



## Business Update: How will the CTA affect your business?

Nicholas J. Stock and Robert A. Hamor

*Business & Tax Law News E-blast*

January 16, 2024

This article is an update regarding a law that may impact your business: The Corporate Transparency Act. The text below continues a series of notices, alerts, and analysis that you may have seen from us on this issue.

The Corporate Transparency Act ("CTA") was enacted as part of the National Defense Authorization Act for Fiscal Year 2021 and became effective on January 1, 2024. It is intended to combat money laundering, terrorist financing, corruption, tax fraud, and other illicit activity.

Below we briefly answer central questions about the CTA and how it may affect you.

### ***Who Must Report?***

Many for-profit companies will be required to report. The CTA applies to both domestic and foreign companies. A "domestic reporting company" is any entity that is a corporation, limited liability company, or was created by filing a document with the secretary of state or any similar office under the law of a state. A "foreign reporting company" is defined similarly.

The CTA applies to nearly every for-profit entity-type operating in the United States, including:

- Corporations
- Limited liability companies
- Limited liability partnerships
- Limited partnerships
- Business trusts
- Foreign entities registered to do business in the United States

### ***Who is Exempt?***

The CTA exempts 23 categories of entities.

---

#### **AUTHORS/ CONTRIBUTORS**

Robert A. Hamor

Nicholas J. Stock II

---

#### **PRACTICE AREAS**

Business Law

Cybersecurity and Data Privacy

Family Owned Businesses

Small Business

Technology Law



Exempt entities include:

- Large operating companies (more than 20+ full time employees and more than \$5 million in gross sales)
- Publicly traded companies
- Inactive entities
- Investment companies
- Banks
- Many tax-exempt and not-for-profit entities
- Entities in certain highly regulated industries
- Subsidiaries of certain CTA-exempt entities

***What Information Must be Reported?***

Reporting companies must report: (1) the beneficial owners of the entity and (2) the individuals who have filed an application to create or register it to do business.

A beneficial owner is any individual who directly or indirectly controls a reporting company or owns or controls at least 25 percent of the ownership interests of that company. There are several exceptions, but the term is broad.

For every beneficial owner and everyone who files an application to form a domestic entity or registration of a foreign entity to do business, companies must report four kinds of information:

1. The individual's full legal name,
2. The individual's date of birth,
3. The individual's current residential or business street address, and
4. A unique identifying number from an acceptable identification (like a passport, government ID, driver's license) or the individual's FinCEN identifier (for individuals who submit for many companies).

***When to Report?***

- Companies existing before January 1, 2024 must file by January 1, 2025.
- New companies between January 1, 2024 and January 1, 2025 have 90 days from the date of formation to file a report.
- Companies formed in 2025 will have 30 days.
- A company must report a change of beneficial ownership within 30 days after the change occurs.

***Consequences for Noncompliance?***

FinCEN has clarified that a Reporting Company is responsible for the accuracy of its information. Reporting violations (e.g., false reporting or failing to report) can lead to civil or criminal penalties for a Reporting Company and certain associated individuals.



Failure to comply with the reporting requirements can result in civil penalties of up to \$500 for each day the violation continues. There are also criminal penalties in the form of fines of up to \$10,000, imprisonment of up to two years, or both.

***How can Foster Swift Help You?***

Foster Swift has a team of attorneys who can help you determine if you are required to report and how to meet your obligations under the CTA.

The rules surrounding the CTA are changing and evolving weekly. Please reach out to your Foster Swift contact if you would like assistance with anything CTA related. Thank you!