

TOPIC FOUR – THE NEW U.S. CORPORATE TRANSPARENCY ACT – COMING TO A THEATRE NEAR YOU

After the Corporate Transparency Act (CTA) Act was passed in Jan 2021, FinCEN issued its final rule on Sep 29, 2022, implementing the requirement for most US companies and foreign companies registered to do business in the US to provide information regarding persons with at least 25% ownership (a “beneficial owner”) or substantial control.

This is effective from Jan 1, 2024, and reporting companies are allowed one year to file initial reports. New companies formed after Jan 1, 2024 will have 30 days to file an initial report. It is estimated that about 30 million businesses will come under the radar.

Applicability:

- This rule applies to Corporations, LLCs, and similar business entities registered to do business with a Secretary of State within the US - domestic or foreign.
- The rule requires sharing owner information like name, DOB, address, and identifying document image for each beneficial owner or person with substantial control over the entity.
- Penalties will be applied for failure to report or disclose beneficial ownership. Willfully providing false information to FinCEN or failing to report complete information to FinCEN can result in fines up to \$10,000 and imprisonment for up to two years.
- The database is not publicly accessible but is for law enforcement, national security, intelligence agencies, and federal regulators enforcing anti-money-laundering laws.
- Reporting companies:
 - Domestic and foreign companies - Corp, LLC, sole owner, any other entity registered within SoS of the US States or under the law of foreign countries and registered to do business in any State by filing a document with SoS
 - There are 23 exempt types of companies. This can be viewed in this link.

Reporting details:

- Company details; beneficial owners (own or control 25% or exercises substantial control) details, senior officers, and key people details are to be disclosed, including a photocopy of the individual’s identification (typically a state driver’s license or passport).
- Applicants - attorneys, tax preparers, etc., who perform the filing should disclose details, including their photo IDs. Exemption - only about 851 accounting firms are registered under Sec 102 of the Sarbanes-Oxley Act of 2002.
- Applicants can apply to get an FinCEN identifier, which will ask for the same personal information for the first time, and use that in the forms filed.

More details are available on the FinCEN website here.

Our recommended read: https://www.americanbar.org/groups/business_law/publications/blt/2021/02/corp-transparency-act/