

DENHA & ASSOCIATES, PLLC
ATTORNEYS AND COUNSELORS AT LAW
PRACTICAL ◆ KNOWLEDGEABLE ◆ PROFESSIONAL

Randall A. Denha, Esq.
(248) 935-0468 – Mobile
(248) 265-4101 – Direct
(248) 265-4105 – Fax
rad@denhalaw.com

January 8, 2024

ALERT: REPORTING UNDER CORPORATE TRANSPARENCY ACT

There is a new federal law called the Corporate Transparency Act (“CTA”) that affects over 33 million companies in the United States, and chances are, your company is one of them. CTA affects almost all closely-held businesses, including common forms of business entities such as LLCs, corporations, and limited partnerships. The scope of the law is very broad, and its requirements apply even to small family businesses and entities designed only to hold property such as real estate which conduct no active business.

Because of the difficulties involved in pulling together all of the requested information required under the CTA and identifying all the entities and individuals who will have to report, our resources are insufficient to assist you in complying with the CTA requirements. **Even if we assisted you in the creation of particular entities, we may no longer have access to information about the entity. We do not accept responsibility to attempt to obtain or provide information about any entity, or to analyze whether any particular company is a reporting company or who its beneficial owners may be. Furthermore, we will not file any reports with FinCEN.**

While we will not be CTA reporting for our clients under the CTA, we will instead be referring clients who are required to report to my affiliate entity, **CTA Compliance Advisors** which can be accessed at **www.goctac.com**. CTAC was created to assist those required to report, as well as their advisors, under CTAC. CTAC provides a full suite of consulting services as well as a simple, easy to use online platform to fulfill reporting requirements under the Corporate Transparency Act. Powered by CTAC’s proprietary BOIN AI, the United States’ first technology-led regulatory filing platform, clients will be able to submit required reports directly to FinCEN through CTAC’s website, and even avail themselves to CTAC’s managed services. In addition, CTAC is working with other professionals, such as law firms, accounting firms, and advisory firms in co-branding opportunities.

About the Corporate Transparency Act

The CTA is aimed at promoting greater transparency in corporate structures and preventing illicit activities such as money laundering, terrorist financing, and other financial crimes. Under this Act, entities such as corporations, limited liability companies, and certain other types of companies are

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required to report certain information to the Financial Crimes Enforcement Network (FinCEN) on an ongoing basis.

We want to ensure that you are aware of your obligations in complying with the new reporting requirements. Here's a brief summary of what you need to know:

- **Reporting Entity**: Entities falling within the scope of the CTA include corporations, limited liability companies, and similar legal structures engaged in trade or business activities within the United States.
- **Reporting Information**: The Act requires reporting entities to disclose certain information, which may include the names and contact details of the beneficial owners or individuals holding substantial ownership interests (typically 25% or more). Other relevant data, such as dates of birth, social security numbers, and addresses, may also be required.
- **Reporting Deadlines**: For entities in existence as of January 1, 2024, initial reports of reporting companies must be filed no later than January 1, 2025. However, different rules apply to the creation of new reporting companies which will require reporting within 90 days of creation if formed in 2024 and within 30 days of creation if formed after December 31, 2024, but those rules are not discussed here.
- **Compliance Assistance**: The CTAC team is prepared to assist you in navigating the reporting process and ensuring compliance with the CTA. It will review your corporate structures, assess reporting obligations, and guide you through the necessary steps to meet the requirements.

Preparing Yourself (or Your Clients) for Reporting

We recommend taking the following actions to begin the compliance process:

- **Gather Relevant Data**: Start collecting the necessary information about your beneficial owners or substantial ownership interests, including their contact details, personal identification numbers, and addresses. It's essential to maintain accurate and up-to-date records.
- **Review Corporate Structures**: We can conduct a comprehensive review of your corporate structure to identify entities subject to the reporting requirements. This will help determine the extent of the information you need to disclose. to the extent we determine that you need restructuring or clarity on the current structure, we can recommend legal counsel.

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- **Seek Regulatory Guidance:** Don't hesitate to reach out to me by email at rad@denhalaw.com or the CTAC team with any questions or concerns you may have regarding the CTA and your compliance obligations. We are here to assist you every step of the way.

Ensuring compliance with the Corporate Transparency Act is crucial to avoiding any penalties or disruptions to your business operations. We urge you to take the necessary steps to meet these new reporting obligations.

I have enclosed a short memorandum which discusses the CTA reporting requirements in more detail. The reach of this new law is very broad and may catch many people by surprise, so we urge you to read the memorandum. Please be aware that the rules and regulations surrounding the reporting requirements are subject to change. This memorandum was accurate as of the date indicated; however, additional guidance, including proposed statutory changes, may have been released subsequently. These changes, expected and unexpected, are one of the many challenges inherent in attempting to comply with the Corporate Transparency Act. We will not undertake to send you updated memoranda detailing all the changes, proposed or otherwise, to this Act, and new guidance or rules issued by FinCEN.

Should you require any guidance or assistance, please contact me or visit www.goctac.com and complete the online contact form. Of course, if you require a demo or have questions please do not hesitate to contact me or any member of the CTAC team.

Thank you for your attention to this matter, and we look forward to assisting you with compliance.

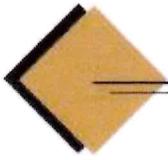
Sincerely,

DENHA & ASSOCIATES, PLLC



Randall A. Denha, Esq.

RAD:blt
Enclosure



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MEMORANDUM: IMPACT OF CORPORATE TRANSPARENCY ACT

There is a new Federal law, called the Corporate Transparency Act (the “CTA”), which will impact almost all closely-held businesses, including common forms of business entities, such as LLCs, corporations, and limited partnerships. The CTA was enacted to assist law enforcement in combatting criminal activity (such as money-laundering, terrorism, and tax evasion) by creating a database of U.S. companies that identifies the real human beings who own or control small businesses. Businesses covered by the CTA (called "reporting companies") are required to report certain information about the business and certain people associated with the business to the Financial Crimes Enforcement Network ("FinCEN"). Although most people and companies affected by the reporting requirements in the CTA will not be engaged in criminal activity, it is important that everyone who is affiliated with a reporting company be aware of the new reporting requirements in order to avoid civil and criminal penalties that will be imposed for failing to report timely.

The Financial Crimes Enforcement Network (“FinCEN”), which is a bureau of the United States Treasury Department but is not part of the Internal Revenue Service, will be in charge of creating and maintaining the database. FinCEN is still developing rules around access to the database but has stated that the information reported will be stored in a secure, non-public database, and that the database information will be available to certain Federal, State, local, and Tribal officials via request for purposes of national security, intelligence, and law enforcement. FinCEN has also stated that financial institutions will have access to the information in certain circumstances, with the consent of the reporting company. All reporting companies will be required to file reports with FinCEN providing certain information regarding the companies and “beneficial owners” of the companies – the humans behind the companies.

What is a “Reporting Company”?

The CTA has broad application, and the reporting requirements will apply to a large number of closely-held businesses. A business may be required to report under the CTA even if it is a business that is not required to report for Federal income tax purposes (such as a single-member LLC), and even if it was formed to hold specific property, such as real estate, and does not conduct any active business. There are exceptions to the reporting requirements of the CTA which apply to certain large businesses, 501(c) tax-exempt entities, and certain types of companies that already are highly regulated (e.g., banks, insurance companies, companies required to register with the Securities and Exchange Commission, and utilities.)² To fall within the exception for "large businesses" the company must (i) employ 20 or more fulltime employees in the United States, (ii) have an operating presence at a physical office within the United States and (iii) have filed a United

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States Federal income tax or information return for the previous year demonstrating more than \$5 million in gross receipts or sales, excluding gross receipts or sales from sources outside the United States.

Whose Information Must be Reported?

As mentioned above, if the company is a reporting company, it must file a report providing information regarding: (i) the company, and (ii) all “beneficial owners” with respect to the company. Certain people or entities with the authority to control the company will be considered beneficial owners and the company will be required to report their information. Each of these reporting categories is further discussed below.

Who is a Beneficial Owner?

As mentioned above, the reporting company is required to report certain information about all of its “beneficial owners.” A “beneficial owner” of a reporting company is an individual who directly or indirectly owns or controls 25% or more of the ownership interests of a reporting company or who directly or indirectly exerts “substantial control” over the company. The definition of “substantial control” is broad and includes any senior officer of the reporting company, anyone who can appoint or remove a senior officer or a majority of the board or other governing body of the reporting company, and anyone who has substantial influence over certain important decisions made by the reporting company.⁴ The ownership interests and means of control may be direct (e.g., owning the corporate stock outright or acting as an officer of the company) or indirect (e.g., an individual who controls a company that in turn exerts substantial control over the reporting company). Ownership or control can also be through an informal arrangement or agreement, and can be through a nominee, agency arrangement and even joint ownership.

The rules for determining whether an individual meets the 25% threshold for ownership are detailed and take into account arrangements such as options and profit interests.

It is also important to note that most estate planning trusts are not considered reporting companies under the CTA. However, when a trust owns an interest in a reporting company or when people associated with the trust otherwise have the ability to exert control over the reporting company, the trustee, beneficiaries, or others associated with the trust such as a trust protector may be considered “beneficial owners” whose information must be reported by the reporting company. The rules relating to trusts and beneficial owners are complicated and leave a number of questions unanswered. Reporting companies that are owned, in whole or in part, by a trust, or which otherwise are affiliated with a trust, likely will need to seek advice from legal counsel in determining beneficial ownership.

When are initial reports due to FinCEN?

For entities in existence as of January 1, 2024, initial reports of reporting companies must be filed no later than January 1, 2025. (As mentioned above, different rules apply to the creation of new

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reporting companies which will require reporting within 90 days of creation if formed in 2024 and within 30 days of creation if formed after December 31, 2024, but those rules are not discussed here.)

What must be reported?

Initial Reports

For domestic reporting companies (i.e., an entity formed in a U.S. state or tribal jurisdiction), the report must include (i) the full legal name of the reporting company, (ii) any trade name or “doing business as” name of the reporting company, (iii) a complete current street address of the principal place of business of the reporting company, (iv) the State, tribal or foreign jurisdiction of the reporting company, and (v) the IRS Taxpayer Identification Number of the reporting company.

In addition, for each beneficial owner of the reporting company, the company must report:

- a. the full legal name of the individual;
- b. the individual’s date of birth;
- c. the individual’s current residential street address;
- d. a unique identifying number and the issuing jurisdiction from one of the following documents - (i) a non-expired passport issued to the individual from the United States, (ii) a non-expired identification document issued to the individual by a State, local government or Indian tribe for the purposes of identifying the individual, (iii) a non-expired driver’s license issued to the individual by a State, or (iv) a non-expired passport issued to the individual by a foreign government if the individual does not have any of the other documents; and
- e. an image of the document from which the unique identifying number was obtained.

There are stiff civil and criminal penalties for failing to file. No extensions are allowed.

Updated Reports and Corrected Reports

In addition to the initial report filed by the reporting company, the CTA requires additional updated reports if beneficial ownership changes or any of the reportable information about a beneficial owner changes. Such updated reports are due within 30 days of the change. Finally, the CTA requires corrected reports to be filed if any filed report is found to be inaccurate.

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What issues should be considered?

Ongoing Reporting Obligations

It is important to understand that the requirement to report to FinCEN is placed on the reporting company; however, if those in control of the reporting company fail to cause it to report timely, those individuals may be subject to significant civil and criminal fines and penalties. Accordingly, beneficial owners of a reporting company will need to provide certain information to the reporting company to allow the company to report and avoid these penalties.

As mentioned above, the rules require the reporting company to file updated reports whenever any information about the beneficial owners or the company changes. The updated reports are due 30 days after any reportable change. While it may be obvious that an update may need to be filed when officers of the reporting company change, it may be less obvious that an update will need to be filed if a beneficial owner moves, changes their name, or has a passport expire. Indeed, a reporting company may be completely unaware of such changes until well after the reporting deadline. As a result, even existing companies that are reporting companies should consider adopting written policies and guidelines for ensuring CTA compliance, including monitoring the company and the beneficial owners for changes in reportable information.

FinCEN Identification Number

As mentioned above, the reporting deadlines are tight, even with respect to small changes. The rules provide a method whereby individuals who are beneficial owners of a reporting company can apply to FinCEN for a FinCEN Identification Number by providing FinCEN with the information the reporting company would need to supply. Once granted, the individual can give the FinCEN Identification Number to the reporting company, which the reporting company may then provide to FinCEN in lieu of the beneficial owner's information. The beneficial owner must then report any changes in information to FinCEN so that the new information may be associated with the FinCEN Identification Number. Many reporting companies may decide to adopt a requirement that their beneficial owners get a FinCEN Identification Number because then the responsibility for reporting any changes switches to the individual beneficial owner. It is also possible for entities to obtain a FinCEN Identification Number. However, if the entity is a beneficial owner of a reporting company, the circumstances in which an entity FinCEN number may be used are limited.

Difficulties in identifying beneficial owners

Identification of the beneficial owners of a reporting company may not be a straightforward matter, particularly if any of the interests in the reporting company are held by trusts. The FinCEN rules concerning trusts are not clear and FinCEN has stated that it will be releasing additional guidance in the future. However, in the meantime, it is most important to understand that legal counsel will likely be needed to review any trust agreements for trusts which hold interests in reporting companies. In addition to needing to identify whether a particular trust may have substantial

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control over a reporting company, it will be necessary to identify whether any person associated with the trust holds any power which may result in them being deemed to own or control an interest in the reporting company.

The FinCEN Rules do indicate that a person may be deemed to own or control an ownership interest in a reporting company under some circumstances: persons holding the power to “dispose of trust assets”; persons who are beneficiaries of a trust and who are the sole permissible recipient of income and principal of the trust or who have the right to demand a distribution of or withdraw substantially all of the assets of the trust; and persons who are grantors of revocable trusts or who “otherwise have the right to withdraw the assets of the trust.” With the exception of the clear rule covering grantors of revocable trusts, there are many uncertainties about how the FinCEN Rules would apply to many common trust provisions which are created for estate and gift tax planning purposes and for flexibility and which may be implicated by some of the guidance FinCEN has issued thus far.

The comments to the FinCEN Rule make it clear that it is possible for an individual to be a beneficial owner as a result of a combination of different interests and powers over the reporting company or other entities that may own or control the reporting company. Thus, it is possible for a small interest held in a trust to be combined with an interest held outright to meet the 25% interest threshold to make a person a beneficial owner. As such all trusts that hold or control any ownership interests in a reporting company will really need to be reviewed in order to comply with the CTA. Additionally, it is clear that more than one individual may be considered to be a beneficial owner as a result of interests in or powers over the same entity that is associated with the reporting company at the same time. Thus, interests held in a trust may have multiple beneficial owners depending on the terms of the document.

What to Do Next

If you are affiliated with a closely-held business, it is important that you are aware of the CTA reporting requirements and determine whether you or the business have reporting obligations. As discussed above, the penalties for non-compliance are severe and include both civil fines and criminal penalties. This memorandum is intended to help you understand the questions you need to ask with respect to the CTA, but it does not include all the information you need in order to determine your reporting requirements. In addition, FinCEN is issuing new guidance rapidly which may change reporting deadlines and clarify the application of its rules to many situations. We urge you to contact us or to seek advice from other legal counsel in order to ensure compliance with the CTA requirements and avoid severe penalties.