



MEMORANDUM

TO: OUR CLIENTS AND FRIENDS

FROM: LAMBZANKEL, LLP

**RE: CORPORATE TRANSPARENCY ACT AND THE
REPORTING OF BENEFICIAL OWNERSHIP
INFORMATION**

KEEPING YOU INFORMED...

The Corporate Transparency Act (“CTA”), enacted by Congress in 2021 as part of the National Defense Authorization Act, takes effect on January 1, 2024 and requires that certain companies report ownership information to the U.S. Treasury Department.

The purpose of the CTA is to capture certain information (outlined below), referred to as beneficial ownership information (“BOI”), for non-exempt companies. This information must be reported to the Financial Crimes Enforcement Network (“FinCEN”), a bureau within the U.S. Treasury Department. A beneficial owner is an individual who either directly or indirectly: (i) exercises substantial control over the company; or (ii) owns or controls at least 25% of the company’s ownership interests.

Companies required to report their BOI to FinCEN are called reporting companies. There are two types of reporting companies:

1. **Domestic reporting companies** - corporations, limited liability companies, and any other entity created by the filing of a document with a secretary of state or any similar office in the U.S.; and
2. **Foreign reporting companies** - entities (including corporations and limited liability companies) formed under the law of a foreign country that have registered to do business in the U.S. by the filing of a document with a secretary of state or any similar office.

As previously noted, certain entities are exempt from the reporting of BOI. The purpose for exempting certain entities, as expressed by Congress, is that they are already heavily regulated by the federal government. Exempt entities include publicly-traded companies, banks and other financial institutions, insurance companies, public accounting firms, tax-exempt entities and large operating companies. According to the CTA, a large operating company is one that: (i) employs more than 20

full-time employees in the U.S.; (ii) has an operating presence at a physical office within the U.S.; and (iii) filed a federal income tax return or information return in the previous year demonstrating more than \$5,000,000 in gross receipts or sales. IF YOUR COMPANY DOES NOT MEET THIS DEFINITION, IT MUST COMPLY WITH THE RULES REGARDING REPORTING OF BOI.

A reporting company that is not exempt from BOI reporting, and that was created or registered to do business before January 1, 2024, will have one year from January 1, 2024 to file its initial BOI report.

A reporting company created or registered on or after January 1, 2024, will have 30 days to file its initial BOI report. This 30-day deadline runs from the earlier of: (i) the date in which the company receives notice that its creation is effective; or (ii) the date in which a secretary of state or similar office first provides public notice of its creation or registration.

There is no fee to submit the BOI report to FinCEN. Reporting will be done electronically through a secure filing system available via FinCEN's website. This system is currently being developed and will be available before your report must be filed.

A reporting company will have to report the following to FinCEN:

1. Legal name of the company;
2. Trade names, "doing business as" (d/b/a), or "trading as" (t/a) names;
3. Current street address of its principal place of business if that address is in the U.S. (*e.g.*, a U.S. reporting company's headquarters), or, for reporting companies whose principal place of business is outside the U.S., the current address from which the company conducts business in the U.S. (*e.g.*, a foreign reporting company's U.S. headquarters);
4. Jurisdiction of formation or registration; and
5. Taxpayer Identification Number.

In addition, the company must report the following for each individual who qualifies as a beneficial owner:

1. The individual's name;
2. Date of birth;
3. Residential address; and
4. An identifying number from an acceptable identification document such as a passport or U.S. driver's license, the name of the issuing state or jurisdiction of the identification document, and an image of the identification document.

FinCEN requires reporting companies created or registered *on or after* January 1, 2024, to also report their company applicants to FinCEN. Up to two individuals per company could qualify as company applicants; the individual who directly files the document primarily involved in the filing and the individual who is primarily responsible for directing or controlling the filing. An accountant or lawyer may be a company applicant if they directly filed the document that created or registered the reporting company.

The CTA provides for both civil (fines of \$500 per day, up to \$10,000) and criminal penalties (up to two years in prison) for willfully providing false information, failing to provide complete

information or failing to update information. Therefore, if your entity is not exempt, it is important to promptly comply with the CTA and its BOI reporting requirements.

If you have any questions regarding the Corporate Transparency Act and the reporting of Beneficial Ownership Information beginning on January 1, 2024, please contact Steven Godsberg (sg@lambzankel.com), Jeffrey A. Zankel (jaz@lambzankel.com), Gia Foster (gf@lambzankel.com), or one of our other attorneys at 631-694-2300.

THIS MEMORANDUM IS MEANT TO ASSIST IN GENERAL UNDERSTANDING OF THE CURRENT LAW. IT IS NOT TO BE REGARDED AS LEGAL ADVICE. THOSE WITH PARTICULAR QUESTIONS SHOULD SEEK THE ADVICE OF COUNSEL.

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