

## THE CORPORATE TRANSPARENCY ACT

Recent changes in regulatory reporting laws impacting many private businesses are about to become effective. Some background as to these changes, we offer the following for your consideration:

- The Corporate Transparency Act (CTA) was passed by Congress in 2021, with key provisions of the law going into effect on January 1, 2024.
- The name is deceiving—most would think a federal law focused on corporations would primarily impact large companies and there would be exceptions or exemptions for small businesses. However, the opposite is true.
- The CTA requires certain entities with fewer than 20 employees to disclose the identity of and information about the “beneficial owners” of the entity with the U.S. Department of the Treasury’s Financial Crimes Enforcement Network (“FinCEN”). The U.S. Small Business Administration suggests this will impact more than 27 million businesses.
- The goal of the CTA is to require a level of transparency in entity structures and ownership to combat money laundering, tax fraud, and other illicit activities. It is designed to capture more information about the ownership of specific entities operating in or accessing the U.S. market.

### Who Must Report:

- **Domestic Companies:** A domestic reporting company is any corporation, limited liability company, or any other entity created by filing a document with a secretary of state or similar state or tribal office. FinCEN expects this will include a variety of non-corporate entities such as limited liability partnerships, limited liability limited partnerships, business trusts, or limited partnerships.
- **Foreign Companies:** A foreign reporting company is any corporation, limited liability company, or any other entity formed under the law of a foreign country and registered to do business in any state or tribal jurisdiction by filing a document with a secretary of state or similar office.



THRASHER, DINSMORE  
& DOLAN

100 7TH AVENUE  
SUITE 150  
CHARDON, OHIO 44024  
PHONE: (440) 285-2242  
FAX: (440) 285-9423

1282 WEST 58TH STREET  
CLEVELAND, OHIO 44102  
PHONE: (216) 255-5431  
FAX: (216) 255-5450

[www.tddl.com](http://www.tddl.com)

- **Exemptions:** The CTA exempts 23 categories of entities from the definition of a “reporting company” and also gives FinCEN authority to create new exemptions. To date, FinCEN has declined to adopt any additional exemptions. Exempted entities include the following, which each have detailed definitions:
  - Large operating companies — companies with 20 or more full-time U.S. employees, more than \$5 million in U.S.-sourced revenue, and a physical operating presence in the U.S.;
  - Issuers registered with the Securities and Exchange Commission;
  - Banks, bank holding companies, savings and loan holding companies, credit unions, financial market utility entities, and money services businesses registered with FinCEN;
  - Registered Commodity Exchange Act entities, registered investment companies or investment advisers, broker-dealers, and registered venture capital fund advisers;
  - Insurance companies or state-licensed insurance producers;
  - Accounting firms;
  - Public utilities;
  - Tax-exempt entities or certain entities that assist tax-exempt entities; and
  - Inactive companies.

The Rule also provides a reporting exemption for subsidiaries that are controlled or wholly owned, directly or indirectly, by one or more exempt entities. According to FinCEN, it limited this exemption to wholly-owned subsidiaries to prevent “entities that are only partially owned by exempt entities from shielding all of their beneficial owners.”

- **Who is a Beneficial Owner:**

Under the CTA, a beneficial owner is defined as any individual who, directly or indirectly, **either** exercises substantial control over such reporting company **or** owns or controls at least 25 percent of the ownership interests of such reporting company.



THRASHER, DINSMORE  
& DOLAN

100 7TH AVENUE  
SUITE 150  
CHARDON, OHIO 44024  
PHONE: (440) 285-2242  
FAX: (440) 285-9423

1282 WEST 58TH STREET  
CLEVELAND, OHIO 44102  
PHONE: (216) 255-5431  
FAX: (216) 255-5450

www.tddl.com

An individual can exercise substantial control over a reporting company if that individual serves as a senior officer in the reporting company, has authority over the appointment or removal of senior officers or a majority of the board, has “substantial influence over important decisions” of the reporting company, or has any other form of substantial control over a reporting company. The broad definition may include third parties.

### **When to Report:**

- The Rule takes effect on January 1, 2024. Any reporting company existing or registered **before** January 1, 2024, must file its initial report with FinCEN by January 1, 2025.
- Any reporting company created or registered after January 1, 2024, must file its initial report within 30 calendar days after creation or registration. And if any reporting company no longer meets the criteria for a reporting exemption, the company must file its initial report within 30 calendar days of when it lost its exemption status. After filing an initial report, any reporting company that has a change in its beneficial ownership information must file an updated report within 30 days of the change. In addition, if a reporting company meets the criteria for an exemption after filing its initial report, it must file an updated report, notifying FinCEN of the change, within 30 days.
- There is no fee for filing the beneficial ownership information report with FinCEN.
- Filing will be done electronically through a secure filing system available through FinCEN’s website.
- FinCEN Identifier.

### **What is Reported:**

#### **For the Reporting Company:**

- A reporting company will have to report:
- Its legal name;
- Any trade names, “doing business as” (d/b/a), or “trading as” (t/a) names;



THRASHER, DINSMORE  
& DOLAN

100 7TH AVENUE  
SUITE 150  
CHARDON, OHIO 44024  
PHONE: (440) 285-2242  
FAX: (440) 285-9423

1282 WEST 58TH STREET  
CLEVELAND, OHIO 44102  
PHONE: (216) 255-5431  
FAX: (216) 255-5450

[www.tddl.com](http://www.tddl.com)

- The current street address of its principal place of business if that address is in the United States (for example, a U.S. reporting company's headquarters), or, for reporting companies whose principal place of business is outside the United States, the current address from which the company conducts business in the United States (for example, a foreign reporting company's U.S. headquarters);
- Its jurisdiction of formation or registration; and
- Its Taxpayer Identification Number (or, if a foreign reporting company has not been issued a TIN, a tax identification number issued by a foreign jurisdiction and the name of the jurisdiction).
- A reporting company will also have to indicate whether it is filing an initial report, or a correction or an update of a prior report.

**For Each Beneficial Owner:**

For each individual who is a beneficial owner, a reporting company will have to provide:

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

The reporting company will also have to provide an image of the identification document used to obtain the identifying number.

**For A Company Applicant:**

A Company Applicant is:

- The individual who directly files the document that creates or registers the company; and
- If more than one person is involved in the filing, the individual who is primarily responsible for directing or controlling the filing.



THRASHER, DINSMORE  
& DOLAN

100 7TH AVENUE  
SUITE 150  
CHARDON, OHIO 44024  
PHONE: (440) 285-2242  
FAX: (440) 285-9423

1282 WEST 58TH STREET  
CLEVELAND, OHIO 44102  
PHONE: (216) 255-5431  
FAX: (216) 255-5450

www.tddl.com

**For entities created after January 1, 2024:**

For each individual who is a company applicant, a reporting company will have to provide:

- The individual's name;
- Date of birth;
- Address; and
- An identifying number from an acceptable identification document such as a passport or U.S. driver's license, and the name of the issuing state or jurisdiction of the identification document.

The reporting company will also have to provide an image of the identification document used to obtain the identifying number.

If the company applicant works in corporate formation—for example, as an attorney or corporate formation agent—then the reporting company must report the company applicant's business address. Otherwise, the reporting company must report the company applicant's residential address.

**Who Can Access This Information:**

- FinCEN will allow federal, state, local, and tribal officials, as well as certain foreign officials who submit a request through U.S. federal government agencies, to obtain beneficial ownership information for authorized activities related to national security, intelligence, and law enforcement.
- Financial institutions will also have access to beneficial ownership information in certain circumstances, with the consent of the reporting company. Those financial institutions' regulators will also have access to beneficial ownership information when they supervise the financial institution.

**Failure to Comply:**

- Failure to comply with the CTA's reporting requirements can lead to civil and criminal penalties, including a maximum civil penalty of \$500 per day (up to \$10,000) and imprisonment for up to two years.



THRASHER, DINSMORE  
& DOLAN

100 7TH AVENUE  
SUITE 150  
CHARDON, OHIO 44024  
PHONE: (440) 285-2242  
FAX: (440) 285-9423

1282 WEST 58TH STREET  
CLEVELAND, OHIO 44102  
PHONE: (216) 255-5431  
FAX: (216) 255-5450

[www.tddl.com](http://www.tddl.com)

### FinCEN Charts

- Attached are explanatory flow charts published by FinCEN with respect to registration.

If you have any questions or concerns about any of the information contained in this memo, please reach out to us.

Todd C. Hicks, Esq.  
[thicks@tddlaw.com](mailto:thicks@tddlaw.com)  
(440) 255-2242

Tim L. Collins, Esq.  
[tcollins@tddlaw.com](mailto:tcollins@tddlaw.com)  
(216) 255-5431



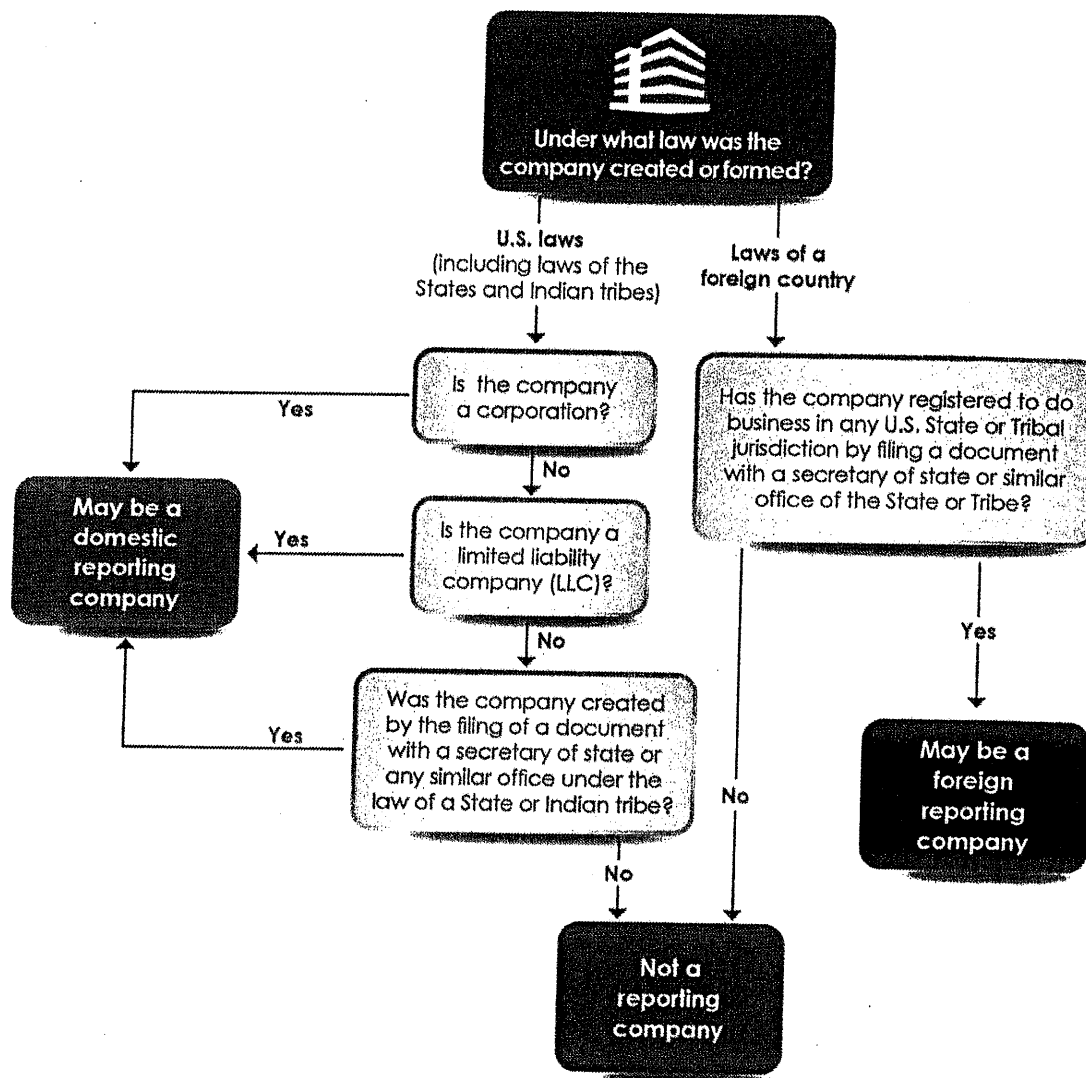
THRASHER, DINSMORE  
& DOLAN

100 7TH AVENUE  
SUITE 150  
CHARDON, OHIO 44024  
PHONE: (440) 285-2242  
FAX: (440) 285-9423

1282 WEST 58TH STREET  
CLEVELAND, OHIO 44102  
PHONE: (216) 255-5431  
FAX: (216) 255-5450

[www.tddlaw.com](http://www.tddlaw.com)

THE ABOVE INFORMATION IS NOT LEGAL ADVISE, BUT IS PROVIDED AS EDUCATIONAL MATERIAL ONLY. IN ORDER TO OBTAIN LEGAL ADVISE, YOU MUST PROVIDE A LAWYER THE SPECIFIC FACTS OF YOUR MATTER, AND YOU AND THE LAWYER MUST AGREE TO FORM AN ATTORNEY-CLIENT RELATIONSHIP.



## SUBSTANTIAL CONTROL



### SENIOR OFFICER

any individual holding the position or exercising the authority of a:

1. President
2. Chief financial officer (CFO)
3. General counsel (GC)
4. Chief executive officer (CEO)
5. Chief operating officer (COO)

or any other officer, regardless of official title, who performs a similar function as these officers



### APPOINTMENT OR REMOVAL AUTHORITY

any individual with the ability to appoint or remove any **SENIOR OFFICER** or a majority of the board of directors or similar body



### IMPORTANT DECISION-MAKER

any individual who directs, determines, or has substantial influence over important decisions made by the reporting company, including decisions regarding the reporting company's:

1. Business, such as:
  - Nature, scope, and attributes of the business
  - The selection or termination of business lines or ventures, or geographic focus
  - The entry into or termination, or the fulfillment or non-fulfillment, of significant contracts
2. Finances, such as:
  - Sale, lease, mortgage, or other transfer of any principal assets
  - Major expenditures or investments, issuances of any equity, incurrence of any significant debt, or approval of the operating budget
  - Compensation schemes and incentive programs for senior officers
3. Structure, such as:
  - Reorganization, dissolution, or merger
  - Amendments of any substantial governance documents of the reporting company, including the articles of incorporation or similar formation documents, bylaws, and significant policies or procedures



### CATCH-ALL

any other form of substantial control over the reporting company. Control exercised in new and unique ways can still be substantial. For example, flexible corporate structures may have different indicators of control than the indicators included here



Who is an important decision-maker?



**IMPORTANT DECISION-MAKER**

any individual who directs, determines, or has substantial influence over important decisions made by the reporting company, including decisions regarding the reporting company's:

1. Business, such as:
  - Nature, scope, and attributes of the business
  - The selection or termination of business lines or ventures, or geographic focus
  - The entry into or termination, or the fulfillment or non-fulfillment, of significant contracts
2. Finances, such as:
  - Sale, lease, mortgage, or other transfer of any principal assets
  - Major expenditures or investments, issuances of any equity, incurrence of any significant debt, or approval of the operating budget
  - Compensation schemes and incentive programs for senior officers
3. Structure, such as:
  - Reorganization, dissolution, or merger
  - Amendments of any substantial governance documents of the reporting company, including the articles of incorporation or similar formation documents, bylaws, and significant policies or procedures

## What is an ownership interest?



### EQUITY, STOCK, OR VOTING RIGHTS

any interest classified as stock or anything similar, regardless whether it confers voting power or voting rights, and even if the interest is transferable

**EXAMPLES** include:

- equity, stock, or similar instrument
- preorganization certificate or subscription
- transferable share of, or voting trust certificate or certificate of deposit for, an equity security, interest in a joint venture, or certificate of interest in a business trust



### CAPITAL OR PROFIT INTEREST

any interest in the assets or profits of a company organized as an LLC, which is similar to stock in a corporation and sometimes referred to as a 'unit'



### CONVERTIBLE INSTRUMENTS

any instrument convertible into *equity, stock, or voting rights* or *capital or profit interest*, whether or not anything needs to be paid to exercise the conversion. The **RELATED** items are also ownership interests:

- any future on any convertible instrument
- any warrant or right to purchase, sell, or subscribe to a share or interest in *equity, stock, or voting rights* or *capital or profit interest*, even if such warrant or right is a debt



### OPTION OR PRIVILEGE

any put, call, straddle, or other option or privilege of buying or selling *equity, stock, or voting rights, capital or profit interest, or convertible instruments*, EXCEPT if the option or privilege is created and held by others without the knowledge or involvement of the reporting company



### CATCH-ALL

any other instrument, contract, arrangement, understanding, relationship, or mechanism used to establish ownership

Who is a company applicant?

