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The Corporate Transparency Act (CTA) and state analogues - by Bowman and Royce

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This article summarizes the basics of (a) the federal Corporate Transparency Act (the CTA), which became effective on January 1st, 2024, (b) the New York LLC Transparency Act (NY LLCTA), which was passed on March 1st, 2024 and becomes effective on January 1st, 2026, and (c) state transparency laws that have been proposed for passage in California and Massachusetts.

The federal CTA was passed in 2021, in an effort to help prevent bad actors from using shell companies to commit illegal acts it requires the disclosure of the beneficial ownership information (BOI) of certain “reporting companies”. Reporting companies, are defined as all business entities formed or registered to do business in any jurisdiction in the U.S. Accordingly, the CTA impacts millions of corporations, limited liability companies, and small businesses across the U.S., including many owners and/or operators of hotels.

Reporting companies are required to disclose BOI to the U.S. Treasury Department’s Financial Crimes Enforcement Network (FinCen). Under the CTA, a beneficial owner is defined as an individual who owns at least 25% of a reporting company, or has “substantial control” over such reporting company. BOI includes each beneficial owner’s full legal name, date of birth, address, and an image of an acceptable identification document, such as a passport. This BOI is held on a secure server and is not publicly available.

The CTA provides 23 categories of entities that are exempt from the definition of reporting company.

These include tax-exempt entities, investment companies or investment advisers, state-licensed insurance producers, and “large operating companies”. In order to qualify as a large operating company, an entity must:

- (i) employ more than 20 full-time employees in the U.S.,
- (ii) have a physical presence at an office in the U.S., and
- (iii) have filed a Federal income tax return in the U.S. for the previous year reporting over \$5 million in gross receipts or sales. Failure to comply with the CTA can result in civil penalties, including fines of up to \$500 per day for failure to timely report, and/or criminal penalties including fines up to \$10,000 and/or imprisonment of up to two years.

Given the potential consequences of non-compliance, anyone (including without limitation any owner or operator of any hotel) that has not yet established a plan for complying with the CTA should consult with a knowledgeable attorney as soon as possible.

If the regulatory burdens of the CTA were not enough, on March 1st, 2024, New York passed its own transparency act, the NY LLCTA. Unlike the CTA, which is already effective, the NY LLCTA will not become effective until January 1st, 2026. The NY LLCTA will impose its own BOI reporting obligations for LLCs formed in, or registered to do business in, New York. Other business entities, such as limited partnerships or corporations, are not covered by the NY LLCTA. The NY LLCTA incorporates all 23 exemptions to the reporting company definition from the federal CTA. However, unlike the federal CTA, under the NY LLCTA, exempt entities are required to make (under the penalty of perjury) a filing (an “attestation of exemption”) with the New York Department of State to confirm which exemption(s) from the definition of reporting company is (are) being claimed. The NY LLCTA originally made reported BOI publicly available, although recent amendments should keep such information confidential. The NY LLCTA requires an annual electronic filing to keep the database updated. Failure to comply with the NY LLCTA may result in substantial fees, suspension of the delinquent LLC’s right to operate in New York, and/or dissolution of the delinquent LLC.

Some other states are also contemplating their own transparency laws. For example, if enacted, California Senate Bill 738 would require LLCs and corporations formed in other jurisdictions to disclose BOI to the secretary of state of California in order to qualify to do business in California. While such proposed bill does not incorporate any of the exemptions to the definition of reporting company from the federal CTA, the definition of “beneficial owner” in the proposed California legislation is limited to any “natural person who owns, directly or indirectly, 50% or more of the equity interest” of an entity. Thus, the BOI reporting threshold is higher than the 25% threshold in the CTA, but without the 23 categories of exemptions in the CTA. The proposed California bill does not address any limitations to access of the BOI.

Even more onerous than the California proposed bill is Massachusetts House Bill 3566, which, if enacted, would require domestic and foreign LLCs to disclose BOI to the Massachusetts secretary of state. The Massachusetts bill appears to be the most burdensome of any state disclosure law, as

it explicitly states that BOI will be publicly available, and that beneficial owners are required to disclose the total number of properties, if any, they own in Massachusetts, as well as the city or town in which each property is located.

While it is still unknown whether the California and Massachusetts transparency bills will become law, the CTA is already the law of the land, and, barring further legislative action, the NY LLCTA will become effective on January 1st, 2026. While complying with state and federal transparency laws is burdensome, costly and difficult, it is important for all businesses, including without limitation, hotel owners and operators, to understand the brave new world in which they are now (or will soon be) operating, so that they take the necessary steps to comply with such laws.

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