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The New York LLC Transparency Law and Beneficial Ownership Reporting

Alert

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Corporate transparency laws is a rapidly evolving area of the law. Inspired by the federal Corporate Transparency Act (the “**CTA**”), the State of New York recently enacted its own entity transparency law – the New York LLC Transparency Act (the “**NY Transparency Act**”), which became effective on January 1, 2024.

Although the NY Transparency Act is similar to the CTA, and incorporates many of the CTA’s defined terms by reference, there are some significant differences between these laws. This Client Alert summarizes certain key provisions of the NY Transparency Act which may be applicable to you, and some of the key differences between the NY Transparency Act and the CTA.

What Does the NY Transparency Act Require?

The NY Transparency Act requires a reporting company (as defined below) which is not exempt to file reports with the New York Department of State (the “**DOS**”) disclosing information regarding its direct and indirect “beneficial owners”. The term “beneficial owner” has the same meaning as its definition in the CTA.

What Companies are Subject to the NY Transparency Act?

Although the CTA and the NY Transparency Act both apply to any “reporting company”, that term is defined more narrowly under the NY Transparency Act – it only includes a limited liability company (“**LLC**”) (not to corporations or other entities) and only if they are formed as a New York company or registered to transact business with the DOS.

The NY Transparency Act exempts LLCs from being a “reporting company” through use of the same 23 exemption categories set forth in the CTA, which are incorporated by reference to the CTA exemptions. A key departure from the CTA’s exemptions approach is that, in order to qualify for an exemption under the NY Transparency Act, the LLC must file a report with the DOS indicating the exemption that it is relying upon. The form of exemption statement has not yet been made available by the DOS.

What Reports Must Be Filed Under the NY Transparency Act?

The form of beneficial owner report has not yet been made available by the DOS. However, the disclosure will require each beneficial owner’s legal name, date of birth, business address and the unique identifying number from a driver’s license, passport or other acceptable identification document. Some key differences between the disclosures required under the CTA and the NY Transparency Act are:

CTA	NY Transparency Act
Requires beneficial owner’s address.	Requires beneficial owner’s address.

Requires a unique identifying number from an ID document plus a copy of such ID document.	Requires the unique identifying number, but not a copy of the ID document itself.
Allows a beneficial owner to register for a FinCEN ID number and provide that in lieu of other information.	Has no comparable concept.

Also, unlike the CTA, the NY Transparency Act requires no disclosures regarding “company applicants”.

Can an LLC Satisfy the NY Transparency Act by Submitting its CTA Report to the DOS?

The NY Transparency Act permits an LLC to satisfy its reporting obligations by submitting its CTA report filed with FinCEN, provided that the CTA report includes all information required under the NY Transparency Act. Given the differences between the requirements of the CTA and the NY Transparency Act as discussed above, there remain open questions as to when a CTA report might satisfy the foregoing condition. For example:

- CTA reports require a beneficial owner’s residential address – would that satisfy the NY Transparency Act’s requirement that the company report its beneficial owner’s business address?
- If a CTA report identifies a beneficial owner solely by providing their FinCEN ID number, would that satisfy the NY Transparency Act’s requirements? Such a CTA report would not clearly identify the beneficial owner on the face of the report. Perhaps the DOS would be able to access the FinCEN database to allow them to use a FinCEN ID number to identify a beneficial owner, but that remains uncertain. Even if the DOS could access FinCEN’s database, the CTA has governmental use restrictions that would seemingly prevent the DOS from using the database to make a beneficial owner’s data publicly available.

The DOS has not yet issued guidance providing clarity on these issues.

What if There is a Change in Information after a NY Transparency Act Report is Filed?

After the initial report is filed, the NY Transparency Act only requires such reports to be amended if the LLC’s articles of organization are amended, in which case the report must be amended to reflect changes to the information in the report (e.g., an address change or new beneficial owners).

This differs from the CTA, which requires reports to be amended within 30 days of any changes in the reported information, whether or not the entity’s governing documents have been amended.

When Must the Beneficial Ownership Disclosure and the Exempt Company Statement Be Filed?

The initial filing date of a beneficial ownership disclosure, in the case of a reporting company, or exempt company statement, in the case of an exempt company, depends on when the reporting company was first formed or registered to do business in New York through the filing of a document with a DOS:

Year First Formed/Registered	NY Transparency Act Report Due Date

Calendar year 2024 or earlier	Not later than January 1, 2025
Calendar year 2025 or later	At the time of formation or foreign LLC registration

What are the Penalties for Violating the NY Transparency Act?

The penalties for violations of the NY Transparency Act are much less severe than the penalties for CTA violations, with no criminal penalties. If the LLC fails to make the requisite filing of its beneficial ownership disclosure or exempt company statement (as applicable), then:

- If more than 30 days past due, the LLC will be shown on the DOS records to be “past due” until a beneficial ownership disclosure (with up-to-date information) is filed.
- If more than 2 years past due, the DOS will mail a delinquency warning notice to the LLC. Unless the delinquency warning is remedied with 60 days of the mailing, the LLC will be placed in “delinquent” status on DOS records. Such “delinquency” status will be removed from the DOS records if the missing report is filed (with up-to-date information) and a \$250 penalty is paid.

Are the NY Transparency Act Filings Accessible to the Public?

Currently, the NY Transparency Act provides that beneficial owners’ names and business addresses (but not the other information in the NY Transparency Act reports) will be available to the public on the DOS website, unless the owner qualifies for certain limited confidentiality exceptions. In contrast, the CTA generally limits access of CTA report data to law enforcement and government authorities.

However, Governor Hochul’s approval of the NY Transparency Act was subject to an informal agreement she had reached with the legislature to pass an amendment in 2024 (referred to as a “chapter amendment”) so as to limit access to the beneficial owner information to those in government with a law enforcement interest.

Has the New York DOS Published any Guidance Regarding the NY Transparency Act?

No. As of the date of this client alert, the DOS has not yet published any guidance regarding the NY Transparency Act.

Are there Vendors that Specialize in Providing Assistance with the Mechanics of Preparing and Filing Reports under the NY Transparency Act?

We expect that online filing service vendors will be available to assist companies with the preparation and filing of reports under the NY Transparency Act, including some of the vendors who currently provide such services with respect to the CTA.

Do such Filing Service Vendors Provide Legal Advice Regarding CTA Compliance?

No. While filing service vendors can assist you with the mechanics of filing reports under the NY Transparency Act, these vendors do not provide substantive legal advice.

What if I have Legal Questions?

Windels Marx has closely followed the NY Transparency Act since it was enacted and will continue to monitor it for any updates. Thus, while generally we will not be filing NY Transparency Act reports on behalf of our clients, we will be available to consult with our clients and answer any questions they may have about the legal requirements related to potential obligations under the NY Transparency Act and the completion of reports.

If you would like assistance from our law firm, including how the NY Transparency Act may affect you, please do not hesitate to contact your Windels Marx relationship lawyer or one of the following members of our **Corporate and Securities Practice Group: Charles Damato, Christopher Dean, Benjamin Fink, Jonathan Gray, Tom Huszar, Gregory Krauss, Jonathan Kret, Michael Moriarty, Robert Rossi or Robert Schwartz.**

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