Business Law Update

Drake University Law School General Practice CLE

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Nicholas H. Roby
Clinical Professor of Law
Drake Legal Clinic
Entrepreneurial and Transactional Clinic
nick.roby@drake.edu

A. Limited liability companies continue to be the dominant business entity choice.

Iowa is now home to over 190,000 active domestic limited liability companies. An additional 20,000 foreign LLCs (i.e., LLCs formed in other jurisdictions) are registered to do business in Iowa. The number of Iowa domestic LLCs has increased by 21% over the past 3 years. Business corporations, on the other hand, have decreased in popularity. A 14% decline in the number of Iowa domestic business corps over the past 3 years results in a total of under 42,000. Here is information on the number of active business entities as of June 30, 2024 and 2021:

ACTIVE IOWA BUSINESS ENTITIES - BY TYPE 2024 VS. 2021				
-	2024	2021	Change	% Change
DOMESTIC LIMITED LIABILITY COMPANIES (IA LLCs)	190,964	157,315	33,649	21%
DOMESTIC PROFIT CORPORATIONS (IA BUS CORPS)	41,439	48,285	(6,846)	-14%
DOMESTIC NON-PROFIT CORPORATIONS (IA NPs)	30,896	30,936	(40)	0%
FOREIGN PROFIT CORPORATIONS (FOREIGN BUS CORPS)	16,682	15,949	733	5%
FOREIGN LIMITED LIABILITY COMPANIES (FOREIGN LLCs)	20,003	15,576	4,427	28%
DOMESTIC LIMITED LIABILITY PARTNERSHIPS (IA LLPs)	4,122	3,956	166	4%
DOMESTIC PROFESSIONAL CORPORATIONS (IA PCs)	2,467	2,851	(384)	-13%
DOMESTIC PROFESSIONAL LIMITED LIABILITY COMPANIES (IA PLLCs)	2,460	1,856	604	33%
DOMESTIC LIMITED PARTNERSHIPS (IA LPs)	1,157	1,328	(171)	-13%
FOREIGN NON-PROFIT CORPORATIONS (FOR NPs)	1,342	1,233	109	9%
FOREIGN LIMITED PARTNERSHIPS (FOREIGN LP)	526	578	(52)	-9%
DOMESTIC LIMITED LIABILITY LIMITED PARTNERSHIPS (IA LLPs)	525	542	(17)	-3%

Source: https://data.iowa.gov/Regulation/Active-Iowa-Business-Entities-by-Corporation-Type/3e22-29pq

B. Comprehensive amendments to Iowa's Limited Liability Company Act enacted in Spring 2023 took effect January 1, 2024.

Iowa Code Chapter 489, the Iowa Revised Uniform Limited Liability Company Act, was updated, clarified and otherwise amended by HF 655, signed into law on June 1, 2023. *See* *https://www.legis.iowa.gov/legislation/BillBook?ga=90&ba=HF655*. Chapter 489 is now known as the "Iowa Uniform Limited Liability Company Act" (i.e., "Revised" has been dropped from its

name) and the new version became effective as of January 1, 2024. The amendments are based on the Uniform Law Commission 2013 Uniform Limited Liability Company Act ("Uniform Act"). While the Iowa Act now tracks closely the updated version of the Uniform Act, Iowa still retains a number of non-Uniform Act provisions.

Some of the more important substantive changes made to Chapter 489 by HF 655 are described below.

1. Changes to the all-important operating agreement provision – now Section 490.105 (formerly Section 490.110)

a. A critically important provision of the LLC Act deals with the operating agreement and the ability of the LLC's members to craft the agreement with provisions that accurately reflect their business deal. Generally, the provisions of the operating agreement control over contrary "default" provisions of the Act. That is, generally the operating agreement governs (1) relations among the members as members and between the members and the company; (2) the rights and duties under the Act of a person in the capacity of manager; (3) the activities and affairs of the company and the conduct of those activities and affairs; and (4) the means and conditions for amending the operating agreement. *Iowa Code §489.105(1).*

b. To the extent the operating agreement does not provide for a matter, then the (default) provisions of the Act governs the matter. *Iowa Code §489.105(2).*

c. HF 655 moved this all-important provision from Section 110 to 105, but retained the critical concept from prior law that the provisions of the operating agreement generally govern over conflicting provisions of the Act.

d. However, prior law as well as the amended Act, contain exceptions to the general rule; that is, a list of matters that the operating agreement cannot override the Act or otherwise do.

e. The list is expanded from 11 to 15 items described in paragraphs (a) through (o) of Section 489.105(3). See the full list in **Appendix A**.

2. The Iowa LLC Act now includes specific provisions dealing with creditor rights and charging orders in the case of single member LLCs.

a. Upon application of a judgment creditor, a court may enter a charging order against the ***transferable interest*** of the judgment debtor for the unsatisfied amount of the judgment. *Iowa Code §489.503(1) (emphasis added)*. The ***transferable interest*** is the economic interest in the LLC; in other words, the right to receive distributions. It does not include the right to participate in management or any other right of a member of the LLC. Even if foreclosure of the lien of the charging order is permitted and an order to sale is entered (upon a showing that distributions under the charging order will not pay the judgment debt within a reasonable time), the purchaser at the foreclosure sale obtains only the transferable interest and not other rights of a member including the right to participate in management. *Iowa Code §489.503(3).*

b. This statutory limitation on the collection rights of a creditor is consistent with the right to "pick your partner" concept that is a key feature of LLC law. That is, the continuing members of an LLC will not generally be forced to partner up with a former member's creditor following its collection action. This general rule still applies to multi-member LLCs.

c. The new subsection – Iowa Code 503(6) - recognizes that when an LLC has only one member, the "pick your partner" concept is not applicable. So, the new special rule provides that, in the case of a single member LLC, the foreclosure of a charging order pertains to the entire ownership interest - the management rights in addition to the economic rights - so that the judgment creditor becomes the sole member and owner of the LLC.

d. This new provision limits the usefulness of an Iowa single member LLC as an internal asset protection device; that is, a structure that ensures that a creditor of an owner cannot directly participate in (or take over) management and potentially cause liquidation of the business entity. Certain states, including Alaska, Delaware, Nevada, South Dakota and Wyoming have gone the other way. Those states have

amended their LLC laws to specifically provide that single-member LLCs have the same protection from creditors as multi-member LLCs (i.e., charging orders with the limited rights of a transferee, not a full member, upon foreclosure).

e. Do not confuse this concept with the limited liability protection that Iowa law affords members of limited liability companies (including single member limited liability companies) from debts and obligations of the LLC. Section 489.304 provides that a member (as well as a manager) is not personally liable for a debt, obligation, or other liability of the company solely by reason of being or acting as a member (or manager). There is no distinction made between multi-member and single member LLCs for this purpose.

3. The Chapter 489 amendments clarify the default standard of fiduciary duty of care for members and managers.

a. Members in a member-managed LLC (and managers in a manager-managed LLC) owe the company and the other members the fiduciary duties of loyalty and care. *Iowa Code §489.409.*

b. Section 489.409(3) now (after the amendments of HF 655) defines the duty of care imposed on members (and managers) as follows:

> The duty of care of a member of a member-managed limited liability company in the conduct or winding up of the company's activities and affairs is to refrain from engaging in grossly negligent or reckless conduct, willful or intentional misconduct, or knowing violation of law. [In a manager-managed LLC, this duty applies to the managers and not to the members. *Iowa Code §489.409(9)(a).]*

c. This is the exact language used to describe the duty of care of general partners under the Iowa Uniform Partnership Act and the Iowa Limited Partnership Act. *Iowa Code §§486A.404, 488.408.* The recent amendments to the LLC Act are intended to clear up some confusion caused by the language used in former Section 489.409(3) that could be viewed as invoking an "ordinary negligence" standard of liability in certain circumstances.

d. Remember that most provisions of the Iowa Uniform Limited Liability Company Act are default provisions, and the members can provide otherwise in their

operating agreement. However, the ability to modify the default provisions of the Act, while quite broad, is not unlimited. Section 489.105 (Section 489.110 before the recent amendments) sets forth the rules governing what the operating agreement can and cannot do.

e. As for the duty of care, Section 489.105(6) provides that if not manifestly unreasonable, the operating agreement may alter the duty of care, but may not authorize conduct involving bad faith, willful or intentional misconduct, or knowing violation of law. This means that generally:

- An operating agreement could impose a stricter duty of care by establishing an ordinary negligence threshold; or
- An operating agreement could loosen the duty of care (as compared to the statutory default provision) by providing that only bad faith, willful or intentional misconduct or knowing violation of law (and not negligence – ordinary or gross – or reckless conduct) constitutes a breach of the duty; but
- An operating agreement cannot entirely eliminate the duty of care. Some other states, including Delaware, allow the elimination of the duty of care (and all other fiduciary duties).

C. Reinstatement of Administratively Dissolved Entities Made Easier – SF 2054 (2024)

Iowa business entities are generally required to file a biennial report with the Iowa Secretary of State. Except in the case of nonprofit corporations, the report must be accompanied by a biennial fee. Limited liability companies and nonprofit corporations file in odd numbered years (e.g., 2025); business corporations file in even years (e.g., 2026) The report and fee are due by April 1 of the applicable year. Failure to file the required report or pay the required fee will result in administrative dissolution by the Secretary of State. *Iowa Code §§489.708(1), (2); 490.1420(1), (2)*. Iowa limited liability companies and business corporations are also subject to administrative dissolution if they do not comply with the registered agent requirements. *Iowa Code §§489.708(3), (4); 490.1420(3), (4)*.

Under prior law, to reinstate an administratively dissolved limited liability company or business corporation, an application was required including the federal tax identification number of the entity. Following the filing of the application for reinstatement, a delay ensued while the Secretary of State, as required by statute, inquired of Iowa Workforce Development to ensure that no taxes were owed. Reportedly, sometimes the delays were lengthy and sometimes the Secretary of State reported that the tax status could not be verified and therefore the reinstatement was not approved.

SF 2054, enacted in the Spring of 2024, eliminates the requirement that an application for reinstatement include the applicant's federal tax identification number and the Secretary of State's obligation to refer the application to Iowa Workforce Development to ensure that all taxes have been paid to that agency by the applicant. §§489.710(1) (limited liability companies); 490.422(1) (business corporations). The change was effective July 1, 2024.

This change expedites and streamlines the reinstatement process. The application for reinstatement can now be prepared and filed online through the Secretary of State's Fast Track Filing System. See https://help.sos.iowa.gov/node/70 .

D. Corporate Transparency Act's Beneficial Ownership Reporting Requirements – Nationwide Injunction Enjoining Enforcement by the Government and Other Updates. –

On December 3, 2024, the U.S. District Court for the Eastern District of Texas issued a nationwide preliminary injunction blocking the U.S. Department of Treasury from enforcing the Corporate Transparency Act (CTA). *Texas Top Cop Shop, Inc., et. al. v. Garland, et. al.,* E.D. Tex., No. 4:24-cv-00478, 12/3/24.

In its *Texas Top Cop Shop* decision, the court concluded that the CTA was likely unconstitutional. The court enjoined the CTA's enforcement anywhere in the country, specifically stating that neither the CTA nor its related regulations may be enforced, and that "reporting companies need not comply with the CTA's January 1, 2025 BOI reporting deadline." The federal government filed an appeal to the U.S. Court of Appeals for the Fifth Circuit on December 5, 2024.

The Financial Crimes Enforcement Network (FinCen), the bureau within the U.S. Department of Treasury charged with enforcement of the CTA has posted an alert on its website stating:

> ***Alert:*** *Impact of Ongoing Litigation – Deadline Stay – Voluntary Submission Only*
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> *In light of a recent federal court order, reporting companies are not currently required to file beneficial ownership information with FinCEN and are not subject to liability if they fail to do so while the order remains in force. However, reporting companies may continue to voluntarily submit beneficial ownership information reports.*
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> The Corporate Transparency Act (CTA) plays a vital role in protecting the U.S. and international financial systems, as well as people across the country, from illicit finance threats like terrorist financing, drug trafficking, and money laundering. The CTA levels the playing field for tens of millions of law-abiding small businesses across the United States and makes it harder for bad actors to exploit loopholes in order to gain an unfair advantage.
>
> On Tuesday, December 3, 2024, in the case of *Texas Top Cop Shop, Inc., et al. v. Garland, et al.*, No. 4:24-cv-00478 (E.D. Tex.), a federal district court in the Eastern District of Texas, Sherman Division, issued an order granting a nationwide preliminary injunction that: (1) enjoins the CTA, including enforcement of that statute and regulations implementing its beneficial ownership information reporting requirements, and, specifically, (2) stays all deadlines to comply with the CTA's reporting requirements. The Department of Justice, on behalf of the Department of the Treasury, filed a Notice of Appeal on December 5, 2024.
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> *Texas Top Cop Shop* is only one of several cases in which plaintiffs have challenged the CTA that are pending before courts around the country. Several district courts have denied requests to enjoin the CTA, ruling in favor of the Department of the Treasury. The government continues to believe—consistent with the conclusions of the U.S. District Courts for the Eastern District of Virginia and the District of Oregon—that the CTA is constitutional.
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> While this litigation is ongoing, FinCEN will comply with the order issued by the U.S. District Court for the Eastern District of Texas for as long as it remains in effect. Therefore, reporting companies are not currently required to file their beneficial ownership information with FinCEN and will not be subject to liability if they fail to do so while the preliminary injunction remains in effect. Nevertheless, reporting companies may continue to voluntarily submit beneficial ownership information reports.

https://fincen.gov/boi, last visited Dec. 9, 2024.

For information relating to the CTA and the beneficial owner information reporting rules applicable before the nationwide injunction, see **Appendix B**.

E. Recent Cases Dealing with Iowa Business Matters

1. Hunter Three Farms, LLC v. Hunter, 4 N.W.3d 462, *9-*13 (Iowa Ct. App. 2024) (Table Unpublished), 2024 WL 2317708. Two members of a member-managed Iowa limited liability company authorized the company to file a direct suit against the company's third member. The suit alleged the third member had violated fiduciary duties and misappropriated company property. The LLC did not have a written operating agreement. The district court dismissed the case on the theory that filing such a suit was not an "ordinary course of business" matter for the company and thus, under the LLC Act, required unanimous member consent. The effect of the district court ruling was that the two members would have to pursue the company's claims against the third member as a derivative suit. The two members instead appealed, and the Iowa Court of Appeals reversed in a majority opinion.

The court sidestepped the issue of whether the bringing of the lawsuit was within the "ordinary course of business" of the company, and instead reasoned that the "exceptional circumstances" presented by the situation justified a conclusion that the consent of all *disinterested* members provided sufficient authority for the company to file suit. The dissent noted that the majority's recognition that the case facts involved "exceptional circumstances" justified the opposite conclusion: that filing suit against a managing member was not ordinary business for a limited liability company and that unanimous consent was thus required.

2. Hora v. Hora, 5 N.W.3d 635 (Iowa 2024). Minority shareholders in family farming corporation brought derivative action against director, who was their father, and employee who was their brother, asserting claims for breach of fiduciary duties, fraud, and appointment of an independent custodian for corporation, and also asserting a claim for removal of director as trustee of stock trust. The District Court, Washington County, Sean W. McPartland, J., dismissed claims after a bench trial, and granted in part a motion

to reconsider. Minority shareholders appealed. The Court of Appeals (*2023 WL 1809035*) affirmed in part and reversed in part. All parties sought further review, which was granted. The Supreme Court, with Oxley, J. writing for the majority, held that: (1) employee was not corporation's agent triggering a fiduciary duty based on his position as operations manager; (2) employee did not misappropriate grain in violation of duty of loyalty as employee; (3) director's yearly compensation (of $31,000 in cash and benefits) was fair to corporation; (4) business judgment rule applied to director's general oversight of employee; and (5) director did not violate fiduciary duties in his oversight of employee with respect to misappropriation of grain.

3. **South Construction and Insulation, LLC v. Iowa Workforce Development, 8 N.W.3d 563 (Table, Unpublished), 224 WL 2317708.** A married couple comprise the only two members of an Iowa LLC, with each owning 50 percent of the membership interests. The company performs construction, insulation, and weatherization services. Over the five-year period, husband received substantially more payments from the company than wife. All payments from the company were characterized by the members as "draws", but no written operating agreement in support of such characterization or clarifying such disparate payments as something other than remuneration for services was provided by the members. Following an unemployment insurance tax audit, the Iowa Workforce Development (IWD) determined that the excess payments to husband constituted wages to an employee for purposes of the unemployment insurance tax. The Iowa Court of Appeals, affirming a decision of the District Court, agreed with the findings of the IWD and held that because the statute at issue here—Iowa Code section 96.1A—defines wages, we are bound by its definition. Its definition includes all remuneration received by a member of an LLC unless proportional to membership interest.
4. **Northwest Bank & Trust Company v. Pershing Hill Lofts, LLC et. al., Slip Copy 2024 WL 4964594 (Table), December 4, 2024.** Letters of intent, and similar documents referred to as term sheets or memorandums of understanding, are frequently the subject of litigation. Often the controversy involves one party construing the document as containing one or more legally enforceable provisions and the other party arguing that the document was

unenforceable in its entirety. That was nature of the dispute in this recent Iowa Court of Appeals decision. A developer and bank executed a "summary of terms" outlining proposed loan terms which concluded with this statement:

> This is a summary of terms that may lead to a commitment to lend, subject to satisfactory completion of due diligence, and a subsequent Commitment Letter. Acceptance below assures [the bank] of [the developer's] exclusive consideration as "Lender" in exchange for the expense in time and travel of the proposed due diligence.

When the developer secured financing with another lender, the bank sued claiming the developer had breached this exclusivity clause and sought to recover its damages caused by the breach. The district court found the entire financing proposal document to be an unenforceable agreement to agree. On appeal, the Court of Appeals reversed, finding the developer's agreement to seek financing exclusively from the bank in return for the bank expending its resources on due diligence imposed mutual legal obligations on the parties and did not become unenforceable merely because it was included in a longer document that describes the tentative financing terms that everyone agrees cannot be enforced.

APPENDIX A

Section 489.105(3) – What an Operating Agreement Cannot Do

3. An operating agreement shall not do any of the following:

a. Vary the law applicable under section 489.104.

b. Vary a limited liability company's capacity under section 489.109 to sue and be sued in its own name.

c. **Vary any requirement, procedure, or other provision of this chapter pertaining to any of the following:**

(1) **Registered agents.**

(2) **The secretary of state, including provisions pertaining to records authorized or required to be delivered to the secretary of state for filing under this chapter.**

d. Vary the provisions of section 489.204.

e. Alter or eliminate the duty of loyalty or the duty of care, except as otherwise provided in subsection 4.

f. Eliminate the contractual obligation of good faith and fair dealing under section 489.409, subsection 4, but the operating agreement may prescribe the standards, if not manifestly unreasonable, by which the performance of the obligation is to be measured.

g. **Relieve or exonerate a person from liability for conduct except as provided in subsection 6.**

h. Unreasonably restrict the duties and rights under section 489.410, but the operating agreement may impose reasonable restrictions on the availability and use of information obtained under that section and may define appropriate remedies, including liquidated damages, for a breach of any reasonable restriction on use.

i. Vary the causes of dissolution specified in section 489.701, subsection 1, paragraph *"d"*.

j. Vary the requirement to wind up the limited liability company's activities and affairs as specified in section 489.702, subsection 1; subsection 2, paragraph *"a"*; and subsection 5.

k. Unreasonably restrict the right of a member to maintain an action under subchapter VIII.

l. **Vary the provisions of section 489.805, but the operating agreement may provide that the limited liability company shall not have a special litigation committee.**

m. Vary the right of a member to approve a merger, interest exchange, conversion, or domestication under section 489.1023, subsection 1,

paragraph *"b"*; section 489.1033, subsection 1, paragraph *"b"*; section 489.1043, subsection 1, paragraph *"b"*; or section 489.1053, subsection 1, paragraph *"b"*.

n. **Vary the required contents of a plan of merger under section 489.1022, subsection 1; plan of interest exchange under section 489.1032, subsection 1; plan of conversion under section 489.1042, subsection 1; or plan of domestication under section 489.1052, subsection 1.**

o. Except as otherwise provided in sections 489.106 and 489.107, subsection 2, restrict the rights under this chapter of a person other than a member or manager.

Note: Bold face text indicates new paragraphs added by SF 655, effective January 1, 2024.

See full text of Chapter 489, as amended by SF 655, here: https://www.legis.iowa.gov/docs/ico/chapter/489.pdf .

APPENDIX B

NOTE: As described in more detail in the body of this outline:

On December 3, 2024, the U.S. District Court for the Eastern District of Texas issued a nationwide preliminary injunction blocking the U.S. Department of Treasury from enforcing the Corporate Transparency Act (CTA). On December 5, 2024, the federal government appealed the ruling to the Fifth Circuit. The appeal is pending. In the meantime, the government has issued a notice that it will comply with the court order for as long as it remains in effect. Therefore, reporting companies are not currently required to file their beneficial ownership information and will not be subject to liability if they fail to do so while the preliminary injunction remains in effect. Nevertheless, reporting companies may continue to voluntarily submit beneficial ownership information reports.

The following summary of the CTA, and its beneficial owner information reporting requirements, was prepared before the December 3, 2024 preliminary injunction:

Effective January 1, 2024, many companies operating in the United States became subject to certain reporting requirements relating to their beneficial owners – the individuals who ultimately own or control the company. The beneficial ownership information reports were to be filed with the Financial Crimes Enforcement Network (FinCEN), a bureau of the U.S. Department of the Treasury. The new reporting obligations were imposed pursuant to the federal Corporate Transparency Act (CTA), enacted in 2021 and found in 31 U.S.C. §5336. The CTA is being implemented through regulations that were finalized by the Treasury Department in 2022. *See 31 CFR § 1010.380*.

1. Overview of CTA Requirements

The CTA was passed and is being implemented to combat money laundering, terrorist financing, and other illicit activities through shell corporations and similar entities. The CTA requires certain entities – so-called "reporting companies" to disclose certain basic company information (e.g., name, business address, jurisdiction of formation, federal tax identification number), as well as "Beneficial Ownership Information" (BOI), described

below, in reports filed with FinCEN through an electronic interface. Reports can be filed, and additional information can be found at the government website - https://fincen.gov/boi .

a. "Reporting companies" under the CTA include entities that are created or registered by filing a document with a secretary of state or similar offices at the state level. Reporting companies thus include limited liability companies, business corporations, and limited partnerships, but not general partnerships or sole proprietorships.
b. Some specific exemptions apply to the filing requirement. Companies are not required to file reports under the CTA if the entity meets the requirements for an exemption from reporting. Exempt entities generally include heavily regulated business entities or large operating companies, and non-profits that are tax exempt under IRC §501(c). The vast majority of private businesses do not qualify for an exemption and must comply with the reporting requirements.
c. A reporting company's BOI report must cover the following persons, all of whom are included in the definition of "beneficial owner":

    (1) individuals who own or control at least 25% of the company's ownership interests;

    (2) individuals who exercise "substantial control" over the company, like the CEO, CFO, COO, and general counsel;

    (3) individuals who hold the power to appoint or remove a majority of the company's governing board or senior officers; and

    (4) individuals who direct, determine, or have substantial influence over important decisions made by the reporting company, like organic transactions, major expenditures, issuance of debt or equity, and approval of the reporting company's operating budget.

d. Specified personal identifying information included in report must include each beneficial owner's name, date of birth, physical residence address, and unique

identifier number from a recognized issuing jurisdiction (e.g., driver's license or passport) and a photo of that document.

a. For reporting companies formed on or after January 1, 2024, the report must also information as to "company applicants", such as incorporators and organizers. Company applicants also include those who filed, or directed the filing of, the company's organizational document. Thus, attorneys and other professionals filing, or directing the filing of, certificates of organization and articles of incorporation with the secretary of state to form new limited liability companies and business corporations are "company applicants" even if they do not serve as the organizer or incorporator of the newly formed entity.

b. Information in the BOI reports filed with FinCEN will not be publicly available, but will be accessible by federal and state law enforcement agencies.

c. A reporting company, beneficial owner and company applicant for whom information must be reported can provide the necessary information to FinCEN through a registration process that results in a FinCEN Identifier, which can then be used in lieu of independently providing such information for reporting purposes.

d. A reporting company in existence on January 1, 2024 will have until January 1, 2025 to file the initial BOI report.

e. After an initial report is filed, a Reporting Company must promptly (i.e., within 30 days) file updates with FinCen if relevant information changes.

f. There are substantial civil and criminal penalties for non-compliance with the filing requirements of the CTA. The penalty for a late BOI report is a civil penalty of approximately $591 per day for non-compliance (adjusted annually for inflation). Additionally, willfully failing to file a BOI report can result in criminal penalties including fines up to $10,000 and/or imprisonment for up to two years.

2. Recent developments regarding the CTA and BOI reporting requirements.

a. For reporting companies formed before 2024, the initial BOI report must be filed by January 1, 2025. There is no extension procedure.

b. Reporting companies formed in 2024 have 90 days from formation to file their initial BOI report. For reporting companies formed after 2024, the deadline for filing the initial BOI report is shortened to within 30 days following formation.

c. There are currently at least six pending lawsuits challenging the constitutionality of the CTA, on various grounds, including that the CTA exceeds Congress's enumerated authorities and violates the First, Fourth, Fifth, Eighth, Ninth, Tenth, and Fourteenth Amendments. Most notably, on March 1, 2024, a federal district court in Alabama held that the CTA unconstitutionally exceeds Congress's enumerated powers. *National Small Business United et al. v. Yellen et al.*, No. 5:22-cv-01448 (N.D. Ala. 2024), on appeal *National Small Business United et al. v. U.S. Dep't of the Treasury et al.*, No. 24-10736 (11th Cir. 2024). Importantly, the district court's order is limited to the parties in the case, and FinCEN released a statement taking the position that any entity that is not a party to the case must continue to comply with the CTA. *See Beneficial Ownership Information, FinCEN,* *https://www.fincen.gov/boi* . The government appealed the district court's decision, and the Eleventh Circuit heard oral argument on September 27, 2024. By contrast, federal district courts in Oregon and Virginia recently rejected arguments challenging the constitutionality of the CTA. *Firestone v. Yellen*, No. 3:24-cv-1034, Dkt. 18 (D. Or. June 26, 2024); *Comm. Ass'ns. Inst., et al., v. Yellen, et al.,* No. 1:24-CV-1597 (E.D. Va. Oct. 24, 2024). In still other cases, motions for summary judgment have either been briefed or are being briefed. Against this backdrop, companies should continue to proceed on the basis that the CTA will remain enforceable for the time being.

d. It appears well settled that general partnerships, including limited liability partnerships, are not reporting companies under the CTA. *See Rutledge and Keatinge, LLPs Are Not CTA Reporting Companies, ABA Business Law Today, Oct. 2024*; online

copy accessible at: https://www.americanbar.org/groups/business_law/resources/business-law-today/2024-october/llps-are-not-cta-reporting-companies/#:~:text=The%20definitions%20of%20a%20reporting,LLP%2C%20to%20come%20into%20existence. Accordingly, for clients adamantly opposed to federal reporting of beneficial ownership information, the LLP may be a reasonable alternative to an LLC. The LLP is a special form of general partnership that provides limited liability to partners. The limited liability provisions are invoked by the filing of a statement of qualification with the Iowa Secretary of State. *See Iowa Code §486A.1001 et. seq.* Since an LLP is a state law general partnership, it requires two or more partners; so the LLP alternative to avoid CTA filing requirements is not available for single owner entities.

e. Throughout 2024, FinCEN has continued to issue guidance in the form of FAQs regarding the CTA. *See, e.g.*, FinCEN FAQ C13, https://www.fincen.gov/boi-faqs. Recently, FinCEN has issued important FAQs on the reporting obligations of dissolved entities. The CTA and its implementing regulations did not squarely address situations where an entity is dissolved before the entity's BOI report is due. FinCEN has subsequently released a number of FAQs, which collectively state, among other things, that:

   - If an entity is dissolved prior to 2024, then the entity does not need to file.
   - If, on the other hand, an entity that would have needed to report existed at <u>any point</u> during 2024, then it must file a report with FinCEN, even if the entity is dissolved before its BOI report was due.

f. On September 9, 2024, the Iowa Supreme Court adopted new rules clarifying that it is not the unauthorized practice of law for non-attorneys to assist clients in preparing, filing, or determining whether to file, BOI reports. *Ia Ct. Rules §37.6*.