Corporate Insights: Are You Ready for the Corporate Transparency Act?

BY MMAICHLE • SEPTEMBER 27, 2023

The Corporate Transparency Act ("CTA") goes into effect January 1, 2024. Here are some key facts that will help you understand your obligations under the CTA:

WHY WAS THE CTA ENACTED?

The CTA was enacted on January 1, 2021, to counter bad actors who seek to conceal their ownership of corporations, LLCs, or similar entities in the United States in order to facilitate money laundering, financing of terrorism, tax fraud, or other illegal acts, by creating "reporting requirements" for certain categories of entities. The U.S. Department of the Treasury's Financial Crimes Enforcement Network ("FinCEN") is the governing body enforcing the CTA.

WHO IS IMPACTED BY THIS CHANGE?

The CTA impacts any "reporting company." A "reporting company" includes any entity that is either created or registered to do business in the U.S.

CAN I CLAIM AN EXEMPTION?

There are 23 categories of entities that are exempt from the reporting requirement. Most of the exemptions are for entities that file reports with the SEC or other regulatory authorities such as publicly traded companies, banks, credit unions, money services businesses, securities brokers and dealers, tax-exempt entities, insurance companies, state-licensed insurance producers, pooled investment vehicles, public utilities, and accounting firms.

Certain dormant companies are also exempt from the reporting requirements.

There is also an exemption for any existing company employing more than 20 employees in the U.S. on a full-time basis that filed a prior year federal tax return showing more than $5 million in gross receipts or sales, and that operates at a physical location in the U.S. A newly formed "reporting company" could never be eligible for this exemption as the exemption only becomes available after a prior year federal tax return has been filed.

WHAT IS THE REPORTING REQUIREMENT?

A "reporting company" is required to file a report with FinCEN (the "BOI Report") which provides: (1) its legal name and any trade name or DBA; (2) its address; (3) the jurisdiction in which it was formed or first registered, depending on whether it's a U.S. or foreign company; and (4) its Taxpayer Identification Number (TIN).

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While the details set out in the paragraph above were always required to be disclosed to the applicable Secretary of State, one of the big changes in these new reporting requirements is that the entity is also required to provide certain information about the following individuals:

- beneficial owners, i.e., the person(s) who ultimately own(s) or control at least 25% of the entity or who exercise "substantial control" over the entity (i.e., the president of the company who is not a 25% shareholder); and
- the person applying for entity formation

The information to be provided in the BOI Report about the beneficial owners/ applicant includes the (1) legal name; (2) birthdate; (3) address (in most cases, a home address); and (4) an identifying number from a driver's license, passport or other approved document, as well as an image of the document that the number is from.

WHAT IS THE REPORTING TIMELINE?

Any existing entities that were formed prior to January 1, 2024, have until January 1, 2025, to file their first BOI Report.

Any new entities that are formed after January 1, 2024, will be required to file their first BOI Report within thirty days from the date of formation.

HOW AND WHERE WILL THE BOI REPORT BE FILED?

FinCEN will be creating an online system for the filing of BOI Reports, which will likely be housed on FinCEN's website.

DOES THIS MEAN THE PUBLIC WILL HAVE ACCESS TO MY PERSONAL INFORMATION?

The FinCEN database will not be accessible to the public. Access to the personal information in the database is limited to:

- Any federal agency engaged in national security, intelligence, or law enforcement activity
- State, local and tribal law enforcement agencies with court authorization
- Federal regulatory agencies for the purposes of their supervision
- Foreign law enforcement agencies, prosecutors or judges upon a request by a federal agency on their behalf
- A financial institution that has been authorized to make the request by the reporting company for customer due diligence purposes

WHAT ABOUT CHANGES?

If there are any changes to the information reported in the initial BOI Report, such changes will need to be reported by amending the BOI Report within 30 calendar days from the date the relevant change occurred.

WHAT IF I FIND AN ERROR ON THE BOI REPORT?

If any information filed in any prior BOI Report is inaccurate, the inaccurate information will need to be corrected by amending the BOI Report within 30 calendar days from the date the company became aware of the inaccuracy.

WHAT IF I DO NOT COMPLY?

Failure to comply could lead to civil and criminal actions.

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