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Insights

Important Reminders about the Corporate Transparency Act

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By: Travis D. Lovett and Robert A. Greising

The federal Corporate Transparency Act ("CTA") went into effect January 1, 2024, and requires most small businesses to file a Beneficial Ownership Information ("BOI") report with the United States Department of Treasury, specifically the Financial Crimes Enforcement Network ("FinCEN"). Companies that existed as of 2024 have until January 1, 2025 to make the required filing. Those that have deferred this step may want to consider filing their BOI report now to avoid the last grains of sand running out before their filing has been made.

A reporting company, in its BOI report, will disclose personal information about its owners and individuals that exercise substantial control over that entity. A reporting company created in or after 2024 must also report information about the individuals that file the documentation to form the company, and the individual that oversees this filing if more than one individual is involved. For more information regarding the reporting requirements and the scope of information that must be included in a BOI report, please see our prior Alert.

With the transparent information provided in a BOI report, the federal government hopes that it will be better able to combat bad actors that use the disguise of 'legitimate businesses' to foster their criminal activities, such as money laundering for terrorist activity, human trafficking and other financial criminal acts.

Businesses that existed before January 1, 2024, have until January 1, 2025, to file their initial BOI report unless it qualifies for one of the 23 exemptions from the CTA's requirements. [The 23 exemptions mostly apply to businesses that are heavily regulated, such as banks and other financial institutions, large businesses and their subsidiaries, and tax-exempt organizations.] Companies formed in 2024 (that do not satisfy any of the 23 exemptions) have 90 days from formation to file their initial BOI report. Companies formed in 2025 and onward have 30 days from formation to file their initial BOI report.

We previously issued an Alert about the CTA being ruled unconstitutional by the U.S. District Court for the Northern District of Alabama (the "Court") in an opinion issued on March 1, 2024. However, the Court did not issue a national injunction. Rather, it only enjoined the government from applying the CTA to the plaintiffs, one of which was the National Small Business Association. The CTA currently remains in effect for all other businesses that are not members of the National Small Business Association (as of March 1, 2024).

Several states have enacted or are considering enacting their own versions of the CTA. New York has enacted the New York LLC Transparency Act. In California and Maryland, active efforts to enact similar legislation are underway.

Even if your business stopped doing business in 2024, whether it dissolved or lost its customers, it must still file its initial BOI report. FinCEN recently issued guidance that confirms if a reporting company existed at any

period of time in 2024, it is still required to file its BOI report to FinCEN. This holds true even for companies that had wound up their affairs and stopped conducting business before January 1, 2024 or started the process in 2024 and will be completely dissolved before its BOI report is due.

The CTA provides severe penalties for noncompliance. A person who willfully violates the BOI reporting requirements may be subject to civil penalties of up to $500 for each day that the violation continues. (This civil penalty amount is adjusted annually for inflation and has increased to almost $600.) A person who willfully violates the BOI reporting requirements may also be subject to criminal penalties of up to two years imprisonment and a fine of up to $10,000. Potential violations include willfully failing to file a BOI report, willfully filing false information, or willfully failing to correct or update previously reported beneficial ownership information. A reporting company must file an updated report within 30 days to update information that has changed or was previously reported inaccurately. Note that both an individual and the reporting company can be held liable. For example, a senior officer who willfully does not file an updated BOI report when information changes about the reporting company could potentially be held liable.

To better avoid and prevent personal and corporate liability, reporting companies should examine their governing documents (e.g., operating agreements, partnership agreements, or bylaws) and ensure mechanisms are in place to accomplish the following:

- For the company to identify the individuals that need to be disclosed in its BOI report. These individuals include the “Beneficial Owners,” which are individuals who own 25% or more equity in the company or exercise substantial control over the company, or both.
- For the company to solicit and obtain accurate and complete information from the Beneficial Owners.
- For the company’s determination that it is a reporting company under the CTA and who within the company qualifies as a Beneficial Owner to be binding on the owners if made in good faith by the company.
- For each owner to indemnify the company and the other owners, and hold each of them harmless, from any and all damages and losses sustained by it or them arising out of or in connection with such owner’s failure to provide the information the company needs to comply with the BOI reporting requirements.

Tight deadlines and FinCEN’s evolving guidance regarding the BOI reporting requirements together with steep penalties for noncompliance have made many business owners nervous about the CTA. It is critical that business owners assess their governance structures and install procedures to comply with the CTA. For those companies that have deferred the filing process, time keeps getting tighter. Krieg DeVault has attorneys in place to help you comply with the BOI reporting requirements. If you have any questions regarding the CTA or obligations to comply with the BOI reporting requirements, please contact Travis D. Lovett, Robert A. Greising , or any member of our Business, Acquisitions and Securities Practice.

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