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The Corporate Transparency Act: Are You Prepared?

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Beginning on January 1, 2024, millions of business entities (including corporations, limited liability companies, and other similar entities created in or registered to do business in the United States) will be required to report certain information about their entity and their beneficial owners to the United States Treasury Department's Financial Crimes Enforcement Network ("FinCEN"). This new obligation was established under the recently enacted Corporate Transparency Act (the "CTA"), which was designed to deter terrorist financing, money laundering, tax fraud, and other illegal activities. All domestic and foreign business entities should assess whether they are subject to the CTA, as there may be significant consequences for non-compliance.

Who Must Comply?

The CTA applies to business entities (referred to as "reporting companies") that were either: (i) created by the filing of a document with the secretary of state or similar office under the law of a state or Indian tribe; or (ii) formed under the law of a foreign country AND registered to do business in the United States, by the filing of a document with a secretary of state or similar office under the laws of a state or Indian tribe. This means that nearly all business entities formed in the US or doing business in the US (for example, corporations, limited liability companies and limited partnerships) are subject to "reporting companies" under the CTA, unless an exemption applies.

Who is exempt?

There are 23 categories of business entities that are exempt from the reporting requirements under the CTA. One such exemption applies to "large operating companies," which are defined as entities that (i) employ more than 20 employees on a full-time basis in the U.S., (ii) have filed federal U.S. income tax returns for the prior year reflecting more than $5 million in gross receipts or sales in the aggregate (excluding receipts and sales from sources outside of the U.S.), and (iii) operate a physical office premises in the U.S. A company that meets the criteria for exemption as a large operating company might lose such exempt status if it ceases to meet these criteria at any time. For example, a reduction in number of employees or a reduction in revenue might result in a company losing its exempt status and might trigger reporting obligations under the CTA.

Inactive companies are also exempt from the reporting obligations under the CTA. In order to qualify as an "Inactive Company," an entity must (i) have been in existence before January 1, 2020; (ii) not be engaged in active business; (iii) not be owned by a foreign person directly or indirectly, wholly or partially; (iv) not have experienced any change in ownership in the preceding twelve months; (v) not have sent or received any funds greater than $1,000, either directly or through any account the entity or an affiliate had an interest, in the preceding twelve months; and (vi) not hold any assets.

A full list of the 23 exemptions under the CTA are:

1. Securities reporting issuer
2. Governmental authority
3. Bank
4. Credit union
5. Depository institution holding company
6. Money services business
7. Broker or dealer in securities
8. Securities exchange or clearing agency
9. Other Exchange Act registered entity
10. Investment company or investment adviser
11. Venture capital fund adviser
12. Insurance company
13. State-licensed insurance producer
14. Commodity Exchange Act registered entity
15. Public accounting firm
16. Public utility provider
17. Financial market utility
18. Pooled investment vehicle
19. Tax-exempt entity
20. Entity assisting a tax-exempt entity
21. Large operating company
22. Subsidiary of certain exempt entities
23. Inactive entity

What reporting information is required?

A reporting company is responsible to file three levels of information: (i) Reporting Company Information; (ii) Beneficial Owner Information; and (iii) for entities formed on or after January 1, 2024, Company Applicant Information.

<u>Reporting Company Information</u> – This includes entity legal names, trade names, DBAs, addresses, jurisdiction of formation or registration, and Tax ID Number.

<u>Beneficial Owner Information</u> – A reporting company must provide the legal name, birthdate, address (i.e. a residential street address), a copy of nonexpired driver's license or passport and the identifying number from a driver's license or passport for each beneficial owner of the company.

A "beneficial owner" is an individual who directly or indirectly (i) exercises "substantial control" over the Reporting Company or (ii) owns or controls at least 25% of the "ownership interests” of such Reporting Company. The following are examples of individuals having “substantial control”: (a) a senior officer; (b) a person who, directly or indirectly, has authority to appoint or remove a senior officer or a majority of the board of directors (or similar body); and/or (c) a person who directly or indirectly, otherwise directs, determines, or has substantial influence over important decisions made by the Reporting Company; or (d) a person who exercises any other form of substantial control over the Reporting Company.

Company Applicant Reports - A “company applicant” is (i) the person responsible to file the document creating the Reporting Company (e.g., the certificate of incorporation, certificate of formation, articles of organization, etc.) and/or (ii) the individual primarily responsible for directing or controlling the filing of the formation document. A reporting company may have up to two individuals act as Company Applicants. Companies formed prior to January 1, 2024, do not need to report company applicant information. Companies required to report company applicant information must submit the same categories of personal information regarding company applicants as with beneficial owners.

Reporting companies will be required to submit the reporting information directly to FinCEN through a newly established and not-yet-operational system referred to as the Beneficial Ownership Information System (BOSS). BOSS will not be live to the public until January 1, 2024.

When does a reporting company have to file required reports?

Reporting companies formed prior to January 1, 2024 will have a deadline of January 1, 2025 to comply with the new reporting requirements. This means that reporting companies in existence on the effective date of the CTA will have a period of one year to submit the required reports.

Entities formed on or after January 1, 2024 that are reporting companies will have ninety (90) calendar days from formation to file a report. For foreign companies, the ninety (90) day period begins from the company’s registration to do business in the US.

Reporting companies created or registered on or after January 1, 2025, will have 30 calendar days to file their initial beneficial ownership information reports after receiving actual or public notice of their creation or registration becoming effective.

After filing an initial report, a reporting company has an ongoing obligation to submit updated reports to correct errors or to account for any company changes (for example, changes in beneficial ownership). Such updated reports must be submitted within 30 days of the date of the change or of the date the company became aware of, or had reason to know of, the error.

What are potential penalties for non-compliance?

According to FinCEN, the act of knowingly or willingly providing false or fraudulent information in connection with the beneficial ownership may result in civil penalties up to $500 for each day that the violation continues or criminal penalties including imprisonment for up to two years and/or a fine of up to $10,000.

Next Steps

Our firm is ready and willing to help you navigate through the new requirements of the CTA. Please reach out to us at your earliest convenience to discuss strategies for collecting and monitoring information and reporting to FinCEN in a timely manner.

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If you have any questions about the above alert, please contact Randi Schillinger or Ami Foger of Saiber LLC's Business Services practice group.

Disclaimer

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