TRUST COMPANY
OF THE SOUTH

Corporate Transparency Act: What to Know

The final regulations of the Corporate Transparency Act (the "Act") went into effect on January 1, 2024. Designed to protect U.S. national security and strengthen the integrity and transparency of the U.S. financial system, the Act is intended to help identify and stop criminal actors who would use anonymous shell companies to hide their illicit proceeds. The Act requires most corporations, limited liability companies, limited partnerships and other entities that are formed with a secretary of state office in the U.S. to report information about their companies and those persons who own or control them to the Financial Crimes Enforcement Network ("FinCEN"), and there are significant civil and criminal penalties for failing to comply.

These new rules affect anyone who owns or controls a "reporting company," which the legislation defines as a business created by a filing with a secretary of state's office. Note that certain entities are exempt from these filing requirements, including but not limited to charities, large operating companies (20+ employees and $5MM or more in revenue) and certain types of other entities that are already subject to significant government regulation, such as banks.

So, what should you know about reporting requirements under the Act?

WHAT MUST BE REPORTED?

A representative of the reporting company must file a report with the legal name and d/b/a, principal business address and tax identification number of the company as well as information for any individual who is a "beneficial owner." The information to be reported on a beneficial owner consists of legal name, date of birth, home street address and a PDF of the individual's passport or driver's license. And, for companies formed on or after January 1, 2024, the "company applicant," which is the individual who directly files the document that creates or registers the company with the secretary of state, must also be reported.

WHO IS A BENEFICIAL OWNER?

Broadly, anyone who (1) owns 25% or more of the company OR (2) has substantial control over the company is considered a beneficial owner. Substantial control means an individual who (i) serves as a senior officer of the reporting company, (ii) has authority over the appointment or removal of any senior officer or majority of the board of directors of the reporting company, (iii) directs, determines or has substantial influence over important decisions made by the reporting company or (iv) has any other form of substantial control (catch-all!). A "senior officer" includes the president, chief financial officer, general counsel, chief executive officer, chief operating officer or any other officer who performs a similar function.

WHAT IF A REPORTING COMPANY'S INTEREST IS IN A TRUST?

What if a trust holds a 25% or greater interest in a reporting company, or the trust controls the company, for example, by holding a majority of the voting stock in the company? The trustee of that trust is a beneficial owner of the reporting company if the trustee can dispose of the trust assets. If the trust's beneficiary is the sole permissible recipient of income and principal or has the right to demand a distribution of or withdraw substantially all of the assets from the trust, that beneficiary is a beneficial owner of the reporting company. If such a trust is revocable, the trust's grantor would be a beneficial owner of the reporting company.

WHAT IS A FINCEN IDENTIFIER?

Individuals can apply for a FinCEN identifier rather than provide personal information to the reporting company. A FinCEN identifier will be helpful for individuals who have a beneficial ownership interest in numerous reporting companies, and it will be easier for reporting companies to list FinCEN identifiers in lieu of listing all its beneficial owners' detailed personal information. Note that if any of the required information previously submitted to FinCEN in an individual's identifier application changes, the individual must file an update on their application within 30 days after the change occurs. The use of a FinCEN identifier appears to shift the burden of updating information from the reporting company to the beneficial owner.

WHEN MUST REPORTS BE FILED AND BY WHOM?

For reporting companies created in 2024, reports are due 90 days from the creation of the entity. The 90 days will be shortened to 30 days for entities created on or after January 1, 2025. For reporting companies in existence prior to January 1, 2024, reports are due by December 31, 2024, and that includes companies that were in existence prior to January 1, 2024, but dissolved during 2024. Corrections or changes to required information for the company or for beneficial owners must be reported within 30 days of the change. The company is required to report, meaning those managing the company, not the owners, will bear the reporting burden.

WHAT HAPPENS IF THE REQUIREMENTS OF THE ACT ARE NOT MET?

Both individuals and corporate entities may be liable for willfully failing to report complete or updated beneficial ownership information; in such circumstances, individuals can be held liable if they either cause the failure or are a senior officer at the company at the time of the failure. A person who willfully violates the reporting requirements may be subject to civil penalties of up to $500 for each day that the violation continues and 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 beneficial ownership information report, willfully filing false beneficial ownership information, or willfully failing to correct or update previously reported beneficial ownership information.

The vast majority of entities formed by a filing with the secretary of state are going to be reporting companies, including family LPs and LLCs. Although technically the filing requirement is the responsibility of the company's management, the company owners will want to ensure their company is following the requirements of the Act. You should contact your advisory team with a list of your existing companies to determine whether any of them constitute a reporting company.

Note that this article does not constitute tax, legal or investment advice and should not be used as a substitute for the advice of professional legal counsel.

FOR MORE INFORMATION, PLEASE REACH OUT TO:

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