SQUIRE PATTON BOGGS

Beneficial Ownership Reporting Under the US Corporate Transparency Act

US – February 15, 2024

The Corporate Transparency Act (CTA) went into effect on January 1, 2024, requiring many entities doing business in the US, such as corporations, limited liability companies and limited partnerships (reporting companies), to report their beneficial ownership information (BOI) to the Financial Crimes Enforcement Network (FinCEN).

Overview

To address concerns about secret ownership of entities and its link to funding terrorist activities, corruption and other illegal activities, the CTA was enacted to require reporting companies to identify individuals possessing substantial control and ownership over such entities. Unless at least one of 23 listed exemptions is applicable, US domestic entities that were formed by filing a document with a secretary of state or similar office and non-US entities that registered to do business in the US by filing a document with a secretary of state or similar office are required to file an initial BOI report with FinCEN identifying such individuals (subject to certain limitations) and to update such reports when the information therein has changed.

Reporting Requirements

Reporting companies will be required to report specific information regarding the reporting company itself, its beneficial owners and, for reporting companies created or registered after January 1, 2024, its company applicants. Beneficial owners are any individuals who, directly or indirectly, either (a) exercise "substantial control" over a reporting company, or (b) own or control at least 25% of the ownership interests of a reporting company. Company applicants are the individuals who (a) directly file the document creating or registering the reporting company or (b) are primarily responsible for directing or controlling such filing (if more than one individual is involved in the filing of the document).

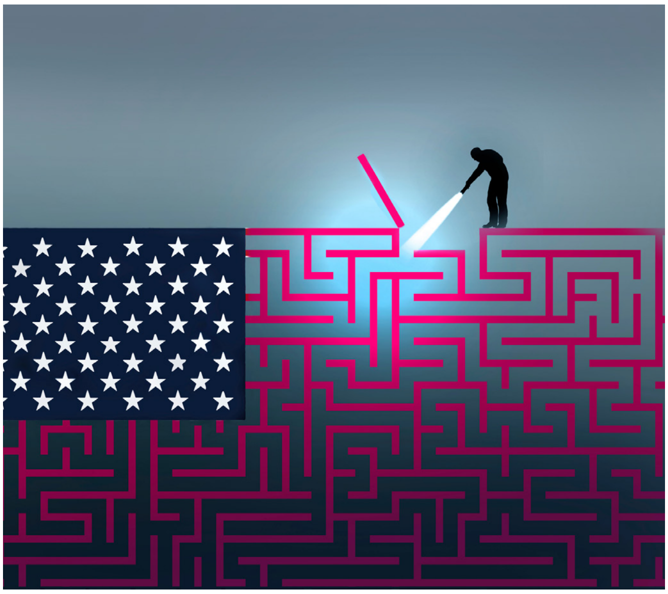
A BOI report will require the following information:

Reporting Company

- Full legal name of the reporting company
- Any trade name or "doing business as" name
- Complete street address of the principal place of business
- State or foreign jurisdiction of formation
- Employer Identification Number or alternative Taxpayer Identification Number

Beneficial Owners

- Full legal name
- Date of birth
- Complete current residential street address
- Identifying Number and Issuing Jurisdiction from one of a list of specified personal identification documents
- An image of the identifying document



Company Applicants

- Full legal name
- Date of birth
- Current address
- Identifying Number and Issuing Jurisdiction from one of a list of specified personal identification documents
- An image of the identifying document

Excluded Individuals

Certain individuals are excluded from the definition of "beneficial owner," such that their information is not required to be reported. Such individuals include the following:

- A minor child (although information of a parent or legal guardian must be reported)
- An individual acting as a nominee, intermediary, custodian or agent on behalf of another individual
- An employee of a reporting company, acting solely as an employee, whose substantial control over or economic benefits from the company are derived solely from the employee's employment status, and who is not a senior officer of the company
- An individual whose only interest in the reporting company is a future interest through a right of inheritance
- A creditor of a reporting company

FinCEN has established a procedure for individuals to obtain a unique FinCEN identifying number for themselves so that they can provide such number to reporting companies over which they have substantial control or ownership so that they do not have to report such confidential personal information to a reporting company. Although using a unique FinCEN identifier helps individuals to maintain some control over the confidentiality of their information, it does shift the burden of reporting updated information to such individuals rather than to the reporting companies.

Exemptions for Certain Entities

The regulations implementing the CTA list 23 exemptions that exclude certain entities from the definition of "reporting company," including publicly traded companies meeting specified requirements, many nonprofit organizations and certain large operating companies. One exemption applies to a wholly owned subsidiary of a parent company in situations where the parent company itself satisfies the requirements of an exemption (with certain exceptions).

Deadlines

Reporting companies created or registered to do business prior to January 1, 2024, have until January 1, 2025, to file their initial BOI report. Further, these reporting companies will not be required to disclose their company applicant(s). Following a reporting company's initial BOI report, changes regarding any of the information provided for the reporting company or beneficial owners must be reported within 30 days.

Reporting companies created or registered to do business on or after January 1, 2024, but before January 1, 2025, will have 90 days to file their initial BOI report, running from the earlier of the time the company receives actual notice that creation or registration is effective, or after a secretary of state or similar office first provides public notice of creation or registration.

Reporting companies created or registered after January 1, 2025, will have 30 days to file their initial BOI report, running from the earlier of the time the company receives actual notice that creation or registration is effective, or after a secretary of state or similar office first provides public notice of creation or registration.

Following a reporting company's initial BOI report, changes regarding the reporting company or beneficial owners must be reported through an updated BOI report no later than 30 days after the date on which the change occurred. Changes in personal information regarding company applicants will not require an updated filing. Reporting companies must also correct inaccurate information in previously filed reports within 30 days of becoming aware of the inaccuracy.

Access to Reports

To protect the confidentiality of reporting companies and individuals identified in their reports, reports are to be filed through and stored in FinCEN's beneficial ownership secure system (BOSS), which is intended to be a secure, nonpublic database using rigorous information security methods and controls typically used in the federal government to protect nonclassified yet sensitive information systems at the highest security level. FinCEN will permit federal, state, local and tribal officials to obtain BOI for authorized activities related to national security, intelligence and law enforcement. Similarly, information will be provided for the same purpose to certain foreign officials who submit a request through a US federal government agency. In addition, financial institutions will be provided with access to BOI in certain circumstances, with the consent of the reporting company, and the regulators of such financial institutions will have access to BOI when they supervise the financial institutions.

Practical Challenges

Recognizing the amount of information that many reporting companies will need to gather and the number of people from whom information will need to be collected, FinCEN has enacted certain safe harbors and other safeguards. For example, if one has reason to believe a previously filed BOI report contains inaccurate information and voluntarily submits a report correcting the inaccurate information within 90 days of the deadline of the original report, no penalties will be implemented.

As a further complicating factor, there are indications that state legislatures may consider the enactment of similar corporate transparency legislation at the state level. For example, the New York LLC Transparency Act was signed into law on December 23, 2023. The New York Act, in general, requires limited liability companies organized under New York law or qualified to do business in New York state to file a list of their beneficial owners with the New York Department of State at the time of registration or qualification. If and when other states decide to enact similar legislation, the compliance burden will become increasingly complex.

Compliance Violation

Senior officers and other representatives of reporting companies should become acquainted with the reporting duties, taking into consideration any exemptions or special reporting rules that may be applicable. Subsequent changes to BOI need to be addressed with an updated filing within the prescribed deadline. Those filing BOI reports will be required to certify the report as true, correct and complete.

Willful failure to file a complete or updated BOI report or willful provision or attempts to provide false or fraudulent information can result in civil penalties up to US$500 per day that the violation is ongoing or criminal penalties including imprisonment up to two years and/or a fine up to US$10,000. FinCEN has stated that senior officers of a reporting company may be held personally accountable for such violations.

Conclusion

The CTA is here to stay. Entities, senior officers and stockholders should be aware of the CTA's filing requirements to maintain compliance on an ongoing basis. As noted above, updates to BOI reports will have to be filed with FinCEN within a limited period of time of the occurrence of such changes or penalties may be assessed.

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