THE CORPORATE TRANSPARENCY ACT IS HERE. ARE YOU PREPARED?

Are you or a family member the operator or manager of a Limited Liability Corporation ("LLC"), or a general partner of a Limited Partnership ("LP")? Have you ever created an LLC to hold real estate or other investment assets? If so, new, more stringent reporting requirements brought on by the Corporate Transparency Act warrant attention. The Act, passed in 2021 as part of the larger National Defense Authorization Act, authorized the Treasury Department to institute rules aimed at preventing money laundering. To this end, a great deal of attention has been placed on LLCs, smaller corporations, and LPs given that many shell companies were created for the purpose of tax avoidance and, in certain instances, in the furtherance of illicit activities.

New requirements became effective on January 1, 2024, and compel "reporting companies" to register the ownership interests of individuals that exercise substantial control, or own or control not less than 25% of the entity. This must be done by filing a Beneficial Ownership Information Report, or BOI Report, with the Financial Crimes Enforcement Network ("FinCEN"). FinCEN is a bureau of the U.S. Treasury Department whose mission it is "to safeguard the U.S. financial system from illicit use and combat money laundering and promote national security through the collection, analysis, and dissemination of financial intelligence and strategic use of financial authorities."[1] Failure to comply with the requirements of the Corporate Transparency Act may incur civil and criminal penalties, including penalties of up to $500 a day and up to two years imprisonment along with a $10,000 fine.

Entities Subject to the FinCEN BOI Reporting

The Corporate Transparency Act ("The Act") defines "reporting companies" as a corporation, LLC or other legal entity created by the filing of a document with the Secretary of State of a given state or created under the laws of a foreign country and registered to do business in the U.S. It is estimated that the new law applies to over 32 million entities.

The Act does not apply to entities:

- With greater than 20 employees;
- A physical office in the U.S.; and
- Greater than $5 million in sales or gross receipts

There are also 23 different types of entities that are exempt from the requirements of the Corporate Transparency Act, mostly financial services institutions such as banks, credit unions, and broker dealers. (see: https://www.wolterskluwer.com/en/expert-insights/the-23-exemptions-from-the-corporate-transparency-act).

Information That Must Be Reported to FinCEN

Details to be provided include legal name, DOB, residential address, business street address, ID number of a non-expired passport or state issued ID, and a picture ID. While the reporting company does not need to file a BOI report annually, if there are any changes to the information on file, an updated BOI report must be filed within 30 days. Furthermore, the Act also requires reporting companies to disclose other information including legal/trade/DBA names, street address, state in which entity was created, as well as providing an incorporation instrument from the issuing state.

The Treasury Department has begun building a Beneficial Ownership Information database and recently Treasury Secretary Janet Yellen announced that over 100,000 entities have joined the BOI tracking system. **Covered entities must file an online BOI report no later than January 1, 2025. After January 1, 2024, all newly created "reporting entities" will have to file an online BOI report within 90 days of formation. Beginning in 2025, all newly created "reporting entities" will have only 30 days to file their BOI report with FinCEN.**

Please see: https://www.fincen.gov/boi

If you have any questions, please contact Jim O'Neil at (617) 303-0775.

1. www.fincen.gov/what-we-do

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