Financial Page Summary February 2024

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Ignorantia legis nulla excusatio est. Huh? Translated as “ignorance of the law is no excuse”. According to a National Small Business Association survey in November, about 50% of respondents had no idea what the Corporate Transparency Act was and another 30% were uncertain of its applicability to their business. The Corporate Transparency Act was passed in 2021 and became effective January 1, 2024. It was created to curb illicit financial transactions and money laundering and requires most reporting companies to complete Beneficial Ownership Information Reports in 2024. For organizations created since January 1, they have 90 days to register. Those organizations formed prior to 2024, have until the end of the 2024 year to comply. There are substantial civil and criminal penalties for failure to comply. Implementation, supervision, and regulation has been delegated to The Financial Crimes Enforcement Network (FinCen) a bureau of the U.S. Department of the Treasury. This is a general summary of the Act’s provisions and you should consult your professional advisor for additional information and compliance.

Generally, a reporting company under the Act is a limited liability company (LLC), a corporation. or any other entity that is created by filing paperwork with a state Secretary of State of similar regulator. FinCen has created 23 exemptions, mainly government agencies, organizations already subject to similar disclosures as financial service providers, and tax-exempt entities. To qualify as a tax-exempt entity, the organization must be determined as exempt by the IRS under Section 501(c)(3) of the Internal Revenue Code. There are some additional exemptions for tax-exempt entities.

The Act requires registration of the entity with FinCen and disclosure of “beneficial owners”. A beneficial owner is generally an individual with 25% or more of the reporting company’s ownership interest. In addition, an individual who exercises substantial control over the company also qualifies as a beneficial owner. Senior officers typically exercise substantial control and a beneficial owner might have substantial control over the senior officers. Senior officers are defined to include President, CFO, CEO, COO, and general counsel. Directors of the company may be considered beneficial owners but FinCen states it will consider each director on a case-by-case basis. Substantial control can be the exercise of hiring decisions, signing major contracts, approving major expenditures, taking on debt, or approval of the operating budget. This is not an exhaustive list. There are also some exemptions from this definition.

Entities are required to register and provide information. The applicant is the person filing the paperwork to form the business. Applicants must also be listed in the FinCen report. The reporting company must provide information about itself, its beneficial owners, and the applicant, in its report. It is to report its full legal name, address, tax ID number and jurisdiction where it was created. It also is to report the full legal name, date of birth, home address and state issued photo ID for each of its beneficial owners defined by the Act.

The initial report only needs to be filed once, but changes of beneficial owners or their information will require an updated report. FinCen states that a reporting company will be able to file its initial report electronically. There is no filing fee. A request can be made for a FinCen identifier for beneficial owner or company applicant. This identifier number can be used for other reporting requirements of business ownership information. This number is not mandatory.

Now you are in the know and are aware of potential filing requirements for your business or entity. Filing must be done electronically at https://boiefiling.fincen.gov/fileboir. It is in English! Your professional advisor should be able to provide any additional translation as needed.