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THE CORPORATE TRANSPARENCY ACT EXPLAINED

The Corporate Transparency Act (“CTA”) came into effect on January 1, 2024. It is the most sweeping corporate transparency law in decades and will have a major impact on how most businesses in the U.S. operate. In the video below, JAH **corporate** attorney **Jessica Shoop** covers which companies are affected by the CTA, what companies are exempt, reporting requirements, and the consequences of failing to comply with the CTA.

Audio

Transcript

If you’re a business owner or operator, you may have heard about a new law that could have a big effect on your company—called the Corporate Transparency Act, or the “CTA”. This new federal law went into effect on January 1, 2024, and it aims to provide more transparency in business ownership and structure, in hopes to better combat financial crimes, like money laundering and tax evasion.

Generally speaking, the CTA requires reporting companies to file a “beneficial ownership information” report—or a “BOI” report—with the Financial Crimes Enforcement Network—or “FinCEN”. The BOI report provides FinCEN with identifying information for certain individuals, but there are many different aspects of CTA compliance you should be aware of.

In this video, we will discuss 4 major topics: (1) which companies do the CTA apply to; (2) whether an exemption applies to your company, so you don’t have to file a BOI report; (3) if your business doesn’t fall under an exemption, what information has to be reported; and (4) and the consequences of failing to comply.

Part 1: Reporting Companies

The CTA applies to all “reporting” companies. So what is a “reporting” company? A reporting company is any corporation, limited liability company, or other entity created by filing a document with a secretary of state or similar office under the laws of a state. Your company is also a reporting company if it was formed under the laws of a foreign country and is registered to do business in the United States by filing a document with a secretary of state or similar office under the laws of a state. This means that if you had to file Articles of Incorporation, Articles of Organization, or similar paperwork with a state to form your company, your company is a “reporting” company.

Part 2: Exemptions

The definition of “reporting” company is pretty broad—but this is just the starting point. In fact, you may not have to file a BOI report, even if you filed Articles or similar filings with the state. The CTA lists 23 different exemptions—which means that if your company qualifies for any one of these exemptions, the CTA does not consider it to be a “reporting company” and you do not have to file a BOI report. Some of these exemptions apply to publicly traded companies and highly regulated industries where the government already has sufficient information about the beneficial owners, but there are a few which might apply to smaller businesses.

- Tax-Exempt Entities

Churches, charities, non-profits, and other organizations that are tax-exempt under Section 501(c) of the IRS Code may be exempt from FinCEN’s reporting requirements, as well as certain political organizations and trusts.

- Large Operating Companies

Companies that (1) employ over 20 full-time employees, (2) filed a tax return in the previous year showing more than \$5 million in gross receipts or sales in the aggregate, and (3) which have a physical office in the United States may also be exempt from the CTA.

Note that because this exemption requires review of the company’s tax return for the previous year, new companies will not be eligible under this exemption.

- Subsidiaries

Subsidiaries which are wholly-owned or whose ownership interests are wholly-controlled by an exempt company may be exempt from the CTA.

- Inactive Entities

Certain companies which existed before 2020, which are not actively engaged in business, have not had a change in ownership or received any funds greater than \$1,000 in the previous 12 months, are not owned by a foreign person, and which do not own any assets may also be exempt under the CTA.

Part 3: Reporting Requirements

If your company qualifies under any one of the 23 exemptions listed in the CTA, then you do not have to file a report for your company. But, if your company does not qualify for an exemption, or if your company loses its exemption, then you have to file a few different things.

First, you will have to report a few things about the company itself, like (1) its full legal name, (2) any trade names or DBAs, (3) its address and tax identifying number, such as EIN or TIN, and (4) the state where it was formed.

Second, you will have to file the BOI report for any “beneficial owner”. A “beneficial owner” is any person who owns at least 25% of the company or who exercises “substantial control” over the company. What constitutes “substantial control” includes C-suite and other officers who perform similar functions (like Presidents, CEOs, COOs, and other senior executives), and people with certain authorities or who exert substantial influence or control over the company (like the power to appoint or remove senior executives or make major decisions).

When figuring out who constitutes a beneficial owner, you are required to go all the way “up the chain” until you hit either an exempt entity or an individual. However, a beneficial owner does not include: (1) a minor child, (2) an individual acting as an intermediary or agent, (3) an individual acting solely as an employee, (4) an individual whose only interest in the entity is through a right of inheritance, or (5) a creditor of the company.

For each beneficial owner, your company is required to provide the following information: (1) full legal name, (2) date of birth, (3) current residential street address, (4) unique identifying number from a passport, state ID, or driver’s license, and (5) an image of the individual’s passport, state ID, or driver’s license.

Lastly, companies formed on or after January 1, 2024 have to report the company applicant. The “company applicant” is the individual who filed the document that creates the reporting company (like Articles of Incorporation or Organization). There can be up to two people who qualify as company applicants: (1) the individual who directly files the document that creates the reporting company, and (2) the individual that is primarily responsible for directing or controlling the filing of the relevant document. This could be you, your attorney, or another third party.

For each company applicant, your company is required to provide: (1) the full legal name of the individual, (2) date of birth, (3) current residential street address (or business street address for the business company applicant if it is the course of such company’s business to form entities, such as your attorney’s law firm), (4) unique identifying number from a passport, state ID, or driver’s license, and (5) an image of the individual’s passport, state ID, or driver’s license.

The FinCEN database is not open to the public, so your sensitive information should remain confidential.

Part 4: Consequences of Failing to Comply

There is a one-year grace period for pre-existing companies, so reporting companies formed before January 1, 2024 must report information about itself and its beneficial owners by January 1, 2025. But reporting companies formed on or after January 1, 2024 must report information about

itself, its beneficial owners, and its company applicants within 90 days after the date the reporting company is formed—although beginning in 2025, the deadline is 30 days after the company is formed.

Thankfully, if your company is exempt, no report or confirmation of the exemption is required.

It is important that you have a continuing obligation to report any changes to your report, and any updated report must be filed with FinCEN within 30 days of the date on which the change occurred. And if you report any inaccurate information, your company 30 days of the date it knew, or should have known, that the information was inaccurate to file a corrected report.

So now for the bad news. It is unlawful for any person to willfully provide, or attempt to provide, false or fraudulent beneficial ownership information or to willfully fail to report complete or updated beneficial ownership information. An individual who willfully files false information or willfully fails to file information required to be filed may be fined up to \$10,000 per violation and/or imprisoned for a maximum of two years. If your company files its report late, you may face a civil penalty of not more than \$500 per day per violation.

Ongoing Litigation

One final note—on March 1, 2024, a federal district court in Alabama entered a declaratory judgment, holding that the CTA was unconstitutional as against the plaintiffs, and preventing the government from enforcing the CTA against them. The government has filed its appeal, but long-story short for you is that the CTA remains in effect and FinCEN will continue to enforce it as against everyone else. This means that you are still required to comply, even as litigation remains ongoing.

JAH Can Help

Well, that was a lot of information! Complying with the CTA can be complicated, but it is important, and we're here to help. Our attorneys at Johnston, Allison & Hord are available to navigate these and other complicated legal concepts with you. **Contact us through our website** or give us a call any time to see how we can help.

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