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Corporate Transparency Act Update

Reporting Requirements Suspended For U.S. Entities and U.S. Citizens

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Congress enacted the Corporate Transparency Act ("Act") on January 1, 2021. In general, the Act requires the officers of small sized U.S. state organized legal entities and non-U.S. legal entities registered to do business in at least one state to report to the Department of Treasury's Financial Crimes Enforcement Network ("FinCEN") the names, addresses and other identifying details of individuals owning or controlling 25% or more of the ownership in the entity or who exercise substantial control over the entity. The "controlling" or "substantial control" criteria are vague.

Failure to comply with the Act by the applicable compliance date deadlines (whether an initial filing or an updated filing) brings an inflation upward adjusted civil penalty of $591.00 per day until correct compliance is accomplished, plus possibly a criminal fine of up to $10,000.00 for each failure to file or failure to update a prior filing. Further, upon conviction under a beyond a reasonable doubt standard, Congress prescribed up to two years of federal imprisonment. We believe Congress's idea was to cause the owners of all small U.S. state organized legal entities (at least) to file reports with FinCEN; then, a relevant federal law enforcement agency would *computer* (emphasis added) compare the millions of companies' filed reports to the 50 states' more millions of business entities organization and registration to do business filings. The result of this effort would be one or more federal law enforcement agencies investigating state organized or registered small companies that did not file reports, leading to a range of outcomes from their discovery of small business owners' ignorance or innocent reporting mistakes to Justice Department prosecutions of those entities and their control persons for money laundering and other financial impactful crimes, such as selling illegal narcotics or illicitly selling firearms and ammunition outside the prescribed channels of commerce.

Treasury set a December 31, 2024, filing deadline based on final regulations issued on September 30, 2022. Millions of small size legal entities timely complied with the Act, but a large number of them had instead followed federal district court decisions concluding that the Act violated one or more Articles of the Constitution. *See, e.g., Small Business Association of Michigan et al. v. Janet Yellen et al.*, Federal District Court, Western District of Michigan (March 3, 2025). Many did not file because they were unaware of the filing requirements. By early December of 2024, approximately 9 million entities had registered with FinCEN out of an estimated 32 million required to register.

Most recently, owing to Donald Trump's re-election and the number of federal court cases filed against the Act's legality, such as *Small Business Association of Michigan*, on March 26, 2025, Treasury issued "final interim" regulations to require reporting compliance only by entities formed under the laws of a foreign country, such as the United Kingdom, that have registered to do business in at least one state. Furthermore, reporting foreign entities do not need to identify 25% beneficial owners or control individuals who are U.S. persons; only those who are non-U.S. persons. In effect, Treasury is taking otherwise bound to comply small sized U.S. state legal entities outside of the Act's reporting requirements. Aside from whether or not Treasury's position is legal, it is doubtful that any plaintiff with adequate standing to file suit would be motivated to challenge a non-reporting rule.

Perhaps Congress will amend the Act to limit reporting to state registered foreign legal entities and possibly also require reporting without regard to registration, if a foreign legal entity is doing business in the US without having registered with a state to do business. It is not beyond a reasonable doubt that Congress will repeal the Act as overkill, federal law enforcement legislation.

In any event, "as is" the Act is a personal information reporting mandate so broad and deep in scope that Congress saw fit to create exceptions. Hence, under the Act, publicly traded corporations and publicly traded master limited partnerships are exempt from reporting. Congress also provided for reporting exceptions for those state entities having more than 20 full-time employees, $5,000,000 of annual gross receipts and an operating presence at a physical location in the United States for a given year such that the identity and physical location of their substantial direct or indirect individual owners or control persons likely can be found out by federal law enforcement agencies, based on already existing federal information reporting requirements under many other federal information reporting statutes as well as from ubiquitous Internal Revenue Code reporting. Several lines of business are totally exempt, such as are all public accounting firms registered with the federal government under the Sarbanes-Oxley financial reporting anti-fraud legislation of over two decades ago.

Meanwhile, absent Congressional amendment or repeal of the Act, the many docketed cases against the Act are likely going to lead to at least one U.S. Supreme Court Decision about whether the Act is illegal, and if legal in general, which sections of the Act or regulations, if any, do not pass muster. On the other hand, because U.S. legal entities are now not required to report, it remains to be seen whether the one or more lawsuits now in process come to an abrupt end this year. If at least one case reaches a federal circuit court of appeals, the Supreme Court might not accept the U.S. legal entity's appeal from an adverse appeals court decision, owing to the fact that the executive branch will not be enforcing the statute against U.S. legal entities through 2028.

We entertain inquiries about the evolving status of the Act from concerned clients. We recommend that they speak to our partners, Robert S. Schwartz, at 908-647-1022, extension 112, or Joseph M. Lemond, at extension 136, for more information.