

Delaware Law Update

Friday, December 22, 2023

Corporate Transparency Act to Take Effect on January 1, 2024

On January 1, 2024, the Corporate Transparency Act (the “Rule”) is set to go into effect. The Rule will require entities formed by the filing of a document with a secretary of state (such as limited liability companies, corporations, statutory trusts, and certain other entity types) (collectively, “Reporting Companies”) to submit beneficial ownership information directly to the Department of Treasury’s Financial Crimes Enforcement Network (“FinCEN”). Failure to comply with the Rule’s reporting requirements carries both civil and criminal penalties. Richards, Layton & Finger previously published client alerts providing overviews of the Rule; links to those alerts can be found [here](#) and [here](#).

On November 30, 2023, FinCEN amended the Rule’s filing deadline for Reporting Companies created or registered on or after January 1, 2024 and before January 1, 2025 from 30 calendar days to 90 calendar days. Reporting Companies existing prior to January 1, 2024 will have until January 1, 2025 to comply with the Rule’s reporting requirements. Reporting Companies formed on or after January 1, 2025 will have 30 days from the date the Reporting Company is formed with a secretary of state to file.

Beneficial Ownership Information Reports (“BOI Reports”) filed with FinCEN must identify the Reporting Company and disclose certain personal identifying information relating to beneficial owners (“Beneficial Owners”) and applicants (“Applicants”) for the Reporting Company. There are two categories of Beneficial Owners under the Rule. First, an individual is a Beneficial Owner of a Reporting Company if that individual directly or indirectly owns or controls at least 25 percent of the ownership interests in the Reporting Company. Second, an individual is a Beneficial Owner if that individual directly or indirectly exercises “substantial control” over the Reporting Company. There are also two categories of Applicants. First, the individual who files the document that forms the Reporting Company is an Applicant. Second, the individual who is primarily responsible for directing or controlling such filing is also an Applicant.

There are 23 exemptions to the definition of Reporting Company. For so long as an entity that would be a Reporting Company falls into one of the exempted categories, it will not need to file a BOI Report with FinCEN. The Rule also introduces the new concept of “FinCEN Identifiers.” Individuals whose information may be frequently contained on BOI Reports will be able to submit a request to FinCEN to obtain a unique number that can be provided *in lieu of* transmitting that individual’s personal information each time a BOI Report is filed with FinCEN. Entities may also obtain FinCEN Identifiers.



As we approach the final days before the Rule goes into effect, further information is expected from FinCEN on (i) submitting BOI Reports and (ii) applying for and receiving FinCEN Identifiers.