I Corporate Beneficial Ownership Reporting*

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1.01 Introduction

Pursuant to the Corporate Transparency Act enacted on January 1, 2021, effective January 1, 2024 certain "covered entities" will be required to report specified information about beneficial owners to the U.S. Treasury Department's Financial Crimes Enforcement Network (FinCEN).

Since reporting is primarily focused on smaller companies all owners of owner managed companies should pay particular attention to these new rules.

The BOI Small Entity Compliance Guide should be used to determine which companies are required to report, and for a complete outline of the reporting rules. This article is only a summary of the information provided by FinCEN.

This new rule apples to foreign and domestic corporations and other entities owned by U.S. persons or operating in the United States. Penalties for failure to report will range from civil penalties of $500 per day of non-compliance (without limit) and criminal penalties of $10,000 and imprisonment.

1.02 Reporting Comanies

(a) Companies Required to Report

(i) Domestic Reporting Companies

The following domestic reporting companies are required to report beneficial ownership information:

- Corporations;
- Limited Liability Companies, or
- Any other artificial entity created by filing a document with a secretary of state or similar office.

(ii) Foreign Reporting Companies

The following foreign reporting companies must also report:

Corporations, limited liability companies or any other entity formed under the laws of a foreign country, and;
Registered to do business in any state of the United States.

(b) Companies Not Required to Report

The following entities are not required to report:

- Large operating companies (which employ over 25 employees, and have a physical office in the U.S.; and have over $5 million is sales);
- General partnerships, most trusts or highly regulated companies in industries like banking, brokerage, government agencies, etc.

A full list of exempt companies can be found in The BOI Small Entity Compliance Guide

(c) Beneficial Owners

A Beneficial Owner of a company is any individual who:

- Owns or controls directly or indirectly 25% or more of the "ownership interests" of the reporting company, or
- Anyone who exercises "substantial control" over the reporting company.

Therefore under these new rules, not only shareholders and stake holders are considered beneficial owners, but senior managers, officers and executives of reporting companies must report as well, regardless of whether they have an ownership interest in the company.

Exempt from the definition of Beneficial Owner are:

(i) Minor children (if parents information is reported);
(ii) Employees, as long as they are not senior officers;
(iii) Persons who hold a future interest in a company through right of inheritance;
(iv) A creditor of a reporting company; and
(v) A tax professional providing services to the company.

(d) Company Applicants

If an entity is created after 2023, it must report information about its company applicants. This can be up to two individuals who:

- Files the document to crated the entity; and
- The person primarily responsible for directing the filing of documents.

1.03 What Must be Reported

(a) First Report

In the first report filed, the company must report:

- Full legal name;
- Trade name(s)
- Current address
- Jurisdiction of formation
- Taxpayer identification number (foreign or domestic).

(b) Reporting Information for Beneficial Owners

The company must report the following information for its beneficial owners, and for entities formed after 2023 for its company applicant(s):

- Individuals legal name
- Date of birth
- Current residential address
- Unique identifying number from unexpired documents issued to the individual from one of the following:
  - U.S. Passport
  - Government ID card
  - State drivers license
  - Foreign passport

A copy of the document must be provided.

A "FinCEN Identifies" may be applied for and reported instead of the above. The FinCen identifier application will include the above information.

1.04 Due Dates, Updates, and How to File

(a) Due Date – Initial Report

For entities established prior to 2024 must file their initial report by January 1, 2025.

For entities established after 2023, the initial report must be filed within 30 days of its creation or registration.

Entities that no longer qualify for an exemption must file an initial report within 30 days thereof.

Severe penalties without limit apply to late returns.

(b) Corrected and Updated Reports

A corrected report must be filed within 90 days of the date that the company became aware of the inaccuracy of the prior report.

Updated reports must be filed within 30 days if any of the following information changes:

- Change of ownership of the company;
- Divorce of beneficial owner;
- Minor child reaching age of majority;
- Change in senior officers;
- Change in any of the following for a beneficial owner:
    - Move;
    - Change name;
    - Renew passport;
    - Replace drivers license.

(c) How and Where to File

Reports must be filed electronically with FinCen after January 1, 2024. At the date of writing of this article, the facility for filing has not been established, but will be made available in the IRS FBAR Reference Guide. This guide also contains valuable further information on these new rules, and will likely be updated by IRS from time to time as information becomes available.

This summary has been designed to provide a concise overview of the subjects addressed, and may not be complete. Reference should be made to original legislation prior to acting on any matter, and professional advice should also be obtained.

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