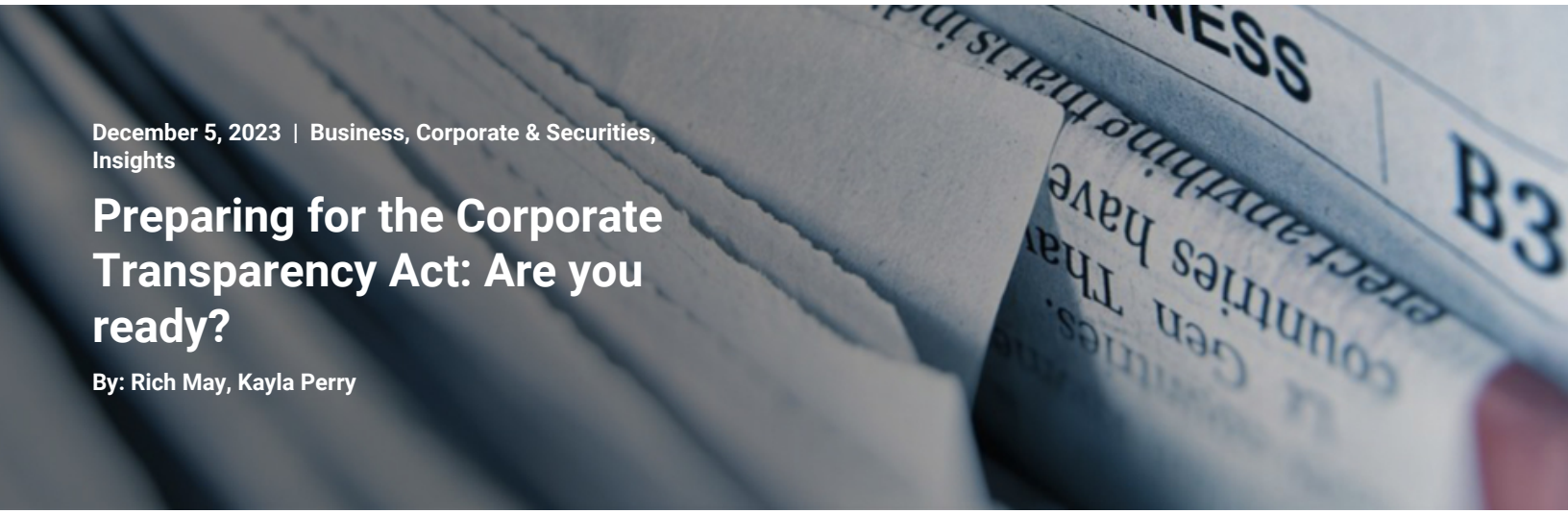

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Preparing for the Corporate Transparency Act: Are you ready?

By: Rich May, Kayla Perry

The beneficial ownership information ("BOI") reporting requirement of the Corporate Transparency Act ("CTA") is set to go into effect January 1, 2024. This new reporting requirement is intended to provide BOI to law enforcement in an effort to prevent financial crimes and other illegal activities conducted by companies and will impact many small and mid-sized businesses. Failure to comply with the CTA could result in civil or criminal penalties.

Reporting Requirement

Unless otherwise exempt, the BOI reporting requirement requires U.S. companies and non-U.S. companies registered to do business in the U.S. to report certain information about the company, its beneficial owner(s) and applicant to the U.S. Treasury Department's Financial Crimes Enforcement Network ("FinCEN").

More information about the specific reporting requirements and exemptions can be found in our earlier blog here.

Filing Deadlines

Companies that were formed or registered *prior* to January 1, 2024 have until January 1, 2025 to file their initial BOI reports with FinCEN.

Companies formed or registered to do business *between* January 1, 2024 and January 1, 2025 will have 90 days from the date of actual or public notice of the company's formation or registration to file their initial BOI reports with FinCEN.

Entities formed or registered to do business *after* January 1, 2025 will have 30 days from the date of actual or public notice of the company's formation or registration to file its initial BOI report with FinCEN.

After the initial BOI report, there are no ongoing filing requirements, unless there is a

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change to a company's reported information. In any such case, the company will have 30 days from the date of the change to amend its information with FinCEN.

How to Prepare

In anticipation of the new reporting requirements under the CTA, companies should take the following steps prior to December 31, 2023:

1. Identify all business entities that are wholly owned, partially owned, or controlled by the company;
2. Determine whether any individual entity is exempt;
3. Identify the person(s) who own at least 25% of the ownership interest of the company and the person(s) who exercise substantial control over the company;
4. Collect BOI required to be reported;
5. Update or create any internal policies and procedures to collect and track changes to BOI;
6. Revise any corporate governance documents to permit a company to gather and report BOI; and
7. Appoint appropriate person to be responsible for making required filings or engage outside assistance.

Additionally, companies may want to consider dissolving any inactive entities that are (i) not exempt from the BOI reporting requirements and (ii) unnecessary to maintain the existence of prior to year-end to avoid having a reporting requirement.

Penalties

Civil penalties of up to $500 for each day that the violation continues or criminal penalties including imprisonment for up to 2 years and/or a fine of up to $10,000 may be imposed for willfully (i) failing to report BOI to FinCEN; (ii) providing or attempting to provide false or fraudulent BOI to FinCEN; or (iii) failing to update BOI with FinCEN. Senior officers of an entity may be held accountable.

Conclusion

While the CTA is a significant step in helping law enforcement prevent criminal activities accomplished through corporate entities, it is an added burden for small and mid-sized businesses. Companies should work with legal counsel and take the necessary steps now to ensure compliance beginning in 2024.

Rich May, P.C. makes it easy to meet complex and continuously evolving compliance requirements. Contact the author or another member of your Rich May team to help you navigate the CTA requirements.

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Disclaimer: This summary is provided for educational and informational purposes only and is not legal advice. Any specific questions about these topics should be directed to attorney Kayla Perry.

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