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FinCEN Imposes CTA Reporting on Certain Dissolved Entities

As the end-of-year deadline looms for millions of reporting companies that were formed prior to 2024 to file their initial beneficial ownership information reports (BOIRs) pursuant to the Corporate Transparency Act (CTA), the Treasury Department's Financial Crimes Enforcement Network (FinCEN), which is charged with administering the CTA, has just added many more potential reporting companies with the latest update to its FAQ, released on Monday, July 8, 2024.

The updated FAQ start helpfully enough by stating that a reporting company is not required to file a BOIR if it ceased to exist as an entity prior to January 1, 2024—meaning that it completed a formal and irrevocable process of dissolution—because it never became subject to CTA reporting requirements when the CTA became effective at the beginning of 2024. However, if the reporting company did not complete a formal and irrevocable dissolution before January 1, 2024, and is therefore deemed to have continued to exist for any period of time on or after January 1, 2024, it is required to file a BOIR. This applies whether the actual reporting deadline would be the end of this year (for pre-2024 entities) or 90 days after the creation (in the case of a domestic U.S. entity) or registration (in the case of a foreign entity) of the entity during the current year. In other words, if the reporting company only ceased to exist in 2024, there is still a filing obligation, and dissolving ahead of the deadline does not relieve the company of that filing obligation.

So how do reporting companies know whether they have ceased to exist sufficiently to avoid a CTA filing obligation? FinCEN says a reporting company must consult the law of the jurisdiction in which it was created (in the case of an entity created in the U.S.) or registered (in the case of an entity created in a foreign country but registered in the U.S.). And if that jurisdiction's law permits a previously dissolved and wound-down entity to be revived by the filing of a certificate, can it ever actually cease to exist under this FinCEN directive? FinCEN notes that laws of different jurisdictions "may vary" on this issue but that typically the process of formally and irrevocably dissolving involves complete liquidation and the closing of all bank accounts. However, many jurisdictions allow the filing of a certificate of dissolution before the winding down is complete.

Extending the CTA filing obligation to even more entities that may have previously been thought to be outside the CTA's reach, the FAQ notes that if a reporting company was "administratively dissolved or suspended," it does not necessarily cease to exist as a legal entity unless the dissolution or suspension has become "permanent." This will come as unwelcome news to anyone who has allowed (intentionally or unintentionally) an entity to "wither on the vine" and be administratively dissolved rather than formally dissolving it. There is no limit on FinCEN's look-back period on the administratively dissolved entity other than what is allowed by the law of the applicable jurisdiction regarding the revival of such entities.

Generally, a reporting company is supposed to report its beneficial owners as of the time the BOIR is filed. This raises a number of questions with respect to reporting companies that have dissolved. Who are the beneficial owners of a dissolved entity? Who owns the equity or has substantial control? Do you look to the beneficial owners immediately prior to the dissolution? Who is left to be responsible for the filing? Hopefully, the laws of the applicable jurisdiction involved provide clear answers since FinCEN does not.

As a thin silver lining, FinCEN has clarified that if a reporting company has filed an initial BOIR and then ceases to exist, it does not have to file a BOIR update noting that it no longer exists.

If you need assistance with any CTA-related obligations, please contact your Day Pitney counsel, or feel free to contact us at cta@daypitney.com.

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