NAVIGATING THE CORPORATE TRANSPARENCY ACT: A MUST-READ FOR EVERY BUSINESS OWNER

Effective January 1, 2024, the Corporate Transparency Act will apply to a significant number of United States business entities and owners. This pivotal legislation is not just another regulatory hurdle; it marks a significant shift in how businesses operate in terms of transparency and accountability. Every business owner needs to understand the CTA and its implications for their business. In this article, we delve into the requirements under the CTA, equipping you with much of what you need to know to stay compliant.

1. <u>What is the Corporate Transparency Act?</u>

- At its core, the CTA introduces new reporting requirements for businesses, a move aimed at enhancing transparency.
- The CTA mandates that all reporting companies disclose specific details about their "beneficial owners" and "applicants" (described below) to the U.S. Treasury Department's Financial Crimes and Enforcement Network.

2. <u>Compliance Timeline: A Closer Look</u>

- *For Existing Entities*: If a business entity was formed prior to January 1, 2024, the business has a one-year window to submit a beneficial owner information report.
- *For New Entities*: If a business entity was formed on or after January 1, 2024, the business has 90 days after its formation to submit a beneficial owner information report.

3. <u>What Information Must be Reported?</u>

- Each beneficial owner and applicant is required to provide comprehensive personal information, including their full legal name, date of birth, current residential or business address, and a photocopy of a passport or driver's license.

4. <u>Identifying "Beneficial Owners" and "Applicants"</u>

- A "beneficial owner" is a person who either (1) owns 25% or more of an entity, or (2) exercises substantial control over the entity (e.g., any senior officer or director). In particular, the degree of control over an entity that constitutes substantial control is a heavily fact-based determination and often requires familiarity with the intricacies of a business entity's organization and structure.
- An "applicant" is a person who files an application to form or register a business by

filing a document with the secretary of state or similar office.

5. The Need for Amendments: Keeping Information Up to Date

- **STAY VIGILANT**: Any changes in the reported information must be amended within 30 days, even if they seem minor.

6. Who are the “Reporting Companies”?

- A “reporting company” includes all entities formed or registered to do business in the U.S. through a filing with a secretary of state or similar office—including corporations, LLCs, LLPs, etc.—unless an exemption applies.
- Entities not created through such state filings, such as most trusts, are not subject to the CTA.

7. What Entities are Exempt from the Reporting Requirements?

- The CTA lists 23 exemptions, including:
  - “Large operating companies,” defined as entities with (1) over 20 full-time U.S. employees; (2) more than $5 million in revenue, and (3) a physical presence in the U.S.
  - Nonprofit entities, political organizations, and certain tax-exempt trusts.
  - Public companies, insurance companies, banks, registered investment companies, and other entities already subject to sufficient regulatory oversight.
  - Inactive entities no longer engaged in active business.
  - Subsidiaries wholly owned by the above exempt entities.
- Entities that are exempt for any of these purposes, or pursuant to any of the other exemptions listed in the CTA, do not need to take further action under the CTA.

8. Will the Reported Information be Publicly Available?

- No, beneficial ownership information reports and the information contained therein will not be publicly available.
- The information may be disclosed legally only to law enforcement agencies in specified circumstances and, with the reporting company’s permission, to banks for their Know-Your-Customer obligations.

9. What are the Penalties for Noncompliance?

- The penalties can be significant, with fines up to $10,000 and potential imprisonment. Additionally, these penalties do not only apply to the company: individuals in key positions may also be held accountable.

10. The Broader Impact: Why the CTA Matters?

- Most states do not require information about the beneficial owners of business entities, which can sometimes allow bad actors to conduct illicit activity through corporate structures and evade detection.
- The CTA seeks to enable law enforcement efforts to counter money laundering, tax fraud, human and drug trafficking, the financing of terrorism, and other illicit activity.

The CTA represents a significant shift in the corporate regulatory environment. Understanding and adapting to it is not optional, but essential. At O’Neil Cannon, we’re dedicated to helping our clients navigate the complexities of the CTA and ensure compliance. If you have any questions or need assistance with CTA compliance, please do not hesitate to contact us.