



Corporate Transparency Act practical considerations: dissolved entities

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USA | August 12 2024

Introduction

Beginning in 2024, the Corporate Transparency Act (CTA) requires US corporations, limited liability companies and statutory partnerships to file a beneficial ownership information (BOI) report with the US Financial Crimes Enforcement Network (FinCEN), unless an exemption applies. FinCEN has clarified that entities dissolved in 2024 prior to the filing deadline must still submit a BOI report.

For further details on the CTA in general please see “Corporate Transparency Act: beneficial ownership information reporting begins”, "Corporate Transparency Act: identifying individuals who own or control interests in reporting companies", "Corporate Transparency Act: identification of individuals who exercise substantial control over reporting companies".

Initial BOI report deadlines

FinCEN estimates that more than 32 million entities will need to submit an initial BOI report in 2024. Reporting companies in existence prior to the law’s effective date of 1 January 2024 (the “Effective Date”) must file an initial BOI report in a timely manner, no later than 1 January 2025. Reporting companies established in 2024, must file within 90 days of their state filings. Beginning in 2025, newly formed entities will have 30 days to file an initial BOI report.

Entities dissolved due to increasing compliance landscape

Last year, prior to the CTA Effective Date, as families and their advisors reviewed US entities used in succession planning structures, decisions were made to merge or dissolve US entities. The CTA is just the latest addition to an increasing company compliance landscape. Non-US entities have dealt with FATCA, CRS, and Economic Substance compliance and reporting requirements added over the last ten years. A new annual return requirement is rolling out in the British Virgin Islands. Foreign-owned disregarded US entities have IRS reporting obligations even in the absence of taxable income. As a result of all these initiatives, holding on to shelf companies and shell companies both onshore and offshore is now more expensive and time intensive.

FinCEN FAQ regarding dissolved entities

For families who successfully completed the state dissolution process prior to the Effective Date, those dissolved entities do not have to file a BOI report with FinCEN. For some, the dissolution process was not completed until after the Effective Date. For others, the process was begun and completed in 2024, in many cases well before the 1

January 2025 BOI reporting deadline. Even though the CTA imposed the legal filing obligation as of the Effective Date, there was speculation as to whether dissolved companies would be required to file. FinCEN has provided certainty in FAQ C.13.

In FAQ C.13. posted 8 July 2024, FinCEN advises consulting the law of the jurisdiction in which the company was created or registered for specifics on how to determine when a company ceases to exist as a legal entity. And cautions that “a company that is administratively dissolved or suspended—because, for example, it failed to pay a filing fee or comply with certain jurisdictional requirements—generally does not cease to exist as a legal entity unless the dissolution or suspension becomes permanent.”

Dissolution completed prior to the Effective Date

FAQ C.13. confirms that a company is not required to provide BOI to FinCEN if it ceased to exist as a legal entity before the Effective Date, meaning that it completed the process of formally and irrevocably dissolving before January 1, 2024. Such a company was never subject to the CTA reporting requirements. It is recommended that the family office or advisers retain proof that the company completed the process of formally and irrevocably dissolving. This would include copies of dissolution paperwork filed with the jurisdiction of creation or registration, written confirmation of dissolution received from the state or tribal nation, final payment of related taxes or fees. Such documentation should support the position that prior to the Effective Date, the entity ceased to conduct any business and wound up its affairs (e.g., fully liquidating itself and closing all bank accounts).

Dissolution started but not completed prior to the Effective Date

The factual and legal determination of when the company ceased to exist is paramount. If a reporting company did not entirely complete the process of formally and irrevocably dissolving, so that it continued to exist as a legal entity for any period of time on or after the Effective Date, then it is required to report its BOI to FinCEN. FAQ C.13. clarifies that this is the requirement even if the company had wound up its affairs and ceased conducting business before the Effective Date.

Created after the Effective Date then subsequently dissolved

FAQ C.13. also provides that, if a reporting company was created or registered on or after the Effective Date, and subsequently ceased to exist, it is required to report its BOI to FinCEN—even if the company ceased to exist before its initial beneficial ownership information report was due.

In addition, FAQ C.14. also posted 8 July 2024, reiterates that reporting companies created or registered in 2024 must report their BOI to FinCEN within 90 days of receiving actual or public notice of creation or registration. Reporting companies created or registered in 2025 or later must report their BOI to FinCEN within 30 days of receiving actual or public notice of creation or registration.

FAQ C.14. stresses that these obligations remain applicable to reporting companies that cease to exist as legal entities before their initial BOI reports are due. So, a company that in 2024 has wound up its affairs, ceased conducting business, and entirely completed the process of formally and irrevocably dissolving must nevertheless file a BOI report.

No additional BOI filing after dissolution

At present, if a reporting company files an initial beneficial ownership information report and then ceases to exist, there is no requirement for the reporting company to file an additional report with FinCEN notifying it that the company has ceased to exist.

Practicalities of filing for a dissolved entity

The senior officer of the dissolved company must remember to prepare and file a BOI report. Advisers to families who assisted with dissolutions early in 2024 should reengage with clients to inform them of the BOI reporting obligation. FinCEN has previously said in FAQ G.4. that a reporting company does not file historical data but must file BOI accurate as of the date of filing. In the case of a dissolved entity, which no longer exists on the date of filing, reporting BOI accurate as of the date of dissolution is the prudent approach. Documentation should be maintained to support the dissolution, the individuals reported and why.

Comment

Reporting companies and their senior officers could face civil and criminal penalties if beneficial ownership information reporting obligations are disregarded. Although it is not intuitive that a company dissolved in 2024 would still need to file a BOI report, FinCEN is clear that the legal obligation to do so arose with the Effective Date.

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