

Client Alert

International Trade

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Federal District Court in Alabama Declares CTA Unconstitutional; DOJ Appeals to 11th Circuit; FinCEN Requires Continued Compliance

On March 1, 2024, a federal judge in the U.S. District Court for the Northern District of Alabama ruled that the Corporate Transparency Act (“CTA”) is unconstitutional. The CTA and its implementing regulations require that many privately held corporations, limited liability companies, and similar entities (i.e., “reporting companies”) formed or registered to conduct business in the United States report “beneficial ownership information” (“BOI”) to the U.S. Treasury Department’s Financial Crimes Enforcement Network (“FinCEN”).

The definition of a reporting company set forth in the BOI rule applies to most U.S. companies and many non-U.S. entities formed or registered in the United States. Beneficial owners are individuals who, directly or indirectly, either exercise substantial control over a reporting company or own or control at least 25 percent of the ownership interests of a reporting company. These reporting companies are required to comply with the BOI requirements by the end of this year if they were formed or registered before January 1, 2024; companies formed after January 1, 2024, have ninety days to file—and thirty days if formed or registered after January 1, 2025.

In its decision, the district court ruled that the CTA is unconstitutional because it “exceeds the Constitution’s limits on the legislative branch and lacks a sufficient nexus to any enumerated power to be a necessary or proper means of achieving Congress’ policy goals.” More specifically, the court determined that the CTA does not fall within Congress’s authority under the commerce, taxing, and necessary and proper clauses, as well as its foreign affairs and national security powers.



FINCEN RESPONSE AND DOJ APPEAL OF RULING

In response to this decision, FinCEN issued a statement on March 4, 2024, indicating that, during any appeal, it is enjoined from enforcing the CTA with respect to the plaintiffs, i.e., the members of the National Small Business Association, and any other persons subject to the jurisdiction of the court. It also stated, however, that all other reporting companies are still required to comply with the law and file beneficial ownership reports as provided in the CTA and FinCEN's implementing regulations. That is consistent with the government's general position that court issued injunctions do not have nationwide affect and should bind only the parties involved in the litigation. On March 11, 2024, the U.S. Department of Justice filed a notice of appeal with the United States Court of Appeals for the Eleventh Circuit.

RECOMMENDATION

In light of the appeal, and the limited ability of the federal district court's ruling to impose a nationwide injunction, we advise that all reporting companies not otherwise subject to the court's order continue to comply with the BOI requirements as set forth in FinCEN's regulations (and consistent with FinCEN's guidance). King & Spalding is closely monitoring the litigation and any developments that may impact the enforceability of the CTA.

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