

LEGAL ALERT

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The Corporate Transparency Act to Take Effect in the Coming Year: What Business Owners Need to Know

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U.S. companies will soon face new reporting requirements under the Corporate Transparency Act (“CTA”). The new law will require entities identified as reporting companies to provide information about their beneficial owners. The information will be compiled into a private database maintained by the U.S. Department of the Treasury’s Financial Crimes Enforcement Network (“FinCEN”) to combat money laundering activities. If reporting companies fail to disclose the necessary information, then they could face both severe civil and criminal penalties.

BACKGROUND

On January 1, 2021, Congress enacted the National Defense Authorization Act of 2021 (“NDAA”). Both the Senate and the House of Representatives voted to override President Trump’s veto of the legislation with an overwhelming majority, 81-13 and 322-87, respectively. Title LXIV of the NDAA included the CTA. The CTA is recognized as an amendment to the Anti-Money Laundering Act of 2020 (“AMLA”), and it is a significant addition to the most comprehensive legislative crackdown on money laundering in recent history.

The CTA discourages the use of shell companies by mandating a new layer of transparency during entity formation. Prior to the CTA, Congress identified anonymous shell companies as a serious loophole to the existing AMLA legal framework. The CTA marks a bipartisan effort to address that loophole and to shift the burden of collecting ownership information from financial institutions to reporting companies.

REPORTING REQUIREMENTS

The statute identifies a **reporting company** as a corporation, limited liability company, or other similar entity created by a filing document with a secretary of state (or similar office), or formed under the law of a foreign country and registered to do business in the United States.



Under the statute, a **beneficial owner** is any individual who directly or indirectly exercises substantial control over an entity AND holds or controls at least 25% of the ownership interests of that company.

The CTA will require a reporting company to provide the following information about its beneficial owners to the FinCEN database:

- Full Name
- Date of Birth
- Current Residential or Business address; and
- A unique identifying number from a state-issued identification document (ID)
 - This may include a passport, driver's license, or a FinCEN identifier

The database maintained by FinCEN will have limited access. Authorized users will include federal government agencies (e.g. FBI), state and local law enforcement with an appropriate court order (i.e. warrant), Non-U.S. law enforcement (i.e. Interpol), or financial institutions granted the reporting company's permission.

EXCEPTIONS

Some entities will be exempt from reporting beneficial ownership information. The exceptions apply to entities that already disclose beneficial ownership information through other federal laws/regulations or those entities which are impracticable for money-laundering activities.

The most prominent exceptions include:

- Publicly traded companies (subject to SEC regulations)
- Companies employing more than 20 full-time employees in the United States, operating from a physical office in the United States, AND having filed a tax return demonstrating more than \$5 million in gross receipts/sales
- Dormant companies which have been in existence for more than one year, are not engaged in "active business," AND not owned (either directly or indirectly) by a non-U.S. individual
- Additional exceptions exist for certain financial institutions, charitable trusts, and pooled investment vehicles

TIMELINE

The Secretary of the Treasury has one year to promulgate regulations for the CTA; the effective date shall be no later than Jan. 1, 2021. The effective date of the forthcoming regulations will determine the exact filing timeline for reporting companies. Companies that were formed or registered **prior to** the effective date will have two years to comply. Companies that are formed or registered **on or after** the effective date will be required to report the beneficial ownership information at the time of formation or registration. Any changes to reported information must be reported to FinCEN within one year of the change occurring.

PENALTIES

Failure to comply with the new CTA reporting requirements will result in serious penalties. An individual who fails to meet the reporting standards may face civil penalties of up to \$500 per day. An individual who willfully provides or attempts to provide false or fraudulent information, or willfully fails to provide FinCEN with the requisite information, may face criminal fines up to \$10,000 and/or imprisonment for up to two years.

Moreover, the statute imposes penalties for individuals who engage in unauthorized use or disclosure of beneficial ownership information collected under the CTA. The civil penalty is up to \$500 per day, and the criminal penalty includes fines up to \$250,000 and imprisonment for up to five years.

NEXT STEPS

It is essential for a company to determine whether its entity structure qualifies as a reporting company under the CTA. Reporting companies need to keep abreast of forthcoming regulations and consider a compliance plan. Identifying beneficial owners and keeping FinCEN information up to date is essential for businesses to avoid civil and criminal penalties going forward. Hahn Loeser & Parks LLP provides strategic legal advice to its business clients regarding regulatory compliance. We are available to counsel business owners who want to learn more about the CTA and to prepare for how it may affect their business in the coming year.

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