

CONGRESS ENACTS THE CORPORATE TRANSPARENCY ACT REQUIRING CERTAIN ENTITIES TO DISCLOSE THEIR OWNERS

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On January 1, 2021, Congress enacted the National Defense Authorization Act (the NDAA). One portion of the NDAA includes the Corporate Transparency Act (the “CTA”), which is described as the most comprehensive anti-money laundering legislation passed in the United States and which regulates the use of anonymous entities for money laundering, tax evasion, and financing terrorism. The CTA requires certain entities, including limited liability companies, corporations, and “similar entities,” to disclose their individual owners and their “beneficial owners”, meaning those who own or control at least 25% of the entity. The legislation is aimed at preventing these “shell companies” from hiding illegal activity.

The statute states that the CTA only applies to entities that are created by filing a document with a secretary of state or a similar office, or are formed under the laws of a foreign country, but are registered to do business in the United States through the filing of a document with a secretary of state or a similar office. The CTA will apply to any such entities that are being newly registered as well as any such entities that are already in existence (though existing entities will have a period of 2 years to meet their reporting requirements).

The reporting entity must report these disclosures to the U.S. Treasury Department’s Financial Crimes Enforcement Network (“FinCEN”). In addition, this reporting requirement will apply to an applicant (such as the lawyer filing entity formation documents with the appropriate secretary of state) who files the application paperwork to form a new reporting entity. Such applicant must also disclose the same information about itself as the reporting entity. FinCEN will then compile such information into a confidential database. Though this database will not be made available to the general public, FinCEN will provide this data to law enforcement agencies and banks upon request.

Certain entities are exempt from the reporting requirements, such as large entities with an operating presence at a US office with over 20 full-time employees, provided such entity filed federal income tax returns in the US reflecting more than \$5 million in gross receipts or sales. Certain banks, issuers of securities, insurance companies, and other financial vehicles are also exempt under the CTA. Charitable organizations are also specifically exempt from the reporting requirements. The CTA is silent regarding whether these reporting requirements will apply to trusts and limited liability partnerships. While some commentators suggest that it is unclear whether the CTA applies to

trusts, we anticipate that most trusts will not be subject to reporting requirements as they typically do not require registration with a secretary of state and are not otherwise specifically identified by the CTA. Certain statutory trusts or “business trusts”, however, may be found to fall within the CTA if they are created through a filing with a secretary of state. Because most limited liability partnerships are typically formed by registration with a secretary of state, we anticipate that they will likely be subject to reporting requirements. The regulations will outline more details on who is required to file under the CTA, as well as the specific reporting requirements. Practitioners are hoping for guidance once the Treasury Department issues regulations for the CTA on if and when reporting will be required for trusts, limited liability partnerships and other entities.

If an entity is found to fall within the CTA’s reporting requirements, it must disclose each beneficial owner’s full legal name, date of birth, address, and an identification number for such individual. The ID number can be a US passport number, US or state government ID number, a driver’s license number issued by a US state, or a foreign passport number. There are penalties for any person who willfully provides or attempts to provide false beneficial ownership information or anyone who fails to report complete or updated beneficial ownership information.

The effective date of the reporting requirements will depend on when the Treasury Department issues final regulations. Because the Treasury Department is required to issue regulations within a year from the enactment of the Act, the effective date will be January 1, 2022 at the latest. Once the final regulations have been issued, existing entities will have 2 years from the effective date of the regulations to comply. Any new entities formed after the regulations have been issued will have to comply at the time of formation. Similarly, any entity that has a change in beneficial ownership must submit an updated report within 1 year reporting any such change.

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