

NEWS ALERT

BUSINESS GROUP



Congress Passes Corporate Transparency Act Requiring Further Disclosure of Beneficial Ownership Information

By David A. Menard, Mark J. Tarallo & Sergio E. Marin | January 28, 2021

On January 2, 2021, the National Defense Authorization Act (“NDAA”) became law following Congressional override of President Trump’s veto. A significant part of the NDAA is the inclusion of the Corporate Transparency Act (“CTA”), which greatly expands the obligations of companies to identify and disclose beneficial ownership information. The expanded obligations take meaningful steps toward eliminating anonymous shell companies as the money laundering method of choice for criminals and terrorists. These increased disclosure requirements will have an impact, however, on everyday businesses.

Who is affected?

Under the CTA, companies that are required to comply are referred to as “reporting companies” and include a “corporation, limited liability company, or other similar entity that is – (i) created by the filing of a document with a U.S. state or Indian Tribe or (ii) formed under the law of a foreign country and registered to do business in the United States.”

The CTA, however, does provide exceptions for certain categories of companies. Exceptions include, among others, (1) publicly-traded entities, (2) companies that are already subject to supervision or otherwise closely regulated by the federal government (banks, commodity brokers, registered investment advisors, etc.) and (3) companies that employ more than 20 full-time people, filed a tax return reporting gross receipts greater than \$5 million, and have a physical presence in the United States. Under this rule, most newly formed companies in the U.S. will be considered a “reporting company.”

What information must be disclosed?

The CTA will create a beneficial ownership database at the United States Treasury Department’s Financial Crimes Enforcement Network (“FinCEN”), to which reporting companies will send information regarding their beneficial owners. Specifically, reporting companies must disclose their beneficial owners’ (1) full name, (2) date of birth, (3) residential or business street address, and (4) unique identifying number from an acceptable identification document, including a driver’s license, U.S. passport, or other U.S. state-issued identification. If the beneficial owner does not hold any U.S.-issued identification documents, a non-U.S. passport number is required.

Existing entities are required to report this information within two years of the effective date, which regulations will promulgate within one year of enactment. For new entities, the information is required at the time of formation. A reporting company is required to update information provided to FinCEN upon any changes to their beneficial ownership.

The above information held by FinCEN will not be publicly accessible and can only be disclosed in certain circumstances, such as pursuant to a request by a federal agency “engaged in national security, intelligence, or law enforcement activity, for use in furtherance of such activity.” Financial institutions will also have ability to access the FinCEN database for customer due diligence purposes.

Who is a beneficial owner?

The CTA defines a beneficial owner as “an individual who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise—(i) exercises substantial control over the entity or (ii) owns or controls not less than 25 percent of the ownership interests of the entity.”

The CTA also provides numerous exceptions to the definition of a beneficial owner, notably (1) an individual acting as nominee, intermediary, custodian or agent on behalf of another individual, (2) an employee of a reporting company whose control or economic benefit with respect to the entity is derived solely from their employment; and (3) creditors of the reporting company (unless the creditor has “substantial control” or owns or controls 25% or more of the reporting company).

Conclusion

The CTA is one of the most important updates to U.S. anti-money laundering laws in decades and one of the most significant anti-corruption laws ever passed. Some opposition groups argue that the CTA imposes burdensome regulations that will hamper small businesses and puts their private information at risk. However, most commentators and lawmakers agree that the CTA is the right step towards eliminating money laundering and potential terrorist financing. The CTA, in conjunction with other anti-money laundering laws within the NDAA, provides much needed updates to U.S. anti-money laundering efforts, an area where the U.S. arguably has fallen behind compared to international anti-laundering efforts.

Murtha Cullina LLP is here to help you comply with your CTA obligations and will provide further updates as regulations are finalized by the federal government. If you have any questions regarding the CTA and how it may affect you or your business, please contact:

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