

## THE CORPORATE TRANSPARENCY ACT: NEW FEDERAL REPORTING REQUIREMENTS FOR CERTAIN BUSINESS ENTITIES

Under the laws of most states, the formation of a new business entity requires the filing of certain paperwork with the secretary of state or other specified state filing office. In most cases, the information required includes the names and addresses of the board of directors, managers, etc., as well as the executive officers of the new entity. Furthermore, the information must be updated regularly in an annual report filed by the company. This information is a matter of public record and is accessible by anyone dealing with or interested in the company. However, the identity of the owners of these companies (the stockholders, LLC members, etc.) is not required to be included in either the formation papers or the annual reports filed once the company is in legal existence. Therefore, the owners are not a matter of public record.



In order to help reduce certain criminal activity, including money laundering, organized crime and the financing of terrorism, and to discourage the use of so-called "shell companies," the Corporate Transparency Act (the "CTA") was passed by Congress in early 2021 and becomes effective upon the issuance of final Treasury Regulations not later than January 1, 2022. In general terms, the CTA requires a wide range of business entities to report personal information regarding the individuals who own, control or form covered entities to the Financial Crimes Enforcement Network of the U.S. Department of Treasury ("FINCEN"), which is required to maintain a database of all information provided.

### What are the Deadlines for Reporting?

Entities formed after the effective date of the CTA must file at the time the entity is formed. Entities formed before the effective date must file with FINCEN within two (2) years after the CTA becomes effective.

## What Entities are Required to Report to FINCEN?

Reporting companies include a corporation, limited liability company or “*similar entity*” that is created by filing a public document with the appropriate filing office under the laws of a state and any foreign entity registered to do business in the U.S by the filing of a public document with a state filing office. In addition to excluding entities that do not require such a public filing, the CTA specifically excludes a number of other entities, including banks and credit unions (which already report similar information to government regulators), publicly traded companies and some tax exempt entities. The CTA also exempts from its reporting obligations large private companies. These are defined as companies that employ more than 20 *full time employees*, reported gross revenues in excess of \$5 million on its federal income tax return for the prior year (including revenues for entities owned by the reporting company) and which operate from a physical office in the United States.

## What Information Must be Reported?

Each reporting company must provide the following for each beneficial owner and, for newly formed companies, the applicant: (i) full legal name; (ii) date of birth; (iii) current residence or business address; and (iv) a unique identifying number from a passport, driver's license or FINCEN identifier. Any changes in the personal information must be reported to FINCEN within one (1) year of the date of such change. A *beneficial owner* is an individual who exercises *substantial control* over the entity or controls more than 25% of ownership interests of the entity. An *applicant* is a person who files the application to form or register the entity with the appropriate state filing office.

## Who has Access to the Federal Database?

It is important to note that information reported to FINCEN and stored in the FINCEN database is NOT available to the general public. Access is limited to federal, state and local law enforcement agencies, foreign countries, federal intelligence and regulatory agencies and certain financial institutions. Application for disclosure of information will also be subject to compliance with certain protocols. Nevertheless, given the rise in cyber-security breaches, it seems likely that reporting companies will still be concerned about the confidentiality of such information.

## What are the Penalties for Failure to Comply?

The CTA provides for penalties of up to \$500 per day that a violation of the CTA continues and up to \$10,000 and possible imprisonment for anyone who willfully provides false beneficial ownership information or fails to provide complete or updated beneficial ownership information. It is worth noting that information regarding the applicant is not included in the penalty provisions of the CTA, though that may be addressed in the final Treasury Regulations.

### Some Practical Considerations

The final Treasury Regulations have not yet been issued. However, it is not too soon for existing companies to start assessing whether they likely will be deemed to be a reporting company when the CTA becomes effective. If that seems likely, they should also consider developing their own policies and procedures to ensure compliance and how best to maintain records of such compliance.

Although the CTA is quite detailed in many respects, a number of key terms (including those appearing in italics above) and concepts are not spelled out in the Act. For example, for purposes of the “large private company exception to the definition of reporting companies, does the term “full time employee” include independent contractors or just W-2 employees; or will multiple part-time employees be deemed to be the equivalent of a full-time employee? In regards to the \$5 million gross revenue test described above, what percentage of ownership will be required by the reporting company to include the revenue of a subsidiary and will gross revenue of a subsidiary be pro-rated if the subsidiary is not wholly owned? Hopefully these and other issues and definitions will be clearly addressed and defined in the final Treasury Regulations.

If you have questions pertaining to the CTA or any other business matters, please contact PLDO Partner William F. Miller at 508-420-7159 or email [wmiller@pldolaw.com](mailto:wmiller@pldolaw.com).



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