

advisory

THE CORPORATE TRANSPARENCY ACT — PREPARING NOW WILL HELP YOU AVOID PENALTIES

Over 20 million existing businesses stand to be affected by the Corporate Transparency Act (“CTA”). The CTA will require small entities to report certain information about themselves and their founders, owners, or those who exercise control over them. The CTA will apply to both domestic and foreign entities, with the required filings made to the U.S. Treasury Department.

FINCEN intends to begin enforcement as early as possible, so preparation is key to avoiding last minute scrambling and potentially incurring the penalties outlined below:

Who has the obligation to report?

Any legal entity. “Any legal entity” encompasses corporations, LLCs, partnerships and certain trusts. Larger entities may be classified in one of 23 exempt categories, which exemption is essentially a recognition that the entity already reports this information in other formats. The reference to certain trusts applies to business trusts, or a trust that holds an ownership interest in a reporting company and the ownership is sufficient to trigger reporting.

An individual settlor, beneficiary, or trustee may have to report as a beneficial owner, if, for instance, a beneficiary has a right to withdraw or demand distribution of substantially all assets; a trust beneficiary is the sole recipient of income and principal; with respect to the settlor, if the settlor retains a power to revoke; or a trustee has the power to dispose.



What has to be reported?

1. Information about the entity, including the legal name of the entity, its address, the jurisdiction of formation or registration and the tax identification number.
2. Information about the beneficial owners - those who own or control at least 25% of the entity or exercise substantial control over the entity. The concept of substantial control is expected to be further fleshed out in the implementation regulations. The beneficial owners must provide their legal name, date of birth, residential address, identification number from a state issued identification, and a copy of the identification document.
3. Information about the applicants. An applicant is one who made the decision to form the reporting entity. If the entity was formed by an attorney, then the attorney must report his information. The applicant must provide his legal name, date of birth, business street address, identification number from a state issued identification, and a copy of the identification.

When do companies have to report?

Once the requirement to report is in effect, reporting companies will have one year to file the initial report. Thereafter, for companies formed after the effective date, the report must be filed within fourteen days of formation. If the reported information changes (i.e. a change in ownership), the change must be reported within thirty days. If an error is found in the reported information, it must be corrected within fourteen days of discovery.

Who receives the reported information?

Federal law enforcement, intelligence agencies and regulators will have access to the reported information. State law enforcement will need a court order to access the information.

What is the penalty for failure to report?

Violations or failures to file could result in civil penalties of up to \$500 per day, criminal fines up to \$250k, or up to five years in prison. FINCEN intends to begin enforcement as early as possible.

What is the goal of the CTA?

The CTA's stated purpose is to identify the use of and identity of structures that previously provided some amount of anonymity to move or hide funds. Prior measures did not have the intended effect, so the CTA is intended to fill and close the existing gaps.

The reporting is reasonably minimal, and the penalties are onerous, so proactive measures are warranted. Final regulations are pending, but enforcement is expected to begin as early as the end of 2022/beginning of 2023. If you have questions pertaining to the CTA or any other business, estate and trust planning matters, please contact PLDO Partner Leah A. Foertsch in our Boca Raton, FL office at 561-362-2030 or email lfoertsch@pdlolaw.com.



Leah A. Foertsch
Partner

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DEVEREAUX & O'GARA LLC
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