

advisory

PREPARING FOR THE CORPORATE TRANSPARENCY ACT — EFFECTIVE JANUARY 1, 2024

Background

In November of 2021 and again in 2022, we published Client Advisories summarizing the Corporate Transparency Act (“CTA”) and its impact upon both newly formed and existing business entities. The CTA was passed by Congress in early 2021, to become effective upon the issuance of final Treasury Regulations. The purpose of the CTA is to establish reporting requirements for a wide range of business entities and to authorize the Financial Crimes Enforcement Network of the U.S. Department of Treasury (“FINCEN”) to maintain a database of all information provided and to disclose such information to government authorities and certain financial institutions. The ultimate goal is to assist in combatting money laundering, financing of terrorism and other illegal activities. In order to accomplish this, the CTA requires a wide range of business entities to report personal information regarding the individuals who own, control or organize covered entities to FINCEN starting January 1, 2024.



Who Must File as a Reporting Company?

The CTA requires domestic corporations, limited liability companies and other entities formed by a filing with a state secretary of state or similar office under the laws of a State or Indian tribe to file with FINCEN. It also requires a FINCEN filing by similar entities formed under the laws of a foreign country AND registered to do business in the U.S. by filing with a similar office under the laws of a State or Indian tribe. Certain companies that operate in highly regulated industries are excluded from the reporting requirements, as are entities wholly owned by an exempt entity, and so-called “large operating companies.”

To qualify as a large operating company, the entity must employ more than twenty (20) full time employees in the U.S.; have filed

with respect to the previous year a federal income tax return showing gross revenue exceeding \$5 million and operate from a physical office in the U.S.

Beneficial Owners and Applicants

Under the CTA, reporting companies must report to FINCEN certain information regarding the company, certain personal information regarding its beneficial owners and, in the case of entities formed after January 1, 2024, information regarding the so-called “company applicant.” The term “beneficial owner” is defined under the CTA as an individual who, directly or indirectly, exercises substantial control over the reporting company or owns or controls not less than 25% of the ownership interests of the entity. Substantial control includes: (i) senior officers of the entity; (ii) persons having authority to appoint or remove any senior officer of the entity; and (iii) those with a right to direct or substantially influence important decisions of the company.

Ownership interests are also broadly defined to include equity, capital and profits interests, as well as convertible securities and options. The CTA specifically excludes five (5) categories of individuals from the definition of beneficial owner: (a) minors; (b) individuals acting as nominees; (c) individuals whose interest is limited to a future interest (e.g., via inheritance, etc.); (d) employees who are not senior officers of the company, and (e) creditors of the company.

The information to be disclosed to FINCEN regarding beneficial owners includes each person’s (i) full legal name; (ii) date of birth; (iii) current residential or business street address, and (iv) a unique identifying require number from an acceptable identification document or FINCEN identifier. The CTA also requires reporting companies to provide information about themselves, including the information listed above, as well as the state of their formation or registration and any d/b/a’s used by the reporting company.

When are FINCEN Filings Required to be Made?

Filing deadlines are based on the formation date of the reporting company. A reporting company formed after January 1, 2024 must file within 30 days after it receives notice that it has been registered to do business or the secretary of state provides public notice of the entity’s registration. Entities already in legal existence on January 1, 2024, must file no later January 1, 2025.

Who has Access to the FINCEN’s Database?

Public access to FINCEN information regarding beneficial owners is NOT permitted. In general terms, access is limited to:

- Federal agencies engaged in national security, intelligence or law enforcement;
- With prior court approval, state and local law enforcement agencies;
- Financial institutions for certain specified purposes and the federal regulators which supervise those institutions;
- Certain foreign agencies that meet all of the stated criteria; and
- US Treasury employees whose official duties require such access.

Some Practical Takeaways

The CTA will impact a large number of existing entities, as well as many yet to be formed. It is not too early to assess whether your company will be required to report and when. Developing internal processes to ensure timely compliance should also be on the company's "to do" list. It is worth noting that the filing deadline for follow-on reports is very short.

If you have questions or would like further information about the CTA, please contact PLDO Partner William F. Miller at 508-420-7159 or email wmiller@pldolaw.com.



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