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The Corporate Transparency Act: Targeting Shell Companies for Money Laundering and Financial Crimes

A new requirement has been imposed upon businesses within the massive National Defense Authorization Act for Fiscal Year 2021 (“NDAA”), passed on January 1, 2021. The relevant provisions of the NDAA, known as the Corporate Transparency Act (“CTA”)[¹] provide for the establishment of a beneficial ownership registry within the U.S. Treasury Department’s Financial Crimes Enforcement Network (“FinCEN”) and require non-exempt domestic and foreign companies to disclose information regarding their beneficial owners.

Since May 11, 2018, the banking industry has been required to collect beneficial ownership information from all commercial account holders, as part of that industry’s compliance with the federal Bank Secrecy Act (“BSA”).[²] With the passage of the CTA, this requirement has been shifted away from the nation’s financial institutions, to the companies themselves. Consistent with the BSA’s objectives, the CTA’s legislative objective is to foster greater corporate ownership transparency and hinder criminals from utilizing shell companies to launder money or evade taxes.[³]

Which Businesses Will be Affected?

The CTA shifts the beneficial ownership recordkeeping requirements to corporations, limited liability companies, and other similar entities registered to do business in the United States, now known as “reporting companies.”

There are several major exemptions to the “reporting companies” definition and related requirements. Generally, the CTA exempts certain categories of regulated entities such as banks, securities broker-dealers, investment advisors, political organizations, registered 501(c) organizations, and insurance companies. Also excluded from this reporting requirement are taxable entities that:

- Have more than 20 full-time employees in the United States;
- Report to the Internal Revenue Service annually more than \$5 million in gross receipts or sales; **and**
- Maintain an operating presence at a physical office within the United States.

Required Reporting Information

A non-exempted reporting company will soon be obligated to report the name, date of birth, current address (business or residential) and unique identifying number from an acceptable document (such as a state driver's license, U.S. or foreign passport) for each "beneficial owner." A beneficial owner (with few exceptions) is any natural person who, directly or indirectly:

- Owns 25% or more of the equity interest in the reporting company; or
- Exercises "substantial control" over the reporting company; or,
- Receives substantial economic benefits from the assets of a company.

The CTA does not define the term "substantial control." However, as this same basic definitional structure for "beneficial owner" existed under the BSA, we anticipate that banking attorneys who previously guided financial institutions in their compliance programs will be able to provide valuable counsel as this new law takes effect.

The new reporting regime begins on the effective date of the CTA's implementing regulations, which regulations must (currently) be finalized before January 1, 2022. Companies in existence on that date will be required to report beneficial ownership information within two years. Companies created after the effective date are required to report that information upon formation. Reporting companies must also submit an annual filing containing a list of the beneficial owners and an update of any change in ownership or control.

The CTA imposes material civil and criminal penalties for willful failures to comply with its reporting requirements. Negligent

omissions or mistakes are insufficient to trigger the law's penalties. Inaccuracies may be corrected within 90 days of submitting the original report.

Access to the Information

FinCEN will maintain information reported under the CTA in a private registry for the life of the reporting company, plus five years.

The Treasury Department is authorized to use the information in this database for a variety of purposes, including tax purposes. Registry information will be available to state, local, or tribal law enforcement agencies pursuant to a court order or upon receipt of an appropriate request from federal agencies "engaged in national security, intelligence or law enforcement activity." Foreign law enforcement can request this information through an appropriate U.S. agency, but the information is not subject to any automatic reporting or exchange of information.

With the consent of the reporting company, financial institutions will be permitted to access this information for Customer Due Diligence (CDD) purposes.

Unlawful disclosure of collected information will trigger penalties.

Implications for Reporting Companies

The CTA is expected to have significant implications for both U.S. and foreign businesses. Businesses should first determine whether they are a statutory "reporting company." While the CTA appears to target shell companies, its language is broad enough to ensnare many small businesses. Each statutory reporting company must next determine and prepare to report, as necessary, its beneficial owners. This process may require the involvement of legal counsel, possibly including those with experience under the previous BSA protocols.

As the CTA's implementing regulations are not final, it is too early to give definitive guidance on many aspects of the CTA. However, companies currently conducting equity financings in which an investor purchases 25% or more of the equity of a company may

want to proactively collect the necessary beneficial ownership information from such investor. That way, once the anticipated regulations are in place, such companies will be prepared to submit that beneficial ownership information.

The lawyers at Frost Brown Todd are well-positioned to assist you and your business in understanding the CTA and will continue to monitor all governmental agencies' future work as regulations and guidance is issued to implement this new law. Please contact the authors or any attorney with Frost Brown Todd's [Corporate Transparency Act Team](#) if you have any questions or concerns regarding the Corporate Transparency Act provisions of the NDAA.

Frost Brown Todd's Corporate Transparency Act Team is staying up to date on the important rule changes that will likely have significant impacts on your business operations. Click below to read the latest information about the Corporate Transparency Act.

- [**Corporate Transparency Act: Who Can Exert Substantial Influence on My Company? Part I**](#)
- [**Corporate Transparency Act: Who Can Exert Substantial Influence on My Company? Part II**](#)
- [**Reporting Under the Corporate Transparency Act – Is My Company Exempt?**](#)
- [**FinCEN Announces Proposed Solution to Disclosure Dilemma in the Corporate Transparency Act**](#)
- [**Portfolio Company Reporting Under the Corporate Transparency Act**](#)
- [**The Corporate Transparency Act: Considerations for Effectively Using the FinCEN Identifier**](#)
- [**The Corporate Transparency Act's Impact on the Real Estate Industry: What You Need to Know to Comply**](#)
- [**The Corporate Transparency Act: Targeting Shell Companies for Money Laundering and Financial Crimes**](#)
- [**Transparency Enters A New Stage – Defense Act Anti-Laundering Provisions Now in Place**](#)

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[1] H.R. 6395, 116th Cong. § 6403 (2020), available here
<https://www.congress.gov/bill/116th-congress/house-bill/6395>

[2] See 31 C.F.R. § 1010.230.

[3] Quote by Rep. Carolyn Maloney: “The Corporate Transparency Act will finally crackdown on anonymous shell companies, which have become the vehicle of choice for terrorist financing, money laundering, and organized crime.”

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