An Overview of the Corporate Transparency Act

Client Alert

1.13.21

The Corporate Transparency Act (CTA), a segment of the larger National Defense Authorization Act for Fiscal Year 2021, was enacted into law on January 1, 2021. The legislative intent of the CTA is to combat money laundering through enhanced reporting requirements to the U.S. Department of Treasury's Financial Crimes Enforcement Network (FinCEN).

The CTA applies to corporations, limited liability companies and "other similar entities" formed within any state or territory of the U.S., or in foreign entities that are registered to do business in the U.S. (Reporting Companies). Certain entities are not considered Reporting Companies for purposes of the CTA, including (i) entities that are closely regulated (i.e., banks); (ii) publicly traded companies; (iii) dormant entities; (iv) tax exempt entities; (v) entities owned or controlled by an entity that is exempt; and (vi) taxable entities that (a) have more than 20 full time U.S-based employees (b) have a physical office in the U.S., and (c) have more than $5 million in gross receipts or sales.

Reporting Companies are required to disclose their beneficial owners to FinCEN via a beneficial ownership statement. A beneficial owner is defined in the CTA as an individual who directly or indirectly "exercises substantial control over the entity" or "owns or controls not less than twenty-five percent of the ownership interests of the entity."

The U.S. Department of Treasury will adopt regulations to correspond with the CTA. These regulations will likely contain information regarding how to measure ownership and determine who is in control of the Reporting Company. Regulations are also expected to address multi-tiered companies, related parties, and whether those acting as agents on behalf of the Reporting Company will be required to disclose. It is anticipated that the regulations will also contain rules regarding supplemental reporting for a change in ownership or changes in control.

The information that must be disclosed to FinCEN through the beneficial ownership statement is as follows:

- Full legal name of each beneficial owner
- Current residential or business street address of each beneficial owner
- The beneficial owner or owners' date of birth
- The beneficial owner or owners' identification number in the form of either a driver's license number or passport number

The beneficial ownership statements submitted to FinCEN are not publicly available and are to be accessible only to the government for national security, law enforcement, and intelligence purposes. Upon receiving consent from the Reporting Company, financial institutions may be permitted to access the beneficial ownership statements of a customer to facilitate compliance with the financial institution's customer due diligence requirements.

Under the CTA, Reporting Companies that are formed on or after the date that the regulations are adopted will be required to submit a beneficial ownership statement upon formation. Reporting Companies that were in existence prior to the issuance of final regulations will have two years from the issuance of final regulations to submit a beneficial ownership statement to FinCEN.

The CTA imposes financial penalties for Reporting Companies that intentionally fail to comply with the requirements of the CTA, including the filing of false information. Parties who violate the requirements of the CTA are also subject to imprisonment. The CTA provides a safe harbor for those who submit incorrect information so long as such person can prove that (i) they had no knowledge of the inaccuracy; (ii) they were not knowingly trying to evade the requirements for the CTA; and (iii) the information is corrected within 90 days of the initial filing.

The CTA is likely to take effect in early 2022, following the adoption of the Treasury Department's corresponding regulations. Companies should familiarize themselves with the reporting requirements in order to appropriately prepare for compliance in a timely fashion.