

Many US and Foreign Companies in the US Will Need to Disclose Ownership

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By Michiel A. Bloemsma



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On January 1, 2021, the Corporate Transparency Act of 2019 (the “CTA”) became law. The CTA is part of the Anti-Money Laundering Act (“AMLA”) and is intended to fight money laundering and terrorism through the anonymous use of shell companies. Under the CTA, many US and foreign companies registered in the US will need to disclose their beneficial ownership to the Financial Crimes Enforcement Network of the US Treasury (“FinCEN”). Unlike in some foreign countries, including in Europe, states in the US generally do not require disclosure of entity ownership. In Delaware, for example, only the name of the entity and the registered agent information is included in the certificate of incorporation, and the beneficial owners do not need to be disclosed in the Delaware annual report filings.

Who will need to disclose ownership information?

Beneficial ownership will need to be disclosed by a “reporting company.” The CTA broadly defines “reporting company.” It does not only include “a corporation, limited liability company, or other similar entity” in the US but also similar entities formed abroad and registered to do business in the US. The CTA excludes, among others, taxable entities that (i) employ more than 20 full-time employees in the US; (ii) annually report more than \$5 million in gross receipts or sales to the Internal Revenue Service (IRS); and (iii) have an operating presence at a physical office within the US. Public companies and non-profits are also excluded. Many small to mid-size privately held companies will be affected by the disclosure requirements of the CTA.

What will need to be disclosed?

A reporting company must 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, other U.S. state-issued identification, U.S. or foreign passport) for each “beneficial owner.” Under the CTA, a “beneficial owner” is any natural person who, directly or indirectly, owns at least 25% of the equity interests in a reporting company or exercises “substantial control” over the reporting company. The CTA does not define the term “substantial control.” Certain individuals are expressly excluded from the definition of “beneficial owner,” including: individuals acting as agents, nominees, intermediaries, or custodians on behalf of another; individuals who control an entity solely because of their employment; and individuals whose only interest in a reporting company is through a right of inheritance.

When will disclosure need to be made?

Disclosure will need to be made after final regulations under the CTA will have become effective. It is expected that regulations will be issued before January 1, 2022. Companies which already exist as of the effective date of the CTA’s implementing regulations will be required to report beneficial ownership information within two years; companies created after

the effective date of the regulations will be required to report that information upon formation. Reporting companies must update their disclosures within one year of any change in ownership or control.

Who will have access to the information?

Beneficial ownership information will need to be submitted to FinCEN, which is only permitted to use that information for limited national security and anti-money laundering purposes. The beneficial ownership information submitted to FinCEN will be stored and maintained solely with FinCEN and will not be made publicly available nor will such ownership information be made generally available to the states. FinCEN may use the information to confirm beneficial information provided to financial institutions to facilitate the compliance of such financial institutions with anti-money laundering laws, provided that the consent of the reporting company is obtained.

Are there penalties for non-disclosure?

Any person who willfully fails to report complete beneficial ownership information to FinCEN or who willfully provides false or fraudulent information in any such report is subject to a civil penalty up to a maximum of \$10,000 and possibly imprisonment. Negligent omissions or mistakes in beneficial ownership reports do not trigger penalties.

If you have any questions or would like to discuss any of these issues, please contact me at 212-545-1900 or mbloemsma@offitkurman.com.