

Corporate Transparency Act: New Ownership Reporting Requirements

In an effort to combat transactions or activities conducted through corporate structures designed to evade detection across various jurisdictions, on December 11, 2020, Congress passed the Corporate Transparency Act (the “Act”) as part of the National Defense Authorization Act for Fiscal Year 2021 (H.R. 6395 or the “Bill”). While the President vetoed the Bill, the House and the Senate have both voted to override the veto. The Act requires “reporting companies” to report their beneficial ownership to FinCEN.

Reporting Requirements

The Act generally requires corporations, limited liabilities companies, or other entities (1) formed under the laws of a State in the United States or (2) formed under the laws of a foreign country that are registered to do business in a State in the United States to report the name, business or residential address and identifying number from an acceptable identifying source, of their beneficial owners as well as individuals registering the entity. For these purposes, beneficial owners include individuals who, directly or indirectly, own or control not less than 25 percent of the ownership interests of the entity or exercise substantial control over the entity. Beneficial owners generally do not include minors, individuals acting as agents, employees, or those whose only interest in the entity is through a right of inheritance.

Importantly, there are numerous and various significant exclusions from the definition of a “reporting company” including, but not limited to, the following:

- banks;
- public companies;
- brokers and dealers;
- investment advisers registered with the SEC;
- pooled investment vehicles operated or advised by advisers registered with the SEC;
- Section 501(c) organizations, political organizations, and charitable or split-interest trusts;
- dormant companies; and
- entities that employ more than 20 employees on a full time basis in the United States that have filed previous year federal income tax returns of more than \$5 million in gross receipts or sales.

Additionally, pooled investment vehicles operated or advised by registered investment advisers that are formed under the laws of a foreign country are required to report

information of any individual who exercises substantial control over such pooled investment entity.

For entities formed after the effective date of the Act, the information has to be submitted to FinCEN at the time of formation (registration). For entities formed prior to the effective date, the information must be submitted within two years of such effective date. In addition, any changes of beneficial ownership are required to be submitted within one year of such change.

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