

THE DEPARTMENT OF THE TREASURY ISSUES PROPOSED REGULATIONS IMPLEMENTING THE CORPORATE TRANSPARENCY ACT

February 3, 2022

In December 2021, the Financial Crimes Enforcement Network (FinCEN) of the Department of the Treasury issued proposed regulations implementing certain beneficial ownership reporting requirements of the Corporate Transparency Act of 2020. The purpose of the Corporate Transparency Act is to enhance financial transparency and compliance by combatting money-laundering, terrorist financing, tax fraud and other illicit activities by, in the words of FinCEN, “diminish[ing] the ability of malign actors to obfuscate their activities through the use of anonymous shell and front companies”. The Corporate Transparency Act will require most of our clients who have formed companies, including partnerships and limited liability companies, to comply with the Act and file beneficial ownership information reports with FinCEN, even if such companies were formed for legitimate and legal purposes.

Reporting Obligations. Under the Corporate Transparency Act and the proposed regulations, unless exempt, all corporations, limited liability companies and other entities created by filing a document with the secretary of state or any similar office under the law of a State or Indian Tribe will be required to report their ultimate beneficial ownership information, and any changes to such information to FinCEN. Such information will not be made public and access will be limited to law enforcement for specific national security, intelligence or law enforcement activities.

Entities Subject to Reporting. The regulations apply both to newly created companies and companies formed in the past and currently in existence. They apply to both “operating” companies with active trades and business and “holding” or passive companies that may do little more than hold real property, liquid assets or one-off investments.

Exceptions. Exemptions are somewhat limited, but include public companies, “large” operating companies with more than 20 full time employees in the U.S. and at least \$5 million in sales reported on their most recent federal income tax return, and certain other entities in otherwise highly regulated areas (such as chartered banks, investment advisors and charities). Certain non-U.S. companies active in the United States will also have to report their beneficial ownership. Beneficial owners include any natural person who, directly or indirectly, either (i) exercises substantial control over the reporting company, or (ii) owns or controls at least 25% of the ownership interests of the reporting company.

Penalties. Failure of reporting companies to comply can result in both civil and criminal penalties of up to \$10,000 in fines and two years in prison. Such penalties apply to both the reporting companies and the beneficial owner, as well as the persons in control of the reporting companies.

Next Steps. Final comment on the proposed regulations are due February 7, 2022. Following that date, FinCEN will issue final regulations and establish effective times. Therefore, the final regulations may deviate from the proposed regulations summarized in this alert. We will continue to monitor progress with the regulations and work

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with clients to comply with all necessary requirements.

If you have any questions regarding the proposed regulations, please contact the following Cummings & Lockwood LLC attorneys:

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