

January 5, 2021

Services

[Business, Corporate & Securities](#)

[Corporate Finance](#)

[Corporate Governance](#)

[EB-5 Finance](#)

[Franchise and Distribution](#)

[Mergers and Acquisitions](#)

[Private Investment Funds](#)

[Securities Regulation](#)

[Structured Finance and
Securitization](#)

Corporate Transparency Act: New Reporting Requirements for “Shell” Companies and Small Businesses

On January 1, 2021, the Corporate Transparency Act (the “**Act**”) became law.¹ This Client Alert provides a general high-level overview of the Act. The Act itself is subject to numerous qualifications, exceptions and exclusions.

The Act is designed to address the use of U.S. shell companies to facilitate money laundering, terrorist financing and other illegal activities. As discussed below, the Act requires certain new and existing corporations, limited liability companies and similar entities (“**Reporting Companies**”) to confidentially disclose information concerning their applicants and beneficial owners to Financial Crimes Enforcement Network program of the U.S. Department of the Treasury (“**FinCEN**”).

Specifically, Reporting Companies must submit a report (the “**Reporting Requirements**”) to FinCEN identifying the Reporting Company’s applicants and beneficial owners by name, date of birth, current address and unique identifying number from an acceptable identification document (*e.g.*, a government issued form of identification like a driver’s license or U.S. passport). Generally, applicants are individuals who form the Reporting Company (such as incorporators) and beneficial owners are individuals who exercise substantial control over the Reporting Company or who own twenty-five percent (25%) or more of the ownership interests of the Reporting Company.

What Businesses are Subject to the Transparency Act?

A Reporting Company is defined under the Act as a corporation, limited liability company or similar entity that is: (1) formed under the law of any state, Indian tribe or a foreign country that is qualified to do business in the United States; and (2) is not otherwise exempted under the Act. The Act excludes entities that have (i) more than twenty full-time employees, (ii) gross receipts or sales greater than \$5,000,000, and (iii) a physical office within the United States. The Act also exempts several categories of businesses that are unlikely to be used for illicit purposes such as entities that are:

- tax exempt,
- publicly traded,

¹ The Act is part of the National Defense Authorization Act for Fiscal Year 2021 (H.R. 6395). Passed by the U.S. Congress on December 11, 2020, the Act was vetoed by President Trump but his veto was overridden by the U.S. House of Representatives on December 28, 2020 and then by the U.S. Senate on January 1, 2021.

Contacts

Mitch Woolery
Kansas City
816.502.4657
mitch.woolery@kutakrock.com

Andrew Elsberry
Kansas City
816.502.4673
andrew.elsberry@kutakrock.com

- subject to existing regulatory or reporting requirements (like banks and insurance companies), or
- owned by an entity that is itself exempt.

When Must Businesses File a Report?

- ***New Reporting Companies*** need to make their initial FinCEN filings “at the time of formation or registration” of the new Reporting Company, in accordance with Treasury’s regulations.
- ***Existing Reporting Companies*** need to make their initial FinCEN filings within two years after Treasury finalizes its regulations implementing the Act’s reporting requirements.
- ***For changes in beneficial ownership***, Reporting Companies need to make their updated FinCEN filings “in a timely manner, and not later than one year after the date on which there is a change” in beneficial ownership.

Effective Date

The Reporting Requirements take effect on the effective date of Treasury’s regulations implementing the Reporting Requirements. There has not been any public announcement of when Treasury will publish these regulations.

What are the Penalties for Violating the Act’s Reporting Requirements?

Penalties for willfully violating the Act’s Reporting Requirements can be severe: (i) up to \$500 per day civil penalties; (ii) up to \$10,000 for criminal fines; and (iii) up to two (2) years imprisonment. Both Reporting Companies and their applicants and beneficial owners can be subject to these sanctions.

Additional Information

While the Act is widely viewed as a positive step in preventing the use of U.S. shell companies for illicit purposes, the Act imposes new reporting requirements and compliance costs on legitimate small businesses that previously were not subject to beneficial ownership disclosure requirements. Complying with the Act and forthcoming regulations will be a complex task. For further information or questions about the Act or forthcoming regulations, please contact any member of Kutak Rock’s [Business, Corporate & Securities Group](#) or one of the authors listed on the left. For more information regarding our practices, please visit us at www.KutakRock.com.