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The following is a draft summary of the basic requirements that the Department of Justice deems necessary to include in any legislation establishing minimum requirements for the collection of beneficial owner information by the States. The objective of any legislative change is to establish the collection and maintenance of accurate records which identify the true beneficial owner(s) of a business. The proposed legislation must include the following:

A. Establish a definition of “beneficial owner”. There are a number of definitions worldwide for “beneficial owner”, which may assist in drafting this important definition, including but not limited to the definitions contained in: 31 CFR 103.175; 17 CFR 240.13d-3; the United Kingdom Money Laundering Regulations, effective December 15, 2007;<sup>1</sup> and the European Union (Third Anti-Money Laundering Directive).<sup>2</sup> For purposes of this concept paper, the following definition of beneficial owner has been elected:

“beneficial owner” means (a) a natural individual who has a level of control over, or entitlement to, the funds or assets of the corporation or limited liability company or partnership that, as a practical matter, enables such individual, directly or indirectly, to control, manage or direct such entity; or (b) a natural individual who owns more than 15% of the corporation or limited liability company or partnership. If a natural individual exercises such control or ownership over such corporation or limited liability company or partnership through another legal entity, such as a corporation, limited liability company or a partnership, the beneficial owners shall also identify each such legal entity being used by such individual to exercise control over the corporation or limited liability company or partnership and the majority beneficial owner of such entity.

B. Require the beneficial owner of a business:

1. to provide a State with adequate information regarding the identity and location of the beneficial owners, prior to the initial incorporation of the entity. The objective of this requirement is that the beneficial owners provide, and that the States collect the names, current addresses and photos of the natural individuals (rather than legal entities) who will be the true owners of the business that the States are being asked to form. For United States Citizens, the beneficial owner must provide either a copy of his or her driver’s license or passport. All other beneficial owners must provide a copy of his or her passport.

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<sup>1</sup> Used by the United Kingdom in conjunction with the Financial Action Task Force (FATF), a leading international organization combating money laundering and terrorist financing.

<sup>2</sup> Used by the European Union in conjunction with the FATEF.

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2. to verify through signature, subject to criminal penalty, that the information provided to the States has been reviewed, and is true and accurate. This provision is to ensure that there are sufficient criminal penalties to allow either State or Federal authorities to prosecute individuals who provide false information to the State regarding beneficial owners.

3. to be subject to criminal and civil liability until the new beneficial owners' documents are provided to the incorporating State, when an existing business is sold or transferred to a new beneficial owner. This provision is to ensure that businesses maintain and update accurate records with the incorporating State. It is anticipated that there will be criminal penalties for the knowing failure to document the attempted transfer of beneficial ownership. Additionally, it is anticipated that—when the identity documents for a new beneficial owner has not been filed with the proper State authorities—any attempted transfer of ownership will be void, and civil liability for damages caused by the corporation after the date of the putative transfer will attach to the existing beneficial owners. This civil liability will include a rebuttable presumption that the corporate veil is pierced as to the beneficial owners.

C. Require the States to maintain the information regarding the beneficial owner. This provision is to ensure that law enforcement has access to the beneficial owner documents (including payment information for State taxes and fees) for a reasonable period of time (e.g. five to seven years) after the business has ceased to exist.

D. Allow State and Federal law enforcement access to the beneficial owners' information within a reasonable amount of time, after a written request has been made by a law enforcement agency. This provision is to ensure that State and Federal law enforcement have timely access to the beneficial owners' information so the agents may expeditiously use and benefit from the information when investigating criminal activity. State and Federal law enforcement must also have the ability to share beneficial owner records with their foreign law enforcement counterparts when requested within the context of their official duties. To address concerns of those States that do not wish to make the beneficial owners' information available to the general public, this provision will be limited so that only law enforcement will have access to the information in conjunction with a criminal investigation or request from a foreign counterpart.

E. Establish an exception to the above requirements for publicly traded companies, such as those traded on the New York Stock Exchange (e.g. Ford Motor Company); and for larger legitimate privately owned companies (e.g. Mars Incorporated). This provision is intended to avoid burdening both the States and the larger legitimate public and private corporations with the requirement to produce and maintain a large number of documents. These larger corporations have no history of facilitating criminal activity through the use of shell companies; and are already required, as are the corporations' subsidiary companies, to provide Federal and State regulators with significant amounts of information regarding the corporation's ownership and management.