

# LEGAL ALERT

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## The Anti-Money Laundering Act of 2020: What Businesses Need to Know Now

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The National Defense Authorization Act for Fiscal Year 2021 (“NDAA”) enacted earlier this year includes several provisions that may impose new reporting requirements on both foreign and domestic businesses.

NDAA is an omnibus statute that includes, among other things, the Anti-Money Laundering Act of 2020 (“AMLA”). AMLA itself includes numerous new requirements, the most notable of which provides for a new beneficial ownership reporting requirement for certain businesses, expanded subpoena power, and cryptocurrency reporting.

### Beneficial Ownership Reporting

One of the most significant changes in AMLA is the new beneficial ownership reporting requirement. This requirement targets “malign actors” “that seek to conceal their ownership of corporations, limited liability companies, or other similar entities in the United States to facilitate illicit activity.” Aimed at shell companies that act as “Russian nesting ‘Matryoshka’ dolls” to hide illicit activities, the provision requires that “reporting companies” disclose certain beneficial ownership information to the Financial Crimes Enforcement Network (“FinCEN”).

A reporting company, as defined below, must provide beneficial ownership information to FinCEN, including each beneficial owner’s (i) name, (ii) date of birth, (iii) address, and (iv) unique identifying number (e.g., driver’s license, passport, or tax identification number). A beneficial owner is an individual who (i) “directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise” exercises substantial control over the entity or (ii) owns 25% or more of the ownership interests. While substantial control is not defined by statute, it is expected that it will be defined in regulations.



A “reporting company” includes a corporation, limited liability company and “other similar entities,” but does not include publicly traded companies, securities issuers, banks, credit unions, investment companies, pooled investment vehicles, charitable organizations, trusts<sup>1</sup>, partnerships, sole proprietorships, and unincorporated associations. Further, the disclosure requirement does not apply to a corporation, limited liability company or “similar entity” that (i) employs more than 20 employees on a full-time basis in the United States, (ii) has filed a U.S. federal income tax return in the previous year demonstrating more than \$5 million in gross receipts or sales; and (iii) has an operating presence at a physical office within the United States.

By January 1, 2022, the Department of the Treasury is required to issue regulations under which reporting companies must disclose beneficial ownership information to FinCEN, which information will be maintained by FinCEN for at least five years after the date on which the reporting company terminates, and made available by FinCEN upon request to financial institutions with the consent of the reporting company.

Once the regulations are finalized, any reporting company that has been formed or registered before the effective date of the regulations, shall have two years from such date to disclose the beneficial ownership information to FinCEN. Any reporting company that is formed or registered after the regulations are promulgated, shall have to disclose such beneficial ownership information immediately upon formation.

Penalties for failure to provide beneficial ownership information, include a civil penalty of \$500 per day that the violation continues or has not been remitted, a criminal fine of \$10,000 per day, and/or imprisonment for up to two years. Penalties for unauthorized disclosure of beneficial ownership information include a civil penalty of \$500 per day, and criminal fines of \$250,000 per day and/or imprisonment for up to five years.

### Expanded Subpoena Power

The AMLA permits the Department of Justice and the Department of the Treasury to subpoena foreign bank records if the foreign bank maintains a U.S. correspondent account<sup>2</sup> in the United States. The AMLA grants access not only to the correspondent account, but also to any account at such bank, so long as the records are relevant to any investigation of a violation of federal criminal law, in civil asset forfeiture proceedings, and in any investigation conducted under the AMLA laws and regulations.

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<sup>1</sup> While trusts and partnerships are not currently classified as reporting companies, the Act requires that no later than two years after regulations are promulgated, a study be made “evaluating whether the lack of available beneficial ownership information for partnerships, trusts, or other legal entities... raises concerns about the involvement of those entities in terrorism, money laundering, tax evasion, securities fraud, or other misconduct.”

<sup>2</sup> Correspondent accounts are accounts established by U.S. financial institutions for non-U.S. banks to receive deposits from, make payments on behalf of, or handle other financial transactions related to the non-U.S. bank. Correspondent accounts enable non-U.S. banks to conduct business in the United States even if they have no physical presence in the United States. This allows the non-U.S. bank’s customers to receive many of the same services offered by a U.S. bank without becoming a direct client of the U.S. bank.

## Cryptocurrency Reporting

Acknowledging that cryptocurrencies are used by “terrorists and criminals” “to exploit vulnerabilities in the global financial system” the AMLA strengthens FinCEN by requiring that virtual currency businesses register with FinCEN. The AMLA also expands the definition of “financial institution” under the Bank Secrecy Act to include “a business engaged in the exchange of currency, funds, or value that substitutes for currency or funds.”

## Conclusion

Businesses that qualify as reporting companies should seek legal advice to ensure they are complying with the new disclosure requirements of the AMLA. Entities that fail to comply may be subject to civil and/or criminal penalties. If your business is a “reporting company,” or if you need to determine if your entity will be considered a “reporting company,” please contact one of the Hahn Loeser attorneys listed below.

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