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The Anti-Money Laundering Act of 2020: A Survey of Key Provisions and Practice Takeaways

On New Year's Day 2021, Congress overrode a presidential veto to pass the Anti-Money Laundering Act of 2020 (AMLA 2020), which amends and modernizes the Bank Secrecy Act (BSA). The AMLA 2020 includes sweeping reforms updating and modernizing U.S. anti-money laundering laws, rules, and regulations. While most of these reforms target financial institutions subject to the BSA, several have broader implications for domestic and international business.

About the Series

This multipart series will highlight key takeaways from the AMLA 2020 with practical implications for our clients, including (1) new and expansive requirements for disclosure of corporate beneficial ownership, which the Financial Crimes Enforcement Network (FinCEN) is now actively working to implement; (2) enhanced incentives for whistleblowers to report money laundering violations; (3) expansion of U.S. subpoena authority over foreign financial institutions that maintain correspondent accounts in the United States; (4) new criminal penalties for concealing the involvement of senior foreign political figures and certain designated entities in transactions involving U.S. financial institutions; (5) expansion of AML law to codify jurisdiction over virtual currency activities; and (6) development of regulatory solutions with a greater focus on emerging technologies. Below is a high-level overview of some topics this series will cover:

New Beneficial Ownership Disclosure Requirements. Perhaps most significantly, the AMLA 2020 requires many corporations and limited liability companies (LLCs) to disclose their beneficial owners to the government—a new requirement that will apply to previously unregulated entities. The AMLA directs FinCEN to maintain a secure beneficial ownership registry of legal entities to facilitate investigations by law enforcement and diligence by financial institutions. This provision, aimed at shell companies and other single-purpose vehicles, is designed to discourage the use of anonymous entities to disguise the natural persons behind a corporation. On April 1, 2021, FinCEN issued an Advanced Notice of Proposed Rulemaking, setting out the questions it is grappling with in its effort to issue the required regulations by January 1, 2022, and soliciting comments from the public on how the beneficial ownership rule should be implemented. The first part of this series will describe the expanded statutory definition of "beneficial owner" and survey the AMLA's long list of exemptions to the registration requirements as well as discussing some of the key takeaways from FinCEN's recent public notice.

Significantly Enhanced Whistleblower Incentives. The AMLA 2020 introduces a whistleblower program modeled after the program used by the U.S. Securities and Exchange Commission. These provisions incentivize whistleblowers to report violations of the BSA and authorize increased monetary rewards for those who provide information to their employers or to the government. The availability of awards for internal reporting is a provision that may be particularly troublesome where the reporting employee and the company may disagree as to whether the conduct at issue must or otherwise should be reported to regulators. The second part of this series will discuss those provisions in detail.

Expanded Subpoena Authority. The AMLA 2020 expands the U.S. Department of Justice's subpoena authority over foreign financial institutions. It gives the secretary of the treasury and the attorney general authority to issue subpoenas to foreign financial institutions that maintain correspondent accounts in the United States with regard to *any* account records in their possession, a significant expansion from the prior authorization which was limited to records relating to U.S. correspondent accounts. The third part of this series will explain those new

provisions and their implications for foreign financial institutions as well as foreign individuals and entities under investigation.

New Penalties for Concealing Transactions Involving Senior Foreign Political Figures. Finally, the AMLA 2020 amends the BSA to include criminal penalties prohibiting willful concealment from financial institutions of transactions involving senior foreign political figures and certain designated entities of money laundering concern. Most notably, the prohibition extends criminal penalties to anyone involved in the concealment, misrepresentation, or falsification (or attempted concealment, misrepresentation, or falsification) to a financial institution of material facts regarding the ownership or control of assets exceeding \$1 million by a senior foreign political figure (or any immediate family member or close associate). The penalty gives sharp teeth to the transactional diligence process and will undoubtedly enhance the quality of diligence received by financial institutions vetting account holders and transactions. Like other recent anti-money laundering disclosure rules—such as the real estate-related global targeting orders that have been issued and continually expanded over the last several years—this may have important implications for expanding anti-corruption enforcement. This provision will be explored in the fourth installment of our series.

Expansion of AML Law to Codify Jurisdiction Over Virtual Currency Activities. The AMLA 2020 codifies prior FinCEN guidance that requires entities that conduct certain virtual currency business activities to register as money services businesses. By expanding the definitions of terms like "financial institution" and "money transmitting business" the new law includes businesses that exchange or otherwise transmit virtual currency or "value that substitutes for currency." FinCEN guidance was controversial in the industry, and its codification in statute will create additional challenges and opportunities.

Developing an Emerging Financial Technology Focus. The AMLA 2020 puts in place the impetus for financial regulatory agencies and the Government Accountability Office to conduct studies and provide reports to Congress and develop capabilities to better understand and adapt regulatory frameworks to address emerging fintech technologies. The law directs FinCEN to maintain emerging technology experts to identify emerging technologies such as artificial intelligence, digital identity technology, and distributed ledger technologies that may be able to assist the government and financial institutions to counter money laundering and terrorist financing. The federal financial regulators are directed to study emerging payment methods like virtual currencies and peer-to-peer payment systems and provide reports to Congress on their use in money laundering and illicit activities. The federal financial regulators have been advancing the use of emerging technologies by financial institutions, and the AMLA 2020 directs FinCEN to establish a no-action letter process, which provides the opportunity for the industry to better understand the technology solutions acceptable to regulators for BSA compliance.

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