

NEW TARGETED AML REFORMS – ALMOST, MAYBE?

In October 2019, the US House of Representatives passed legislation entitled the Corporate Transparency Act of 2019, H.R. 2513, (the "**Act**") about which Clifford Chance wrote [here](#). The Act would have required corporations and limited liability companies organized under the laws of any US state to disclose their true beneficial owners at the time of formation, as well as on an annual basis, in an effort to prevent the use of anonymous shell companies for illicit purposes. After passing the House, the Act was received in the US Senate and referred to the Committee on Banking, Housing, and Urban Affairs, and thereafter stalled.

However, on July 21, 2020, the US House of Representatives again passed the Act, but this time as an [amendment](#) to the yearly National Defense Authorization Act ("**NDAA**").¹

The Act would apply only to small businesses that employ 20 or fewer full-time, US-based employees, that file US income tax returns demonstrating \$5 million **or** less in gross receipts or sales, or that do not have an "operating presence" at a physical office within the United States.²

The Act would require qualifying corporations or limited liability companies, at the time of formation, to disclose their true beneficial owners to the US Department of the Treasury's Financial Crimes Enforcement Network ("**FinCEN**"). Specifically, companies must report the full legal name, date of birth, current residential or business street address, and valid US passport or driver's license number of each beneficial owner to FinCEN. If the beneficial owner does not have a valid US passport or US state driver's license, they must provide FinCEN with their legal name, current residential or business street address, a unique identifying number from a non-expired foreign passport, and a legible and credible copy of the pages of a non-expired foreign passport bearing their photograph, date of birth, and

¹ The US Congress passes an NDAA every year as part of its funding of the US Department of Defense.

² The Act does not define the term "operating presence."

unique identifying number. In such circumstances, the individual company must also include written confirmation from a person residing in the state of corporate formation attesting to the validity and retention of such information. FinCEN would then maintain a database of the beneficial ownership data and proof of verification until five years after the corporation's termination date, as determined by State law.

Any person who "knowingly" (but not negligently) provides or attempts to provide to FinCEN false or fraudulent beneficial ownership information—including a false or fraudulent identifying photograph—would be guilty of a felony and liable for a civil penalty of \$10,000 under the Act. The same penalties also apply to either (i) a willful failure to provide updated beneficial ownership information to FinCEN on a yearly basis, as required by the Act, or (ii) the knowing disclosure of the existence of a subpoena or other request for beneficial ownership information.

To achieve its stated goal of "strengthening law enforcement investigations of suspect corporations and limited liability companies," the Act would allow law enforcement agencies to query the FinCEN database directly for particular beneficial ownership information, provided the law enforcement agency had "appropriate protocols" in place for the querying and handling of such information. The Act otherwise requires only that the law enforcement agency have "an existing investigatory basis" for requesting beneficial ownership information in order to access the FinCEN database—no court order is necessary.

On July 23, 2020, the US Senate passed its version of the NDAA, without AML-related legislation similar to the House bill. Unlike the House, the Senate chose not to include another, bipartisan [proposed amendment](#) to the NDAA entitled the "Anti-Money Laundering Act of 2020," despite the support of several important industry groups.³ The lack of an AML-related amendment in the Senate version of the NDAA, against which the Act could be compared and reconciled, may result in the simple removal of the House amendment during the conference reconciliation process.

As a result, the Act is unlikely to become law. However, its attachment to such a high-profile, must-pass bill and Congress's priority on making US companies competitive suggest Congressional momentum weighs in favor of passing targeted AML reforms. Clifford Chance will continue to monitor these reforms as they are proposed.

³ For example, the American Bankers Association signed onto a letter in support of the amendment, along with six other financial trade organizations. https://www.aba.com/-/media/documents/notices/aml-reform-ndaa-letter-06272020.pdf#_ga=2.241734986.991442353.1595815329-1795123614.1595815329. The amendment also enjoyed support of law enforcement. <https://www.brown.senate.gov/newsroom/press/release/brown-urges-senate-action-bipartisan-anti-money-laundering-amendment-ndaa>.

CONTACTS



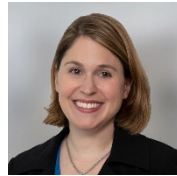
David DiBari
Managing Partner

T +1 202 912 5098
E david.dibari
@cliffordchance.com



Steven Gatti
Partner

T +1 202 912 5095
E steven.gatti
@cliffordchance.com



Megan Gordon
Partner

T +1 202 912 5021
E megan.gordon
@cliffordchance.com



Celeste Koeleveld
Partner

T +1 212 878 3051
E celeste.koeleveld
@cliffordchance.com



Michelle Williams
Partner

T +1 202 912 5011
E michelle.williams
@cliffordchance.com



Philip Angeloff
Counsel

T +1 202 912 5111
E philip.angeloff
@cliffordchance.com



Catherine Ennis
Counsel

T +1 202 912 5009
E catherine.ennis
@cliffordchance.com



Laura K. Hamilton
Associate

T +1 202 912 5900
E laura.k.hamilton
@cliffordchance.com

This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

www.cliffordchance.com

Clifford Chance, 31 West 52nd Street, New York, NY 10019-6131, USA

© Clifford Chance 2020

Clifford Chance US LLP

Abu Dhabi • Amsterdam • Barcelona • Beijing • Brussels • Bucharest • Casablanca • Dubai • Düsseldorf • Frankfurt • Hong Kong • Istanbul • London • Luxembourg • Madrid • Milan • Moscow • Munich • Newcastle • New York • Paris • Perth • Prague • Rome • São Paulo • Seoul • Shanghai • Singapore • Sydney • Tokyo • Warsaw • Washington, D.C.

Clifford Chance has a co-operation agreement with Abuhimed Alsheikh Alhagbani Law Firm in Riyadh.

Clifford Chance has a best friends relationship with Redcliffe Partners in Ukraine.