



**CLIENT ALERT:**

# Congress Passes Corporate Transparency Act

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INTELLIGENCE THAT WORKS



On December 11, 2020, Congress passed the Anti-Money Laundering Act of 2020 (AMLA) as part of the National Defense Authorization Act (NDAA) for Fiscal Year 2021. The AMLA is a wide-ranging reform effort seeking to overhaul and modernize important financial security controls used to identify and prevent money laundering and other illicit activity conducted through financial transactions. The AMLA also enhances rewards and protections for whistleblowers coming forward with potential Bank Secrecy Act (BSA) violations.

Included in the AMLA is the Corporate Transparency Act (CTA). The CTA requires most corporations and limited liability companies established in the United States to disclose their true beneficial owners to the Treasury Department, effectively banning anonymous shell companies. The CTA is a victory for law enforcement and rights groups in the battle against money laundering, illicit money flows, and terrorist financing; allows greater sharing of information between law enforcement and regulators; and authorizes new suspicious activity monitoring tools.

The NDAA passed both houses of Congress by a wide margin and is likely to withstand any potential veto by the executive branch.

## Anti-Money Laundering Act of 2020

Key provisions in the AMLA include the improvement of coordination and information sharing among agencies tasked with administering requirements for anti-money laundering (AML) and countering the finance of terrorism (CFT). Other entities involved in this provision include federal law enforcement, national security agencies, the intelligence communities, financial institutions, and the agencies that examine financial institutions for compliance with AML/CFT requirements.

Additionally, the AMLA modernizes AML/CFT laws to adapt to new and emerging threats; encourages technological innovation and adoption of new technology by financial institutions to better counter money laundering and the financing of terrorism; and reinforces risk-based AML/CFT policies, procedures, and controls for financial institutions. The AMLA also establishes uniform beneficial ownership information reporting requirements.

## Corporate Transparency Act

Each year in the United States, nearly two million corporations and limited liability companies are registered at the state level. Few of these states require companies to disclose their true owners, making the US an attractive (and lucrative) destination for the registration of anonymous companies. In 2020, the United States was listed on the Financial Secrecy Index as the second most financially secretive jurisdiction in the world behind the Cayman Islands.<sup>1</sup>

The CTA aims to make it harder to run these companies anonymously, which deters the misuse of these companies for purposes of hiding wealth or moving illicit money around the world. The CTA requires the disclosure of name, address, date of birth, and identification number of the real owners (person who controls the company, owns at least 25%, or received economic benefit from company assets) for newly registered companies. Previously existing corporations and LLCs have two years from adoption of the CTA to disclose information to the Treasury Department. A reporting company must update the information upon change in beneficial ownership.

Anyone caught willfully providing false information will be liable for fines up to \$10,000 and prison terms of up to two years. This includes attorneys who help with the registration. Protections and financial incentives will be offered to whistleblowers.

Any US company with over twenty employees and at least \$5 million in annual sales will be exempt under the assumption that it is a legitimate business and not a shell company.

Ownership information will be shared with the Financial Crimes Enforcement Network (FinCEN). The general public will not have access to the ownership data. However, upon request, FinCEN will provide the data to law enforcement agencies and banks, and, in some circumstances, allied nations. The CTA will take steps to improve bank communication with FinCEN and require federal regulators to undergo training to detect money laundering.

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<sup>1</sup> <https://fsi.taxjustice.net/en/introduction/fsi-2018-results>



## BSA/AML Outlook

The benefits of the AMLA and CTA are many, including cost savings at financial institutions, improved protections for legitimate companies against bad actors, and increased national security.

A Banking Policy Institute survey from 2018 found that for nineteen participating banks, 14,000 individuals were being employed to assist with BSA/AML compliance at the cost of approximately \$2.4 billion. A 2017 survey showed participants reviewed approximately sixteen million alerts and filed more than 640,000 suspicious activity reports (SARs) and 5.2 million currency transaction reports (CTRs). However, only 4 percent of SARs received follow-up inquiries from law enforcement, while CTRs had even fewer inquiries at 0.44 percent.

Financial institutions were understandably a major lobbying force in favor of the CTA, with the hopes of lessening the costly burden of compliance and other regulatory requirements. The CTA allows financial institutions to push some responsibility onto the corporations, which are better positioned to provide the necessary information.

Besides saving money, the AMLA and CTA benefit financial institutions through information sharing via the centralized FinCEN database. With greater transparency into beneficial ownership, banks can better determine risk from both new and existing clients.

The AMLA will be the most transformative update to BSA/AML regulations, rulemaking, practices, and processes since the 2001 USA PATRIOT Act. Increased enforcement action is expected, and financial institutions and others with AML responsibilities will need to increase compliance efforts and internal whistleblower policies. It will take several years of sustained focus for public and private sectors and financial institutions to implement necessary changes to rulemaking and policy development processes to adhere to the AMLA and CTA.

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