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First Year Into AMLA - What Has Been Done And What To Expect?

One year after the U.S. adopted the historic Anti-Money Laundering Act 2020 (AMLA), experts discuss how the Financial Crimes Enforcement Network (FinCEN) is dealing with its tasks to implement the act and what lies ahead.

In a big overhaul of its AML rules last January, Congress passed the historic AMLA to strengthen the country's financial crime monitoring framework and close a massive loophole that enabled anonymous shell companies to operate in the U.S.

As part of the act, Congress mandated the Treasury's FinCEN to carry out a wide range of regulatory actions within some very tightly set deadlines.

Throughout 2021, FinCEN carried out an enormous amount of work to comply with its duties despite reportedly facing a continued strain on its resources, including staff.

In the summer, it [established](#) a list of the first-ever U.S. national AML priorities and completed an [assessment](#) on the use of no-action letters. Later, in October it [published](#) an analysis on ransomware trends, and in December it [started](#) a number of rulemaking processes aimed to implement provisions of the AMLA.

Although the agency [had difficulties](#) in meeting some of its deadlines, experts believe FinCEN made an incredible effort to meet its obligations.

"FinCEN has clearly put an immense amount of time, resources and thought into implementation," Anand Sithian, counsel at Crowell & Moring, told VIXIO.

The agency has a lot on its plate but is moving through these complex issues "both quickly and with a lot of thought and detail into regulatory actions," he explained.

"Under the circumstances, FinCEN has been making impressive, steady and thoughtful progress, while engaging with industry and other stakeholders as much as possible," Jamal El-Hindi, counsel at Clifford Chance and former FinCEN deputy director, agreed.

Aftermath of the Pandora Papers

Even though the Pandora Papers were released months after the passage of the AMLA, FinCEN has been doing its best to make sure its rulemaking addresses the broader issues raised by the scandal.

One of the key revelations of the leaked documents was that trusts in at least a dozen U.S. states [have become](#) a popular tool for foreign officials and entrepreneurs to evade taxes.

FinCEN's proposal on beneficial ownership information reporting will in part address these issues, as it requires certain types of holding companies to provide information on their beneficial owners to FinCEN.

This will "address a loophole in the U.S. corporate reporting regime of not previously requiring entities to provide beneficial ownership information in certain states," Sithian noted.

In parallel to the beneficial ownership rulemaking, FinCEN also launched a regulatory process that contemplates potentially expanding the AML reporting requirement to certain parties involved in real-estate transactions.

Real-estate agents, along with attorneys, accountants, and trust company service providers, are considered to be the gatekeepers to financial services, but they are exempt from Bank Secrecy Act (BSA) reporting obligations.

With the rulemaking, FinCEN intends to level the disparity between buying a property with a mortgage, where banks are required to identify the parties and report suspicious activities, and a real estate purchased with cash only, where it is nearly impossible to trace the beneficial owners behind shell companies.

Although this rulemaking was not required by the AMLA, it implies that FinCEN is moving toward a more broad approach to the real-estate sector at large.

Attempts to rein in corruption potentially occurring in transactions in the real-estate section is part of the government's broader anti-corruption focus, Sithian said.

Looking ahead

FinCEN is required to issue a number of additional regulations under the AMLA.

One of the rulemakings that should be followed with a close eye is the AMLA's expanded whistleblower rules, Sithian said.

The act introduced robust new incentives for individuals to report AML rule violations to federal authorities while providing a private cause of action against employers for retaliation. FinCEN was supposed to report on that to Congress by January 1, 2022, but it will be "interesting to see where those regulations come down," he added.

Furthermore, FinCEN has currently got an ongoing request for information (RFI) aimed at reviewing the efficiency of existing BSA regulations and guidance. The rulemaking could conclude with FinCEN reducing compliance burdens on financial institutions, but could also result in the imposition of new requirements.

The AMLA also amended the BSA's definition of monetary instrument to include "value that substitutes for monetary instrument," bringing cryptocurrencies into scope.

Similarly, it amended the definitions of financial institution and money transmitter to include digital asset exchanges.

“Look for more focus and action in the virtual assets space, and watch for how that may be combined with the potential use of FinCEN's Section 311 authority to identify "primary money laundering concerns," El-Hindi said.

That section allows FinCEN to require U.S. firms to keep records, collect beneficial ownership information, or even block foreign entities that are of primary money laundering concern.

As part of the America COMPETES Act, which is aimed at boosting the U.S. competitiveness against China, Congress is considering modifying and strengthening some of FinCEN's authority in that regard.

FinCEN might be waiting on those authorities as it will make it easier for them to take action, El-Hindi said, adding that even if the legislation lags, FinCEN still has the ability to use the 311 tool in this space.

Jurisdictions

United States

Authorities

Financial Crimes Enforcement Network

U.S. Department of the Treasury

Specialisms

Anti-Money Laundering/Counter-Terrorism Financing

Products And Services

Bank Accounts

Card Networks

Crypto-Assets

Payment Processors