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New US Anti-Corruption Law: What It Means for S.E. Asia

By Adam Garfinkle

SYNOPSIS

A recent major advance in US anti-corruption, anti-money laundering law may soon make its way to Southeast Asia. ASEAN and Singapore need to signal their readiness to engage the Biden administration on such issues as US authorities increase their interest in this area.

COMMENTARY

GIVEN THE pandemic state of American politics since the 3 November 2020 election, it was easy to miss a major legislative event heavy with implications for aspects of the global economy, and of interest to countries like Singapore. Tucked within the massive, 4,500-page National Defence Authorisation Act (NDAA) that passed Congress through a 1 January 2021 override of a presidential veto was a provision titled “The Corporate Transparency Act” (CTA).

Many years in the making, the CTA is the most important anti-corruption, anti-money-laundering bill to pass the US Congress since the 2001 Patriot Act. It calls out the real beneficial owners behind the mammoth system of often-nesting shell corporations registered in the United States, foreign- and US-owned alike, to hold them accountable to both appropriate law enforcement and tax collection authorities.

What the Law is About

The legislation requires new entities’ owners with a 25 percent or greater share of any corporation to identify themselves by providing names, dates of birth, addresses, passport and/or driver’s licence numbers to the Treasury Department’s Financial Crimes Enforcement Network – FinCEN. Existing corporations must comply in full within two years or be fined heavily.

Excluded are corporations already highly regulated by government, and those with more than 20 actual, not just nominal, employees and new revenue exceeding US\$5 million per year. Since shell corporations rarely have genuine employees or new earned income that can be documented as licit, the exclusions ease the administrative burden on real businesses.

The main motive for the opacity of the shell economy is tax evasion. Wealth defence methods have existed for ages, but the scale and sophistication of the shell economy have grown rapidly in the post-Cold War era for a variety of reasons.

As revealed by the Panama Papers and other whistleblower leaks, the system sums up to at least \$32 trillion in assets governments cannot find to tax, transferring burdens from richer to poorer in a massive reverse-Robin Hood demonstration of sheer selfishness.

West's "Dirty Capitalism"

The great burgeoning of the offshore shell-corporation medusa turned on their heads optimistic expectations at Cold War's end: Instead of "clean" capitalism exporting beneficial practices and attitudes to what had been called the Second and Third Worlds, corrupt "dirty capitalism" instead has made inroads into the Western banking system thanks to unscrupulous banking executives, lawyers, accountants, and pocketed or "captured" government regulators in the West.

Beyond tax evasion, drug money and terrorism funding moving around the globe at the behest of crime syndicates and terror organisations have become a national security concern in many countries. But that is not why the CTA was attached to the 2021 NDAA: It was simply the legislative tactic judged most likely to overcome remaining opposition.

The CTA by itself will not eliminate all current corporate abuses and opportunities for jurisdictional arbitrage. Bad actors can still lie about beneficial ownership, and banks retain incentives to report illicit flows to the FinCEN, but then use their reporting compliance as an excuse not to do anything about them.

Nevertheless, the CTA opens the door to pursue new objectives and to more effectively pursue old ones. Much depends on what the incoming Biden administration, notably Janet Yellen at the Treasury Department, chooses to do with its new powers. A look at why it took so long for something like the Corporate Transparency Act to become law sheds light on her calculus.

What Changed?

For many years officials from a few US states, notably President-elect Joe Biden's home state of Delaware, were unalterably opposed to a crackdown on the shell economy. Delaware alone has accounted for the registry of more shell corporations than all of Europe combined.

Various Chambers of Commerce and a gaggle of corporate lobbyists also stood in opposition, and were supported by Treasury Department officials who reasoned, along

with the banks, that if more than \$300 billion annually, as of 2010, did not end up on the sly in US accounts, it would flow into competitor banks abroad.

Starting in 2016, late in the Obama era, Federal regulators introduced more stringent rules for banks, ramped up inspections, and multiplied the size and frequency of monetary penalties for documented money-laundering deficiencies. In July 2016 the FinCEN required title companies in active real estate markets to report all all-cash purchases of residential real estate by corporate entities, causing a rapid 70 percent drop in all-cash corporate purchases in Miami.

In other words, when the US government got serious about enforcing, and sometimes newly interpreting, laws already on the books, fewer shills were willing to protect the offshore system in the face of the dangers it posed to national security. Now, with the CTA and a new supportive administration behind it, major steps may be in prospect.

Implications for Southeast Asia and Singapore

How will all this affect Southeast Asia and Singapore? US officials may soon be privately pressing allies and friends, as well as others, for new data-sharing and commercial intelligence cooperation arrangements aligned generally with the aims of the CTA.

They may also seek to beef up Interpol's capacities for dealing with cross-border financial crimes, and Interpol sites a major regional centre in Singapore. Stauching money-laundering in the global shell system inherently requires international cooperation, lest tax evaders, criminals and terrorists be able to move assets faster than national governments working alone can track and intercept them.

Cooperative US allies may also be enlisted as partners in making representation to others, not to exclude China and its crony crypto-capitalist ways, in due course. At least in a limited sense, then, US policy may force regional governments to make choices, about their own banking establishments' habits as well as relations with Beijing on a tender topic.

When it comes to a US-China encounter over banking practices that will likely affect the entire region, it might be useful for ASEAN financial authorities to engage the Biden administration on how to cooperate on CTA-related issues. If so, it could make ASEAN more salient in US government estimation.

A Double-Edged Sword?

Singapore's relative lack of business "friction" compared to its neighbours constitutes an important incentive for US and European businesses to choose Singapore as a regional business hub. So if banking standards elsewhere in the region are eventually brought closer to best-practice thanks to US pressure, it would seem to reduce Singapore's relative advantage.

But Singapore's attractiveness to global corporations is based on more than its banks' and government officials' relative incorruptibility, and Singapore would benefit from qualitative improvements in the neighbourhood's standards of doing business,

especially if banking reforms worked in tandem with other initiatives to stimulate broad-based economic growth.

More important still, the national security and “clean capitalism” objectives of the CTA are in full harmony with Singapore’s core interests and values. Singapore may therefore see a new US diplomatic initiative on stanching money-laundering in the international system as a far greater opportunity than a nuisance.

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