On Wednesday, March 25, 2020, the United States Senate struck a deal with the White House on the massive stimulus package proposed in response to the economic crisis caused by COVID-19, and unanimously passed the Coronavirus Aid, Relief, and Economic Security (CARES) Act. The United States House of Representatives is expected to vote on the bill on Friday, March 27, 2020, and pass it as well.

The CARES Act has morphed into the largest emergency relief bill in American history. Among other things, the 800-plus-page CARES Act would offer $2 trillion in short-term economic stimulus and healthcare relief and assistance. In addition to the critical payments to individuals, chief among the bill’s components are the following:

- the creation of a $500 billion financial assistance program for businesses, cities and states, including loans, loan guarantees and other types of assistance to facilitate liquidity;
- a $367 billion employee retention fund for small businesses; and
- $130 billion to hospitals and $150 billion to state and local governments.

The implications for businesses—whether global or small—are massive. The CARES Act focuses on particularly hard-hit people and sectors, and includes efforts to blunt the effects of layoffs and assistance to the various industries, including airlines, energy, healthcare and others. The CARES Act also incorporates lessons learned from prior crises, most notably the 2008 financial crisis, by including more stringent requirements for business recipients of assistance and more robust oversight of assistance programs. The efforts to forge compromises over these issues were central to the negotiations over the stimulus package in recent days.

More specifically, the CARES Act has many notable features, including the following:

- **Direct Payments to Taxpayers.** The CARES Act would provide direct payments of $1,200 to individuals making up to $75,000, or $2,400 for couples making up to $150,000. The payments would decrease on a scale for those with income that exceeds those thresholds, and individuals and couples that earn $99,000 and $198,000 or more, respectively, would not receive a check. For those who qualify for a payment, each dependent child would increase the amount received by an additional $500.

- **Dramatic Increase in Available Unemployment Insurance Benefits.** As business closures and confirmed cases of COVID-19 continue to spike across the United States, many state and local governments have been putting measures in place to streamline the availability of unemployment insurance for workers affected by COVID-19. The CARES Act would dramatically increase the amount of unemployment insurance available to affected workers by $600 per week, and would extend the length of time those workers can receive the benefits to four months. The bill also includes provisions that would mirror the work sharing programs many state and local governments have already adopted to incentivize employers to cut workers’ hours as an alternative to mass layoffs. Work-sharing programs allow affected workers to work reduced hours and receive partial unemployment insurance benefits for the hours they did not work due to COVID-19.

- **Small Business Relief for Maintaining Payroll.** Under the CARES Act, eligible businesses (companies with up to 500 employees) that maintain their payroll while workers are forced to stay home would be able to receive up to eight weeks of cash-flow assistance. Small businesses under the bill would get $367 billion in loan guarantees while workers have to stay home. The Small Business Administration typically aggregates employees of affiliated entities, so companies with a common owner, including portfolio companies of private equity firms, might not qualify, even if they individually have 500 or fewer employees.

- **Payroll Tax Deferrals.** The bill would allow employers to defer payment of 2020 payroll taxes until 2021 and 2022.

- **Payroll Tax Credit.** The bill would provide a refundable payroll tax credit for 50% of wages paid by employers to employees during the COVID-19 crisis. The credit would be available to employers whose: (1) operations were fully or partially suspended, due to a COVID-19-related shut-down order; or (2) gross receipts declined by more than 50% when compared to the same quarter in the prior year. The credit would be provided for the first $10,000 of compensation, including health benefits, paid to an eligible employee. The credit would be provided for wages paid or incurred from March 13, 2020, through December 31, 2020.
- **Net Operating Loss Provision.** Net operating losses (NOLs) are currently subject to an 80% taxable income limitation and cannot be carried back to reduce income in a prior tax year. The CARES Act would eliminate this taxable income limitation for tax years beginning before 2021 and would permit NOLs arising in 2018, 2019 or 2020 to be carried back five years. These changes would allow companies to fully utilize losses and amend prior year returns claiming refunds of taxes previously paid.

- **Business Interest Expense.** Business interest expense is currently subject to a 30% adjusted taxable income limitation. The CARES Act would permit businesses to elect to apply a 50% taxable income limitation for tax years beginning in 2019 and 2020. The CARES Act would also permit businesses to use their adjusted taxable income from the last tax year beginning in 2019 for purposes of applying the limitation to any tax year beginning in 2020. For businesses that take advantage of these provisions, these changes would significantly increase the amount of deductible interest expense.

- **Application of 100% Bonus Depreciation to Qualified Improvement Property.** The CARES Act amends the bonus depreciation provisions to permit 100% bonus depreciation for "qualified improvement property." This change permits taxpayers to take advantage of immediate expensing for qualified leasehold improvements, qualified retail property and qualified restaurant property. This change was a long sought technical correction to an error in the Tax Cuts and Jobs Act.

- **Bankruptcy Eligibility Threshold Increase.** The CARES Act would amend the Small Business Reorganization Act to increase the eligibility threshold to file chapter 11 to businesses with less than $7,500,000 of debt. The increase would sunset after one year, and the eligibility threshold would return to $2,725,625.

- **Relief for Hospitals and State and Local Governments.** The bill would include $130 billion in relief for hospitals dealing with a shortage of medical masks, ventilators and hospital beds ahead of an expected wave of COVID-19 cases, a $25 billion increase from what was initially proposed. It also would provide $150 billion directly to state and local governments dealing with the outbreak.

- **Financial Assistance for Distressed Companies.** The bill would include a substantial financial assistance program—similar to the Troubled Asset Relief Program (TARP) the government approved during the 2008 financial crisis—at a time when many companies badly need liquidity. Under this program, the Secretary of the Treasury would be able to make loans, loan guarantees and other investments in businesses, States and municipalities that do not exceed $500 billion in the aggregate. The airline industry would be afforded access to a significant portion of these funds. Moreover, up to $17 billion would be available to "businesses critical to maintaining national security"—a provision added late in the process, which is designed to benefit firms in the aerospace supply chain that sell to airlines. While some consider this program a “bailout,” the reality is that it would not provide grants, but only funds in the form of debt or equity where the US government stands to gain a return in one form or another. It is important to recognize that the program would establish significant eligibility requirements for potential private sector recipients (e.g., they must be US firms) and would impose robust conditions on companies that accept financing, including restrictions on share buybacks, employment levels and executive compensation. Thus, companies would need to carefully evaluate these requirements and, depending on their circumstances, determine whether this type of assistance makes sense relative to other available commercial options, such as raising funds in capital markets, private bank lending and the like.

If enacted, the **CARES Act is a short-term solution**, designed to last only three to four months, and in many instances, not beyond the end of 2020. It is directed at individuals and companies experiencing the greatest levels of distress due to the COVID-19 crisis. But all companies will want to consider the various aspects of the bill, and make determinations about whether the legislation will provide assistance during these challenging times. You can learn more by visiting the Eversheds Sutherland Coronavirus Hub and by reaching out to your contacts at the firm.