

REVISION OF THE SWISS ANTI-MONEY LAUNDERING ACT

Following recommendations from the Financial Action Task Force, the Swiss government has proposed legislation to shore up the integrity of its financial centre

In December 2016, the Financial Action Task Force (FATF) published its fourth country report on Switzerland. The report acknowledged the generally good quality of the Swiss system in place for combating money laundering and terrorist financing. However, the FATF also identified certain weaknesses and made corresponding recommendations.

The Swiss Federal Council (government) subsequently instructed the Swiss Federal Department of Finance to prepare a consultation draft that takes into account the findings of the FATF country report and enhances the integrity of the Swiss financial centre. This consultation process ended in September 2018. On 26 June 2019, the Swiss Federal Council published the dispatch on the amended Anti-Money Laundering Act (AMLA) and its draft legislation.

Overview of the most important changes

Pursuant to the proposed AMLA, the financial intermediary will not only have to establish the identity of the beneficial owner but also verify the information received (contrary to the currently applicable duty only to determine the beneficial owner).

The existing AMLA obliges financial intermediaries to repeat the verification or establishment of the identity only in the event doubts arise about the identity of a customer or beneficial owner during the course of a business relationship.

The proposed AMLA now stipulates that client data must be periodically checked and, if necessary, updated. The obligation applies to all business relationships regardless of their risk. A risk-based approach only applies with respect to the frequency and scope of review.

Due diligence requirements for advisers

In addition to financial intermediaries and traders, so-called advisers would also become subject to the proposed AMLA.

Advisers are defined as physical or legal persons who are commercially active in connection with the incorporation, management or administration of domiciliary companies and trusts, as well as with the organisation of fundraising in this context.

In addition, the purchase and sale of domiciliary companies as well as the provision of an address or premises as domicile of a domiciliary company or a trust fall under the scope of AMLA.

The proposed AMLA contains certain exemptions in connection with the duty to report for lawyers and notaries.

Duty to report to MROS

Switzerland has a dual reporting system concerning suspicions of money laundering or terrorist financing. The FATF in its report recognised that the reporting duty pursuant to Art. 9 AMLA is largely in line with its recommendations, but it also pointed out that the coexistence of the reporting duty and reporting right leads to legal uncertainty for many financial intermediaries.

Nevertheless, the current draft retains both, the duty as well as the right to report. It is intended to clarify the difference between the reporting duty and the right to report at ordinance level.

It is planned to abolish the 20-day processing period of the Money Laundering Reporting Office Switzerland (MROS). In return, financial intermediaries will be granted the right to terminate a business relationship where an MROS report is pending after a period of 40 days, while maintaining the paper trail, if MROS has not forwarded the report to a criminal prosecution authority within this period.

Improvement of transparency for associations with potential risk for financing terrorism

Associations pursuant to Art. 60 et seqq. of the Swiss Civil Code with an increased risk of abuse, in particular those that collect or distribute assets abroad mainly for charitable, religious, cultural, educational or social purposes, have to be registered in the cantonal commercial register.

In addition, these associations will have to keep a register of members and will need to have a representative body domiciled in Switzerland.

The Federal Assembly will discuss the proposal in the forthcoming autumn and winter session. The changes are expected to enter into force on 1 January 2021 at the earliest.



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