

FIGHT AGAINST MONEY LAUNDERING AND TERRORIST FINANCING IN SWITZERLAND: THE LATEST LEGISLATIVE CHANGES

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This presentation discusses the latest legislative changes and the legislative changes to come in Switzerland in the field of money laundering.

INTRODUCTION

Switzerland attaches great importance to the integrity of its financial centre. At the international level, Switzerland is committed to the development of standards to combat money laundering and terrorist financing and ensures their systematic implementation at the national level ¹.

In the context of constantly evolving crime, Switzerland regularly adapts its anti-money laundering and anti-terrorist financing legislation in order to preserve the integrity of its financial centre and protect against criminal use of the latter. At the same time, Switzerland aims to ensure that its legislation complies with international standards in the area of money laundering.

In view of the above, Swiss legislation is regularly adapted and amended, to the extent that it is sometimes difficult for practitioners, e.g. financial intermediaries, to keep abreast of the latest legislative changes in this area. This contribution briefly outlines recent changes to the following legislation that entered into force on **1st January 2020**:

- the FINMA Anti-Money Laundering

Ordinance ("**ALOF**") ²; and

- the Swiss banks' code of conduct with regard to the exercise of due diligence ("**CDB 20**"). ³.

It also discusses future amendments of the Anti-Money Laundering Act ("**AMLA**") ⁴, which is expected to enter into force in 2021 ⁵. Indeed, on 26 June 2019, the dispatch on the amendment of the AMLA ⁶ was adopted by the Swiss Federal Council ⁷.

The major issue at stake in this revision is the extension of certain duties of care to "advisers", i.e. persons who provide services in a professional capacity in connection with the creation and management of companies or trusts, e.g. family offices, trustees and lawyers ⁸. To this day, these professions are only subject to the AMLA if they practice financial intermediation (Article 2 para. 1 let. a AMLA).

Finally, the amendment of the AMLA also includes new obligations to verify the identity of the beneficial owner and to periodically update KYC data ⁹.

All these points are discussed in more detail below.



¹ For more information, see: <https://www.eda.admin.ch/eda/en/fdfa/foreign-policy/financial-centre-economy/fighting-international-crime.html>.
² SR 955.033.0.

³ See: file:///C:/Users/msb/Downloads/VSF_2020_Einzelseiten_Print_EN_NEU.pdf.
⁴ SR 955.0.

⁵ See dispatch on the amendment of the Anti-Money Laundering Act of the Swiss Federal Council date 26 June 2019

(https://www.bundespublikationen.admin.ch/cshop_mimes_bbl/48/48DF3714B1101ED9AF-C661A478A1BCAC.PDF).

⁶ SR 955.0.

⁷ See dispatch on the amendment of the Anti-Money Laundering Act of the Swiss Federal Council date 26 June 2019
(https://www.bundespublikationen.admin.ch/cshop_mimes_bbl/48/48DF3714B1101ED9AF-C661A478A1BCAC.PDF).

⁸ See dispatch on the amendment of the Anti-Money Laundering Act of the Swiss Federal Council date 26 June 2019
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⁹ See dispatch on the amendment of the Anti-Money Laundering Act of the Swiss Federal Council date 26 June 2019
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RECENT MODIFICATIONS TO THE ALOF

The following amendments to the ALOF are intended to address some of the deficiencies identified in the Financial Action Task Force's ("FATF"¹⁰) fourth evaluation report¹¹. The main amendments are as follows:

- **new Article 6 para. 1 and 2 ALOF:** financial intermediaries with **group companies** or branches abroad must introduce and implement reporting and monitoring procedures, involving: periodic and consolidated risk analysis, regular on-site checks by the group's compliance department, standardised reporting of useful qualitative and quantitative information, and the establishment of a uniform set of anti-money laundering rules throughout the group;
- **new Article 9a ALOF:** legal entities, companies, establishments, foundations, trusts, trust companies and similar structures, which do not operate in a commercial form (manufacturing, trading, etc.), i.e. **domiciliary companies** (Article 2 let. a ALOF) must be examined and documented more rigorously than before;
- **new Article 10 para. 1 ALOF:** the financial intermediary must henceforth ensure that it has complete and accurate information on the contracting party and the beneficial owner for each **payment order**, assuming full and complete responsibility in this respect;
- **new Article 25a ALOF: only members of senior management** or those with an oversight function have now the authority to decide whether to report suspicions to the Money Laundering Reporting Office ("MROS");
- **new Article 51 para. 1 let. b ALOF:** the threshold for identifying the contracting party and beneficial owner has been lowered from CHF 25'000 to CHF 15'000 for cash transactions. As a reminder, cash transactions are **cash transactions** carried out, for example, at bank counters (exchange, purchase and sale of precious metals, sale of traveller's cheques, cash release of bearer securities, medium-term notes and bonds, cash collection of cheques, etc.) when there is no lasting business relationship with the contracting party.

RECENT MODIFICATIONS TO CDB 20

The CDB 20 is a self-regulatory text of the Swiss Bankers' association approved by the Supervisory Authority FINMA which codifies, with binding effect for banks and securities dealers, the rules in force for the ethical conduct of banking business, in particular with regard to the verification of the identity of the contracting party, as well as the identification of the control holder and the beneficial owner¹².

The new version of the CDB 20 takes into account the new recommendations of the FATF in the context of the fight against money laundering and terrorist financing and thus responds to the need for improvement to this end¹³. The main amendments to the CDB 20 are as follows¹⁴:

- **new Article 4 para. 2 let. g CDB 20:** the threshold amount for the identification of the contracting partner has been lowered from CHF 25'000 to CHF 15'000 for **cash transaction**, in order to harmonize with the new ALOF;
- **new Article 45 CDB 20:** in connection with the opening of an account, data and documents relating to the verification of the identity of the contracting party, the controlling holder and the beneficial owner must be obtained in full. In the event that this information has not been exhaustively collected, the **account must be blocked** after 30 days instead of 90 days as previously provided for. If data and/or documents cannot be provided, the Bank shall be obliged to terminate the business relationship;
- **new Articles 21 para. 5 and 28 para. 6 CDB 20:** the FINMA circular 2016/7 "Video and online identification" has been formally incorporated into CDB 20, enabling financial intermediaries to identify customers in the same way as identification in the presence of the customer at the bank;
- **the rules on the summary procedure before the Supervisory Commission** in the case of self-reporting have been updated: in the event of a violation of the CDB 20 and insofar as it is a simple case, the bank must submit to the Commission the complete file as well as a report from an auditing firm describing at least the facts in question, the reasons that led to the self-reporting as well as the relevant rules of conduct.

10 The FATF is an intergovernmental body established in Paris in 1989 with a mandate to set standards and promote effective measures to combat money laundering and the financing of terrorism through the adoption of recommendations and evaluation programs by member countries.

11 FATF (2016), Anti-money laundering and counter-terrorist financing measures - Switzerland, Fourth Round Mutual Evaluation Report, FATF, Paris (www.fatf-gafi.org/publications/mutualevaluations/documents/mer-switzerland-2016.html).

12 Agreement on the Swiss banks' code of conduct with regard to the exercise of due diligence (CDB 20) ([file:///C:/Users/msb/Downloads/VSB_2020_Einzelseiten_Print_EN_NEU%20\(1\).pdf](file:///C:/Users/msb/Downloads/VSB_2020_Einzelseiten_Print_EN_NEU%20(1).pdf)).

13 Commentary on the CDB 20 ([file:///C:/Users/msb/Downloads/SBVg_VSB-Kommentar_FR%20\(3\).pdf](file:///C:/Users/msb/Downloads/SBVg_VSB-Kommentar_FR%20(3).pdf)).

14 Cf. https://www.swissbanking.org/en/media/news/cdb-20-revised-code-of-conduct-in-the-area-of-the-fight-against-money-laundering?set_language=en.

FUTURE MODIFICATIONS OF THE AMLA

On 26 June 2019, the dispatch on the amendment of the AMLA ¹⁵ was adopted by the Swiss Federal Council ¹⁶. The future amendments to the AMLA ¹⁷, which are expected to enter into force in 2021 ¹⁸ are as follows:

- **new Article 2 para. 1 let. c AMLA:** the new AMLA provides for the introduction of a new concept of “**advisers**”, i.e. all persons or entities which, **without being financial intermediaries or traders**, set up, manage and or administer on a professional basis foreign companies, Swiss domiciliary companies or trusts, as well as those who organise contributions, buy or sell or make available premises or an address to such structures, or who act on behalf of another person;
- **new Article 4 AMLA:** this Article creates an explicit legal basis requiring systematic material verification of the beneficial owner rather than mere clarification;
- **new Article 7 para. 1bis AMLA:** the obligation to periodically check whether the customer profile information is still up to date and, if necessary, to update it, will be expressly included in this Article. It will apply to all business relationships irrespective of their risk classification;
- **new Article 8a AMLA:** the new AMLA provides for a lowering of the threshold from the current CHF 100'000 to CHF 15'000 for due diligence requirements for cash payments in the trade in precious metals (gold, silver, platinum and palladium) and precious stones (rubies, sapphires, emeralds and diamonds);
- **new Article 9b AMLA:** the time limit of 20 working days stipulated in the actual Article 23 Para. 5 AMLA will be abolished. On the other hand, financial intermediaries will be able to terminate a business relationship if they do not receive a response from MROS within 40 days of the report. Also, an amendment to the AMLA will resolve the conflict between the customer’s right of access and the prohibition on informing customers, which is an obligation imposed on financial intermediaries and advisers;
- **associations** primarily involved in the collection and distribution of funds for charitable, religious, cultural, educational, social or fraternal purposes will be subject to transparency rules similar to those of other entities. These associations will in future have to register in the commercial register, appoint a representative domiciled in Switzerland and keep a list of their members, accessible in Switzerland at all times, mentioning their names and addresses, under penalty of criminal sanctions (Article 327 SCC). In this context, the Articles 60 et seq. of the Swiss Civil Code concerning associations will also be amended. These amendments are intended, inter alia, to improve the transparency of associations exposed to an increased risk of terrorist financing.



¹⁵ SR 955.0.

¹⁶ See dispatch on the amendment of the Anti-Money Laundering Act of the Swiss Federal Council date 26 June 2019 (https://www.bundespublikationen.admin.ch/cshop_mimes_bbl/48/48DF3714B1101D9AFC661A478A1BCAC.PDF).

¹⁷ SR 955.0.

¹⁸ See dispatch on the amendment of the Anti-Money Laundering Act of the Swiss Federal Council date 26 June 2019

(https://www.bundespublikationen.admin.ch/cshop_mimes_bbl/48/48DF3714B1101ED9AFC661A478A1BCAC.PDF).

CONCLUSION

In the light of the changes of the CBD 20, the ALOF and of the changes to come, we believe that financial intermediaries should take the following steps to ensure proper implementation of the new changes in their internal organisation:

- adaptation of reporting and new communication with clients to make them aware of the changes;
- raising staff awareness (training);
- revision of internal directives and regulations;
- implementation of a control organisation for the transposition of the new rules;
- adaptation of reports and related information issued by the supreme management body to the new requirements.



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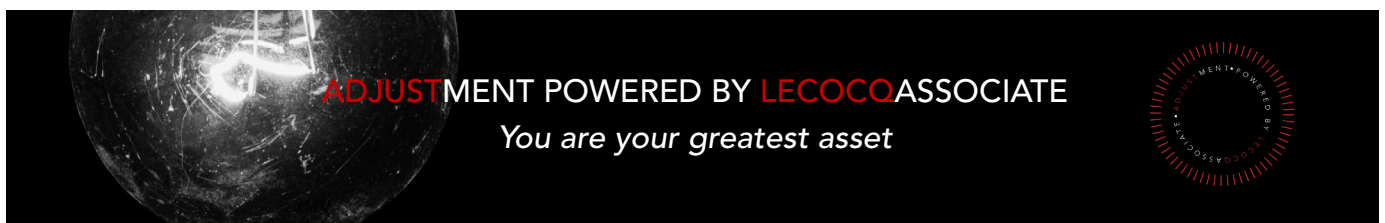
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