

foreign banks . in switzerland .

Federal Councillor Karin Keller-Sutter
Federal Department of Finance
Bundeshaus, Bern
vernehmlassungen@sif.admin.ch

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Consultation: Transparency on Legal Persons Act and Anti-Money Laundering Act

Dear Ms Keller-Sutter

Thank you for the invitation to comment on the draft legislation on transparency on legal persons and the draft revision of the anti-money laundering act.

Our Association members met in Zürich, Geneva, Lugano to discuss the draft legislation and prepare comments which are summarised in the attached document.

Our Association also contributed to the comments of the Swiss Bankers' Association with which it is fully aligned.

We remain at your disposal for any questions. We thank you for your attention.

Best Regards

ASSOCIATION OF FOREIGN BANKS IN SWITZERLAND



Raoul Würigler
Secretary General



Jonathan Deney
Scientific Advisor

Transparency on Legal Persons Act and Revision Anti Money Laundering Act

AFBS organised meetings with experts to discuss the proposed draft legislation on Transparency on Legal Persons TLPA and the revision of the Swiss Anti-Money Laundering Act AMLA. It identified points of concern which it shared with SBA and whose comments to the draft legislation it fully endorses. AFBS would like to particularly insist on the following points.

Beneficial Owners' Registry

Alignment

AFBS welcomes Switzerland's intention to align with international standards and assure transparency on beneficial owners of legal entities. It acknowledges such developments even though several other jurisdictions do not go equally far and are not in a position to provide as extensive and comprehensive identification.

The new law introduces an additional layer of complexity in the AML structure. Therefore, measures should be carefully defined to assure efficiency without introducing excessive complexity. Processes and procedures for data update and checking should be streamlined; obligations imposed upon financial intermediaries carefully defined to be aligned with existing duties. Measures should be fully aligned with existing legislation and regulation to avoid additional complexity in implementation. Terminology should be harmonised. The same set of information should be requested from all legal entities, irrespective of their status and activity. Thresholds triggering reporting should be the same in all instances and be aligned to international standards.

AFBS supports comments made by SBA and is happy to contribute to further alignment.

Accessibility

The BO Registry shall be available to banks and other financial intermediaries as a final and trusted source of information, freeing them from having to perform further checks and controls. This does not exempt financial intermediaries from reporting discrepancies but strengthens the BO Registry's position as an official source of information avoiding replication of tasks.

AFBS supports the SBA proposal to revise wording of the draft (Art 1, 4, 28) in the following points:

- Assurance that both authorities AND financial intermediaries have access to "... adequate, exact, and up-to-date information on beneficial owners ...".
- Clarification that information contained in the Swiss BO Registry can be relied on by the financial intermediary. Definition of conditions under which information contained in a foreign BO Registry can be relied upon.
- Confirmation that the financial intermediary needs to request a declaration in writing from the contracting party in case it appears that the information contained in the registry is incomplete or inadequate.
- Restrict availability of information contained in the BO Registry to entities with direct involvement; avoid making the BO Registry become a general source of information for all government entities.

Additional Considerations

Furthermore, the BO Registry to be introduced requires clarification in various points:

- The BO Registry must not oblige banks to any additional duties.

- If the proposal of the registry being recognised as trusted source of information for financial intermediaries is not implemented, it shall be made clear that consultation of the BO Registry is optional for financial intermediaries both in case of opening of relation and in periodic review of KYC.
- Reporting duties and identification thresholds between different regulations need to be aligned. Thresholds triggering identification duties of beneficial owners need to be aligned between CDB Form A and AMLA.
- Liability for completeness of entries shall reside with the Registry Authority. The Bank needs to be protected from consequences arising from wrong insertions in the BO Registry.
- Deadlines for updating entries of the BO Registry need to be chosen such as to assure entities can effectively comply. Also, entities need to be made aware of the urgency for timely updates as this impacts KYC procedure with financial intermediaries.
- Procedures need to be determined for the case of notification of erroneous entries / notification of discrepancy between bank's KYC and entry in the BO Registry. Deadlines and obligations need to be defined and attributed. Monitoring and follow-up should be with the Registry Authority.
- To avoid excessive administrative burden reporting procedures to MROS and BO Registry respectively shall be aligned. There need to be safeguards in place for protecting the bank from violation of banking secrecy in case it is making announcements on erroneous/incomplete entries.
- There need to be clarification regarding compatibility among and accessibility of BO Registry in the international context. There need to be clarity on duties a bank has to accomplish in case of clients incorporated abroad which are exempt from duty of insertion in the Swiss BO Registry.
- There needs to be coordination regarding terminology and definitions used by national BO Registries. Common understanding is important to assure efficient functioning. The risk of confusion among national BO Registries requesting differing information along differing standards needs to be avoided. Collusion of exemptions granted by national registries needs to be avoided.
- There needs to be clarification on the impact of discrepancies between bank's KYC and BO Registry on the opening process of a banking relation: does it interrupt or does it suspend? can accounts be opened? can assets be received?
- The same applies to the case of an ongoing relation where discrepancies appear in the context of a due diligence update procedure: do accounts have to be blocked?

Sanctions

AFBS is opposed to introducing the concept of sanction compliance in the AMLA. This gives grounds to suspicion that financial intermediaries, but not other economic players in Switzerland, need to be reminded of the obligation to apply sanction regimes. However, such duty arises already in the Embargo Act EmBA. For financial intermediaries it is confirmed through the duty to have an adequate organisation to comply with applicable regulation.

The proposal as outlined in the present draft leads to confusion as it introduces obligations whose compliance should be monitored by an authority (FINMA) which does not have the competences for doing so (directly at least). Sanction regimes belong to SECO (and OAG in some instances), and this should clearly remain so.

AFBS suggests withdrawing reference in AMLA to sanction compliance. Thus, wording of Art 1 and Art 8 of the Anti-Money Laundering Act shall remain unchanged. The proposals made in the draft revision shall be abandoned.

Dieses Gesetz regelt die Bekämpfung der Geldwäscherei im Sinne von Artikel 305^{bis} des Strafgesetzbuches (StGB), die Bekämpfung der Terrorismusfinanzierung im Sinne von Artikel 260^{quinquies} Absatz 1 StGB und die Sicherstellung der Sorgfalt bei Finanzgeschäften, ~~unter anderem zur Verhinderung von Verstössen gegen Zwangsmassnahmen nach dem Embargogesetz vom 22. März 2002 (EmbG).~~

La présente loi règle la lutte contre le blanchiment d'argent au sens de l'art. 305^{bis} du code pénal (CP)⁶, la lutte contre le financement du terrorisme au sens de l'art. 260^{quinquies}, al. 1, CP et la vigilance requise en matière d'opérations financières, ~~y compris pour prévenir la violation des mesures de coercition fondées sur la loi du 22 mars 2002 sur les embargos (LEmb).~~

Art 8 to be worded as follows:

Die Finanzintermediäre treffen in ihrem Bereich die ~~organisatorischen~~ Massnahmen, die zur Verhinderung der Geldwäscherei und der Terrorismusfinanzierung ~~sowie von Verstössen gegen die Zwangsmassnahmen nach dem EmbG~~ notwendig sind. Sie sorgen insbesondere dafür, dass ihr Personal ausreichend ausgebildet wird und ~~namentlich für~~ ~~genügende Ausbildung des Personals und für~~ Kontrollen durchgeführt werden.

Les intermédiaires financiers prennent dans leur domaine les mesures ~~organisationnelles~~ nécessaires pour empêcher le blanchiment d'argent et le financement du terrorisme, ~~ainsi que la violation des mesures de coercition fondées sur la~~ ~~LEmb~~. Ils veillent notamment à ce que leur personnel reçoive une formation suffisante et à ce que des contrôles soient effectués.

Lawyers and Advisers

AFBS welcomes extension of scope of AMLA to lawyers and advisers exercising activities of financial advice.

MROS

Definition of content of information to be transmitted to MROS shall be aligned with requirements defined in AMLA. Introduction of additional requirements can lead to excessive complexity and fail legal certainty.

Transmission through electronic means, as outlined, shall be standard. Nevertheless, transmission by paper shall remain admissible in exceptional cases, such as system-disruption.

Furthermore, and in view of modernising and securing communication between financial intermediaries and MROS, the office should take into consideration new channels of communication. The financial sector is introducing SCION technology through the Secure Swiss Finance Network SSFN for communication between banks and SIX as well as among banks. MROS should assess whether to adopt the same technology for receiving communications from banks.