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the Federal Journal is legally  
binding.*

# Federal Act on the Transparency of Legal Entities and the identification of beneficial owners

(Legal Entities Transparency Act, LETA)



of ...

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*The Federal Assembly of the Swiss Confederation,  
having regard to Articles 95 and 98 of the Constitution<sup>1</sup>,  
having regard to the message of the Federal Council of [date]<sup>2</sup>,  
establishes:*

## Chapter 1 General provisions

### Art. 1 Object and purpose

<sup>1</sup> This Act defines the transparency requirements applicable to legal persons under Swiss private law, to certain legal persons and other legal entities under foreign law, and to trusts.

<sup>2</sup> In particular, it establishes:

- a. obligations to identify, verify and report the beneficial owners of legal entities under Swiss private law, legal entities under foreign law and trusts;
- b. the identification, verification and reporting obligations of nominee directors, managers, shareholders, and partners;
- c. the register containing information on beneficial owners (transparency register), including the rules governing its content and access;
- d. obligations to identify the owners of legal entities, which have their effective management in Switzerland.

RS .....

<sup>1</sup> RS 101

<sup>2</sup> FF 20XX ...

<sup>3</sup> Its aim at ensuring that the authorities have rapid and efficient access to accurate, complete and up-to-date information on the beneficial owners of legal entities and trusts, in the performance of their duties under Articles 33 to 35. In this way, it contributes in particular to combating money laundering, predicate offences to money laundering activities, organized crime and the financing of terrorism.

**Art. 2** Scope of application

<sup>1</sup> The entities subject to this Act are:

- a. the following companies:
  1. corporations,
  2. partnerships limited by shares,
  3. limited liability companies,
  4. cooperative companies,
  5. open-ended investment companies (SICAV),
  6. closed-end investment companies (SICAF),
  7. limited partnerships for collective investments;
- b. foundations and associations required to register in the Commercial Register;
- c. foreign legal entities:
  1. which have a branch registered in the Commercial Register,
  2. which have their effective administration in Switzerland,
  3. who own real estate in Switzerland or acquire real estate in Switzerland within the meaning of Art. 4 of the Federal Act of December 16, 1983 on the Acquisition of Real Estate by Persons Abroad (LFAIE)<sup>3</sup>.

<sup>2</sup> Trustees who have their domicile or registered office in Switzerland or who administer trusts in Switzerland, with the exception of trustees subject to the Anti-Money Laundering Act of October 10, 1997 (AMLA)<sup>4</sup>, are subject to Art. 23 and 24 of this Act.

<sup>3</sup> Legal entities governed by foreign law that have their effective administration in Switzerland are subject to Art. 26 of this Act. The Federal Council shall designate the other legal entities subject to Art. 26, taking into account international recommendations on transparency for tax purposes.

**Art. 3** Exemptions

Are not subject to the present Act:

- a. legal entities in which all or part of the shareholding rights are listed on the stock exchange, as well as subsidiaries by at least 75% directly or indirectly owned by one or more companies, whose all or part of equity rights are listed on the stock exchange;

<sup>3</sup> RS 211.412.41

<sup>4</sup> SR 955.0

- b. occupational pension schemes and pension institutions supervised in accordance with Art. 61 and 64a of the Federal Act on Occupational Retirement, Survivors' and Disability Pension Plans of June 25, 1982<sup>5</sup>;
- c. legal entities in which at least 75% of the equity rights are held directly or indirectly by one or more public authorities.

## Chapter 2 Companies

### Section 1 Beneficial owner

#### Art. 4 General definition

<sup>1</sup> The beneficial owner of a company is any natural person who ultimately controls the company by virtue of holding, directly or indirectly, alone or with others, a share of at least 25% of the capital or voting rights or controlling it in some other way.

<sup>2</sup> Alternatively, if no person meets the criteria of § 1, the most senior member of the management body is deemed to be the beneficial owner.

#### Art. 5 Beneficial owner of a SICAV

<sup>1</sup> The beneficial owner of a SICAV is any natural person who, as an entrepreneurial shareholder, directly or indirectly holds a stake of at least 25% in the entrepreneurial shareholders' subfund, or controls it in some other way.

<sup>2</sup> Alternatively, if no person meets the criteria of § 1, the most senior member of the management body is deemed to be the beneficial owner.

#### Art. 6 Indirect control and control in other ways

The Federal Council specifies the conditions under which a company may be indirectly or otherwise controlled by a natural person.

### Section 2 Company obligations

#### Art. 7 Identification and verification of beneficial owners

<sup>1</sup> The company must identify its beneficial owners. It collects the following information about them:

- a. first and last name;
- b. date of birth;
- c. nationality;
- d. address and country of residence;
- e. necessary information on the nature and extent of the control exercised.

<sup>2</sup> It must verify the identity of beneficial owners and their status as beneficial owners with the diligence required by the circumstances. It shall request the relevant supporting documents from shareholders, partners, beneficial owners or other third parties.

<sup>3</sup> If the company is partially owned by a listed company, for the shares held by this company, only the name of the company, its registered office and the details of its listing are required.

#### **Art. 8** Recording and storing information about the beneficial owner

<sup>1</sup> The company must record the information referred to in Art. 7 § 1 and 3, ensuring that they are up to date and accessible at all times in Switzerland.

<sup>2</sup> If the company is unable to identify the beneficial owner or to verify his identity or status as beneficial owner in a satisfactory manner, it must record this information and the steps taken.

<sup>3</sup> It must keep information and supporting documents for a period of ten years from the date of which the person concerned has lost their status as beneficial owner.

<sup>4</sup> In the case of corporations and limited liability companies, the person referred to in Art. 718 §. 4 or 814 § 3 of the Swiss Code of Obligations (CO)<sup>6</sup> must have access to the recorded information.

#### **Art. 9** Entry in the transparency register

<sup>1</sup> The company must notify the identity of its beneficial owners to the transparency register. It must provide the following information:

- a. first and last name;
- b. date of birth;
- c. nationality;
- d. municipality and country of residence;
- e. necessary information on the nature and extent of the control exercised.

<sup>2</sup> If the company is partially owned by a listed company, it must disclose this fact alone, together with the information collected in accordance with Art. 7 § 3.

<sup>6</sup> RS 220

<sup>3</sup> If the company is unable to identify the beneficial owner or to verify in a satisfactory manner their identity or status as beneficial owner, it shall disclose it in the notification and provide all relevant information at its disposal, including the name of the most senior member of its management body.

<sup>4</sup> The notification must be made within one month of the company's entry in the Commercial Register or, in the case of a foreign legal entity, within one month of its becoming subject to this Act.

<sup>5</sup> The Federal Council regulates the details of the notification procedure. It may stipulate that the company must submit supporting documents. It specifies the content of the information to be provided on the nature and extent of the beneficial owner's control.

**Art. 10** Notification of modifications

The company must notify the transparency register of any change in a fact recorded therein within one month of becoming aware of it.

**Art. 11** Commercial register notification procedure

<sup>1</sup> The company may disclose the identity of its beneficial owners to the competent cantonal commercial register office, instead of the register of transparency, when it enters an event in the commercial register, provided that it certifies that all beneficial owners are entered in the commercial register as partners or shareholders of the company.

<sup>2</sup> In this case, it provides the cantonal commercial register office with the information specified in Art. 9 § 1-3, and certifies that there are no other beneficial owners. This information is not public within the meaning of Art. 936 CO<sup>7</sup>.

<sup>3</sup> The cantonal commercial register office forwards the information received to the transparency register without checking it for accuracy or completeness. It processes the information solely for this purpose and does not retain it.

<sup>4</sup> The notification to the Commercial Register must be made within the deadlines specified in Art. 9 § 4. Art. 10 applies by analogy.

**Art. 12** Responsibility for register entries

<sup>1</sup> The most senior member of the Board of Directors must make the announcements referred to in Art. 9 to 11, 17 or 21.

<sup>2</sup> He may delegate this task to other persons within the company or to third parties, but remains responsible for its proper execution.

## Section 3 Obligations of shareholders

### Art. 13

<sup>1</sup> If a shareholder or partner, either alone or with a third party, holds shares in the company to an extent that gives him ultimate control of the company, he must inform the company of the identity of the beneficial owner. He must provide the following information:

- a. first and last name;
- b. date of birth;
- c. nationality;
- d. address and country of residence;
- e. necessary information on the nature and extent of the control exercised.

<sup>2</sup> If the shareholder or partner is a company whose shares are partly listed on the stock exchange, he or she is only required to disclose this fact, together with the company name, registered office and details of the listing.

<sup>3</sup> The notification must be made within one month of the creation of the control.

<sup>4</sup> At the Company's request, the shareholder or partner must provide the information or documents required to verify the identity or beneficial ownership of the beneficial owner.

<sup>5</sup> The shareholder or partner must notify the company of any changes to the information referred to in § 1 within one month of becoming aware of it.

## Section 4 Obligations of beneficial owners and other relevant third parties

### Art. 14

<sup>1</sup> When a person becomes a beneficial owner, he must notify the shareholder or partner holding the relevant shares or, if control is exercised in some other way or through several companies or persons (chain of control), the company directly. It sends them the information referred to in Art. 13 § 1.

<sup>2</sup> It must notify them of any changes to the information referred to in Art. 13 § 1 within one month.

<sup>3</sup> The beneficial owner and third parties involved in the chain of control must cooperate in verifying the identity and status of the beneficial owner, by providing the company, shareholders or associates with the requisite information and supporting documents.

## **Section 5 Obligations of directors, managers, shareholders and partners acting as a nominee**

### **Art. 15** Nominee relationship

<sup>1</sup> A nominee director or manager is a person who acts as a director or manager of a company incorporated under Swiss private law in his or her own name and on behalf of a third party.

<sup>2</sup> A nominee shareholder or partner is one who exercises, in his or her own name and on behalf of a third party, the pecuniary rights attached to a share in a company governed by Swiss private law.

### **Art. 16** Notification of nominee relationships to the company

<sup>1</sup> Nominee directors, managers, shareholders and partners must disclose to the company the following information about the persons on whose behalf they are acting:

- a. for a natural person, first and last name, date of birth, nationality, address and country of residence;
- b. for a legal entity, the company name, registered office, address and the company identification number.

<sup>2</sup> If they act as financial intermediaries within the meaning of Art. 2 § 2 and § 3 AMLA<sup>8</sup>, they are only obliged to report the existence of a nominee relationship.

<sup>3</sup> The company must keep a record of the information disclosed by nominee shareholders, ensuring that it is accessible at all times in Switzerland.

<sup>4</sup> The notification must be made within one month of the creation of the nominee relationship.

### **Art. 17** Notification of nominee relationships in the Commercial Register

<sup>1</sup> Companies notify the identity of the following persons:

- a. nominee directors, managers or partners;
- b. persons on whose behalf the persons referred to in letter (a) are acting.

<sup>2</sup> For natural persons, the company discloses the first and last name, date of birth, nationality, municipality and country of residence. In the case of legal entities, the company name, registered office and company identification number are given.

<sup>8</sup> SR 955.0

<sup>3</sup> If the nominee director, manager, shareholder or partner is a financial intermediary within the meaning of Art. 2 § 2 and 3 AMLA<sup>9</sup>, the company discloses only the identity of this person and the existence of a nominee relationship.

<sup>4</sup> The notification must be made within one month of the day on which the company becomes aware of the nominee relationship.

**Art. 18** Publication of information on nominee relationship

The status of nominee director, manager or partner is entered in the Commercial Register. Other information disclosed in the Commercial Register pursuant to Art. 17 § 1 is not public.

### Chapter 3 Foundations and associations

**Art. 19** Beneficial owner of a foundation or association

<sup>1</sup> The following natural persons are deemed to be beneficial owners of a foundation:

- a. the founder, if they exert, in fact or in law, a decisive influence on the foundation's decisions, in particular on distributions;
- b. the beneficiary, if designated by name or in a determinable manner in the deed of foundation and entitled to receive distributions from the foundation;
- c. the beneficial owner of any legal entity having the status of founder or beneficiary within the meaning of letter a or b;
- d. any other person who ultimately controls the foundation, in particular any third party who has the power to appoint or dismiss members of the foundation's supreme body who, alone or collectively, hold the majority of votes, or who has the right to change the allocation of distributions or the designation of beneficiaries.

<sup>2</sup> Natural persons who have ultimate control over the decisions of an association are deemed to be the association's beneficial owners.

<sup>3</sup> Alternatively, if no person meets the criteria of § 1 or 2, the foundation or association identifies the most senior member of its governing body as the beneficial owner.

**Art. 20** Obligations of foundations and associations

<sup>1</sup> The foundation or association must identify its beneficial owners.

<sup>2</sup> Where the company has identified the most senior member of its management body as a beneficial owner, it is not required to take any further steps to verify his identity or to record this information.

<sup>9</sup> SR 955.0



<sup>3</sup> When it has identified additional people who meet the criteria of Art. 19 § 1 or 2, it must collect the following information about them:

- a. first and last name;
- b. date of birth;
- c. nationality;
- d. address and country of residence;
- e. necessary information on the nature and extent of the control exercised.

<sup>4</sup> It must verify the identity of beneficial owners identified in accordance with § 3 and their status as beneficial owners with the due diligence required by circumstances. It requests the relevant supporting documents from the persons concerned or from third parties.

<sup>5</sup> It must record the information referred to in § 3, ensuring that it is up-to date and accessible at all times in Switzerland.

<sup>6</sup> If the company is unable to identify the beneficial owner or to satisfactorily verify his identity or status as beneficial owner, it must confirm this information and the steps taken.

<sup>7</sup> It must keep information and supporting documents for ten years after the date on which the person concerned has lost his or her status as beneficial owner.

#### **Art. 21** Notification to the register

<sup>1</sup> The foundation or association must notify the transparency register of the identity of its beneficial owners. Art. 9 and 10 apply by analogy.

<sup>2</sup> If the highest-ranking member of the foundation's or association's governing body is the only person identified in accordance with Art. 19, the foundation or association may notify the competent cantonal commercial register office of this person when they are entered in the commercial register or when there is a change in the information entered in the commercial register. The cantonal commercial register office forwards the information to the transparency register. It processes the information solely for this purpose, and it is prohibited to store the information.

#### **Art. 22** Obligations of beneficial owners and other affected third parties

<sup>1</sup> If a person acquires the status of beneficial owner without being a member of the foundation's or association's governing body, they must notify the foundation or association.

<sup>2</sup> It must notify any changes to the information referred to in Art. 20 § 3 within one month.

<sup>3</sup> The beneficial owner and third parties involved in the chain of control must cooperate in verifying the identity of the beneficial owner and their status as beneficial owner, by providing the foundation or association with the requisite information and supporting documents.

## Chapter 4 Trusts

### Art. 23 Beneficial owner of a trust

<sup>1</sup> The following natural persons are deemed to be the beneficial owners of a trust:

- a. the constituent;
- b. the trustee;
- c. the protector;
- d. the beneficiary;
- e. any other natural person who directly, indirectly or in any other way controls the trust, including the beneficial owners of a legal entity that is a party to the trust within the meaning of letters a to d.

<sup>2</sup> The Federal Council shall further define the concept of control within the meaning of § 1 lit. e.

### Art. 24 Obligations of the trustee

<sup>1</sup> The trustee must identify the beneficial owner of the trust. The trustee must verify the beneficial owner's identity and status with the due diligence required by the circumstances.

<sup>2</sup> It collects the following information on the beneficial owner:

- a. first and last name;
- b. date of birth;
- c. nationality;
- d. address and country of residence;
- e. where applicable, information on the nature and extent of control exercised.

<sup>3</sup> Where an entity, partnership or trust is a party to the trust within the meaning of Art. 23 § 1 letters a to d, the trustee also collects the following information on that entity, partnership or trust:

- a. name or designation;
- b. headquarters or address.

<sup>4</sup> It collects the following information on financial intermediaries, advisors and other financial service providers who have a business relationship with the trust:

- a. name or company name;
- b. headquarters or address;
- c. type of business relationship with the trust.

<sup>5</sup> Where the deed of trust designates categories of beneficiaries, the trustee determines the criteria for establishing beneficiary status.

<sup>6</sup> The trustee must keep a record of the information referred to in § 2 to 4 and periodically verify that it is up to date, updating it where necessary.

<sup>7</sup> He must keep the information for five years after the end of his term of office, ensuring that they are accessible in Switzerland.

## **Chapter 5 Legal persons and other legal entities governed by foreign law**

**Art. 25** Obligations of foreign legal entities

<sup>1</sup> Art. 4-14 apply by analogy to foreign legal entities.

<sup>2</sup> Legal entities incorporated abroad must designate a representative or a notification domicile in Switzerland when they register in the transparency register.

**Art. 26** Additional obligations of legal persons and other legal entities governed by foreign law and having their place of effective administration in Switzerland

Legal persons and other legal entities referred to in Art. 2 § 3, must keep a list of their holders at the place where they are actually managed. This list must contain the first name and surname or company name, as well as the address of these persons.

## **Chapter 6 Simplified rules for certain types of legal entities**

**Art. 27**

The Federal Council may provide for simplified identification and verification rules, or introduce a simplified reporting procedure, for certain types of legal entity that present limited risks. In determining the risks associated with a legal entity, it takes into account its legal form, structure and the legal rules applicable to it.

## **Chapter 7 Transparency register**

### **Section 1 Organization and procedure**

**Art. 28** Storing and form

<sup>1</sup> The Federal Office of Justice (FOJ) is the authority responsible for maintaining the transparency register.

<sup>2</sup> The transparency register is kept in electronic form.

**Art. 29** Contents

<sup>1</sup> The transparency register contains the information referred to in Articles 9 to 11, 21 and 25 as well as those registered automatically.

<sup>2</sup> The Federal Council may stipulate that other information required for the processing of alerts pursuant to Articles 38 and 39 or for the execution of inspections is to be entered in the transparency register. It may provide that the transparency register shall contain information transmitted by the commercial register authorities, including by automated means.

<sup>3</sup> Changes to the transparency register must be traceable chronologically. Art. 53 § 2 is reserved.

**Art. 30** Electronic registration procedure

<sup>1</sup> Entries in the transparency register must be made electronically, subject to the procedure laid down in Art. 11 and Art. 21 § 2.

<sup>2</sup> The Federal Council may provide for the compulsory use of an electronic communication platform for the submission of notifications and supporting documents.

<sup>3</sup> The Federal Department of Justice and Police ensures the authenticity and integrity of transmitted data, as well as the authentication of users. It lays down the technical requirements for the procedure and designates the means of electronic identification that may be used.

**Art. 31** Effects

Registrations are declaratory and have no constitutive effect.

**Art. 32** Deregistration

<sup>1</sup> The registration of a legal entity under Swiss private law is deleted from the transparency register as soon as the legal entity is deleted from the Commercial Register. An association which is no longer required to be entered in the Commercial Register may also apply to have its entry deleted.

<sup>2</sup> The registration of a legal entity governed by foreign law will be cancelled at the request of the transparency register as soon as it is no longer subject to this law.

<sup>3</sup> Information concerning natural persons is deleted from the transparency register as soon as these persons no longer have the status of beneficial owner or are no longer involved in the chain of control.

**Section 2 Access**

**Art. 33** Right to consult the supervisory authority online

<sup>1</sup> The supervisory authority and the third parties it mandates may consult online all register data to carry out the tasks provided for in this Act.

<sup>2</sup> The supervisory authority ensures that third-party agents comply with the regulations applicable to data protection.

**Art. 34** Authorities' online consultation rights

<sup>1</sup> All data in the transparency register can be consulted online by the following authorities:

- a. the police, administrative and criminal authorities of the Confederation and the cantons, to prosecute offences under the Code of Criminal Procedure<sup>10</sup>, under the Federal Act of March 22, 1974 on Administrative Criminal Law (DPA)<sup>11</sup>, the Federal Act of October 7, 1994 on the Central Criminal Police Offices of the Confederation and Joint Police and Customs Cooperation Centres with Other States<sup>12</sup>, the Federal Act of December 14, 1990 on Direct Federal Taxation<sup>13</sup>, the Federal Act of December 14, 1990 on the Harmonization of Direct Taxes of the Cantons and Municipalities<sup>14</sup> or the cantonal acts implementing the latter;
- b. the Money Laundering Reporting Office, in the execution of the tasks under the AMLA<sup>15</sup>;
- c. the competent authorities for administrative assistance in tax matters, to respond to requests for administrative assistance from other states and to fulfill Switzerland's obligations under the following instruments:
  1. international conventions,
  2. the Federal Act of December 18, 2015 on the International Automatic Exchange of Tax Information<sup>16</sup>,
  3. the Act of June 16, 2017 on the Exchange of country-by-country declarations<sup>17</sup>,
  4. of the Administrative Tax Assistance Act of September 28, 2012<sup>18</sup>;
- d. supervisory bodies set up under ordinances based on the Embargo Act (EmbA) of March 22, 2022<sup>19</sup>, to implement measures based on the said Act;
- e. the authorities responsible for enforcing the Act of December 18, 2015 on illicit assets values<sup>20</sup>, in the performance of the tasks provided by the latter.

<sup>2</sup> The following authorities may consult data from the transparency register online, with the exception of data deleted pursuant to Art. 32:

- <sup>10</sup> SR 312.0
- <sup>11</sup> SR 313.0
- <sup>12</sup> RS 360
- <sup>13</sup> SR 642.11
- <sup>14</sup> SR 642.14
- <sup>15</sup> SR 955.0
- <sup>16</sup> SR 653.1
- <sup>17</sup> SR 654.1
- <sup>18</sup> SR 651.1
- <sup>19</sup> SR 946.231
- <sup>20</sup> SR 196.1

- a. the administrative supervisory authorities provided for in the AMLA, as well as self-regulatory and supervisory bodies, in the performance of the tasks provided for therein;
- b. the Confederation's Intelligence Service, in carrying out the tasks set out in the Act of December 13, 1996 on the Control of Assets<sup>21</sup> and the Federal Act of September 25, 2015 on Intelligence<sup>22</sup>;
- c. the Swiss Federal Statistical Office, in the performance of its duties under the Federal Statistics Act of October 9, 1992<sup>23</sup> and the Federal Business Identification Number Act of June 18, 2010<sup>24</sup>;
- d. land registry offices, cantonal supervisory authorities and the Confederation's supreme supervisory authority, in application of the provisions of the Civil Code (CC)<sup>25</sup> relating to rights in real estate;
- e. the authorities responsible for enforcing the LFAIE<sup>26</sup>;
- f. the State Secretariat for Economic Affairs, in carrying out the tasks laid down in the Federal Act of ... on the Examination of Foreign Investments<sup>27</sup>;
- g. the Federal Office of Customs and Border Protection, for the admission and control of authorized economic operators within the meaning of Art. 42a of the Customs Act of March 18, 2005<sup>28</sup>, and for the application for and examination of securities pursuant to Art. 14 of the Heavy Vehicle Fee Act of December 19, 1997<sup>29</sup>;
- h. the Federal Office of Police, in the performance of the tasks provided for in Art. 6b lit. a of the Act of June 22, 2001 on Identity Documents<sup>30</sup>, Art. 24 to 24c of the Act of June 20, 1997 on Weapons (LArm)<sup>31</sup>, and Art. 9 and 14a of the Federal Act of March 25, 1977 on Explosives (LExp)<sup>32</sup>;
- i. the competent cantonal authorities, in carrying out the tasks provided for in Art. 17 LArm and Art. 10 LExp;
- j. contracting authorities, with a view to examining or awarding a public contract, when they are subject to federal or cantonal public procurement law;
- k. the administrative units of the Confederation, cantons or communes responsible for examining and paying out financial aid and compensation.

21 **SR 946.202**

22 **RS 121**

23 **SR 431.01**

24 **SR 431.03**

25 **RS 210**

26 **RS 211.412.41**

27 **RS ....**

28 **SR 631.0**

29 **SR 641.81**

30 **SR 143.1**

31 **SR 514.54**

32 **SR 941.41**

<sup>3</sup> The authorities referred to in § 2 may obtain an extract containing the data deleted from the register in a specific case and on reasoned request.

**Art. 35** Right of online consultation for the purpose of fulfilling duties of care

Financial intermediaries within the meaning of Art. 2 (2) and (3) AMLA<sup>33</sup> and advisors within the meaning of Art. 2 (3)<sup>bis</sup> and (3)<sup>ter</sup> AMLA may consult the data in the transparency register online, with the exception of data deleted pursuant to Art. 32 and information relating to the originator of an alert pursuant to Art. 38 or 39, insofar as this data is required to fulfil the due diligence obligations laid down in the AMLA. The use of the data is limited to this sole purpose.

**Art. 36** Transparency register extracts

Any entity may request:

- a. a certificate of entry in the transparency register;
- b. an extract excluding data deleted pursuant to Art. 32 and information relating to any alerts pursuant to Art. 38 and 39;
- c. a complete extract of the information entered in the transparency register.

**Art. 37** Access procedures and access data

<sup>1</sup> The Federal Council determines the terms and conditions of access to the transparency register.

<sup>2</sup> If an authority, a financial intermediary within the meaning of Art. 2 (2) and (3) AMLA<sup>34</sup> or an adviser within the meaning of Art. 2 (3)<sup>bis</sup> and 3<sup>ter</sup> AMLA consults the data in the transparency register online, the data relating to this access is logged. This does not apply to consultations carried out by the supervisory authority. The Federal Council defines the nature and form of the data to be logged.

### Section 3 Reporting discrepancies

**Art. 38** Reporting by financial intermediaries

<sup>1</sup> Any financial intermediary within the meaning of Art. 2 (2) and (3) AMLA<sup>35</sup> who notices a discrepancy between the information in the transparency register and the information in his possession must report it to the transparency register if the following conditions are met:

- a. the discrepancy is such as to cast doubt on the accuracy, completeness or timeliness of information relating to the beneficial owner of an entity;

<sup>33</sup> SR 955.0

<sup>34</sup> SR 955.0

<sup>35</sup> SR 955.0

- b. the discrepancy persists after the customer has been given a reasonable period in which to resolve it, in particular by notifying the correction in the transparency register.

<sup>2</sup> They must report it within 30 days.

<sup>3</sup> The reasons for the alert must be given in a standardized manner; the financial intermediary may provide additional information to complete the motivation.

<sup>4</sup> Anyone who, in good faith, reports a discrepancy pursuant to this provision may not be prosecuted for breach of official, professional or business secrecy, nor be held liable for breach of contract.

#### **Art. 39** Reporting by the authorities

<sup>1</sup> If an authority has doubts as to the accuracy, completeness or up-to-dateness of information relating to the beneficial owner of an entity, it will report this to the transparency register.

<sup>2</sup> The alert is substantiated in a standardized manner; the authority may transmit additional information to complete the statement of reasons.

<sup>3</sup> The Money Laundering Reporting Office only reports relevant information if the report does not jeopardize pending proceedings or future proceedings to be opened after the report has been analyzed in accordance with Art. 23 AMLA<sup>36</sup>.

<sup>4</sup> The Swiss Financial Market Supervisory Authority may waive the obligation to report to the transparency register information that has already been reported by a financial intermediary pursuant to Art. 38.

<sup>5</sup> The cantonal or federal tax authorities are released from tax secrecy if they issue an alert pursuant to § 1 and 2.

<sup>6</sup> The Federal Council regulates the details of the reporting procedure.

### **Section 4 Control and enforcement**

#### **Art. 40** Control of notifications by the registering authority

<sup>1</sup> The authority keeping the register checks that entries contain the required information and verifies the identity of the persons entered. The Federal Council regulates the modalities of verification.

<sup>2</sup> If the registration is complete, the authority maintaining the register proceeds with the registration and confirms this to the entity that made the registration.

<sup>3</sup> The registry authority verifies that the entities subject to the law have made the required notifications. It summons the entities to make the mandatory notification or to send the additional information required or the documents necessary for the verification. It grants a reasonable time limit for this purpose and indicates the consequences for the consequences of non-compliance with the reporting obligation.

<sup>36</sup> SR 955.0



<sup>4</sup> Once the deadline has expired, the register authority may automatically register an entity that has not submitted a notification in the transparency register.

<sup>5</sup> The registry authority classifies entities according to the risk categories determined by the supervisory authority pursuant to Art. 46 § 2, lit. b. It may notify the supervisory authority of entries that may be of interest to its supervisory activity.

**Art. 41** Processing of alerts and entries in the transparency register

<sup>1</sup> The authority maintaining the register shall annotate the entity's entry when one of the following conditions is met:

- a. it receives a report from a financial intermediary or an authority;
- b. the entity has not responded to a summons;
- c. the entity has notified that it has been unable to identify the beneficial owner or to verify its identity or beneficial ownership.

<sup>2</sup> The annotation indicates the existence of a doubt as to the accuracy, completeness or up-to-dateness of an item of information in the transparency register. If it is based on an alert, it contains the date, the author and the reason for the alert, in a standardized form.

<sup>3</sup> The entity is informed of the annotation. The registry authority asks the entity to correct or complete the information and grants a reasonable period of time to comply.

<sup>4</sup> The authority keeping the register retains the additional information contained in an alert and allows the supervisory authority and third parties appointed by it on-line access to it.

**Art. 42** Checks on transparency register information by the authority control

<sup>1</sup> The supervisory authority that the information contained in the transparency register is accurate, complete and up-to-date.

<sup>2</sup> It carries out controls on the basis of a risk-based approach or by survey, taking into account the categorization of entities referred to in Art. 46 § 2, lit. b.

<sup>3</sup> It may commission third parties to carry out certain control activities.

**Art. 43** Controls based on annotation

<sup>1</sup> The supervisory authority shall carry out a preliminary examination of entries annotated in application of Art. 41, after which it may decide to:

- a. delete the annotation if, on the basis of a summary examination of the elements in its possession, it does not appear justified;

- b. maintain annotation if insufficient information is available to justify the opening of a control procedure;
- c. open a control procedure.

<sup>2</sup> In the case of annotation-based checks, it can access online the following information systems:

- a. the national police index referred to in Art. 17 of the Federal Act of June 13, 2008 on the Confederation's police information systems<sup>37</sup>;
- b. extract 2 intended for the criminal records authorities within the meaning of the Criminal Records Act of June 17, 2016<sup>38</sup>;
- c. the information system referred to in Art. 1 of the Federal Act of June 20, 2003 on the common information system for foreign nationals and asylum-seekers<sup>39</sup>.

<sup>3</sup> Access to the information systems listed in § 2 may only be used in relation to the following persons:

- a. the beneficial owner entered in the transparency register;
- b. a person reported as such pursuant to Art. 38 or 39;
- c. a person acting as an organ, shareholder, partner or being implicated in an entity's chain of control;
- d. a person acting in a nominee capacity or the latter's principal.

<sup>4</sup> The registered entity or beneficial owner may apply to the supervisory authority at any time to have the annotation deleted. The supervisory authority will comply with the request if there is sufficient evidence that the information contained in the transparency register is correct, complete and up-to-date.

<sup>5</sup> At the end of the control procedure, in addition to the measures provided for in Art. 45, the control authority decides whether to maintain, modify or remove the annotation.

<sup>6</sup> The financial intermediary or the authority that issued an alert initiating the control procedure shall be informed of the outcome of the procedure. This information may be provided electronically.

#### **Art. 44** Obligation of entities and third parties to provide information

<sup>1</sup> The following persons are required to provide the supervisory authority or third parties with the required information and documents:

- a. the entity;
- b. shareholders, associates and persons occupying equivalent positions within a corporate body or other entity;
- c. third parties involved in the control chain;

<sup>37</sup> RS 361

<sup>38</sup> RS 330

<sup>39</sup> SR 142.51

d. beneficial owners.

<sup>2</sup> Third parties who have a contractual relationship with the controlled entity, its shareholders or partners or its beneficial owner are obliged to provide information or documents to the control authority or to third parties appointed by it, insofar as such information or documents are necessary to verify the identity of the beneficial owner and its status as beneficial owner. Art. 321 of the Criminal Code<sup>40</sup> is reserved.

**Art. 45** Measures in the event of inaccurate, incomplete or out-of-date registrations

<sup>1</sup> If it finds that any information in the transparency register is inaccurate, incomplete or out-of-date, the supervisory authority takes the necessary measures to re-establish legal order. In particular, it may

- a. order the entity to provide additional information to the register;
- b. decide to modify or delete information from the register;
- c. decide that the result of the inspection is to be noted in the register.

<sup>2</sup> If reporting obligations are repeatedly breached, or if a breach is not remedied despite repeated reminders, the supervisory authority may suspend the corporate and property rights of the shareholder or partner concerned.

<sup>3</sup> If reporting obligations are repeatedly breached, or if a breach is not remedied despite repeated reminders, and if this measure appears justified in view of the circumstances, in particular because the entity concerned is clearly no longer in business or has no realizable assets, the supervisory authority may:

- a. pronounce the dissolution and liquidation of the entity in accordance with the provisions applicable to bankruptcy;
- b. for foreign entities with a branch office, order the deletion of registration of the branch in the commercial register.

<sup>4</sup> The registered beneficial owner and the entity may exercise their right to have their data amended or deleted from the transparency register by applying to the supervisory authority. The supervisory authority decides whether to maintain, amend or delete the contested information.

**Art. 46** Control authority

<sup>1</sup> The competent control unit within the Federal Department of Finance (FDF) is the control authority. It supervises the implementation of this Act to the extent necessary for its supervisory activity.

<sup>2</sup> To this end, it may in particular:

- a. issue directives on the execution and implementation of this Act for entities subject to reporting obligations;

- b. set criteria for the categorization of entities based on the risk of their being used for abusive purposes;
- c. carry out a risk analysis based on data from the transparency register;
- d. request the data needed for a risk analysis from the registry authority.

**Art. 47** Entry in the land register

<sup>1</sup> A legal entity governed by foreign law that acquires real estate in Switzerland within the meaning of art. 4 of the LFAEIE<sup>41</sup> must produce proof of registration in the transparency register when applying for registration in the land register.

<sup>2</sup> If the land registrar finds that proof of registration in the transparency register is missing, he suspends the land registration procedure and gives the entity acquiring the property ten days to register with the transparency register.

<sup>3</sup> It rejects the requisition pursuant to art. 966 CC<sup>42</sup> if the purchaser fails to register with the transparency register within this period.

<sup>4</sup> The entity's right of appeal is governed by art. 956a CC.

**Section 5 Fees**

**Art. 48**

<sup>1</sup> Registration, modification of a registration or deletion of a registration in the transparency register, as well as consultation of the register or delivery of a registration certificate, are free of charge.

<sup>2</sup> Reminders, summonses and rulings issued by the register or supervisory authority are subject to a fee, so as the delivery of an extract.

<sup>3</sup> The supervisory authority may charge the costs of the inspection to a person who has failed to fulfil his obligations under this Act, caused the inspection procedure to be initiated or made the conduct of the procedure more difficult.

<sup>4</sup> The Federal Council sets the fees.

<sup>41</sup> RS 211.412.41

<sup>42</sup> RS 210

## Chapter 8 Administrative assistance

### Art. 49

<sup>1</sup> The register authority, the supervisory authority and the commercial register authorities shall cooperate in carrying out the tasks assigned to them by this Act. They shall provide each other with the necessary information and documents. They may only use the information received for the performance of these tasks.

<sup>2</sup> The competent federal authorities may exchange such information as they require in order to fulfil the duties assigned to them by this Act or by anti-money laundering legislation. They may only use the information received for the performance of these tasks.

<sup>3</sup> At the request of the supervisory authority, the federal, cantonal and communal authorities may provide it with the data it needs to perform the tasks assigned to it by this Act. Such data includes, in particular, financial information, as well as data collected in criminal, administrative or penal proceedings, including that collected in pending proceedings where its transmission would not jeopardize the proceedings. It may include personal data and data concerning legal entities necessary for the performance of the tasks provided for in this Act, including the following sensitive data:

- a. sensitive data :
  1. data on religious, philosophical, political or trade-union opinions or activities,
  2. data on health, intimacy or racial or ethnic origin.
  3. biometric data uniquely identifying a natural person,
  4. data on criminal or administrative prosecutions or sanctions,
  5. data on social assistance measures;
- b. sensitive data concerning legal entities on:
  1. prosecution or criminal or administrative sanctions,
  2. professional or business secrets.

<sup>4</sup> The supervisory authority may request from the competent tax authorities a list of entities which they have identified as having their administration or effective management in Switzerland.

<sup>5</sup> The federal and cantonal tax authorities are released from tax secrecy when they communicate information pursuant to § 3 and 4.

## Chapter 9 Penalties

### Art. 50 Violation of reporting or cooperation obligations

A fine of up to CHF 500'000 shall be imposed on anyone who intentionally:

- a. violates the obligation to notify under Art. 13, 14, 16, 22 or 25;
- b. violates the obligation to notify to the transparency register or the register of commerce pursuant to Art. 9 to 11, 17, 21 or 25;
- c. provides false information to the supervisory authority or to third parties appointed by the supervisory authority.

### Art. 51 Non-compliance with decisions

A fine of up to CHF 100'000 shall be imposed on anyone who intentionally fails to comply with a final decision issued by the supervisory authority under threat of the penalty provided for in this article.

### Art. 52 Jurisdiction and prosecution

<sup>1</sup> The DPA<sup>43</sup> applies to infringements of this Act.

<sup>2</sup> The prosecuting and adjudicating authority is the FDF.

<sup>3</sup> As part of the control activities referred to in Art. 42-46, the supervisory authority reports breaches of the provisions of this Act to the competent FDF unit, and breaches of Art. 327a of the Criminal Code<sup>144</sup> to the competent criminal authorities.

<sup>4</sup> The prescription for criminal proceedings is seven years.

<sup>5</sup> If a court judgement has been requested, the judgement comes under federal jurisdiction. In this case, the competent FDF unit submits the file to the Public Ministry of the Confederation, which forwards it to the Federal Criminal Court. The referral for trial takes the place of an indictment. Art. 73 to 83 DPA apply by analogy.

<sup>6</sup> The representative of the Federal Prosecutor's Office and the representative of the FDF are not required to appear in person to the hearings.

## Chapter 10 Data protection

### Art. 53

<sup>1</sup> The registry authority, the supervisory authority and third parties entrusted with the execution of this Act are authorized to process and communicate to each other the personal data and data concerning legal entities necessary for the performance of the tasks provided for by this Act, including the following sensitive data:

<sup>43</sup> SR 313.0

<sup>44</sup> SR 311.0

- a. sensitive data :
  1. data on religious, philosophical, political or trade-union opinions or activities,
  2. data on health, intimacy or racial or ethnic origin.
  3. biometric data uniquely identifying a natural person,
  4. data on criminal or administrative prosecutions or sanctions,
  5. data on social assistance measures;
- b. sensitive data concerning legal entities on:
  1. prosecution or criminal or administrative sanctions,
  2. professional or business secrets.

<sup>2</sup>Data on entities and data on persons entered in the transparency register are kept for ten years after deletion before being destroyed. The provisions of Art. 38 of the Federal Data Protection Act of September 25, 2020<sup>45</sup> are reserved.

<sup>3</sup>The Federal Council shall regulate the modalities of processing, in particular data security, as well as the organization and management of the transparency register.

<sup>4</sup>The Transparency Act of December 17, 2004<sup>46</sup> does not apply to data from the transparency registers for individuals and companies.

## Chapter 11 Final provisions

### Art. 54 Implementing provisions

The Federal Council issues the implementing regulations.

### Art. 55 Amendment of other deeds

Amendments to other deeds are governed by the appendix.

### Art. 56 Transitional provisions relating to the obligations of shareholders and associates

<sup>1</sup>Shareholders and associates who have complied with the obligation to notify the beneficial owner pursuant to Art. 697j and 790a CO<sup>47</sup> are deemed to have complied with the disclosure obligation pursuant to Art. 13 § 1, provided that the notified persons are the beneficial owner in compliance with the new regime.

<sup>45</sup> SR 235.1

<sup>46</sup> SR 152.3

<sup>47</sup> RS 220

<sup>2</sup> At the request of the legal entity, they provide the required information by Art. 13 § 4, within one month.

**Art. 57** Transitional provision concerning the retention of the list of beneficial owners and supporting documents

Corporations and limited liability companies retain the list of beneficial owners drawn up under the old regime for ten years from the entry into force of the present Act. The retention of documents supporting the notification is governed by the old regime.

**Art. 58** Transitional provision relating to the obligation to notify persons legal entities under Swiss private law

<sup>1</sup> Legal entities governed by Swiss private law are obliged to make the notification required under Art. 9 within one month of the first change of entry in the Commercial Register after the entry into force of this Act, but at the latest within the deadlines set out in § 2 and 3.

<sup>2</sup> Legal entities, all of whose beneficial owners are entered in the Commercial Register as shareholders or corporate bodies, are obliged to carry out the notification required under Art. 9 or 11 no later than two years after this Act comes into force.

<sup>3</sup> Other legal entities are obliged to register at the latest within the following deadlines following the entry into force of this Act:

- a. for corporations required to have their accounts audited by a statutory auditor, within three months;
- b. for other companies required to submit their accounts to an ordinary audit, within four months;
- c. for corporations that do not qualify for an ordinary audit, within five months;
- d. for other companies that do not qualify for limited control, and for other legal entities, within six months.

**Art. 59** Transitional provision on information to register authorities trade

<sup>1</sup> If a legal entity governed by Swiss private law amends an entry in the commercial register after the entry into force of this Act and before the end of the transitional periods provided for in Art. 58, the competent cantonal commercial register office shall, at the time of the first amendment, draw the legal entity's attention to its obligation to notify under Art. 9, 21 and 58. It shall notify the amendment to the authority that keeps the register.

<sup>2</sup> On expiry of the one-month period specified in Art. 58 §1, but at the earliest six months after the entry into force of the Act, the registry authority checks whether the legal entity has complied with its reporting obligation. If this is not the case, the company is requested to do so, indicating the consequences of non-compliance.



**Art. 60** Transitional provision on the obligation to register foreign legal entities

Legal entities governed by foreign law have a period of six months from the date of entry into force of the present Act to make the notifications required by Art. 25.

**Art. 61** Transitional provision relating to the obligation for financial intermediaries to report discrepancies

<sup>1</sup> The obligation to report discrepancies under Art. 38 applies six months after the new regime comes into force.

<sup>2</sup> At the end of this period, if the financial intermediary ascertains that a company is not entered in the transparency register, it asks the company whether it benefits from the two-year period provided for in Art. 58 § 2. If the company confirms that this is the case, the financial intermediary is not obliged to issue an alert until the expiry of this second period.

**Art. 62** Transitional provision concerning the obligation to report fiduciary relationships

For fiduciary relationships created prior to the entry into force of this Act, companies are obliged to make the announcement required under Art. 17 when their entry in the Commercial Register is amended, but at the latest within two years of the entry into force of the new regime.

**Art. 63** Referendum and entry into force

<sup>1</sup> This Act is subject to referendum.

<sup>2</sup> The Federal Council sets the date of entry into force.

## Modification of other acts

The following deeds are amended as follows:

### 1. Federal Act of June 20, 2003 on the common information system for foreign nationals and asylum-seekers<sup>48</sup>

*Art. 9 § 1 lit. q) and § 2 lit. p*

<sup>1</sup> The SEM may provide the following authorities and services with online access to data relating to foreign nationals, which it has processed or had processed in the information system:

q. the Federal Department of Finance, for the fulfilment of its duties under Art. 42 to 46 of the Act of ... on the Transparency of Legal Entities (LETA)<sup>49</sup>.

<sup>2</sup> The SEM may provide the following authorities and services with online access to asylum-related data that it has processed or had processed in the information system:

p. the Federal Department of Finance, for the performance of tasks pursuant to Art. 42 to 46 of the LETA.

### 2. Swiss Code of Obligations<sup>50</sup>

*Art. 656b § 4, no. 3*

*Withdrawn*

*Title twenty-sixth, chap. II, lit. K (Art. 697j to 697m)*

*Withdrawn*

*Art. 718 § 4, 3<sup>rd</sup> sentence*

4... It must have access to the share register.

<sup>48</sup> SR 142.51

<sup>49</sup> RS ...

<sup>50</sup> RS 220

*Art. 731b § 1, no. 3*

<sup>1</sup> A shareholder or creditor may request the court to take the necessary measures when the organization of the company presents one of the following deficiencies:

3. the Company fails to maintain a share register as required;

*Art. 747*

V. Retention of  
share register and  
company books

<sup>1</sup> The share register and books of the company must be kept in a safe place for ten years after the company has been deregistered. This place is designated by the liquidators or, if they cannot agree, by the Commercial Registry Office.

<sup>2</sup> The share register must be kept in such a way that it can be accessed at any time in Switzerland.

*Title twenty-eighth, chap. II, lit. A, ch. III<sup>bis</sup> (art. 790a)*

*Withdrawn*

*Art. 814 § 3, 3<sup>rd</sup> sentence*

<sup>3</sup> .. It must have access to the share register.

### **3. Audit Supervision Act of December 16, 2005<sup>51</sup>**

*Art. 9a § 1, lit. c*

<sup>1</sup> An auditing company is approved as an auditing company to carry out audits in accordance with Art. 2, lit. a, no. 2, if it meets the following requirements:

- c. it does not engage in any other activity subject to authorization under the laws on financial markets (art. 1 § 1 FINMASA<sup>52</sup>); the activity of advisor within the meaning of art. 2 § 3<sup>bis</sup> and 3<sup>ter</sup> of the Act of October 10, 1997 on Anti-Money Laundering <sup>53</sup> is excepted.

### **4. Criminal Code <sup>54</sup>**

*Art. 327*

<sup>51</sup> SR 221.302

<sup>52</sup> SR 956.1

<sup>53</sup> SR 955.0

<sup>54</sup> SR 311.0

*Withdrawn*

*Art. 327a*

Breach of  
corporate  
law  
obligations  
regarding  
record-  
keeping

A fine will be imposed on anyone who intentionally fails to keep one of the following registers in accordance with the regulations, or who violates the related obligations under company law:

- a. for a corporation, the share register within the meaning of Art. 686 § 1 to 3 and 5 of the Swiss Code of Obligations<sup>55</sup>;
- b. for a limited liability company, the share register in accordance with Art. 790 § 1 to 3 and 5 of the Swiss Code of Obligations;
- c. for a cooperative company, the list of associates within the meaning of Art. 837 § 1 and 2 of the Swiss Code of Obligations;
- d. for an open-ended investment company, the register of entrepreneurial shareholders within the meaning of Art. 46 § 3, of the Collective Investment Schemes Act of June 23, 2006<sup>56</sup>;
- e. for a legal entity governed by foreign law that has its place of effective administration in Switzerland, the list of holders within the meaning of Art. 26 of the Act of ... on the Transparency of Legal Entities<sup>57</sup> in Switzerland.

## 5. Criminal Records Act of June 17, 2016<sup>58</sup>

*Art. 46, lit. p*

The following connected authorities may consult online all the data contained in extract 2 for authorities (Art. 38), if they are required to perform the tasks listed below:

- p. the supervisory authority attached to the Federal Department of Finance within the meaning of Art. 46 § 1, of the Act of ... on the Transparency of Legal Entities (LETA)<sup>59</sup>:  
to identify breaches of reporting obligations and conduct control procedures pursuant to Art. 43 § 1, lit. c, LETA.

<sup>55</sup> RS 220

<sup>56</sup> SR 951.31

<sup>57</sup> RS ...

<sup>58</sup> RS 330

<sup>59</sup> RS ...

## **6. Federal Act of June 13, 2008 on police information systems of the Confederation** <sup>60</sup>

*Art. 17 § 4, lit. o*

<sup>4</sup> Have online access to this data:

- o. the Federal Department of Finance, for the fulfilment of its duties under Art. 42 to 46 of the Act of ... on the Transparency of Legal Entities<sup>61</sup>.

## **7. Tax Administrative Assistance Act of September 28,** <sup>201262</sup>

*Chap. 4a (Art. 22i<sup>bis</sup>)*

*Withdrawn*

## **8. Federal Financial Services Act of June 15,** <sup>201863</sup>

*Art. 88* Exchange of information

FINMA, the supervisory authority, the registrar, the registration authority, the ombudsman and the FDF may exchange all information and documents required to perform their respective tasks.

## **9. Collective Investment Schemes Act of June 23,** <sup>200664</sup>

*Art. 46 § 3*

<sup>3</sup> The SICAV keeps a register of entrepreneur shareholders, in which their names and addresses are entered.

*Art. 46a*

*Withdrawn*

<sup>60</sup> RS **361**  
<sup>61</sup> RS ...  
<sup>62</sup> SR **651.1**  
<sup>63</sup> RS **950.1**  
<sup>64</sup> SR **951.31**

## 10. Banking Act of November 8, 1934<sup>65</sup>

*Art. 14b*

*Withdrawn*

## 11. Federal Act of June 15, 2018 on Financial Institutions <sup>66</sup>

*Art. 61a* Exchange of information between FINMA and insurance monitoring

FINMA and the supervisory bodies may exchange all information and documents necessary for the performance of their respective tasks.

## 12. Anti-Money Laundering Act of October 10, <sup>1997</sup><sup>67</sup>

*Art. 1* Subject

This Act governs the fight against money laundering as defined in Art. 305<sup>bis</sup> of the Swiss Criminal Code<sup>68</sup>, the fight against the financing of terrorism as defined in Art. 260<sup>quinquies</sup> § 1 of the Swiss Criminal Code, and due diligence with regard to financial transactions, including the prevention of breaches of coercive measures based on the Embargo Act of March 22, 2022<sup>69</sup>.

*Art. 2 § 1, lit. c, 3<sup>bis</sup>, 3<sup>er</sup>, 4, lit. f, and 5*

<sup>1</sup> The present Act applies to:

c. advisors.

<sup>3bis</sup> Lawyers, notaries and other persons who provide legal or accounting advice are deemed to be advisors if they assist their clients, in a professional capacity, in the preparation or execution of a transaction concerning:

- a. the sale or purchase of a property;
- b. the creation of a company, foundation or trust;
- c. management or administration of a company, foundation or trust;
- d. the organization of a company's contributions;
- e. the sale or purchase of a company.

<sup>65</sup> SR 952.0

<sup>66</sup> SR 954.1

<sup>67</sup> SR 955.0

<sup>68</sup> SR 311.0

<sup>69</sup> SR 946.231

<sup>3ter</sup> In addition, persons who provide the following services for their customers on a professional basis are deemed to be advisors:

- a. set up a company, foundation or trust;
- b. provide an address or premises to be used as the headquarters of a company, foundation or trust;
- c. acting as a nominee shareholder.

<sup>4</sup> This Act does not apply to:

- f. advisors involved in judicial, criminal, administrative or arbitration proceedings.

<sup>5</sup> The Federal Council specifies the activities considered as financial intermediation or consulting. It lays down the criteria for determining whether an activity is carried out on a professional basis, in particular on the basis of the volume or value of the activities in question, the amount of income obtained from this activity, the number of customers or the amount of assets involved.

#### *Art. 2b* Material coordination

<sup>1</sup> If the same activity falls within the scope of both financial intermediation and consultancy within the meaning of Art. 2 § 3<sup>bis</sup> or 3<sup>ter</sup>, the provisions relating to financial intermediaries apply to this activity.

<sup>2</sup> Any person who is both a financial intermediary and an advisor is subject to the provisions applicable to each of these activities. They may declare that all their activities are subject to the rules applicable to financial intermediaries. The Federal Council regulates the modalities of the declaration.

#### *Art. 8* Organizational measures

Financial intermediaries take the necessary organizational measures to prevent money laundering and terrorist financing, as well as the violation of coercive measures based on the Banking Act.<sup>70</sup> In particular, they ensure that their staff receive sufficient training and that controls are carried out.

#### *Art. 8a § 2<sup>bis</sup>, 2<sup>ter</sup> and 3 to 5, 2<sup>nd</sup> sentence*

<sup>2bis</sup> The relevant threshold pursuant to § 1 for trading in precious metals within the meaning of art. 1 §1 LCMP<sup>71</sup>, or precious stones is CHF 15'000.

<sup>2ter</sup> Financial intermediaries are not covered by § 1 to 2<sup>bis</sup> if they trade professionally in bank precious metals within the meaning of the legislation on the control of precious metals.

<sup>70</sup> SR 946.231

<sup>71</sup> SR 941.31

<sup>3</sup> Traders must fulfil the obligations set out in § 1 and 2 even if the cash payment is made in several instalments below the relevant threshold, but which together exceed this threshold.

<sup>4</sup> Dealers who trade in real estate are also subject to the obligations set out in § 1 and 2 if they receive cash as payment in connection with a trading transaction.

<sup>5</sup> ... It determines the precious metals and stones referred to in § 2<sup>bis</sup> .

*Title following Art. 8a*

### **Section 1b Advisors' duty of care**

*Art. 8b*            Duty of care

<sup>1</sup> Consultants must fulfill the following obligations:

- a. verification of the customer's identity (Art. 3 § 1);
- b. identification of the beneficial owner (Art. 4 §1 and 2, letters a and b);
- c. preparation and preservation of documents (Art. 7).

<sup>2</sup> They must identify the object and purpose of the transaction or service requested by the customer.

<sup>3</sup> They must clarify the background and purpose of the transaction or services when this is justified by the high risks presented by the transaction or the customer.

*Art. 8c*            Simplified or increased due diligence obligations

<sup>1</sup> The extent of due diligence depends on the risks represented by the transaction, the service or the customer.

<sup>2</sup> The Federal Council shall regulate the scope of due diligence obligations. It provides that these may be simplified or increased to take account of the low or high risks presented by the transaction, the service or the client. In particular, it shall define the circumstances in which the advisor must clarify the background and purpose of the transaction or service pursuant to Art. 8b § 3.

*Art. 8d*            Organizational measures

Advisors take the necessary organizational measures in their field to prevent money laundering and the financing of terrorism, as well as the violation of coercive measures based on EmbA<sup>72</sup>. In particular, they ensure that their staff receive sufficient training and that controls are carried out.

<sup>72</sup> SR 946.231



*Art. 9 § 1<sup>ter</sup> to 1<sup>sexies</sup> and 2*

<sup>1ter</sup> The consultant immediately informs the communications office:

- a. if it knows or presumes, on the basis of well-founded suspicions, that the assets involved in the transaction or the provision of services:
  1. are related to one of the offences mentioned in Art. 260<sup>ter</sup> or 305<sup>bis</sup> Criminal Code,
  2. originate from a felony or a qualified tax offence as defined in Art. 305<sup>bis</sup> ch. 1<sup>bis</sup> Criminal Code,
  3. are subject to the power of disposal of a criminal or terrorist organization, or
  4. are used to finance terrorism (Art. 260<sup>quinquies</sup> § 1 Criminal Code)
- b. if it breaks off negotiations concerning its services due to well-founded suspicions in accordance with letter a;
- c. if it knows or presumes, on the basis of clarifications carried out pursuant to Art. 8b § 3, that the data concerning a person or organization transmitted on the basis of Art. 22a § 2, matches those concerning a customer, a beneficial owner or an authorized signatory of a business relationship, a transaction or a provision of services.

<sup>1quater</sup> The name of the financial intermediary, trader or consultant must appear in all disclosures made pursuant to § 1, 1<sup>bis</sup> and 1<sup>ter</sup>. On the other hand, the names of the employees of the financial intermediary, trader or advisor in charge of the case may be omitted, provided that the Reporting Office and the prosecuting authority retain the possibility of contacting them rapidly.

<sup>1quinquies</sup> *Ex § 1<sup>quater</sup>*

<sup>1sexies</sup> The definition of well-founded suspicion in § 1<sup>quinquies</sup> applies by analogy to the cases referred to in § 1<sup>bis</sup> and 1<sup>ter</sup>.

<sup>2</sup> Anyone acting in his capacity as a lawyer or notary is subject to the obligation to report suspicions only if the following conditions are met:

- a. carries out a financial transaction in the name of or on behalf of a customer;
- b. the information available to them is not protected by professional secrecy in accordance with Art. 321 of the Criminal Code.

*Art. 9b § 2<sup>bis</sup>*

<sup>2bis</sup> The consultant who makes a communication may terminate the business relationship at all times.

*Art. 10a § 5*

<sup>5</sup> The trader or advisor must not inform the persons concerned or any third party of the fact that they have made a communication pursuant to Art. 9. The authorities and bodies responsible for the supervision referred to in Art. 12 and persons carrying out audits are not considered to be third parties.

*Art. 11a § 1 to 4*

<sup>1</sup> If the Reporting Office requires additional information for the analysis of a communication received pursuant to Art. 9 of this Act or Art. 305<sup>ter</sup> § 2 Criminal Code,<sup>73</sup> the author of the communication must provide such information on request, provided that it is available to the Reporting Office.

<sup>2</sup> If the analysis shows that, in addition to the reporting party, other financial intermediaries or consultants are taking part or have taken part in a business relationship, operation, transaction or provision of services, they must provide all relevant information to the Reporting Office at the latter's request, insofar as such information is available to them. Persons acting as lawyers or notaries are only obliged to provide information in accordance with Art. 9 § 2.

<sup>2bis</sup> If analysis of the information received from a foreign counterpart shows that financial intermediaries or consultants within the meaning of this Act are or have been involved in a business relationship, operation, transaction or service in connection with the said information, the financial intermediaries or advisors concerned must provide all relevant information to MROS at the latter's request, insofar as such information is available to them. Those acting as lawyers or notaries are only obliged to provide information in accordance with Art. 9 § 2.

<sup>3</sup> The MROS sets the deadline by which the financial intermediaries and advisors referred to in paragraphs 1 to 2<sup>bis</sup> must provide the information requested.

<sup>4</sup> The prohibition on disclosure in Art. 10a §1 and 5, applies by analogy to financial intermediaries and advisors who receive a request from the Reporting Office under § 2 or 2<sup>bis</sup>.

*Art. 12, introductory sentence and letters a to d*

The following authorities and bodies ensure that financial intermediaries and consultants comply with the obligations set out in Chapter 2:

- a. *concerns only the German text*
- b. *concerns only the German text*
- b<sup>bis</sup> *concerns only the German text*
- b<sup>ter</sup> *concerns only the German text*
- c. *concerns only the German text*
- d. for consultants, their recognized self-regulatory bodies (Art. 24).

<sup>73</sup> SR 311.0

*Art. 12a* Coordination of supervision

<sup>1</sup> Any person who is subject to a supervisory authority established by special Act as a financial intermediary within the meaning of Art. 2 § 2, and who engages in advisory activities is subject to the supervision of this authority for all his activities.

<sup>2</sup> Any person who is affiliated to a recognized self-regulatory organization on account of his activity as a financial intermediary within the meaning of Art. 2 § 3, and who carries on an advisory activity is subject to the supervision of this self-regulatory organization for all his activities.

<sup>3</sup> The financial intermediaries referred to in Art. 2 §2, lit. <sup>abis</sup>, which are subject to supervision by a supervisory authority within the meaning of Art. 43a FINMASA<sup>74</sup>, are subject to supervision by the competent supervisory authority for all their activities.

*Art. 14 § 1 and 2, introductory sentence and letters a to d*

<sup>1</sup> All financial intermediaries within the meaning of Art. 2 § 3, and all advisors must be affiliated to a self-regulatory organization.

<sup>2</sup> A financial intermediary within the meaning of Art. 2 § 3, or an advisor is entitled to join a self-regulatory organization:

- a. *concerns only the German text*
- b. *concerns only the German text*
- c. *concerns only the German text*
- d. *concerns only the German text*

*Art. 17 §. 1, introductory sentence*

<sup>1</sup> The due diligence obligations defined in Chapter 2, Section 1, and in the legislation on gambling are specified by ordinance by:

*Title as per Art. 17*

**Section 3a**

**Supervision of financial intermediaries as per Art. 2 § 3, and of consultants**

*Art. 18 § 1, introductory sentence, 3 and 4*

<sup>1</sup> Within FINMA's surveillance of the financial intermediaries referred to in Art. 2 § 3, and of the consultants, FINMA assumes the following tasks:

<sup>3 and 4</sup> *Withdrawn*

<sup>74</sup> SR 956.1

*Art. 18a* Professional secrecy

<sup>1</sup> In order to guarantee professional secrecy, self-regulatory organizations must ensure that AMLA inspections of lawyers and notaries are carried out by lawyers and notaries.

<sup>2</sup> Lawyers and notaries in charge of AMLA inspections must meet the following requirements:

- a. hold a lawyer's or notary's license;
- b. offer all the guarantees of an irreproachable revision activity;
- c. provide proof of the required knowledge of the legislation on money laundering, proper experience and ongoing training;
- d. justify their independence from the member of the self-regulatory body subject to inspection.

<sup>3</sup> Lawyers and notaries may pass on information subject to professional secrecy to the lawyers and notaries responsible for AMLA inspections, insofar as this is strictly necessary for the purposes of the inspection.

<sup>4</sup> Lawyers and notaries in charge of AMLA inspections are bound by professional secrecy when inspecting the activities of a lawyer or notary. They may not access information covered by professional secrecy, nor communicate it to the self-regulatory organization or other authorities, except to the extent strictly necessary for the performance of their duties under the present Act.

*Art. 18b* Public register

<sup>1</sup> FINMA keeps a register of the financial intermediaries referred to in Art. 2 § 3 and consultants who are members of a self-regulatory organization. This register is accessible to the public in electronic form.

<sup>2</sup> FINMA makes the data in the register accessible by means of an appeals procedure.

*Art. 22a § 2 letter c*

<sup>2</sup> FINMA forwards the data received from the FDF:

- c. to self-regulatory organizations' members.

*Art. 23 § 5 and 7*

<sup>5</sup> It informs the financial intermediary or consultant whether it will pass on the information communicated pursuant to Art. 9 § 1, a, or 1<sup>ter</sup>, a, of this Act or Art. 305<sup>ter</sup> § 2 of the Criminal Code to a prosecuting criminal authority, insofar as the financial intermediary or consultant has not terminated the business relationship pursuant to Art. 9b.

<sup>7</sup> The exchange of information with the Reporting Office takes place via the system referred to in § 3. The Federal Council determines the content and scope of the information to be communicated. The Federal Office of Police (FedPol) defines the rules relating to the data that apply to the information transmitted by the system.

*Art. 24 § 1, letter b*

<sup>1</sup> Self-regulatory organizations must meet the following requirements in order to be recognized as such:

- b. ensure that their members comply with the obligations defined in Chapter 2;

*Art. 25 § 2 and 3, lit. a*

<sup>2</sup> In this regulation, they specify for their members the obligations of due diligence defined in chapter 2 and regulate the terms of application.

<sup>3</sup> In this regulation, they also define:

- a. the conditions relating to the affiliation and exclusion of persons;

*Art. 26 § 1*

<sup>1</sup> The self-regulatory organizations keep a list of persons affiliated to them and a list of persons to whom they refuse affiliation.

*Art. 27, title and § 1 and 5*

Obligation to communicate

<sup>1</sup> *Withdrawn*

<sup>5</sup> Self-regulatory organizations are exempt from the obligation to provide information pursuant to § 4 if their member has already fulfilled this obligation.

*Art. 28 § 2*

<sup>2</sup> If a self-regulatory organization sees its recognition withdrawn, its members have a two months deadline to apply for membership of another organization.

*Art. 29 § 1, 1<sup>bis</sup> and 2<sup>ter</sup>*

<sup>1</sup> The following authorities may exchange all information and documents necessary for the application of this Act and the fight against money laundering, predicate offences to money laundering, organized crime or the financing of terrorism:

- a. FINMA;
- b. the Federal Gambling Commission (CFMJ);
- c. the intercantonal authority;
- d. the Central Office;

- e. the Federal Office of Justice (FOJ), in its capacity as authority maintaining the transparency register pursuant to the Act of ... on the Transparency of Legal Entities (LETA)<sup>75</sup>;
- f. the FDF, in its capacity as supervisory authority for the LETA;
- g. the Reporting Office.

<sup>1bis</sup> The Reporting Office and the State Secretariat for Economic Affairs (SECO) may exchange all information and documents required for the application of this Act and the EmbA<sup>76</sup>.

<sup>2ter</sup> The Reporting Office may only forward information from a foreign counterpart to the authorities referred to in § 1, <sup>1bis</sup> and 2 for the purposes mentioned in § 2<sup>bis</sup> and with the latter's express authorization.

*Art. 29a § 4, 1<sup>st</sup> sentence*

<sup>4</sup> FINMA, the CFMJ, the intercantonal authority and the Central Office coordinate any action against a financial intermediary or consultant with the competent prosecution authorities. ...

*Art. 29b, heading* Exchange of information with the issuing office

*Insert before section 2 title*

*Art. 29c* Exchange of information with FINMA

Supervisory bodies, self-regulatory organizations and FINMA may exchange all information and documents necessary for the performance of their respective duties, including information that is not publicly available.

*Art. 30 § 2, letter a*

<sup>2</sup> In particular, it can transmit the following information:

- a. the name of the financial intermediary, trader or consultant, insofar as the anonymity of the person who has sent a communication or who has complied with the duty to inform referred to in the present Act is guaranteed;

*Art. 32 § 3*

<sup>3</sup> The Reporting Office is not authorized to pass on to foreign criminal prosecution authorities the name of the person who has sent the report of the financial intermediary, trader or consultant, or who has complied with the duty to inform pursuant to Art. 11a.

<sup>75</sup> RS ...

<sup>76</sup> SR 946.231

*Art. 34 § 1*

<sup>1</sup> Financial intermediaries and consultants maintain separate files or databases containing all documents relating to the reports referred to in Art. 9 of this Act or Art. 305<sup>ter</sup> § 2 Criminal Code<sup>77</sup> as well as to the MROS requests referred to in Art. 11a.

*Art. 35 § 2*

<sup>2</sup> The communication office may exchange information with the following authorities by means of an appeal procedure:

- a. FINMA;
- b. the CFMJ;
- c. the intercantonal authority;
- d. the Central Office;
- e. the FOJ, in its capacity as authority that maintains the transparency register in application of the LETA<sup>78</sup>;
- f. the FDF, in its capacity as supervisory authority for the LETA;
- g. SECO;
- h. criminal prosecution authorities.

*Art. 37 § 2*

<sup>2</sup> If the perpetrator acts negligently, he or she is liable to a fine of up to CHF 150'000. In minor cases, the competent authority will waive criminal prosecution and conviction.

### **13. Federal Act of October 3, 2008 on Intermediated Securities<sup>79</sup>**

*Art. 23a*

*Withdrawn*

<sup>77</sup> SR 311.0

<sup>78</sup> RS ...

<sup>79</sup> SR 957.1