



Ordinance of the Swiss Financial Market Supervisory Authority on the Prevention of Money Laundering and the Financing of Terrorist Activities

(FINMA Anti-money Laundering Ordinance, AMLO-FINMA)

SR 955.033.0

dated 3 June 2015 (version as at 1 January 2019)

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*The Swiss Financial Market Supervisory Authority (FINMA),
based on Articles 17 and 18(1)(e) of the Anti-Money Laundering Act of 10 October 1997¹ (AMLO)
decrees:*

Title 1: General Provisions

Chapter 1: Object and Definitions

ARTICLE 1 Subject matter

- 1 This Ordinance shall define how financial intermediaries as per Article 3(1) shall implement the duties related to the combating of money laundering and the financing of terrorist activities.
- 2 The FINMA shall consult this Ordinance when it approves the regulations of self-regulating organizations as per Article 25 AMLA or acknowledges regulations of self-regulating organizations as per Article 17 as minimum standard.
- 3 Self-regulating organizations may wish to limit themselves to regulating any divergences to this Ordinance. In any case, divergences must be identified as such.

ARTICLE 2 Terms

In this Ordinance the following terms shall mean:

- a. *Domiciliary companies*: legal entities, companies, institutions, foundations, trusts, fiduciary companies and similar associations that do not operate a trading, manufacturing or other commercial business. The following are not deemed to be domiciliary companies:
 1. legal entities and companies that aim to safeguard their members' or beneficiaries' interests by means of mutual self-help or that pursue political, religious, scientific, artistic, charitable, sociable or similar aims,
 2. legal entities and companies that hold a majority of equity interest of one or several operating companies in order to reunite these under a single management by means of voting majority

¹ SR 955.0

or otherwise and whose main business is not the management of assets of others (holding companies or sub-holding companies). In the process, the holding or sub-holding company shall factually exercise its management and controlling influence.

- b. *Cash transactions*: all cash transactions, especially money changing, the purchase and sale of precious metals, the sale of travelers' checks, the issue of bearer instruments, bonds and medium-term notes payable in cash, the cashing of checks, provided no long-term business relationship is entered into;
- c. *Money and asset transfers*: the transfer of assets against acceptance of cash, precious metals, virtual currencies, checks or other means of payment in Switzerland and the payment of a corresponding sum in cash, precious metals, virtual currencies or by remittance, transfer by or other use of a payment or clearing system abroad, or vice-versa, provided no long-term business relationship is entered into;
- d. *Long-term business relationships*: client relationships booked at a Swiss financial intermediary or mostly handled from Switzerland and which are not limited to one-off transactions subject to the law;
- e. *Professional note traders*: non-banks that buy and sell currencies thus making a significant portion of their turnover or income;
- f. *Controlling person*: natural persons, who control a legal entity by directly, indirectly or acting in concert with third parties owning equity shares which reunite more than 25 percent of the capital or voting rights or who control such companies in other ways and are considered to be beneficial owners of these operational entities controlled by them, or, as an alternative, the managing person of such entities;
- g. *Investment companies under CISA*: investment companies under the Collective Investment Schemes Act of 23 June 2006² (CISA), i.e. investment companies with variable capital (SICAV), limited partnerships for collective investment schemes³ as well as investment companies with fixed capital (SICAF) as per Article 2(2)(bbis) AMLA.
- h. *Asset managers under CISA*: asset managers of collective investment schemes under CISA as per Article 2(2)(bbis) AMLA.

² SR 951.31

³ Since 1 July 2016: LP-CIS

Chapter 2: Scope

ARTICLE 3 Scope

- 1 This Ordinance shall apply to:
 - a. financial intermediaries pursuant to Article 2(2)(a)-(d) AMLA;
 - b. financial intermediaries pursuant to Article 2(3) AMLA, which are directly supervised by the FINMA as per Article 14 (DSFI).
- 2 When applying this Ordinance, FINMA may take into consideration the financial intermediary's specific business activities; in view of the money-laundering risk of an activity or the size of a company, it may grant facilitations or impose stricter rules. It may also make use of new technologies which are equally secure to implement the due diligence.
- 3 FINMA shall inform the public of its practice.

ARTICLE 4 Domestic group companies

- 1 For DSFIs and persons pursuant to Article 1b of the Banking Act of 8 November 1934⁴ (BA) that are considered a domestic group company of a financial intermediary as per Article 3(1)(a), FINMA may require these to prove that they have adhered to the AMLA and this Ordinance in their consolidated audit report.⁵
- 2 FINMA shall publish a list of group companies supervised by it as per (1).

ARTICLE 5 Branch offices or affiliated group companies abroad

- 1 The financial intermediary shall ensure that its branch office and/or group companies active in the financial or insurance sector abroad adhere to the following principles stipulated in the AMLA and this Ordinance:
 - a. the principles set out in Articles 7 and 8;
 - b. the identification of the contractual party;
 - c. the establishment of the controlling person or the person entitled to the assets, i.e. the beneficial owner;
 - d. the use of a risk-oriented approach;
 - e. special investigative duties in case of increased risks.

⁴ SR 952.0

⁵ Version according to Section I of the FINMA Ordinance of 5 December 2018, in force since 1 January 2019 (AS 2018 5333).

- 2 This shall apply especially to subsidiaries and branch offices which are located in countries that are considered to be high risk.
- 3 The financial intermediary shall inform FINMA if local rules contradict the basic principles of this Ordinance or if it suffers great competitive disadvantages because of these.
- 4 Reporting suspicious transactions or business relationships and any blocking of assets must conform to the host country's rules.

ARTICLE 6 Global supervision of legal and reputational risks

- 1 Financial intermediaries with international branch offices or that operate a financial group with foreign group companies, shall record, limit and supervise their legal and reputational risks related to money laundering and financing of terrorism on a global level.
- 2 A financial intermediary shall ensure:
 - a. that the group's internal supervisory bodies and the audit firm have access to the information on individual business relationships in all group companies if the need arises. However, it is not necessary to maintain a centralized database pertaining to contractual parties and beneficial owners at group level or centralized access by the group's supervisory units to local databases;
 - b. that the branch offices and group companies make all relevant information available to the group units responsible for the global monitoring of the legal and reputational risks.
- 3 Should a financial intermediary determine that it is impossible to access information on contractual parties, controlling persons or beneficial owners in certain countries due to legal or practical reasons or if access is obstructed, it shall immediately inform FINMA of this.
- 4 Financial intermediaries that are part of a foreign group shall grant the company's internal monitoring units and external auditor's access to information on certain transactions to the extent necessary for the global monitoring of legal and reputational risks.

Chapter 3: Principles

ARTICLE 7 Prohibited assets

- 1 Financial intermediaries shall not accept assets where they know or must assume that they originate from a crime or qualified tax evasion, even if this crime or offense was committed abroad.
- 2 Negligent acceptance of assets which are the result of a crime or qualified tax evasion may jeopardize the guarantee of irreproachable business conduct required of a financial intermediary.

ARTICLE 8 Forbidden business relationships

Financial intermediaries shall not entertain business relationships:

- a. with persons or companies where they know or must assume that the company or person in question finances terrorism or is a criminal organization, or is a part of or supports such an organization;
- b. with banks that are not physically present at the place of incorporation (fictive banks) unless they are part of a supervised and adequately consolidated financial group.

ARTICLE 9 Breach of provisions

- 1 The breach of a provision of this Ordinance or a FINMA-approved self-regulation policy may jeopardize the guarantee of irreproachable business conduct required of a financial intermediary.
- 2 Serious breaches may entail a professional ban as set out in Article 33 of the Financial Market Supervision Act of 22 June 2007⁶ (FINMASA) and the confiscation of profits realized due to these breaches (Article 35 FINMASA).

Chapter 4: General Provisions on Due Diligence

ARTICLE 10 Required disclosures in payment orders

- 1 For payment orders, the client's financial intermediary shall disclose the client's name, account number and address as well as the name and account number of the beneficiary. If no account number is available, the institution shall provide a reference number that refers to the transaction. The address may be replaced with the client's date of birth and place of birth, his/her client number or his/her national ID number.
- 2 For domestic payment orders, the financial intermediary may restrict itself to providing the account number or a transaction-referenced identification number, provided it can provide the other information on the client to the financial intermediary of the beneficiary and the Swiss authorities within three working days upon request.
- 3 For domestic payment orders which serve to pay goods and services, the financial intermediary may act as per (2) if compliance with (1) is not possible for technical reasons.
- 4 The financial intermediary shall inform the client adequately on the fact that his/her client data is disclosed in the course of payment operations.
- 5 The financial intermediary of the beneficiary shall define how it will proceed upon reception of payments which are incomplete in regard to client or beneficiary information. In doing so, it takes a risk-based approach.

⁶ SR 956.1

ARTICLE 11 Waiving compliance with due diligence

- 1 The financial intermediary may waive compliance with due diligence in the case of long-term business relationships with contractual parties where payment operations not involving cash only serve to pay for goods and services, if the following situation is on hand:
 - a. Not more than CHF 1,000 may be paid for each transaction and not more than CHF 5,000 per calendar year and contractual party. The refund of such a means of payment can only be credited to an account in Switzerland or if abroad, to an account at a bank which is under equivalent supervision, paid to the name of the contractual party. A refund may not exceed CHF 1,000.
 - b. Not more than CHF 5,000 per month and CHF 25,000 per calendar year and contractual party may be paid to dealers in Switzerland; the means of payment can only be refunded by debiting the account in the name of the contractual party at a bank authorized in Switzerland.
 - c. The means of payment can only be used to pay service or goods providers within a certain network and the turnover may not exceed CHF 5,000 per month and CHF 25,000 per calendar year and contractual party.
 - d. The situation is a finance lease and the annual leasing rates to be paid including value-added tax do not exceed CHF 5,000.
- 2 In the case of long-term business relationships with contractual parties for means of payment used for cashless payment operations which are not used exclusively goods and payments, the financial intermediary may waive compliance with due diligence if each means of payment does not amount to more than CHF 200 per month and payments and refunds may only be debited and credited to an account in the name of the contractual party held at a bank authorized in Switzerland.
- 3 The financial intermediary may waive due diligence for non-reloadable means of payment if:
 - a. the stored cash only serves to pay goods and services electronically;
 - b. not more than CHF 250 is made available for each data carrier; and
 - c. not more than CHF 1,500 per transaction and contractual party is made available.
- 4 A financial intermediary shall only be allowed to waive compliance with due diligence if it disposes of technical installations that recognize if the relevant thresholds have been exceeded. It also takes all necessary precautions to prevent any accumulation of limits as well as the violation of these provisions, subject to the provisions of Articles 14 and 20 in regard to the monitoring of transactions and Article 10, if applicable.
- 5 Upon request, FINMA may also allow other exemptions for self-regulating organizations or financial intermediaries as per Article 3 (1) for long-term business transactions, provided the money-laundering risk is low, as per Article 7a AMLA.

ARTICLE 12 Simplified due diligence for issuers of means of payment

- 1 The issuer of means of payment is exempted from having to collect copies of documents for the identification of contractual parties and the establishment of the controlling person and beneficial owner of the assets for its files if it has a outsourcing agreement with a bank authorized in Switzerland that contains the following:
 - a. The bank shall make available data on the identity of the contractual party, the controlling person or the beneficial owner of the assets to the issuer of the means of payment.
 - b. The bank shall inform the issuer of the means of payment whether the contractual party, the controlling person or the beneficial owner of the assets is a politically exposed person (PEP).
 - c. The bank shall inform the issuer of the means of payment of any changes in letters (a) and (b) immediately.
 - d. In case a Swiss authority requires information from the issuer of a means of payment, the issuer shall answer the query and refer the authorities to the bank for any documents required.
- 2 The issuer of means of payment does not need to obtain an authentication for copies of identification documents which it contracted directly and by mail with a business relationship, provided:
 - a. the means of payment used for cash-less payments of goods and services and to withdraw cash where an electronic credit balance is required for the transaction does not allow transactions and withdrawals of more than CHF 10,000 per month and contractual party;
 - b. the means of payment where transactions are invoiced after the fact, the limit for cashless payments for goods and services and for the withdrawal of cash does not exceed CHF 25,000 per month and contractual party;
 - c. the means of payment that allows private persons to receive or send cash by cashless payment between private persons domiciled in Switzerland does not exceed CHF 1,000 per month and CHF 5,000 per year and contractual party; or
 - d. the means of payment that allows private persons to receive or send cash by cashless payment between private persons without residence requirement does not exceed CHF 500 per month and CHF 3,000 per year and contractual party.
- 3 Should the issuer of a means of payment as described in (1) and (2) find out during its transaction monitoring that its means of payment was passed on to a persons who does not have a recognizably close relationship to the contractual party, it must re-identify the contractual party and establish the beneficial owner of the means of payment.

Chapter 5: Special due diligence

ARTICLE 13 High-risk business relationships

- 1 The financial intermediary shall develop criteria that flag a high-risk business relationship.
- 2 Depending on the business activities, especially the following criteria may be used:
 - a. domicile or residence of the contractual party, the controlling person or the beneficial owner of assets as well as the nationality of the contractual party or the beneficial owner of assets;
 - b. Type of business activities and place of business of the contractual party and/or the beneficial owner of the assets;
 - c. No personal contact to either the contractual party and/or the beneficial owner;
 - d. Type of requested services or products;
 - e. Amount of assets deposited;
 - f. Amount of incoming and outgoing assets;
 - g. Origin or target country of frequent payments;
 - h. Complex structures, especially the use of domiciliary companies.
- 3 The following shall always be deemed a high-risk business relationship:
 - a. business relationships with foreign politically exposed persons (PEPs);
 - b. business relationships with persons who are close to persons described in Article 2a (2) AMLA;
 - c. Business relationships with foreign banks where a Swiss financial intermediary acts as correspondent bank.
- 4 Should business relationship show one or several of these criteria, it is to be deemed as high risk:
 - a. business relationships with local politically exposed persons (PEPs);
 - b. business relationship with politically exposed persons who hold leading functions in intergovernmental organizations;
 - c. business relationships with persons who are close to persons described in (a) and (b) as per Article 2a (2) AMLA;
 - d. business relationship with politically exposed person who hold leading functions in sports organizations;

- e. business relationships with persons who are close to persons described in (d) as per Article 2a (2) AMLA.
- 5 Business relationships with persons as per (3)(a) and (b) and (4) are deemed to be high risk, whereby it is irrelevant whether the persons involved are:
- a. the contractual party;
 - b. a controlling person;
 - c. a beneficial owner in assets;
 - d. proxies.
- 6 Financial intermediaries shall investigate and flag high-risk business relationships internally.

ARTICLE 14 High-risk transactions

- 1 The financial intermediary shall develop criteria to recognize high-risk transactions.
- 2 Depending on the business activities, especially the following criteria may be used:
- a. Amount of incoming and outgoing assets;
 - b. significant deviations from normal transaction types, volumes and/or frequencies for the business relationship in question;
 - c. significant deviations compared to transaction types, volumes and/or frequencies customary for this type of business relationship;
- 3 All transactions where an account is opened with more than CHF 100,000 (added to the account all at once or over a period of time) in physical cash shall be high-risk transactions.

ARTICLE 15 Additional investigations of high risks

- 1 The financial intermediary shall investigate high-risk transactions further with adequate efforts.
- 2 Depending on the circumstances, investigations shall entail the following:
- a. whether the contractual party is the beneficial owner of the deposited assets;
 - b. the origin of the deposited assets;
 - c. the intended use of withdrawn assets;
 - d. the background and plausibility of larger amounts deposited;

- e. the origin of the assets of the contractual party and the beneficial owner of the assets;
- f. the profession or occupation of the contractual party and the beneficial owner of the assets;
- g. whether the contractual party, the controlling person or the beneficial owner of the assets are a politically exposed person.

ARTICLE 16 Means of investigations

- 1 Depending on the circumstances, investigations shall entail the following:
 - a. obtain written or verbal information on the contractual party, the controlling person or the beneficial owner of the assets;
 - b. visit the offices where the contractual party, the controlling person or the beneficial owner of the assets do business;
 - c. consult publicly accessible sources and databases;
 - d. if necessary, obtain information from trustworthy individuals.
- 2 The financial intermediary shall check the results from these investigations for their plausibility and document this.

ARTICLE 17 Timing of additional investigations

Once a business relationship exhibits high-risk traits, the financial intermediary shall begin investigations and conclude these as quickly as possible.

ARTICLE 18 Onboarding of high-risk business relationships

Onboarding a high-risk business relationships shall require the approval of a line manager, a special office or Management.

ARTICLE 19 Responsibility of Executive Management in case of high risks

- 1 Executive Management or at least one of its members shall decide on:
 - a. onboarding high-risk business relationships as described in Article 13 (3) and (4) (a)-(c) and on an annual basis whether to continue such business relationships in view of Article 13 (3) (a) and (b) and (4) (a) - (c);
 - b. the periodic control of all high-risk business relationships, including their monitoring and an analysis.
- 2 Financial intermediaries with an extensive asset management business that have several levels of hierarchy may delegate this responsibility to a department head.

ARTICLE 20 Monitoring of business relationships and transactions

- 1 The financial intermediary shall ensure that business relationships and transactions are adequately monitored, thus ensuring that high risks are investigated.
- 2 The financial intermediary shall operate an IT system to monitor transactions, which helps identify high risks as described in Article 14.
- 3 Transactions identified by the IT-based monitoring system shall be analyzed within a useful period. If necessary, transactions shall be investigated as per Article 15.
- 4 Banks and securities dealers with few contractual parties and beneficial owners or transactions may be exempted from maintaining an IT-based transaction monitoring system if they mandate their audit firm to audit their transaction monitoring with audit depth "audit" once a year.
- 5 FINMA may require that an insurance company, a fund management company, an investment company under CISA, an asset manager under CISA, DSFI or a DSFI or a person in accordance with Article 1b BA⁷ implement an IT-based monitoring system if this is necessary for an adequate monitoring.⁸

ARTICLE 21 Qualified tax offense

When developing criteria to identify a qualified tax offense which might apply to new or existing high-risk business relationships as well as for the investigations and flagging of such business relationships, financial intermediaries may base themselves on the maximum tax rate of tax domicile of their clients in order to determine whether the evaded taxes exceed the threshold of CHF 300,000 as defined in Article 305bis(1bis) of the Swiss Penal Code⁹ (SPC). They do not have to determine the individual tax factors for the business relationship.

Chapter 6: Duty to Document and Retain Records

ARTICLE 22

- 1 The financial intermediary shall prepare, organize and retain its documentation in such a way that the following authorities or persons can form an opinion on whether the duties to combat money laundering and prevent the financing of terrorism have been complied with within a useful period:
 - a. FINMA;
 - b. an audit agent involved or mandated by it as per Article 25 FINMASA¹⁰;

⁷ SR **952.0**

⁸ Version according to Section I of the FINMA Ordinance of 5 Dec 2018, in force since 1 January 2019 (AS **2018** 5333).

⁹ SR **311.0**

¹⁰ SR **956.1**

- c. an investigation agent involved or mandated by it as per Article 36 FINMASA;
 - d. an audit firm recognized by the Federal Audit Oversight Authority.
- 2 It shall prepare, organize and maintain its documentation in such a manner to be able to provide access to prosecuting authorities or otherwise empowered agencies in case the documentation needs to be inspected or confiscated within a reasonable deadline.

Chapter 7: Governance

ARTICLE 23 New products, business customs and technologies

The financial intermediary shall ensure that it adequately estimates, mitigates and supervises the risk of money laundering and financing terrorism emanating from new products, new business customs or the use of new or upgraded technologies beforehand in the framework of its risk management.

ARTICLE 24 Competence center for money-laundering issues

- 1 The financial intermediary shall appoint one or several persons to act as competence center for money-laundering issues. This competence center shall support and advise line managers in question and Management in the implementation of this Ordinance without relieving these of their responsibility to adhere to this Ordinance.
- 2 The competence center shall prepare internal directives on the prevention of money laundering and the financing of terrorism and plans and monitors the internal training on the prevention of money laundering and the financing of terrorism.

ARTICLE 25 Further tasks of the competence center for combating money-laundering issues

- 1 In addition to the tasks stated in Article 24, the competence center for money-laundering issues or another independent function shall also supervise the compliance with the duty to prevent money laundering and the financing of terrorism, in particular:
- a. it supervises the adherence to internal directives on the combating of money laundering and the financing of terrorism in consultation with Internal Audit, the audit firm and the line managers in question;
 - b. it defines the parameters for the transaction monitoring system as per Article 20;
 - c. it orders the analysis of the reports generated by the transaction monitoring system;
 - d. it orders additional investigations pursuant to Article 15 or performs these itself;
 - e. it ensures that the responsible management body is provided with the decision fundamentals as per Article 19 which it requires to decide whether to accept or continue a business relationship.

- 2 In addition, the competence center for money-laundering issues or another independent function shall prepare a risk analysis for money laundering and terrorism financing, specifically taking into consideration the client's domicile or residence, the client segment as well as the products and services offered. The risk analysis shall be approved by the Board of Directors or Executive Management and updated periodically.
- 3 An internal person responsible for supervision as per (1) may not control any business relationships for which she/he is responsible.
- 4 The financial intermediary may also appoint external experts to act as competence center for money-laundering issues if:
 - a. if its size or organization does not allow it to implement such an office; or
 - b. implementing such an office would be disproportionate to the size of the institution.

ARTICLE 26 Internal directives

- 1 The financial intermediary shall issue internal directives on the combating of money laundering and the financing of terrorism and inform the persons concerned accordingly. Such directives must be approved by the Board of Directors or the supreme management board.
- 2 Specifically, such directives shall address the following:
 - a. the criteria for identifying high-risk business relations (Article 13);
 - b. the criteria for recognizing high-risk business relations as per Article 14(1) and (2);
 - c. the basics of transaction monitoring as per Article 20;
 - d. in which cases the internal Money Laundering Office is to be involved and the supreme management board is to be informed;
 - e. the basic principles of employee training;
 - f. the business policy with regard to PEPs (politically exposed persons);
 - g. the responsibilities for reports to the Money Laundering Reporting Office Switzerland;
 - h. how the financial intermediary records, mitigates and supervises its high risks;
 - i. the thresholds as per Articles 13(2)(e) and (f) and 14(2)(a);
 - j. criteria according to which third parties as per Article 28 may be contracted;
 - k. the other internal allocation of tasks and competences between the competence center for money-laundering issues and other departments in charge of due diligence.

ARTICLE 27 Integrity and training

- 1 The combating of money laundering and financing of terrorism shall require reputable and adequately trained staff.
- 2 The financial intermediary shall ensure the diligent selection of staff and the periodic training in matters related to combating money laundering and financing terrorism of all employees in question.

Chapter 8: Appointment of Third Parties

ARTICLE 28 Prerequisites

- 1 The financial intermediary may mandate in writing persons and companies to identify contractual parties and establish controlling persons, beneficial owners of assets and order additional investigations if:
 - a. it has carefully selected such party;
 - b. has instructed this party on the task; and
 - c. it can control whether the mandated party adheres to due diligence or not.
- 2 It may entrust the fulfillment of such tasks to such a party without a written agreement on due diligence if:
 - a. if the mandated party comes from within the group, provided the same level of due diligence is applied; or
 - b. if the mandated party is another financial intermediary, provided this party is subject to equivalent supervision in regard to the prevention of money laundering and the financing of terrorism and measures have been taken to fulfill due diligence in an equivalent manner.
- 3 The mandated party, in turn, cannot use the services of another sub-contractor.
- 4 Outsourcing agreements as per Article 12(1) shall be exempted if the sub-contractor is also a financial intermediary authorized in Switzerland.

ARTICLE 29 Modality of the appointment

- 1 For regulatory purposes, the financial intermediary shall always remain responsible for the required fulfillment of duties delegated to persons and companies as per Article 28.
- 2 It shall add a copy of the documents which served to fulfill the duties of the prevention of money laundering and the financing of terrorism to its files and obtain a confirmation in writing that these copies are identical to the original.

- 3 It shall check the results of additional investigations for their plausibility on its own.

Chapter 9: Continuation of business relationships and reporting

ARTICLE 30 Procedure after reporting an incident

- 1 The financial intermediary shall have the discretionary power to decide by itself whether it wants to continue the business relationship if:
 - a. the Money Laundering Reporting Office Switzerland after having been notified according to Article 9 (1)(a) AMLA within twenty working days:
 1. does not issue a formal response,
 2. informs the financial intermediary that the report will not be passed on to the prosecuting authorities,
 3. informs the financial intermediary that the report has been passed on to the prosecuting authorities, and it does not receive a decree from the prosecuting authorities within five days;
 - b. it does not receive a decree from the prosecuting authorities within five days after having made a report as per Article 9(1)(c) AMLA;
 - c. it receives a formal response from the Money Laundering Reporting Office Switzerland after having reported an incident as per Article 305ter(2) SPC¹¹ that the MLROS will not forward the case to the prosecuting authorities; or
 - d. after having reported an incident as per Article 9 AMLA or Article 305ter(2) SPC, it is informed that the blocked funds have been released by the prosecuting authorities, unless ordered otherwise by the prosecuting authorities.
- 2 A financial intermediary wishing to terminate the business relationship may only allow the withdrawal of the funds in a form that leaves a paper trail for the prosecuting authorities to follow.

ARTICLE 31 Suspect business relationships and the right to notify the authorities

- 1 Should a financial intermediary not have a justified suspicion of money laundering or the financing of terrorism as per Article 9(1)(a) AMLA or Article 9(1)(c) AMLA but if it has nonetheless perceived actions which could indicate that assets originate from a crime, a qualified tax offense or that they serve the financing of terrorism, it may notify the Money Laundering Reporting Office

¹¹ SR 311.0

Switzerland (MROS) in application of Article 305ter(2) of the SPC¹².

- 2 If, in the case of a suspect business relationship with significant assets, it chooses not to exercise its right to notify the MROS, it must document its justification for this.
- 3 If the financial intermediary continues the suspect business relationship, it shall observe it closely for indications of money laundering or the financing of terrorism.

ARTICLE 32 Terminating a business relationship

- 1 Should the financial intermediary terminate a dubious business relationship without a justified suspicion of money laundering or financing of terrorism, it may only allow the withdrawal of assets in a form that leaves a paper trail the prosecuting authorities could follow this if necessary.
- 2 The financial intermediary may not terminate suspect business relationships or allow the withdrawal of important assets if there is concrete evidence that the authorities are about to sanction the owner.
- 3 A business relationship may not be terminated if the conditions for a notification to the Money Laundering Reporting Office Switzerland as per Article 9 AMLA are given or if the financial intermediary assumes its right to notify the MLRO as per Article 305^{ter}(2) SPC¹³.

ARTICLE 33 Execution of client orders

Financial intermediaries shall only execute client orders involving significant amounts as per Article 9a AMLA in such a manner as to leave a paper trail.

ARTICLE 34 Information

- 1 A financial intermediary shall inform FINMA of its notifications to the Money Laundering Reporting Office Switzerland of business relationships that involve significant assets. Specifically, it must inform FINMA if, in view of the circumstances, it must be assumed that the case that was reported would impact the reputation of the financial intermediary or Switzerland as a financial center.
- 2 Should the financial intermediary inform another financial intermediary as described in article 10a AMLA, it shall adequately record this.

¹² SR 311.0

¹³ SR 311.0

Title 2: Special provisions for banks and securities dealers

ARTICLE 35 Duty to identify the contractual party and determine the controlling party as well as the beneficial owner of the assets

For the identification of contractual parties and the establishment of the controlling person and beneficial owners, financial intermediaries shall adhere to the provisions of the Swiss Bankers Association's code of conduct with regard to the exercise of due diligence of 1 June 2015¹⁴ (CDB 16).

ARTICLE 36 Professional banknote trading

- 1 Professional banknote trading may be undertaken only with note traders that satisfy the requirements of a trustworthy correspondent bank relationship.
- 2 Prior to accepting a business relationship with the note trader, the financial intermediary must inform itself on this firm's business activities and must obtain business information and references.
- 3 It shall define limits on turnover and credit for its professional banknote trading activities on an aggregate level as well as for each individual counterparty, review these on an annual basis and adhere to these at all times.
- 4 Any financial intermediaries acting as professional note traders shall issue directives which shall be decided upon by its supreme management body.

ARTICLE 37 Correspondent bank relationships with foreign banks

- 1 The general provisions of this Ordinance shall also apply to correspondent bank relationships, with the exception of Article 28(2)(b).
- 2 A financial intermediary that settles correspondent bank transactions on behalf of a foreign bank shall adequately ensure that this foreign bank does not enter into a business relationship with a fictive bank.
- 3 In addition to the investigations stipulated in Article 15 and depending on the circumstances, it shall also determine whether its contractual party disposes of controls for the prevention of money laundering and the financing of terrorism. In the scope of these investigations it shall also determine whether the contractual party is subject to adequate supervision and a law on the prevention of money laundering and the financing of terrorism.
- 4 It shall ensure that the information received in order to perform the payment order are passed on. It shall put into place procedures that address the issue of repeated payment orders with obviously incomplete client information. In doing so, it takes a risk-based approach.

¹⁴ The CDB 16 may be downloaded at no cost from the Swiss Bankers' Association website (www.swissbanking.org).

ARTICLE 38 Criteria for high-risk business transactions

Apart from the type of transactions listed in Article 14, any transaction exhibiting characteristics stated in the Annex "Indicators of money laundering" shall also be deemed to be high risk.

ARTICLE 39 Duty to keep records

In application of Article 22, the financial intermediary shall organize its documentation in such a way that it is especially in the position to provide information on who the client of an outgoing payment order is within a reasonable time period, and whether this company or person:

- a. is the contractual party, controlling person or beneficial owner of the assets;;
- b. has undertaken a spot transactions which requires the identification of the person in question;
- c. possesses a permanent proxy for an account or a securities deposit if this is not already evident from a public registry.

Title 3: Special Provisions for fund management companies, investment companies under CISA and asset managers under CISA

ARTICLE 40 Fund management companies and investment companies under CISA

- 1 Fund management companies as per Article 2(2)(b) AMLA and investment companies under CISA shall identify subscribers as well as establish the controlling person or the beneficial owners of the assets of non-listed Swiss collective investment schemes at the time of subscription if the amount subscribed to exceeds CHF 25,000.
- 2 No declaration of the controller or beneficial owner of the assets is necessary at the time of the subscription if the subscriber is a financial intermediary as per Article 2(2)(a)-(d) AMLA or a foreign financial intermediary with adequate prudential supervision in regard to money laundering and the financing of terrorism.
- 3 If fund management companies, SICAVs or SICAFs entrust their custodian bank or if a limited partnership for collective investments¹⁵ entrusts a bank authorized in Switzerland with the fulfillment of due diligence and the duty to document, these do not need to fulfill the requirements set out in Article 28(3) and the terms set out in Article 29(2). The custodian bank or the bank may involve sub-contractors only if these fulfill the requirements set out in Article 28(1) or (2) and the terms set out in Article 29(2) and (3). However, it shall be the sole responsibility of the fund management company or the investment company under CISA that these duties are adhered to as required.

¹⁵ Since 1 July 2016: LP-CIS

- 4 The CDB 16¹⁶ shall be used to identify the contractual party and determine the controller and the beneficial owner of the assets, as well as any other AMLA-relevant activities Fund Management Companies management company.

ARTICLE 41 Asset managers of foreign collective investment schemes under CISA

- 1 Asset managers of non-listed foreign collective investment schemes under CISA must identify the subscriber as well as establish the controlling person or the beneficial owners of the assets in the foreign collective investment scheme, if:
 - a. neither the foreign collective investment scheme nor its management company are subject to an adequate prudential supervision and adequate regulations for the combating of money laundering and financing of terrorism;
 - b. they do not prove the application of an adequate regulation on money laundering and the financing of terrorism by another financial intermediary that is subject to adequate prudential supervision; and
 - c. the invested amount exceeds CHF 25,000.
- 2 No declaration of the controlling person or beneficial owner of the assets is necessary if the subscriber is a financial intermediary as per Article 2(2)(a)-(d) AMLA or a foreign financial intermediary with adequate prudential supervision and an adequate regulation of money laundering and the financing of terrorism.
- 3 The CDB 16¹⁷ shall be used to identify the contractual party and determine the controller and the beneficial owner of the assets, as well as any other AMLA-relevant activities of the asset management company.

Title 4: Special Provisions for Insurers

ARTICLE 42 Regulations of the Self-Regulatory Organization of the Swiss Association of Insurance Companies to Prevent Money Laundering

- 1 For the due diligence, the regulations set out in the “Self-Regulated Organization of the Swiss Association of Insurance Companies to Prevent Money Laundering” (SRO-SAIC) of 12 June 2015¹⁸ shall apply.
- 2 These regulations shall be subject to Articles 6 and 20(5).

¹⁶ The CDB 16 may be downloaded at no cost from the Swiss Bankers' Association website (www.swissbanking.org).

¹⁷ The CDB 16 may be downloaded at no cost from the Swiss Bankers' Association website (www.swissbanking.org).

¹⁸ The regulations may be downloaded at no cost from the website of the Swiss Association of Insurance Companies at www.sro-svv.ch.

ARTICLE 43 Exemptions

Pillars 2 and 3a as well as pure risk insurance policies shall be exempt from the AMLA due diligence duties.

Title 5: Special Provisions for DSFIs and Persons in Accordance with Article 1b BA¹⁹

Chapter 1: Identification of contractual parties (Article 3 AMLA)

ARTICLE 43a²⁰ Persons pursuant to Article 1b BA

The special provisions applicable to DSFIs shall also be applicable to persons pursuant to Article 1b BA,²¹ provided there are no other special provisions.

ARTICLE 44 Required Information

- 1 When opening a business relationship, the DSFI shall obtain the following information from the contractual party:
 - a. for natural persons and proprietors of sole proprietorship entities: family name, first name, date of birth, domicile and nationality;
 - b. for legal entities and partnerships: firm and domicile.
- 2 This information is not necessary for persons originating from a country which does not use birth dates or domicile addresses. However, such exceptional cases shall be described and explained in a file note.
- 3 Where the contractual party is a legal entity or a partnership, the DSFI must acknowledge and document the contractual party's proxy provisions for this person, and verify the identity of the persons who is entering into the business relationship on behalf of the legal entity.

ARTICLE 45 Natural persons and proprietors of sole proprietorship entities

- 1 At the beginning of a business relationship with a natural person or a proprietor of a sole proprietorship, the DSFI shall identify the contractual party by inspecting his or her identification documents.

¹⁹ Version according to Section I of the FINMA Ordinance of 5 December 2018, in force since 1 January 2019 (AS **2018** 5333)

²⁰ Inserted with Sect. I of the FINMA Ordinance of 5 December 2018, in force since 1 January 2019 (AS **2018** 5333).

²¹ SR **952.0**

- 2 If the business relationship has started without a personal meeting, the DSFI shall test the stated domicile by sending items by post to this address or with another, equivalent method and adds an authenticated copy of an identification document to its file.
- 3 All identification documents which have been issued by Swiss or foreign authorities bearing a photo shall be acceptable.

ARTICLE 46 Simple partnerships

- 1 When beginning a business relationship with a simple partnership, the DSFI shall identify the contractual party by either identifying the following persons:
 - a. all of the partners involved; or
 - b. at least one partner as well as the person who holds signatory powers for matters concerning the DSFI.
- 2 Article 45(2) and (3) shall also be applicable.

ARTICLE 47 Legal entities, partnerships and authorities

- 1 At the beginning of a business relationship with a legal entity or partnership registered in a Swiss or a foreign commercial register of equivalence, the DSFI shall identify the contractual party by inspecting one of the following documents:
 - a. an excerpt from the commercial register provided by the registrar;
 - b. a written extract from the commercial register database;
 - c. a written extract from privately held lists and databases, provided these are trustworthy.
- 2 Legal entities or partnerships not registered in a Swiss or foreign commercial register of equivalence shall be identified on the basis of one of the following documents:
 - a. their articles of incorporation, memorandum of association, a confirmation by an audit firm, an official authorization to exercise a profession or a similar document of equivalent status;
 - b. a written extract from privately held lists and databases, provided these are trustworthy.
- 3 Authorities shall be identified using a relevant charter or resolution or another document of equal relevance.
- 4 The extract from a registry, the confirmation by an audit firm and the list or database extract may not be older than twelve months at the time of the identification and must reflect the current status.

ARTICLE 48 Form and treatment of the documents

- 1 The DSFI shall inspect the original identification documents or copies thereof which have been authenticated.
- 2 It shall place the authenticated copies in its files or make a photocopy of the document presented, confirming on the photocopy that the document originally inspected was the original or an authenticated copy, signing and dating the photocopy.
- 3 Simplifications as per Article 3(2) and Article 12 shall remain applicable.

ARTICLE 49 Authentication

- 1 The following may authenticate a photocopy of an original identification document:
 - a. a notary public or a public authority that customarily performs such authentication services;
 - b. a financial intermediary as per Article 2(2) or (3) AMLA domiciled in Switzerland;
 - c. an attorney-at-law admitted to the bar in Switzerland;
 - d. a financial intermediary domiciled abroad that exercises an activity listed in Article 2(2) or (3) AMLA, provided it is subject to supervision which is of an equivalent nature as far as the prevention of money laundering and the financing of terrorism is concerned.
- 2 Another valid way to authenticate identification documents shall be to obtain copies of identification documents in the database of recognized certification service providers subject to the Federal Act on the Electronic Signature of 19 December 2003²² in combination with the electronic authentication by the contractual party in this regard. This copy of identification document must have been obtained at the time the qualified certificate was issued.

ARTICLE 50 Waiving an authentication and missing original identification documents

- 1 The DSFI may waive authentication if it takes other measures to verify the address of the contractual party. The measures taken must be documented.
- 2 If the contractual party does not dispose of identification documents as listed in this Ordinance, the DSFI may, as an exception, determine the identity on the basis of a conclusive document in lieu. However, such exceptional cases shall be described and explained in a file note.

²² SR 943.03

ARTICLE 51 Spot transactions

- 1 The DSFI shall identify the contractual party if one or several transactions that seem to be connected to each other reach or exceed the following amount:
 - a. CHF 5000 for money changing transactions;
 - b. CHF 25 000 for all other spot transactions.
- 2 It may waive the identification of the contractual party if it has already performed other services as described in paragraph (1) and Article 52 for the same contractual party and has ensured during that occasion that the contractual party is indeed the same person who had been identified in the first transaction.
- 3 The contractual party must be identified at all times if there is a suspicion of money laundering or the financing of terrorism.

ARTICLE 52 Transfer of funds and assets

- 1 The contractual party must be identified at all times if funds or assets are being transferred abroad from Switzerland.
- 2 For funds and assets transferred from abroad to Switzerland the recipient must be identified if one or several transactions which seem to be connected to each other exceed CHF 1,000. If there is a suspicion of money laundering or financing of terrorism, the recipient of the transferred funds and assets must be identified under all circumstances.

ARTICLE 53 Generally known legal entities, partnerships and authorities

- 1 If the contractual party of a legal entity, a partnership or an authority is generally known, the DSFI may waive their identification. "Generally known" shall especially mean if the contractual party is a public limited corporation or is directly or indirectly connected to such a company.
- 2 If a DSFI waives identification, it must substantiate this in the file.

ARTICLE 54²³ Identification duties of exchange-listed investment companies

Exchange-listed investment companies shall identify the buyer of participation units if these (or with these) equal the limit subject to notification as per the Financial Market Infrastructure Act of 19 June 2015²⁴ (i.e. 3 percent). There is no need to obtain authenticated documents.

²³ Version according to Annex 2 Section II 2 Financial Market Infrastructure Ordinance - FINMA dated 3 Dec 2015, in force since 1 January 2016 (AS 2015 5509)

²⁴ SR 958.1

ARTICLE 55 Failure to identify contractual parties

- 1 All of the required documents and indications allowing the identification of the contractual party shall be made available prior to entering into transactions in the course of the business relationship.
- 2 If the DSFI cannot identify the contractual party, it must refuse to open the business relationship or terminate the relationship in accordance with the provisions of Chapter 9 of the Title 1.

Chapter 2: Establishment of beneficial owners of assets and of companies (Article 4 AMLA)

Section 1: Controlling persons

ARTICLE 56 Principle

- 1 If the contractual party is a non-listed operational legal entity or partnership or a subsidiary controlled in majority by such a company, the DSFI must obtain a written declaration on who, as the (direct or indirect) controlling person, holds at least 25 percent of the voting rights and shares (alone or in union with others).
- 2 If a company is not controlled by a person described in (1), the DSFI must obtain a written declaration on who controls the company otherwise as controlling person.
- 3 If no controlling persons as per (1) and (2) can be established, the DSFI must obtain a written declaration from the contractual party instead of the controlling persons who the manager is.
- 4 Paragraphs (1) - (3) shall apply to long-term business relationship and for all cases where funds or assets are transferred from Switzerland to abroad.
- 5 For spot transactions, (1) - (3) shall only apply if one or several transactions that appear to be connected exceed CHF 25,000. At the latest, the DSFI shall obtain this declaration immediately after having executed this transaction.

ARTICLE 57 Required Information

- 1 A written declaration from the contractual party on the controlling person shall include the name, first name and domicile.
- 2 If the controlling person originates from a country which does not use domicile addresses, this information does not need to be provided. However, such exceptional cases shall be described and explained in a file note.

ARTICLE 58 Exceptions to the duty to establish the controlling person

A DSFI does not need to obtain a written declaration on the identity of the controlling person if the contractual party is one of the following:

- a. a company listed on a stock exchange or a subsidiary controlled in majority by such a company;
- b. a governmental authority;
- c. a bank, securities dealer, fund management company, investment company under CISA, asset management company under CISA, life insurance company or a tax-exempt occupational pension scheme domiciled in Switzerland;
- d. a bank, securities dealer, fund management company, investment company under CISA, asset manager under CISA, life insurance company domiciled abroad, provided it is subject to supervision equivalent to the one required in Switzerland;
- e. other financial intermediaries domiciled abroad if they are subject to adequate prudential oversight and regulations on money laundering and financing of terrorism;
- f. simple partnerships.

Section 2: Beneficial owners of assets

ARTICLE 59 Principle

- 1 The DSFI must obtain a written declaration stating who the beneficial owner (natural person) of the assets is if the contractual party is not identical with this party or if it doubts that these are identical, specifically if:
 - a. it is a person who is not recognizably close enough to the contractual party has been given proxy powers which entitles this person to withdraw assets;
 - b. the assets which a contractual party contributes obviously exceed their financial means;
 - c. the contact with the contractual party results in other unusual findings;
 - d. the business relationship is assumed without the person opening the account having been there in person.
- 2 From non-listed operating legal entities or partnerships, a DSFI must only obtain a written declaration on who the natural beneficial owner of the assets is if it is known or if there are clear indications that the operating legal entity holds assets on behalf of another person.
- 3 Should there be suspicions of money laundering or financing of terrorism, the DSFI must demand a written declaration on the identity of the beneficial owner of assets.

- 4 If the DSFI has no doubts that the contractual party is also the beneficial owner of the assets, this shall be documented adequately.

ARTICLE 60 Required Information

- 1 The written declaration provided by the contractual party shall state the following on the beneficial owner of the assets: family name, first name, date of birth, domicile and nationality.
- 2 The declaration may be signed by the contractual party or a proxy. In the case of legal entities, the declaration shall be signed by someone who has the relevant signatory powers as per company documentation.
- 3 It is not necessary to provide this information for a beneficial owner originating from a country which does not use birth dates or domicile addresses. However, such exceptional cases shall be described and explained in a file note.

ARTICLE 61 Spot transactions

- 1 The DSFI must obtain a written declaration from the contractual party stating who the beneficial owner of the assets is if one or several transactions that seem to be connected to each other amount to CHF 25,000 or more.
- 2 It shall in any case obtain such a declaration if:
 - a. there is any doubt whether the contractual party, the controlling party or the beneficial owner of the assets are one and the same person; or
 - b. there are suspicions of money laundering or financing of terrorism.

ARTICLE 62 Transfer of funds and assets

In case of transfers of funds and assets from Switzerland abroad, the declaration on the beneficial owner of assets must be obtained at all times.

ARTICLE 63 Domiciliary companies

- 1 If the contractual party is a domiciliary company, the DSFI must obtain a written declaration stating the beneficial owner.
- 2 Indications of a domiciliary company shall be in particular:
 - a. a lack of own premises, i.e. if the company's address is a c/o address, with the seat of the company being at a lawyer's office, at a fiduciary company or a bank; or
 - b. no own staff.
- 3 Should the DSFI not deem the contractual party to be a domiciliary company, despite one or both

indicators of (2) being evident, it shall record its reasoning in writing.

- 4 Domiciliary companies listed on a stock exchange and subsidiaries controlled in majority by such companies do not have to declare a beneficial owner.

ARTICLE 64 Personal unions, trusts and other economic units

- 1 For personal unions, trusts or other economic units, the DSFI shall obtain a written declaration from the contractual party on the following persons:
 - a. the actual founder;
 - b. the trustees;
 - c. any curators, protectors or other persons deployed;
 - d. the beneficiaries by name;
 - e. the group of persons who could be seen as beneficiaries, broken down by category;
 - f. the persons who are entitled to instruct the contractual party or its executive bodies;
 - g. for revocable structures, the person entitled to revoke the structure.
- 2 Paragraph (1) shall also apply to companies that function in a similar way as personal unions, trusts or other economic units.
- 3 A DSFI that accepts a business relationship as a trustee or who executes a transaction must identify itself as trustee to the financial intermediary of the contractual party or the transactional party.

ARTICLE 65 Financial intermediaries under special law or tax-exempt occupational pension schemes as contractual party

- 1 No declaration on the beneficial owner is necessary if the contractual party is:
 - a. a financial intermediary as per Article 2(2) AMLA domiciled in Switzerland;
 - b. a financial intermediary domiciled abroad which exercises an activity listed in Article 2(2) AMLA and which is subject to supervision and regulations of an equivalent nature;
 - c. a tax-exempt occupational pension schemes as per article 2(4)(b) AMLA.
- 2 A written declaration on the beneficial owner must always be provided by the contractual party if:
 - a. there are suspicions of money laundering or financing of terrorism;

- b. FINMA warns against general abuses or against doing business with a particular contractual party;
- c. the contractual party is domiciled in a country, where FINMA warns of its institutions in general.

ARTICLE 66 Collective investment schemes or investment companies as contractual party

- 1 If the contractual party is a collective investment scheme or an investment company with 20 or fewer investors, the DSFI must obtain a declaration on the beneficial owners.
- 2 If the contractual party is a collective investment scheme or an investment company with 20 or more investors, the DSFI must only obtain a declaration on the beneficial owners if the investment funds or equity investments are not subject to adequate supervision and regulations in regard to money laundering and financing of terrorism.
- 3 It may be possible to forego a declaration of the beneficial owner if:
 - a. the collective investment scheme or investment company is listed at a stock exchange;
 - b. a financial intermediary as per Article 65(1) acts as promoter or sponsor for a collective investment vehicle or investment company and demonstrates that it applies adequate rules to combat money laundering and financing of terrorism.

ARTICLE 67 Simple partnerships

If, in a business relationship with the partners of a simple partnership, the partners themselves are the beneficial owners, the beneficial owners do not need to be declared if the simple partnership aims to safeguard their members' or beneficiaries' interests by means of mutual self-help or pursues political, religious, scientific, artistic, charitable, sociable or similar aims and encompasses more than four partners and if it does not have any relationship to high-risk countries.

Section 3: Failure to establish the identity of the beneficial owner

ARTICLE 68

- 1 All of the required documents and indications allowing the establishment of the controlling person or the beneficial owner shall be made available prior to entering into transactions in the course of the business relationship.
- 2 If doubts remain as to the veracity of the declaration on the contractual party and if these cannot be dispelled with further investigations, the DSFI must refuse to enter into the business relationship or terminate it in accordance with the provisions of Chapter 9 of Title 1.

Chapter 3: Re-identification of the contractual party or re-establishment of the beneficial owner (Article 5 AMLA)

ARTICLE 69 Re-identification or re-establishment of the controlling person or the beneficial owner of the assets

The identification of the contractual party or the establishment of the controlling person and beneficial owner of the assets shall be repeated if there are any doubts as to whether:

- a. the information on the identity of the contractual party and the controlling person is correct;
- b. the contractual party and the controlling person are identical with the beneficial owner of the assets;
- c. the contractual party's or the controlling party's declaration the beneficial owner of the assets is correct.

ARTICLE 70 Terminating a business relationship

The DSFI shall terminate a business relationship as per Chapter 9 of Title 1 as quickly as possible if:

- a. suspicions regarding the information provided on the contractual party or the controlling person remain even after having performed the procedures described in Article 69;
- b. the suspicions intensify that wrong information on the identity of the contractual party, the controlling person or the beneficial owner was provided knowingly.

ARTICLE 71 Identification of the contractual party and establishment of the controlling person and the beneficial owner of the assets within the group

- 1 If the contractual party has already been identified within the group that the DSFI belongs to in a manner that is equal to the ones stated in this Ordinance, it is not necessary to re-identify the party as required in Chapter 8 of Title 1.
- 2 The same shall apply if a declaration on the controlling person or the beneficial owner of the assets already exists within the group.

Chapter 4: High-risk business relationships and transactions

ARTICLE 72 Criteria for high-risk business transactions

- 1 A DSFI that maintains no more than 20 long-term business relationships does not have to define any criteria according to Article 13 which indicate high-risk business relationships.
- 2 Persons pursuant to Article 1b BA²⁵ shall define criteria pursuant to Article 13 in all cases.²⁶

ARTICLE 73 Transfer of funds and assets

- 1 The DSFI shall develop criteria to recognize high-risk transactions. It shall deploy an IT-based system to recognize and supervise high-risk transactions.
- 2 All transfers of funds and assets shall be deemed to be high-risk transactions if one or several transactions that seem to be connected to each other reach or exceed the amount of CHF 5,000.
- 3 Transfers of funds and assets must clearly state the name and address of the financial intermediary on the payment slip.
- 4 The DSFI shall maintain an updated register of auxiliaries and agents of system operators involved.
- 5 A DSFI acting on behalf of other financial intermediaries which have an authorization or which are subject to a self-regulating organization as per Article 24 AMLA, may only transfer funds or assets for a single financial intermediary.

Chapter 5: Duty to Document and Retain Records

ARTICLE 74

- 1 DSFIs shall specifically retain the following documents:
 - a. a copy of the document which served to identify the contractual party;
 - b. in cases where Chapter 2 of this Title applies: a written declaration by the contractual party on the identity of the beneficial owner;
 - c. a written note on the results of the application of the criteria of Article 13;
 - d. a written note or documents on the results of investigations as per Article 15;

²⁵ SR **952.0**

²⁶ Inserted with Sect. I of the Ordinance of 5 December 2018, in force since 1 January 2019 (AS **2018** 5333).

- e. a documentation of the transactions made;
 - f. a copy of any notifications as per Article 9(1) AMLA and Article 305ter(2) SPC²⁷;
 - g. a list of all AMLA-relevant business relationships maintained by this party.
- 2 The documentation must enable the verification of every single transaction.
 - 3 The documentation and records must be kept in a secure place in Switzerland which is accessible at all times.
 - 4 The electronic retention of documents must fulfill the requirements stated in Articles 9 and 10 of the Accounting Records Ordinance of 24 April 2002²⁸. Should the server not be located in Switzerland, the DSFI must retain physical or electronic copies of the relevant documents in Switzerland.

Chapter 6: Governance

ARTICLE 75 Competence center for combating money-laundering issues for DSFIs²⁹

- 1 The competence center for money-laundering issues of a DSFI employing no more than 20 persons performing an activity subject to the AMLA shall perform only the duties stated in Article 24.
- 2 The FINMA may also demand that the competence center for money-laundering issues of a DSFI employing no more than 20 persons performing an activity subject to the AMLA also perform the duties stated in Article 25 if this is necessary in order to adhere to the duties of preventing money laundering and financing terrorism.

ARTICLE 75a³⁰ Competence center for money-laundering issues for persons pursuant to Article 1b BA

- 3 For persons pursuant to Article 1b BA³¹ who meet the requirements for alleviations regarding risk management and compliance pursuant to Article 14e(5) of the Bank Ordinance of 30 April 2014³², the competence center for combating money-laundering issues shall have to meet only the duties stated in Article 24. Such duties may also be performed by Management or a member of Management. Activities to be controlled may not be controlled by a person who is also directly responsible for this business relationship.
- 4 If this is necessary to combat money laundering and the financing of terrorism FINMA may at any time demand that the duties pursuant to Article 25 be performed.

²⁷ SR **311.0**

²⁸ SR **221.431**

²⁹ Version according to Section I of the FINMA Ordinance of 5 December 2018, in force since 1 January 2019 (AS **2018** 5333)

³⁰ Inserted with Sect. I of the Ordinance of 5 December 2018, in force since 1 January 2019 (AS **2018** 5333).

³¹ SR **952.0**

³² SR **952.02**

ARTICLE 76 Internal policies

- 1 A DSFI employing up to 10 persons performing an activity subject to the AMLA does not require any internal policy as required in Article 26.
- 2 However, FINMA may also demand that a DSFI employing up to 10 persons performing an activity subject to the AMLA also establish an internal policy as per Article 26 if this is necessary for governance reasons.
- 3 Persons in accordance with Article 1b BA³³ shall prepare an internal policy pursuant to Article 26 regardless of the number of persons employed.³⁴

Title 6: Final provisions and transitional provisions

ARTICLE 77 Repeal of another enactment

The FINMA-issued Anti-Money Laundering Ordinance of 8 December 2010³⁵ shall be abolished.

ARTICLE 78 Transitional provisions

- 1 The financial intermediary must implement these new requirements as per Articles 26(2)(k) and 73(1) at the latest by 1 January 2017.
- 2 Issuers of means of payment shall implement the transaction monitoring related to the contractual party as per Article 12(2) and (3) at the latest by 1 July 2017.
- 3 The provisions on the establishment of the controlling person shall be applicable to business relationships which are entered into on or after 1 January 2016. They shall also be applicable to business relationships that have existed before 1 January 2016 if during this business relationship, a re-establishment of the contractual party or the beneficial owner of the assets is required.

ARTICLE 79 Entry into force

This Ordinance enters into force on 1 January 2016.

³³ SR **952.0**

³⁴ Inserted with Sect. I of the Ordinance of 5 December 2018, in force since 1 January 2019 (AS **2018** 5333).

³⁵ [AS **2010** 6295]

Annex (Article 38)

Indicators of money laundering

1 Meaning of these indicators

- 1.1 Financial intermediaries shall take into consideration the following indicators which flag a high-risk business relationship or transaction. Just the indicators alone may not be sufficient grounds for suspicion of a money-laundering transaction subject to punishment, but the concurrence of several elements could be a strong indicator for money laundering.
- 1.2 A client's declaration on the background of a particular transaction must be tested for its plausibility. What is important is that not all declarations made by clients may be taken at face value.

2 General indicators

- 2.1 Transactions shall bear a heightened risk of money laundering if:
 - 2.1.1 their structure indicates an illegal purpose, or their economic purpose is not discernable or that it may even seem absurd from an economic point of view;
 - 2.1.2 assets which are drawn down shortly after they have been deposited at the financial intermediary (interim account), unless this is plausible in view of the client's business activities;
 - 2.1.3 it makes no sense that a client would have chosen precisely this financial intermediary or this office for his/her business;
 - 2.1.4 an account which has been inactive for a long time all of a sudden becomes very active without there being a plausible explanation for this;
 - 2.1.5 they seem to be incompatible with the experience and knowledge the financial intermediary has of the client and the purpose of the business relationship.
- 2.2 As a rule, any client who provides false or misleading information or who refuses to provide data and/or documents necessary for the business relationship and the relative activity without a plausible reason shall be considered to be suspicious.

- 2.3 One reason for being suspicious may be if a client regularly receives transfers from a bank domiciled in a country deemed to be high risk according to the Financial Action Task Force (FATF), or if a client repeatedly makes transfers to such a country.
- 2.4 Another suspicion may also be if a client repeatedly transfers funds to areas that are geographically close to areas where terrorist organizations operate.

3 Specific indicators

3.1 Spot transactions

- 3.1.1 Exchanging large amounts in small denomination bills (domestic or foreign currency) into large denomination bills;
- 3.1.2 Exchanging currency for a significant amount of money without recording it on a client account;
- 3.1.3 Cashing checks or traveler's checks for larger sums;
- 3.1.4 Purchasing or selling larger amounts in precious metals by walk-in clients;
- 3.1.5 Purchasing bank checks in a significant amount by walk-in clients;
- 3.1.6 Money transfers abroad by walk-in clients without a perceivably legitimate reason;
- 3.1.7 Repeated spot transactions in an amount just below the identification threshold;
- 3.1.8 Acquisition of bearer shares in physical form.

3.2 Bank accounts and depository accounts

- 3.2.1 Frequent cash withdrawals without there being a perceivable legitimate reason for this;
- 3.2.2 Use of financing instruments which may be customary in an international trade environment but which are incompatible with the known activities of this client;
- 3.2.3 Accounts with frequent movements despite the fact that these accounts normally are not used at all or very infrequently;
- 3.2.4 Client's business relationship structure which does not make economic sense (large number of accounts with the same bank, frequent transfer of funds between accounts, excessive liquidity, etc.);
- 3.2.5 Granting of collateral (gages, sureties) by third-party entities not known to the bank and which do not have a recognizable close relationship to the client and where it is not clear for what the security is being provided;
- 3.2.6 Transfers to another bank without indicating the recipient of the funds;

- 3.2.7 Acceptance of money transfers from other banks without any indication of the account number of the beneficiaries or the order-giving contractual party;
- 3.2.8 Repeated transfers of large sums abroad with the instruction that the recipient should be paid this sum in cash;
- 3.2.9 Frequent transfers of large sums from and to countries known to produce illegal drugs;
- 3.2.10 Granting sureties or bank guarantees to secure loans among third parties that do not conform to market conditions;
- 3.2.11 Cash deposits by many different people into a single bank account;
- 3.2.12 Unexpected repayment of a non-performing loan without a credible explanation;
- 3.2.13 Use of bank accounts using pseudonyms or numbered accounts to settle commercial transactions related to trade, crafts or industry;
- 3.2.14 Withdrawal of assets shortly after they have been deposited in an account (transitory account).

3.3 Fiduciary transactions

- 3.3.1 Back-to-back loans without recognizable or legal purpose;
- 3.3.2 Holding equity interest in non-listed companies on behalf of others where the companies' activities are not perceivable for the financial intermediary.

3.4 Others

- 3.4.1 Client's attempt to avoid personal contact with the financial intermediary.
- 3.4.2 Summons by the Money Laundering Reporting Office Switzerland to release information as per Article 11a(2) AMLA.

4 Indicators triggering heightened suspicion

- 4.1 Client's request to close down accounts without a paper trail and to open up new accounts in their own name or that of relatives;
- 4.2 Client's request for receipts for cash withdrawals or delivery of securities which were not actually made or where the assets in question were deposited in the same institution;
- 4.3 Client's request to perform payments by indicating an incorrect ordering party;
- 4.4 Client's request that certain payments not be made through the client's accounts but through the financial intermediary's nostro accounts or through "for diverse" accounts;
- 4.5 Client's request to accept or show the granting of credit collateral which is economically not possible or to grant a credit on behalf of others by providing fictitious coverage;
- 4.6 Legal proceedings against a financial intermediary's client due to criminal activities, corruption, mis-use of public funds or qualified tax offense.

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