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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**
of 3 June 2015 (Status as of 1 January 2021)

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FINANCIAL SERVICES

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Unofficial translation

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The Swiss Financial Market Supervisory Authority (FINMA), based on Article 17 of the Anti-Money Laundering Act of 10 October 1997[1] *(AMLA),*[2]
decrees:

Title 1: General provisions

Chapter 1: Object and definitions

ARTICLE 1 Object

1 This Ordinance shall define how financial intermediaries according to Article 3(1) shall implement the obligations to combat money laundering and the terrorist financing.

2 The FINMA shall consult this Ordinance when it approves the regulations of self-regulating organizations according to Article 25 AMLA or acknowledges regulations of self-regulating organizations according to Article 17 AMLA as a minimum standard.

3 The self-regulating organizations may limit themselves to regulating any deviations from this Ordinance. In any case, deviations must be identified as such.

ARTICLE 2 Definitions

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 considered as domiciliary companies:

1. 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. companies that hold a majority of equity interest in one or more operating companies in

[1] SR **955.0**
[2] Version according to Annex Section 4 of the FINMA Ordinance of 4 November 2020 on financial institutions, in force since 1 January 2021 (AS **2020** 5327).

order to combine them under a single management by means of voting majority or otherwise, and whose main business is not the management of assets of third parties (holding and subholding companies). The holding or subholding company shall actually exercise its management and control options;

b. *Cash transactions:* all cash transactions, especially the exchange of money, the purchase and sale of precious metals, the sale of travelers' checks, the cash clearing of bearer instruments, cash and bond obligations and the cashing of checks, provided no permanent business relationship is entered into;

c. *Money and securities transfer:* 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 cashless transfer, remittance or other use of a payment or clearing system abroad, or vice-versa, provided no permanent business relationship is entered into;

d. *Permanent business relationships:* client relationships booked at a Swiss financial intermediary or mostly handled from Switzerland and which are not limited to one-off activities subject to subordination;

e. *Professional note traders:* non-banks that buy and sell notes and thereby generate significant revenue or income;

f. *Controlling party:* natural persons who directly or indirectly, alone or in concert with third parties or otherwise, exercise control over an operating legal entity or partnership through votes or capital of at least 25 percent and are considered beneficial owners of such operating entities controlled by them, or alternatively the managing person of such an entity;

g. *Investment companies under CISA:* investment companies according to the Collective Investment Schemes Act of 23 June 2006[3] (CISA), i.e. investment companies with variable capital (SICAV), limited partnerships for collective investment schemes[4] as well as investment companies with fixed capital (SICAF) according to Article 2(2)(b^{bis}) AMLA.

h.[5] *Managers of collective investment schemes:* managers of collective assets according to Article 2(1)(c) of the Financial Institutions Act of 15 June 2018[6] (FinIA) in conjunction with Article 2(2)(b^{bis}) AMLA.

3 SR **951.31**

4 Since 1 July 2016: LP-CIS.

5 Version according to Annex Section 4 of the FINMA Ordinance of 4 November 2020 on financial institutions, in force since 1 January 2021 (AS **2020** 5327).

6 SR **954.1**

Chapter 2: Scope of application

ARTICLE 3 Scope of application

1 This Ordinance shall apply to financial intermediaries as defined in Article 2(2)(a-d) AMLA.[7]

2 When applying this Ordinance, FINMA may take into consideration the financial intermediary's specific business activities and, specifically, 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 provide equivalent security for the implementation of the due diligence obligations.

3 FINMA shall inform the public of its practice.

ARTICLE 4[8]

ARTICLE 5 Branch offices or affiliated group companies abroad

1 The financial intermediary shall ensure that its branch office 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 contracting party;

c. the establishment of the controlling person or the beneficial owner of assets;

d.[9] the use of a risk-oriented approach, specifically when classifying the risks related to business relationships and transactions;

e. special investigative duties in case of increased risks.

2 This shall apply especially to subsidiaries and branch offices which are located in countries that are considered to be high risk at an international level.

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 shall be subject to the regulations of the host country.

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7 Version according to Annex Section 4 of the FINMA Ordinance of 4 November 2020 on financial institutions, in force since 1 January 2021 (AS **2020** 5327).

8 Repealed by Annex Section 4 of the FINMA Ordinance of 4 November 2020 on financial institutions, with effect from 1 January 2021 (AS **2020** 5327).

9 Version according to Section I of the FINMA Ordinance of 20 June 2018, in force since 1 January 2020 (AS **2018** 2691).

ARTICLE 6 Global monitoring of legal and reputational risks

1 A financial intermediary with international branch offices or that operates a financial group with foreign group companies, shall record, limit and monitor its legal and reputational risks related to money laundering and terrorist financing on a global level. Specifically, the financial intermediary shall make sure that:

a. the competence center for combating money laundering or another independent department periodically prepares a risk analysis at a consolidated level;

b. it disposes of at least an annual standardized reporting with sufficient quantitative and qualitative information from branch offices and group companies so that it can properly assert its legal and reputational risk at a consolidated level;

c. the branch offices and group companies inform it on their own and in a timely manner on the acceptance and continuation of business relationships that are globally significant from a risk perspective, about transactions that are globally significant from a risk perspective, and about other material changes in legal and reputational risks,, especially if these involve substantial assets or politically exposed persons;

d. The group's compliance function regularly performs risk-based internal controls, including on-site sample checks of individual business relationships at the branch offices and group companies.[10]

2 The financial intermediary shall ensure that:

a. the group's internal supervisory bodies, in particular the compliance function and internal audit, and the group's audit firm have access to the information on individual business relationships in all branch offices and group companies as required. However, it is not necessary to maintain a centralized database pertaining to contracting parties and beneficial owners at group level or centralized access by the group's supervisory bodies to local databases;

b. the branch offices and group companies make available all relevant information to the monitoring bodies of the group that are responsible for the global monitoring of the legal and reputational risks in a timely manner.[11]

3 Should a financial intermediary determine that it is impossible to access information on contracting parties, controlling persons or beneficial owners in certain countries due to legal or practical reasons or if access is seriously impeded, it shall immediately inform FINMA of this.

4 The financial intermediary that is part of a domestic or foreign group shall grant the company's internal monitoring units and external group auditor access to information on specific business relationships to the extent necessary for the global monitoring of legal and reputational risks.

[10] Version according to Section I of the FINMA Ordinance of 20 June 2018, in force since 1 January 2020 (AS **2018** 2691).
[11] Version according to Section I of the FINMA Ordinance of 20 June 2018, in force since 1 January 2020 (AS **2018** 2691).

Chapter 3: Principles

ARTICLE 7 Prohibited assets

1 Financial intermediaries shall not accept assets that they know or must assume to be originated from a crime or a qualified tax offense, even if this crime or offense was committed abroad.

2 Negligent acceptance of assets which are the result of a crime or a qualified tax offense may jeopardize the guarantee of irreproachable business conduct required of a financial intermediary.

ARTICLE 8 Forbidden business relationships

Financial intermediaries shall not establish business relationships:

a. with companies and persons of whom they know or must assume that they finance terrorism or form a criminal organization, belong to or support such an organization;

b. with banks that do not maintain a physical presence at the place of incorporation (fictitious banks), unless they are part of an adequate consolidated supervised financial group.

ARTICLE 9 Breach of provisions

1 Any breach of a provision of this Ordinance or a self-regulation approved by FINMA may jeopardize the guarantee of irreproachable business conduct required of a financial intermediary.

2 Serious breaches may entail a professional ban according to Article 33 of the Financial Market Supervision Act of 22 June 2007[12] (FINMASA) and the confiscation of profits realized due to these breaches according to Article 35 FINMASA.

Chapter 4: General duties of due diligence

ARTICLE 9a[13] Investigations in the case of domiciliary companies

The financial intermediary shall investigate the reasons for the use of domiciliary companies.

ARTICLE 10 Disclosures in payment orders

1 For payment orders, the originator'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, a transaction-related reference number shall be provided. The address may be replaced with the originator's date and place of birth, the client number or national identity number. The financial intermediary shall ensure that the originator's information is accurate and complete,

[12] SR **956.1**

[13] Inserted with Section I of the FINMA Ordinance of 20 June 2018, in force since 1 January 2020 (AS **2018** 2691).

and that the beneficiary's information is complete as well.[14]

2 For payment orders within Switzerland, the financial intermediaries may restrict themselves to providing the account number or a transaction-related reference number, if they 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 according to (2) if compliance with (1) is not possible for technical reasons.

4 The financial intermediary shall inform the client in an adequate manner about the disclosure of the client data in the course of payment operations.

5 The financial intermediary of the beneficiary shall define how to proceed upon reception of payment orders containing incomplete information on the client or beneficiary. The financial intermediary shall take a risk-based approach.

ARTICLE 11 Waiver of compliance with duties of due diligence

1 The financial intermediary may waive compliance with the duties of due diligence in the case of permanent business relationships with contracting parties for cashless payment transactions in the area of means of payment used exclusively for the cashless payment of goods and services, if one of the following situations applies:

a. Not more than CHF 1,000 may be paid for each transaction and not more than CHF 5,000 per calendar year and contracting party. The refund of such a means of payment shall 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 contracting 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 contracting party may be paid to dealers in Switzerland; the means of payment can only be recharged by debiting the account of the contracting party at a bank authorized in Switzerland. Refunds shall be credited to such an account only.

c. The means of payment shall 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 contracting party.

d.[15] ...

2 In the case of permanent business relationships with contracting parties for means of payment used for cashless payment operations which do not exclusively serve the cashless payment of goods and services, the financial intermediary may waive compliance with the duties of due diligence if each

[14] Version according to Section I of the FINMA Ordinance of 20 June 2018, in force since 1 January 2020 (AS **2018** 2691).
[15] Repealed by Annex Section 4 of the FINMA Ordinance of 4 November 2020 on financial institutions, with effect from 1 January 2021 (AS **2020** 5327).

means of payment does not amount to more than CHF 200 per month and means of payments and refunds may be debited and credited only to an account in the name of the contracting party held at a bank authorized in Switzerland.

3 The financial intermediary may waive the duties of due diligence for non-reloadable means of payment if:

a. the credit balance serves exclusively for the contracting party to pay goods and services electronically;

b. not more than CHF 250 is made available per data carrier; and

c. not more than CHF 1,500 is made available per transaction and contracting party.

4 The financial intermediary shall only be allowed to waive compliance with the duties of due diligence if it disposes of technical installations that are sufficient to detect when the respective thresholds are exceeded. It shall also take all necessary precautions to prevent any accumulation of amount limits as well as the violation of these provisions. Articles 14 and 20 shall remain applicable regarding the monitoring of transactions. Article 10 shall also remain applicable, if relevant.

4bis The financial intermediary may waive compliance with the duties of due diligence if the transaction is a finance lease and the annual lease installments to be paid, including value added tax, do not exceed CHF 5,000.[16]

5 Upon request, FINMA may also approve other exemptions from compliance with the duties of due diligence according to AMLA for permanent business relationships for self-regulating organizations or financial intermediaries according to Article 3(1), provided that it is demonstrated that the money laundering risk within the meaning of Article 7a AMLA is low.

ARTICLE 12 Simplified duties of due diligence[17]

1 The issuer of means of payment is exempted from the duty to keep copies of documents for the identification of the contracting party and the establishment of the controlling person and beneficial owner of the assets for its files provided it has an outsourcing agreement with a bank authorized in Switzerland that contains the following:

a. The bank shall make available data on the contracting 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 contracting party, the controlling person or the beneficial owner of the assets is a politically exposed person.

[16] Inserted with Annex, Section 4 of the FINMA Ordinance dated 4 November 2020 on financial institutions, in force since 1 January 2021 (AS **2020** 5327).

[17] Version according to Annex Section 4 of the FINMA Ordinance of 4 November 2020 on financial institutions, in force since 1 January 2021 (AS **2020** 5327).

c. The bank shall immediately inform the issuer of the means of payment of any changes to the information referred to in (a) and (b).

d. In case of a request for information from the competent Swiss authority to the issuer of the means of payment, the latter shall reply to the request and refer the authority to the bank concerned for any documents to be issued.

2 The issuer of means of payment does not need to obtain an authentication of copies of identification documents for business relationships directly concluded and established by correspondence, provided that:

a. the means of payment used for cashless 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 contracting party;

b. the means of payment, where transactions are invoiced in retrospect, the limit for cashless payments for goods and services and for the withdrawal of cash does not exceed CHF 25,000 per month and contracting party;

c. the means of payment, that allows cashless payment transactions between private persons domiciled in Switzerland, does not exceed CHF 1,000 per month and CHF 5,000 per year and contracting party; or

d. the means of payment, that allows cashless payment transactions between private persons without residence restrictions, does not exceed CHF 500 per month and CHF 3,000 per year and contracting party.

2bis In case of a waiver of obtaining a confirmation of authenticity, the issuer of the means of payment shall check whether the copies of the identification documents show indications that a false or forged identity document has been used. If there is such indication, the facilitations according to (1) and (2) do not apply.[18]

3 Should the issuer of the means of payment as described in (1) and (2) find out as part of its transaction monitoring that the means of payment was passed on to a person who does not have a recognizably close relationship to the contracting party, it must re-identify the contracting party and establish the beneficial owner of the means of payment.

4 When granting consumer credit, no confirmation of authenticity for copies of identification documents need be obtained for business relationships opened by correspondence, provided that the credit amount does not exceed CHF 25,000, and:

a. is paid to an existing account of the borrower;

b. is credited to such an account;

[18] Inserted with Section I of the FINMA Ordinance of 20 June 2018, in force since 1 January 2020 (AS **2018** 2691).

c. is granted in the form of an overdraft on such an account; or

d. in the case of a ceding transaction, is transferred directly to a seller of goods based on a payment order from the borrower.[19]

Chapter 5: Special duties of due diligence

ARTICLE 13 Business relationships with increased risks

1 The financial intermediary shall develop criteria to flag business relationships with increased risks.

2 Depending on the business activities of the financial intermediary, the following criteria may be considered in particular:

a. Place of incorporation or domicile of the contracting party, controlling person or the beneficial owner of assets is in a country deemed to be "High Risk" or non-cooperative by the Financial Action Task Force (FATF) as well as the nationality of the contracting party or the beneficial owner of assets;

b. type and place of business activities of the contracting party or the beneficial owner of the assets, specifically in case of business activities in a country deemed to be "High Risk" or non-cooperative by the FATF;

c. no personal contact to either the contracting party and the beneficial owner;

d. type of requested services or products;

e. amount of assets contributed;

f. amount of inflows and outflows of assets;

g. country of origin or destination of frequent payments, specifically payments from or to a country deemed to be "High Risk" or non-cooperative by the FATF;

h. complexity of structures, especially due to the use of several domiciliary companies or of one domiciliary company with fiduciary shareholders, in a non-transparent jurisdiction, without a plausible reason or for the purpose of short-term placement of assets;

i. frequent transactions with increased risks.[20]

2bis The financial intermediary shall document its risk analyses for each of these criteria individually, stating whether these are relevant for its business activities. It shall specify the relevant criteria

[19] Inserted with Annex, Section 4 of the FINMA Ordinance dated 4 November 2020 on financial institutions, in force since 1 January 2021 (AS **2020** 5327).

[20] Version according to Section I of the FINMA Ordinance of 20 June 2018, in force since 1 January 2020 (AS **2018** 2691).

in internal policies and take these into account when identifying its business relationships with increased risks.[21]

3 In any case, the following are deemed to be business relationships with increased risk:

a. business relationships with foreign politically exposed persons;

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;

d.[22] Business relationships with persons domiciled in a country deemed to be "High Risk" or non-cooperative by the FATF and where the FATF calls for increased due diligence.

4 In connection with one or more further risk criteria, the following are deemed to be business relationships with increased risk:

a. business relationships with domestic politically exposed persons;

b. business relationships with politically exposed persons with leading functions in intergovernmental organizations;

c. business relationships with persons who are close to persons described in (a) and (b) within the meaning of Article 2a(2) AMLA;

d. business relationships with politically exposed persons with leading functions in sports organizations;

e. business relationships with persons who are close to persons described in (d) within the meaning of Article 2a(2) AMLA.

5 Business relationships according to (3)(a), (b) and (d) and (4) are deemed to be business relationships with increased risk, irrespective of whether the persons involved act as:[23]

a. contracting party;

b. controlling person;

c. beneficial owner of assets;

d. authorized person.

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[21] Inserted with Section I of the FINMA Ordinance of 20 June 2018, in force since 1 January 2020 (AS **2018** 2691).
[22] Inserted with Section I of the FINMA Ordinance of 20 June 2018, in force since 1 January 2020 (AS **2018** 2691).
[23] Version according to Section I of the FINMA Ordinance of 20 June 2018, in force since 1 January 2020 (AS **2018** 2691).

6 The financial intermediary shall identify and flag business relationships with increased risks internally.

ARTICLE 14 Transactions with increased risks

1 The financial intermediary shall develop criteria to identify transactions with increased risks.

2 Depending on the business activities of the financial intermediary, the following criteria may be considered in particular:

a. the amount of inflows and outflows of assets;

b. significant deviations from the transaction types, volumes and frequencies customary in the business relationship;

c. significant deviations from the transaction types, volumes and frequencies customary in comparable business relationship;

d.[24] country of origin or destination of payments, specifically payments from or to a country deemed to be "High Risk" or non-cooperative by the FATF.

3 In any case, the following are deemed to be transactions with increased risks:

a. Transactions where, at the beginning of the business relationship, assets with a value of more than CHF 100,000 are physically contributed in a single payment or in a series of payments;

b. payments from or to a country deemed to be "High Risk" or non-cooperative by the FATF and where the FATF calls for increased due diligence.[25]

ARTICLE 15 Additional investigations in case of increased risks

1 The financial intermediary shall make additional investigations with reasonable effort in case of business relationships or transactions with increased risks.

2 Depending on the circumstances, investigations shall entail in particular:

a. whether the contracting party is the beneficial owner of the assets contributed;

b. the origin of the assets contributed;

c. the intended use of withdrawn assets;

d. the background and plausibility of larger incoming payments;

[24] Inserted with Section I of the FINMA Ordinance of 20 June 2018, in force since 1 January 2020 (AS **2018** 2691).
[25] Version according to Section I of the FINMA Ordinance of 20 June 2018, in force since 1 January 2020 (AS **2018** 2691).

e. the origin of the assets of the contracting party and the beneficial owner of the company or assets;

f. the professional or business activity of the contracting party and the beneficial owner of the company or assets;

g. whether the contracting party, the controlling person or the beneficial owner of the assets are a politically exposed person.

ARTICLE 16 Means of investigation

1 Depending on the circumstances, investigations shall entail in particular:

a. obtaining written or verbal information on the contracting party, the controlling person or the beneficial owner of the assets;

b. visits to the place of business of the contracting party, the controlling person or the beneficial owner of the assets;

c. consultation of generally accessible public sources and databases;

d. if necessary, obtaining 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

If increased risks become apparent in a business relationship, the financial intermediary shall immediately initiate the additional investigations and carry them out as quickly as possible.

ARTICLE 18 Establishing business relationships with increased risks

Establishing business relationships with increased risks requires the approval of a senior person, a senior body or the Executive Management.

ARTICLE 19 Responsibility of Executive Management in case of increased risks

1 Executive Management or at least one of its members shall decide on:

a. establishing business relationships with increased risks according to Article 13(3) and (4)(a-c) and, on an annual basis, the continuation of business relationships according to of Article 13(3) (a) and (b) and (4)(a-c);

b. the periodic control of all business relationships with increased risks, including their monitoring and assessment.

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 the increased risks are identified.

2 Banks and securities firms[26] shall operate an IT-based system to monitor transactions, which helps identify transactions with increased risks according to Article 14.

3 Transactions identified by the IT-based monitoring system shall be assessed within reasonable time. If necessary, additional clarifications shall be carried out according to Article 15.

4 Banks and securities firms with a small number of contracting parties and beneficial owners or transactions may refrain from using an IT-based transactions monitoring system.[27]

5 FINMA may require an insurance company, a fund management company, an investment company according to CISA, a manager of collective assets , a person as defined in Article 1b BA[28] or a financial intermediary as defined in Article 2(2)(a^{bis}) AMLA to implement an IT-based monitoring system if this is necessary for an adequate monitoring.[29]

ARTICLE 21 Qualified tax offense

When developing criteria to identify a qualified tax offense in connection with new and existing business relationships with increased risks , and for the investigation and flagging of such business relationships, financial intermediaries may refer to the maximum tax rate of the country of the client's tax domicile in order to determine whether the evaded taxes exceed the threshold of CHF 300,000 as defined in Article 305bis (1bis) of the Swiss Criminal Code[30] (SCC). Financial intermediaries 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 manner that the following authorities or persons can form an opinion on whether the duties to combat money laundering and terrorist financing have been complied with within a reasonable time:

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26 Term according to Section I of the FINMA Ordinance of 4 November 2020, in force since 1 January 2021 (AS **2020** 5327). This amendment has been taken into account throughout the entire enactment.

27 Version according to Section I of the FINMA Ordinance of 20 June 2018, in force since 1 January 2020 (AS **2018** 2691).

28 SR **952.0**

29 Version according to Annex Section 4 of the FINMA Ordinance of 4 November 2020 on financial institutions, in force since 1 January 2021 (AS **2020** 5327).

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a. FINMA;

b. an auditor appointed by FINMA according to Article 25 FINMASA[31];

c. an investigating agent mandated by FINMA according to Article 36 FINMASA;

d. an audit firm recognized by the Federal Audit Oversight Authority;

e.[32] the supervisory organization.

2 The financial intermediary shall prepare, organize and retain its documentation in such a manner to be able to provide access to prosecuting authorities or otherwise competent authorities within a reasonable time in case the documentation needs to be inspected or confiscated.

Chapter 7: Organizational measures

ARTICLE 23 New products, business practices and technologies

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

ARTICLE 24 Competence center for combating money laundering

1 The financial intermediary shall appoint one or several qualified persons to act as competence center for combating money laundering. This competence center shall support and advise line managers in question and the Executive Management in the implementation of this Ordinance without relieving them of their responsibility for this.

2 The competence center for combating money laundering shall prepare internal directives on the combating of money laundering and terrorist financing and plan and monitor the internal training on the combating of money laundering and terrorist financing.

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

1 In addition to the tasks stated in Article 24, the competence center for money-laundering or another independent function shall supervise the compliance with the duty to combat money laundering and terrorist financing, in particular:

a. it supervises the adherence to internal directives on the combating of money laundering and terrorist financing in consultation with internal audit, the audit firm and the line managers;

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31 SR **956.1**

32 Inserted with Annex, Section 4 of the FINMA Ordinance dated 4 November 2020 on financial institutions, in force since 1 January 2021 (AS **2020** 5327).

b. it defines the parameters for the transaction monitoring system according to Article 20;

c. it orders the analysis of the reports generated by the transaction monitoring system;

d. it orders additional investigations according to Article 15 or performs these itself;

e. it ensures that the responsible management body is provided with the decision fundamentals according to Article 19 which it requires to decide whether to accept or continue a business relationship.

2 In addition, the competence center for money laundering or another independent function shall, taking into account the financial intermediary's business activities and the nature of the established business relationships, prepare a risk analysis for money laundering and terrorism financing, specifically taking into consideration the client's place of incorporation or domicile, the client segment as well as the products and services offered. The risk analysis shall be approved and updated periodically by the Board of Directors or Executive Management.

3 An internal person responsible for supervision according to (1) may not control any business relationships for which she or he is directly responsible.

4 The financial intermediary may also appoint external experts to act as competence center for money laundering if:

a. its size or organization does not allow it to implement such a competence center; or

b. implementing such a competence center would be disproportionate to the size of the financial intermediary.

ARTICLE 25a[33] Decision-making authority for reporting

Executive Management shall decide on the submission of a report according to Article 9 AMLA or Article 305ter(2) (SCC), respectively[34]. It may delegate this task to one or several of its members who are not directly responsible for the business relationship, to its competence center for combating money laundering or to a mostly independent function.

ARTICLE 26 Internal directives

1 The financial intermediary shall issue internal directives on the combating of money laundering and terrorist financing and inform the persons concerned accordingly. Such directives shall be approved by the Board of Directors or Executive Management.

2 Specifically, such directives shall address the following:

a. the criteria used to determine business relationships with increased risks according to Article 13;

33 Inserted with Section I of the FINMA Ordinance of 20 June 2018, in force since 1 January 2020 (AS **2018** 2691).
34 SR **311.0**

b. the criteria used to determine transactions with increased risks according to Article 14(1) and (2);

c. the basics principles of transaction monitoring according to Article 20;

d. in which cases the internal competence center for combating money laundering is to be involved and Executive Management is to be informed;

e. the basic principles of employee training;

f. the business policy regarding politically exposed persons;

g. the responsibility for reports to the Money Laundering Reporting Office Switzerland;

h. the modalities according to which the financial intermediary records, mitigates and supervises increased risks;

i. the thresholds according to Articles 13(2)(e) and (f) and 14(2)(a);

j. the criteria by which third parties may be involved according to Article 28;

k. the further internal allocation of tasks and competences between the competence center for money laundering and other departments entrusted with the performance of due diligence duties.

ARTICLE 27 Integrity and training

1 The combating of money laundering and terrorist financing requires reputable and adequately trained staff.

2 The financial intermediary shall ensure the careful selection of staff and the periodic training in matters related to combating money laundering and terrorist financing of all employees concerned.

Chapter 8: Involvement of third parties

ARTICLE 28 Requirements

1 The financial intermediary may mandate in writing persons and companies to identify contracting parties and establish controlling persons, beneficial owners of assets and conduct additional investigations if it:

a. has carefully selected the mandated party;

b. has instructed the mandated party on the task; and

c. can control whether or not the mandated party adheres to due diligence.

2 The financial intermediary may entrust the exercise of due diligence without a written agreement if:

a. the mandated party is a department within a concern or a group, provided the same level of due diligence is applied; or

b. the mandated party is another financial intermediary, provided it is subject to equivalent supervision regarding the combating of money laundering and terrorist financing and measures have been taken to fulfill duties regarding due diligence in an equivalent manner.

3 Mandated parties shall not, for their part, involve any other persons or companies.

4 The delegation agreements shall remain applicable according to Article 12(1) if the subdelegating party is also a financial intermediary authorized in Switzerland.

ARTICLE 29 Modality of the involvement

1 The financial intermediary shall in any case remain responsible under supervisory law for the required fulfillment of duties delegated to persons and companies according to Article 28.

2 It shall add a copy of the documents which served to fulfill the duties in combating money laundering and terrorist financing 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 itself.

Chapter 9: Continuation of business relationships and reporting

ARTICLE 30 Procedure after reporting

1 The financial intermediary may decide on the continuation of the business relationship at its own discretion, 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 that the report will not be passed on to the prosecuting authorities,

3. informs 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 according to Article 9(1)(c) AMLA;

c. it receives a formal response from the Money Laundering Reporting Office Switzerland after having notified according to Article 305ter(2) SCC[35] that the report will not be forwarded to the prosecuting authorities; or

d. after having notified according to Article 9 AMLA or Article 305ter(2) SCC, it is informed that the blocked funds have been released by the prosecuting authorities, unless ordered otherwise by the prosecuting authorities.

2 The financial intermediary wishing to terminate the business relationship may only allow the withdrawal of substantial assets in a form that allows prosecuting authorities to follow up on their trace (paper trail).

ARTICLE 31[36] Dubious business relationships and right to report

If the financial intermediary does not exercise its right to report in the case of a dubious business relationships with substantial assets according to Article 305ter(2) SCC[37] it shall document the reasoning.

ARTICLE 32 Termination of the business relationship

1 Should the financial intermediary terminate a dubious business relationship without a reasonable suspicion of money laundering or terrorist financing and without reporting, it shall only allow the withdrawal of substantial assets in a form that allows prosecuting authorities to follow up on their trace, if necessary (paper trail).

2 The financial intermediary may neither terminate a dubious business relationship nor allow the withdrawal of substantial assets if there is concrete indications that official seizure and confiscation measures are imminent.

3 The financial intermediary must not terminate a business relationship at its own initiative if the conditions for a notification to the Money Laundering Reporting Office Switzerland according to Article 9 AMLA are met or if the financial intermediary assumes its right to report according to Article 305ter(2) SCC[38].[39]

ARTICLE 33 Execution of client orders

Financial intermediaries shall execute client orders involving substantial assets according to Article 9a AMLA only in a form that allows the trace of the transaction to be followed (paper trail).

ARTICLE 34 Information

4 The financial intermediary shall inform FINMA or the supervisory organization of its reports to the Money Laundering Reporting Office Switzerland that involve business relationships with substantial

35 SR **311.0**
36 Version according to Section I of the FINMA Ordinance of 20 June 2018, in force since 1 January 2020 (AS **2018** 2691).
37 SR **311.0**
38 SR **311.0**
39 Version according to Section I of the FINMA Ordinance of 20 June 2018, in force since 1 January 2020 (AS **2018** 2691).

assets. Specifically, it shall 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.[40]

5 Should the financial intermediary inform another financial intermediary according to Article 10a AMLA, it shall adequately record this.

Title 2: Special provisions for banks and securities firms

ARTICLE 35[41] Duty to identify the contracting party and establish the controlling person and the beneficial owner of the assets

For the identification of the contracting parties and the establishment of the controlling person and beneficial owner of the assets, the provisions of the Agreement of 13 June 2018[42] on the Swiss Bank's code of conduct regarding the exercise of due diligence (CDB 20) apply to banks and securities firms.

ARTICLE 36 Professional banknote trading

1 Professional banknote trading may only be permitted with note traders who meet the criteria of a trustworthy correspondent banking 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 and for each individual counterparty, review these on an annual basis and monitors adhere to these on an ongoing basis.

4 Any financial intermediaries acting as professional note traders shall issue directives which shall be adopted by its Executive Management.

ARTICLE 37 Correspondent banking relationships with foreign banks

1 The general provisions of this Ordinance shall also apply to correspondent banking relationships, with the exception of Article 28(2)(b).

2 A financial intermediary that settles correspondent banking business for a foreign bank shall adequately ensure that this foreign bank does not enter into a business relationship with fictitious banks.

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40 Version according to Annex Section 4 of the FINMA Ordinance of 4 November 2020 on financial institutions, in force since 1 January 2021 (AS **2020** 5327).

41 Version according to Section I of the FINMA Ordinance of 20 June 2018, in force since 1 January 2020 (AS **2018** 2691).

42 The Agreement may be downloaded at no cost from the Swiss Bankers Association website at www.swissbanking.org.

3 In addition to the investigations according to Article 15 and depending on the circumstances, the financial intermediary shall also determine whether its contracting party disposes of controls for the combating of money laundering and terrorist financing. In the scope of these investigations it shall determine whether the contracting party is subject to adequate supervision and regulation regarding the combating of money laundering and terrorist financing.

4 It shall ensure that the information required for payment orders is complete and forwarded. It shall put into place procedures that address the issue of repeated payment orders with obviously incomplete client information. The financial intermediary shall take a risk-based approach.

ARTICLE 38 Criteria for transactions with increased risks

In addition to transactions according to Article 14, any transaction that shows indicators of money laundering (Annex) shall be deemed to be transactions with increased risk.

ARTICLE 39 Duty to document

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

a. is the contracting party, controlling person or beneficial owner of the assets;

b. has undertaken a cash transaction, which requires the identification of the person in question;

c.[43] has a permanent power of attorney over an account or securities account, unless the contracting party is a generally known legal entity or partnership, a bank, a securities firm or a public authority.

2 The contracting party shall, in particular, be deemed to be generally known if it is a publicly traded company or is directly or indirectly affiliated with such a company.[44]

[43] Version according to Annex Section 4 of the FINMA Ordinance of 4 November 2020 on financial institutions, in force since 1 January 2021 (AS **2020** 5327).

[44] Inserted with Annex, Section 4 of the FINMA Ordinance dated 4 November 2020 on financial institutions, in force since 1 January 2021 (AS **2020** 5327).

Title 3: Special provisions for fund management companies, investment companies under CISA and asset managers under CISA[45]

ARTICLE 40 Fund management companies and investment companies under CISA

1 Fund management companies according to Article 2(2)(b) AMLA and investment companies under CISA shall identify the subscriber of non-listed Swiss collective investment schemes as well as establish the controlling person or the beneficial owners of the assets at the time of subscription if the amount subscribed to exceeds CHF 15,000.[46]

2 No declaration of the controlling person or beneficial owner of the assets is necessary at the time of the subscription if the subscriber is a financial intermediary according to Article 2(2)(a-d) AMLA or a foreign financial intermediary with adequate prudential supervision regarding the combating of money laundering and terrorist financing.

3 If fund management companies, SICAVs or SICAFs entrust their custodian bank or if a limited partnership for collective investments[47] entrusts a bank authorized in Switzerland with the fulfillment of the duties of due diligence and the duty to document, they do not have to comply with the requirements according to Article 28(3) and the modalities according to Article 29(2). The custodian bank or the bank may involve subdelegates only if they comply with the requirements according to Article 28(1) or (2) and the modalities according to 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.

4 The CDB 20[48] shall apply for identifying the contracting party and for the establishment of the controlling person and the beneficial owner of the assets, as well as any other AMLA-relevant activities of the fund management company.[49]

ARTICLE 41 Asset managers of foreign collective investment schemes under CISA

1 Asset managers of collective investment schemes of non-listed foreign funds must identify the subscriber as well as establish the controlling person or the beneficial owner of the assets of 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 regulation regarding the combating of money laundering and terrorist financing;

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45 Term according to Section 4 of the FINMA Ordinance of 4 November 2020, in force since 1 January 2021 (AS **2020** 5327). This amendment has been taken into account throughout the entire enactment.

46 Version according to Section I of the FINMA Ordinance of 20 June 2018, in force since 1 January 2020 (AS **2018** 2691).

47 Since 1 July 2016: LP-CIS.

48 The Agreement may be downloaded at no cost from the Swiss Bankers Association website at www.swissbanking.org.

49 Version according to Section I of the FINMA Ordinance of 20 June 2018, in force since 1 January 2020 (AS **2018** 2691).

b. they do not provide evidence of the application of an adequate regulation with respect to money laundering and terrorist financing by another financial intermediary subject to adequate prudential supervision; and

c.[50] the invested amount exceeds CHF 15,000.

2 No declaration of the controlling person or beneficial owner of the assets is necessary if the subscriber is a financial intermediary according to Article 2(2)(a-d) AMLA or a foreign financial intermediary with adequate prudential supervision and an adequate regulation regarding the combating of money laundering and terrorist financing.

3 The CDB 20[51] shall be applicable for identifying the contracting party and for the establishment of the controlling person and the beneficial owner of the assets, as well as any other AMLA-relevant activities of the asset manager.[52]

Title 4: Special provisions for insurance companies

ARTICLE 42 Regulations of the self-regulatory organization of the Swiss Insurance Association for combating money laundering

1 For the duties of due diligence applicable to insurance companies, the provisions of the Regulations of 22 June 2018[53] of the Self-Regulatory Organization of the Swiss Insurance Association for Combating Money Laundering shall apply.

2 Articles 6 and 20(5) shall remain applicable.

ARTICLE 43 Exemptions

Insurance contracts under pillars 2 and 3a as well as pure risk insurance are not subject to the duties of due diligence under the AMLA.

50 Version according to Section I of the FINMA Ordinance of 20 June 2018, in force since 1 January 2020 (AS **2018** 2691).
51 The Agreement may be downloaded at no cost from the Swiss Bankers Association website at www.swissbanking.org.
52 Version according to Section I of the FINMA Ordinance of 20 June 2018, in force since 1 January 2020 (AS **2018** 2691).
53 The Regulations can be downloaded at no cost from the website of the Swiss Insurance Association at www.sro-svv.ch

Title 5: Special provisions for financial intermediaries according to Article 2(2)(a^{bis}) AMLA and persons according to Article 1b BA.[54]

Chapter 1: Scope of application[55]

ARTICLE 43a[56]

This title shall apply to the following financial intermediaries:

a. Financial intermediaries according to Article 2(2)(a^{bis});

b. persons according to Article 1b BA.

Chapter 1a: Identification of the contracting party (Art. 3 AMLA)[57]

ARTICLE 44 Required information

1 When establishing a business relationship, the financial intermediary[58] shall obtain the following information from the contracting party:

a. for natural persons and owners of sole proprietorships: Family name, first name, date of birth, domicile address and nationality;

b. for legal entities and partnerships: Company name and domicile address.

2 This information may be omitted for contracting parties originating from a country in which dates of birth or domicile addresses are not used. However, this exceptional situation shall be justified in a file note.

3 Where the contracting party is a legal entity or a partnership, the financial intermediary shall take note of and document the power of attorney arrangements of the contracting party regarding this person and verify the identity of the persons establishing the business relationship on behalf of the

54 Version according to Annex Section 4 of the FINMA Ordinance of 4 November 2020 on financial institutions, in force since 1 January 2021 (AS **2020** 5327).

55 Version according to Annex Section 4 of the FINMA Ordinance of 4 November 2020 on financial institutions, in force since 1 January 2021 (AS **2020** 5327).

56 Inserted with Section 1 of the FINMA Ordinance dated 5 December 2018 (AS **2018** 5333) Version according to Annex Section 4 of the FINMA Ordinance of 4 November 2020 on the financial institutions, in force since 1 January 2021 (AS **2020** 5327).

57 Inserted with Annex, Section 4 of the FINMA Ordinance dated 4 November 2020 on financial institutions, in force since 1 January 2021 (AS **2020** 5327).

58 Term according to Section 4 of the FINMA Ordinance of 4 November 2020, in force since 1 January 2021 (AS **2020** 5327). This amendment has been taken into account throughout the entire enactment.

legal entity or partnership.

4 In case of business relationships with trusts, the trustee shall be identified. In addition, the trustee shall confirm in writing that she or he is authorized to establish a business relationship with the financial intermediary on behalf of the trust.[59]

5 If a person of legal age establishes a business relationship in the name of a minor, the person of legal age establishing the business relationship shall be identified. If a minor capable of judgment establishes a business relationship herself or himself, she or he shall be identified.[60]

ARTICLE 45 Natural persons and owners of sole proprietorships

1 When establishing a business relationship with a natural person or an owner of a sole proprietorship, the financial intermediary shall identify the contracting party by inspecting an identification document of the contracting party.

2 If the business relationship is established without a personal meeting, the financial intermediary shall additionally verify the domicile address by postal delivery or other equivalent means and shall keep a certified copy of the identification document in its files.

3 All identification documents which have been issued by Swiss or foreign authorities bearing a photo shall be acceptable.

ARTICLE 46 Ordinary partnerships

1 When establishing a business relationship with an ordinary partnership, the financial intermediary shall identify the contracting party by either identifying the following persons:

a. all partners involved; or

b. at least one partner as well as those persons who are authorized to sign with the financial intermediary.

2 Article 45(2) and (3) shall apply mutatis mutandis.

ARTICLE 47 Legal entities, partnerships and authorities

1 When establishing a business relationship with a legal entity or a partnership registered in the Swiss Commercial Register or in an equivalent foreign register, the financial intermediary shall identify the contracting party by means of one of the following documents:

a. an excerpt from the register provided by the registrar;

[59] Inserted with Annex, Section 4 of the FINMA Ordinance dated 4 November 2020 on financial institutions, in force since 1 January 2021 (AS **2020** 5327).

[60] Inserted with Annex, Section 4 of the FINMA Ordinance dated 4 November 2020 on financial institutions, in force since 1 January 2021 (AS **2020** 5327).

b. a written excerpt from a database maintained by the registry authority;

c. a written excerpt from privately managed directories and databases, provided that they are trustworthy.

2 Legal entities or partnerships not registered in the Swiss Commercial Register or in an equivalent foreign register shall be identified by means of one of the following documents:

a. the articles of incorporation, the memorandum of association or the founding contract, a confirmation of the audit firm, an official authorization to carry out the activity or an equivalent document;

b. a written excerpt from privately managed directories and databases, provided that they are trustworthy.

3 Authorities shall be identified by adequate statute or resolution or by other equivalent documents or sources.

4 The excerpt from a register, the confirmation of the audit firm and the directory or database excerpt may not be older than twelve months at the time of the identification and shall reflect the current status.

ARTICLE 48 Form and treatment of documents

1 The financial intermediary shall have the identification documents provided in the original or as a certified copy.

2 It shall keep the certified copy on file or make a copy of the document presented, certify on it that the financial intermediary has seen the original or the certified copy, and sign and date the copy.

3 Facilitations according to Article 3(2) and Article 12 shall remain applicable.

ARTICLE 49 Authentication

1 The confirmation of the authenticity of the copy of the identification document may be issued by:

a. a notary public or a public authority that customarily issues such confirmations of authenticity;

b. a financial intermediary according to Article 2(2) or (3) AMLA with domicile or place of incorporation in Switzerland;

c. a lawyer admitted to the bar in Switzerland;

d. a financial intermediary with domicile or place of incorporation abroad who carries out an activity according to Article 2(2) or (3) AMLA, provided it is subject to equivalent supervision and regulation regarding the combating of money laundering and terrorist financing.

2 Obtaining a copy of an identification document from the database of a recognized certification service provider according to the Federal Act on the Electronic Signature of 19 December 2003[61] in combination with electronic authentication by the contracting party in this context shall also be considered valid confirmation of authenticity. This identification copy must have been obtained in the course of issuing a qualified certificate.

ARTICLE 50 Waiver of confirmation of authenticity and absence of identification documents

1 The financial intermediary may waive confirmation of authenticity if it takes other measures that allow to verify the identity and address of the contracting party. The measures taken shall be documented.

2 If the contracting party does not dispose of any identification documents within the meaning of this Ordinance, identity may exceptionally be verified on the basis of evidential substitute documents. However, this exceptional situation shall be justified in a file note.

ARTICLE 51 Cash transactions

1 The financial intermediary shall identify the contracting party if one or more transactions that appear to be interconnected reach or exceed the following amount:

a. CHF 5,000 in money exchange transactions;

b.[62] CHF 15,000 for all other cash transactions.

2 It may waive the identification of the contracting party if it has executed further transactions for the same contracting party within the meaning of (1) and according to Article 52 and has ensured that the contracting party is the person who was already identified in the first transaction.

3 It must identify the contracting party in any case where there are suspicions of potential money laundering or terrorist financing.

ARTICLE 51a[63] Transactions with virtual currencies

1 The financial intermediary shall identify the contracting party if a transaction with a virtual currency or several such transactions that appear to be interconnected reach or exceed the amount of CHF 1,000, provided that these transactions do not constitute transfers of money and securities and no permanent business relationship is associated with these transactions.

2 It may waive the identification of the contracting party if it has executed further transactions for the same contracting party within the meaning of (1) and according to Article 52 and has ensured that

[61] [AS **2004** 5085, 2008 3437 Sect. II 55. AS **2016** 4651 Annex Sect. I]. Now cf: Federal Act of 18 March 2016 (SR **943.03**).
[62] Version according to Section I of the FINMA Ordinance of 20 June 2018, in force since 1 January 2020 (AS **2018** 2691).
[63] Inserted with Annex, Section 4 of the FINMA Ordinance dated 4 November 2020 on financial institutions, in force since 1 January 2021 (AS **2020** 5327).

the contracting party is the person who was already identified in the first transaction.

3 It must identify the contracting party in any case where there are suspicions of potential money laundering or terrorist financing.

ARTICLE 52 Transfer of money and securities

1 It must identify the contracting party in any case where there are suspicions of potential money laundering or terrorist financing.

2 In the case of transfers of money and securities from abroad to Switzerland, the recipient of the payment must be identified if one or more transactions that appear to be interconnected exceed the amount of CHF 1,000. If there are suspicions of potential money laundering or terrorist financing, the recipient of the transfer of money and securities must be identified in any case.

ARTICLE 53 Generally known legal entities, partnerships and authorities

1 The financial intermediary may waive the identification of a legal entity, a partnership or an authority if the contracting party is generally known. In particular, the contracting party is generally known if it is a public company or is directly or indirectly affiliated with such a company.

2 If the financial intermediary waives identification, it shall state the reason in the file.

ARTICLE 54[64]

ARTICLE 55 Failure to identify the contracting party

1 All documents and information required for the identification of the contracting party shall be available in full prior to the execution of transactions in the course of a business relationship.

2 If the contracting party cannot be identified, the financial intermediary shall refuse to establish the business relationship or shall terminate it according to the provisions of Chapter 9 of Title 1.

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

Section 1: Controlling person

ARTICLE 56 Principle

1 If the contracting party is an operating legal entity or partnership not listed on the stock exchange or

[64] Repealed by Annex Section 4 of the FINMA Ordinance of 4 November 2020 on financial institutions, with effect from 1 January 2021 (AS **2020** 5327).

a subsidiary controlled in majority by such a company, the financial intermediary must obtain from the contracting party a written declaration stating who, as the controlling person, holds, directly or indirectly, alone or in concert, at least 25 percent of the voting rights or capital interest in the company.

2 If the company is not controlled by the persons according to (1), the financial intermediary must obtain from the contracting party a written declaration as to who controls the company by other means as the controlling person.

3 If no controlling persons can be established according to (1) and (2), the financial intermediary must obtain from the contracting party, in lieu of the controlling person, a written declaration as to who the managing person is.

4 (1-3) shall apply to the establishment of permanent business relationships and in any case to transfers of money and securities from Switzerland to other countries.

5 In the case of cash transactions, (1-3) shall apply if one or more transactions that appear to be interconnected exceed the amount of CHF 15,000. The financial intermediary shall obtain the declaration at the latest immediately after the transaction has been executed.[65]

ARTICLE 57 Required information

1 The written declaration of the contracting party on the controlling person shall contain information on family name, first name and domicile address.

2 If a controlling person originates from a country in which domicile addresses are not used, this information is omitted. However, this exceptional situation shall be justified in a file note.

ARTICLE 58 Exceptions to the duty to establish the controlling person

The financial intermediary is not required to obtain a written declaration on the controlling person, provided that the contracting parties are as follows:[66]

a. Companies listed on a stock exchange or a subsidiary controlled in majority by such a company;

b. public authorities;

c.[67] financial intermediaries according to Article 2(2)(a-d^{ter}) AMLA as well as tax-exempt occupational pension schemes domiciled in Switzerland;

d. banks, securities firms, fund management companies, investment companies under CISA, managers of collective assets, life insurance companies with their place of incorporation or

65 Version according to Section I of the FINMA Ordinance of 20 June 2018, in force since 1 January 2020 (AS **2018** 2691).
66 Version according to Annex Section 4 of the FINMA Ordinance of 4 November 2020 on financial institutions, in force since 1 January 2021 (AS **2020** 5327).
67 Version according to Annex Section 4 of the FINMA Ordinance of 4 November 2020 on financial institutions, in force since 1 January 2021 (AS **2020** 5327).

domicile abroad, provided they are subject to supervision equivalent to that under Swiss law;

e. other financial intermediaries with their place of incorporation or domicile abroad, provided they are subject to adequate prudential supervision and regulation regarding the combating of money laundering and terrorist financing;

f. ordinary partnerships.

Section 2: Beneficial owner of assets

ARTICLE 59 Principle

1 The financial intermediary must obtain a written declaration from the contracting party stating who, as a natural person, the beneficial owner of the assets is, if the contracting party is not identical with this person or if the financial intermediary has doubts that the contracting party is identical with this person, specifically if:

a. a person who is not apparent to have a sufficiently close relationship with the contracting party is given a power of attorney authorizing the withdrawal of assets;

b. the assets contributed by the contracting party are obviously in excess of her or his financial circumstances;

c. the contact with the contracting party indicates other unusual findings;

d. the business relationship is established without personal meeting.

2 The financial intermediary is only required to obtain a written declaration from unlisted operating legal entities or partnerships as to which natural person the beneficial owner of the assets is if it is known or there are concrete indications that the operating legal entity or partnership holds the assets on behalf of a third party.

3 If there are grounds for suspicion of potential money laundering or terrorist financing, the financial intermediary must request a written declaration on the beneficial owner of assets.

4 If the financial intermediary has no doubts that the contracting party is also the beneficial owner of the assets, it shall document this in an adequate form.

ARTICLE 60 Required information

1 The written declaration of the contracting party on the beneficial owner of the assets shall contain the following information: Family name, first name, date of birth, domicile address and nationality.

2 The declaration may be signed by the contracting party or by an authorized person. In case of legal entities, the declaration shall be signed by a person authorized to do so according to the company documentation.

3 If a beneficial owner originates from a country in which dates of birth or domicile addresses are not used, this information is omitted. However, this exceptional situation shall be justified in a file note.

ARTICLE 61 Cash transactions

1 The financial intermediary must obtain from the contracting party a written declaration as to who the beneficial owner of assets is if one or more transactions that appear to be interconnected reach or exceed the amount of CHF 15,000.[68]

2 In any case, it must obtain such a declaration if:

a. There is any doubt that the contracting party, the controlling person or the beneficial owner of the assets are the same person; or

b. there are grounds for suspicion of potential money laundering or terrorist financing.

ARTICLE 62 Transfer of money and securities

In the case of transfers of money and securities from Switzerland to other countries, the declaration of the beneficial owner of assets must be obtained in any case.

ARTICLE 63 Domiciliary companies

1 If the contracting party is a domiciliary company, the financial intermediary is obliged to obtain from the contracting party a written declaration as to who the beneficial owner is.

2 Indications of the existence of a domiciliary company are in particular:

a. Absence of own business premises, as is the case in particular if a c/o address, place of incorporation with a lawyer, with a fiduciary company or with a bank is indicated; or

b. absence of own staff.

3 Should the financial intermediary not deem the contracting party to be a domiciliary company, despite the presence of one or both of the indications according to (2), it shall record the reason for this in writing.

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

ARTICLE 64 Associations of individuals, trusts and other economic units

1 For associations of individuals, trusts or other economic units, the financial intermediary shall obtain from the contracting party a written declaration on the following persons:

[68] Version according to Section I of the FINMA Ordinance of 20 June 2018, in force since 1 January 2020 (AS **2018** 2691).

a. the actual settlor;

b. the trustees;

c. any curators, protectors or other appointed persons;

d. the named beneficiaries;

e. if no named beneficiaries have yet been designated: the group of persons eligible to be beneficiaries, arranged by category;

f. the persons who may give instructions to the contracting party or its bodies;

g. for revocable structures: the persons entitled to revocation.

2 To companies that function in a similar way to associations of individuals, trusts or other economic units, (1) shall apply mutatis mutandis.

3 A financial intermediary that establishes a business relationship or executes a transaction as a trustee shall identify itself as trustee to the financial intermediary of the contracting party or to the transaction partner.

ARTICLE 65 Financial intermediary supervised by special law or tax-exempt occupational pension schemes as contracting party

1 No declaration on the beneficial owner needs to be obtained if the contracting party is:

a. financial intermediary according to Article 2(2)(a) or (b-c) AMLA with domicile or place of incorporation in Switzerland;

b. a securities firm according to Article 2(2)(d) AMLA with its place of incorporation in Switzerland, that itself maintains accounts according to Article 44(1)(a) FinIA;

c. a financial intermediary with domicile or place of incorporation abroad who engages in an activity according to Article 2(2)(a) or (b-c) AMLA and is subject to equivalent supervision and regulation;

d. a financial intermediary with domicile abroad who engages in an activity according to Article 2(2)(d) AMLA and maintains accounts itself;

e.[69] a tax-exempt occupational pension scheme according to Article 2(4)(b) AMLA.[70]

2 A contracting party must always provide a written declaration on the beneficial owner if:

[69] Inserted with Section I of the FINMA Ordinance of 10 December 2020, in force since 1 January 2021 (AS **2020** 6355).

[70] Version according to Annex Section 4 of the FINMA Ordinance of 4 November 2020 on financial institutions, in force since 1 January 2021 (AS **2020** 5327).

a. there are suspicions of potential money laundering or terrorist financing;

b. FINMA warns against general abuses or against a specific contracting party;

c. the contracting party is domiciled or has its place of incorporation in a country whose institutions FINMA generally warns against.

ARTICLE 65a[71] Life insurance with separate account or custody account management (insurance wrapper)

1 For a life insurance policy, the financial intermediary must obtain from its contracting party a declaration of the policyholder and, if different from the policyholder, the actual premium payer, if:

a. the assets brought into the insurance originate from a directly preceding contractual relationship between her or him and the policyholder or the actual insurance premium payer, or from a contractual relationship to which the latter was the beneficial owner;

b. the policyholder or the actual insurance premium payer has a power of attorney or a right to information on the investment portfolio;

c. the assets brought into the insurance are managed according to an investment strategy agreed between the financial intermediary and the policyholder or the actual premium payer; or

d. the insurance company does not confirm that the insurance product complies with the requirements for life insurance applicable in the policyholder's tax country or country of domicile, including the regulations concerning biometric risks.

2 If the financial intermediary establishes a business relationship on the basis of a confirmation from the insurance company stating that none of the cases listed in (1) apply, the confirmation from the insurance company must also include a description of the characteristics of the insurance product regarding to the items listed in (1)(a)-(d).

3 If, during the term of the business relationship, the financial intermediary becomes aware that the policyholder or the actual premium payer can directly or indirectly influence the individual investment decisions in a way other than according to (1), the policyholder or the actual premium payer shall be identified in writing.

ARTICLE 66 Collective investment scheme or investment company as contracting party

1 If the contracting party is a collective investment scheme or an investment company with 20 or fewer investors, the financial intermediary must obtain a declaration on the beneficial owners.

2 If the contracting party is a collective investment scheme or an investment company with more than

[71] Inserted with Annex, Section 4 of the FINMA Ordinance dated 4 November 2020 on financial institutions, in force since 1 January 2021 (AS **2020** 5327).

20 investors, the financial intermediary must obtain a declaration on the beneficial owners only if the collective investments or investment companies are not subject to adequate supervision and regulation regarding the combating of money laundering and terrorist financing.

3 A declaration on the beneficial owner may be waived if:

a. the collective investment or investment company is listed on the stock exchange;

b. a financial intermediary according to Article 65(1) acts as promoter or sponsor for a collective investment or investment company and demonstrates that it applies adequate rules regarding the combating of money laundering and terrorist financing.

ARTICLE 67 Ordinary partnerships

If, in case of a business relationship with the members of an ordinary partnership, the members themselves are the beneficial owners, a declaration on the beneficial owners does not have to be obtained if the ordinary partnership has as its purpose the protection of its members or beneficiaries in mutual self-help or pursues political, religious, scientific, artistic, charitable, sociable or similar purposes, comprises more than four members and does not have any relation to countries with increased risks.

Section 3: Failure to establish the beneficial owner

ARTICLE 68

1 All documents and information required to establish the controlling person or the beneficial owner of assets shall be available in full prior to the execution of transactions in the course of the business relationship.

2 If doubts remain as to the veracity of the declaration on the contracting party and if these cannot be dispelled by further investigations, the financial intermediary shall refuse to enter into the business relationship or terminate it according to the provisions of Chapter 9 of Title 1.

Chapter 3: Re-identification of the contracting party or re-establishment of the beneficial owner (Art. 5 AMLA)

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

The identification of the contracting party or the establishment of the controlling person and beneficial owner of assets shall be repeated in the course of the business relationship if doubts arise as to whether:

a. the information on the identity of the contracting party and the controlling person is correct;

b. the contracting party and the controlling person is identical to the beneficial owner of assets;

c. the declaration of the contracting party or the controlling person regarding the beneficial owner of assets is correct.

ARTICLE 70 Termination of the business relationship

The financial intermediary shall terminate a business relationship according to the provisions of Chapter 9 of Title 1 as quickly as possible if:

a. the doubts about the information provided on the contracting party or the controlling person remain even after the procedure according to Article 69 has been carried out;

b. the financial intermediary has reason to suspect that false information on the identity of the contracting party, the controlling person or the beneficial owner of assets has been knowingly provided it.

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

1 If the contracting party has already been identified within the group to which the financial intermediary belongs in a manner equivalent to the provisions of this Ordinance, it may not be re-identified according to the provisions of Chapter 8 of Title 1.

2 The same shall apply if a declaration on the controlling person or the beneficial owner of assets has already been obtained within the group.

Chapter 4: Business relationships and transactions with increased risks

ARTICLE 72 Criteria for business relationships with increased risks

1 A financial intermediary who maintains up to 20 permanent business relationships does not have to define criteria according to Article 13 which indicate business relationships with increased risk.

2 Persons according to Article 1b BA[72] shall in any case specify criteria according to Article 13.[73]

ARTICLE 73 Transfer of money and securities

1 The financial intermediary shall specify criteria for the identification of transactions with increased risks. It shall deploy an IT-based system to identify and monitor transactions with increased risks.

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72 SR **952.0**

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

2 All transfers of money and securities shall in any case be deemed to be transactions with increased risks if one or more transactions that appear to be interconnected reach or exceed the amount of CHF 5,000.

3 In case of transfers of money and securities, the name and address of the financial intermediary must be apparent on the payment receipt.

4 The financial intermediary shall maintain an updated register of the auxiliaries and agents of system operators it has engaged.

5 A financial intermediary acting on behalf and for the account of other authorized financial intermediaries or financial intermediaries subject to a self-regulating organization according to Article 24 AMLA may do so in the money and securities transfer business only for a single financial intermediary.

Chapter 5: Duty to document and retain records

ARTICLE 74

1 The financial intermediary in particular shall retain the following documents:

a. a copy of the documents which served to identify the contracting party;

b. in cases according to Chapter 2 of this Title, the written declaration of the contracting party on the identity of the controlling person or the beneficial owner of assets;

c. a written note on the results of the application of the criteria according to Article 13;

d. a written note or the documents on the results of the investigations according to Article 15;

e. a documentation of the transactions executed;

f. a copy of the reports according to Article 9(1) AMLA and according to Article 305ter(2) SCC[74];

g. a list of all AMLA-relevant business relationships maintained by the financial intermediary.

2 The documents must enable each individual transaction to be traced.

3 The documents and records must be retained in a secure place in Switzerland which is accessible at all times.

4 The electronic retention of documents must fulfill the requirements according to Articles 9 and 10 of the Accounting Records Ordinance of 24 April 2002[75]. If the server used is not located in

[74] SR **311.0**
[75] SR **221.431**

Switzerland, the financial intermediary must retain updated physical or electronic copies of the relevant documents in Switzerland.

Chapter 6: Organizational measures

ARTICLE 75[76] Competence center for combating money laundering for financial intermediaries

1 The competence center for combating money laundering of a financial intermediary is only required to perform the duties according to Article 24 only if:

a. the financial intermediary has a company size of five or fewer full-time employees or an annual gross income of less than 2 million Swiss francs; and

b. it has a business model without increased risks.

2 Where necessary to monitor compliance with the duties to combat money laundering and terrorist financing, FINMA may also require a financial intermediary that fulfills the requirements according to (1) to ensure that the competence center for combating money laundering also fulfills the tasks specified in Article 25.

3 The threshold values according to (1)(a) must have been attained in two out of the past three financial years or must have been provided for in the business planning.

ARTICLE 75a[77] Competence center for money laundering for persons according to Article 1b BA

1 For persons according to Article 1b BA[78] who meet the requirements for facilitations regarding risk management and compliance according to Article 14e(5) of the Banking Ordinance of 30 April 2014[79], the competence center for combating money laundering shall only have to perform the tasks according to Article 24. These tasks may then also be performed by the Executive Management or a member of the Executive Management. The activities to be controlled may not be controlled by a person who is directly responsible for this business relationship.

2 If this is necessary to combat money laundering and terrorist financing, FINMA may in any case require that the duties according to Article 25 be performed.

ARTICLE 76[80]

76 Version according to Annex Section 4 of the FINMA Ordinance of 4 November 2020 on financial institutions, in force since 1 January 2021 (AS **2020** 5327).

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

78 SR **952.0**

79 SR **952.02**

80 Repealed by Annex Section 4 of the FINMA Ordinance of 4 November 2020 on financial institutions, with effect from 1 January 2021 (AS **2020** 5327).

Title 6: Final provisions and transitional provisions

ARTICLE 77 Repeal of another ordinance

The FINMA Anti-money Laundering Ordinance of 8 December 2010[81] shall be repealed.

ARTICLE 78 Transitional provisions

1 The financial intermediary must implement these new requirements according to 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 contracting party according to Article 12(2) and (3) at the latest by 1 July 2017.

3 The provisions on the establishment of the controlling person shall apply to business relationships newly established as of 1 January 2016. They shall apply to business relationships that already existed before 1 January 2016, if in the course of the business relationship it is necessary to re-identify the contracting party or to re-establish the beneficial owner of assets.

ARTICLE 78a[82] Transitional provisions to the amendments of 4 November 2020

1 For financial intermediaries according to Article 2(2)(a^{bis}) AMLA, this Ordinance shall apply as from the date on which the license according to Article 74(2) FinIA[83] is granted.

2 Article 65a shall apply to business relationships that are newly established as from the date of granting of the license according to Article 74(2) FinIA.

ARTICLE 79 Entry into force

This Ordinance shall enter into force on 1 January 2016.

81 [AS **2010** 6295]

82 Inserted with Annex, Section 4 of the FINMA Ordinance dated 4 November 2020 on financial institutions, in force since 1 January 2021 (AS **2020** 5327).

83 SR **954.1**

Annex

(Art. 38)

Indicators of money laundering

1 Significance of the indicators

1.1 Financial intermediaries shall take into consideration the following indicators which provide information on business relationships or transactions with increased risks. The individual indicators may not, as a rule, in themselves give sufficient grounds for suspicion of a criminal money laundering transaction, but the concurrence of several of these elements may indicate money laundering.

1.2 A client's declaration on the background of a particular transaction must be checked for its plausibility. It is important to note that not all declarations made by clients may be taken at face value.

2 General indicators

2.1 Transactions shall be deemed to 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 may even seem absurd from an economic point of view;

2.1.2 assets which are withdrawn shortly after they have been deposited at the financial intermediary (transitory 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 branch for her or his business;

2.1.4 an account which has been inactive for a long time 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 documents necessary for the business relationship and customary for the 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.

Specific indicators

3.1 Cash 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 cash 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 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 the 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 (pledges, sureties) by third-party entities not known to the bank and which do not have an obviously close relationship to the client and where it is not clear for what the collateral 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 beneficiary or the contractual party giving the order;

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 persons 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 with 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 Other

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 according to Article 11a(2) AMLA.

4 Particularly suspicious indicators

4.1 Client's request to close 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 immediately deposited again 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 to have documented the granting of credit collateral that is incongruous from an economic point of view or to grant a credit on behalf of others by providing fictitious collateral;

4.6 Legal proceedings against the client of the financial intermediary for crime, corruption, misuse of public funds or qualified tax offense.

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