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Federal Department of Finance FDF

State Secretariat for International Finance SIF

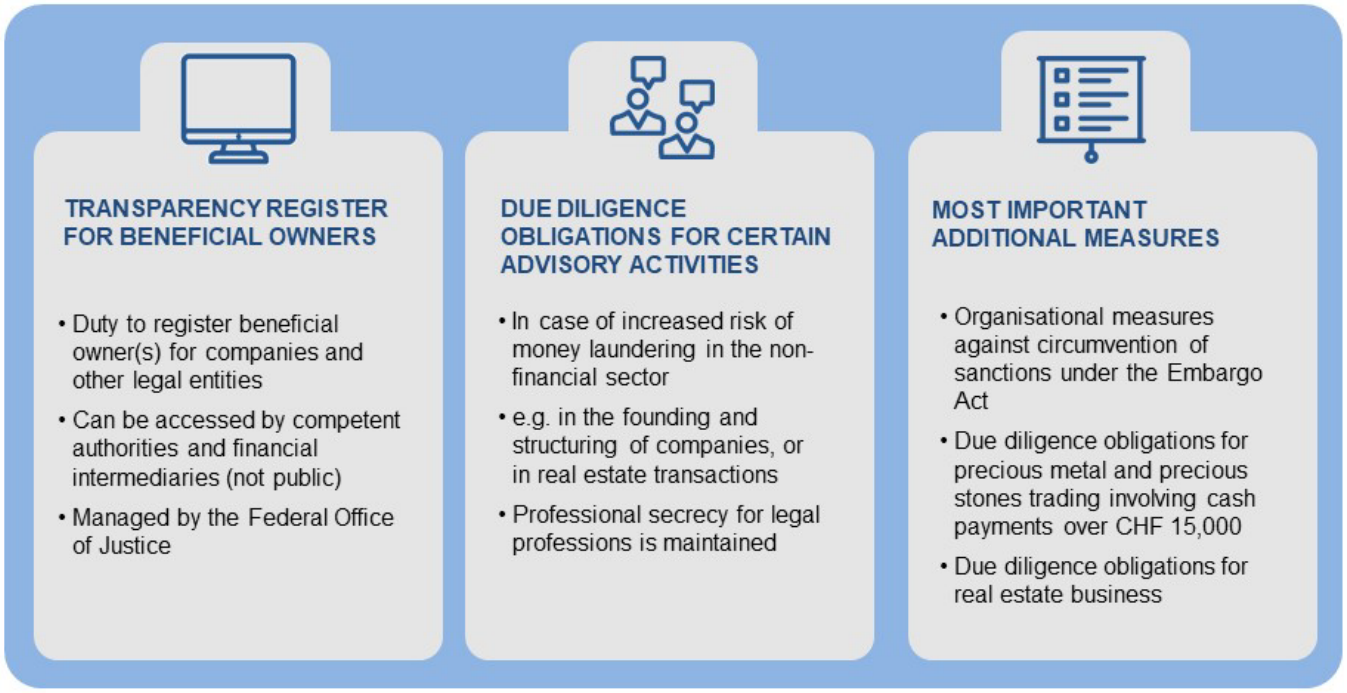
Switzerland strengthens anti-money laundering framework

On 22 May 2024, the Federal Council adopted the dispatch on strengthening the anti-money laundering framework.

Why?

- Money laundering is a serious criminal offence that finances crime in the broader sense, damages the economy and jeopardises trust in our financial and legal system.
- An effective system for combating financial crime is essential for the good reputation and lasting success of an internationally important, secure and future-oriented financial centre and business location.
- The Swiss system for combating money laundering is robust overall, but there are certain gaps, for example in terms of the transparency of legal entities and the identification of beneficial owners.

What?



Questions and answers

General

Why is a new federal law on the transparency of legal entities needed?

Given the high money laundering risks that can be associated with legal entities, especially if they are highly complex and non-transparent, the legislative amendments are important to strengthen the Swiss framework. The bill aims to ensure that the competent authorities can obtain information about the beneficial owners of a legal entity quickly and efficiently using a centralised register. In this way, in particular money laundering and related economic crime can be more effectively prevented.

Why is a revision of the anti-money laundering provisions needed?

Thanks to various due diligence obligations, the financial sector is now well integrated in efforts to prevent money laundering and terrorist financing, but there are gaps in non-financial areas in this respect. Criminals can take advantage of these. As money laundering and terrorist financing pose a serious threat to society, the integrity of the financial centre and the stability of the financial system, it is necessary to also include particularly risky activities in the non-financial sector in efforts to prevent and combat financial crime.

The consultation on the bill took place from August to November 2023. How was the response?

The bill was well received by the majority of the consultation participants. Some criticised the specific design of the new register, e.g. shortcomings in data protection or the overly complicated registration obligation. With regard to the subordination of certain activities in the legal professions, it was criticised that the regional bar associations designated for supervision were not suitable for this task. The professional associations concerned were generally critical of the subordination to the due diligence and registration obligations.

What changes has the Federal Council made to the original bill?

When creating the new federal register (transparency register), data collection was further simplified, coordination with money laundering legislation was improved and data protection was strengthened. Based on feedback from the consultation, the supervision of the fulfilment of due diligence obligations by the lawyers concerned should not be the responsibility of the regional bar associations, but rather of the self-regulatory organisations (SROs) under anti-money laundering legislation. This will allow existing expertise to be utilised and ensure uniform practice. Finally, in view of the criticism voiced during the consultation, the SRO sanctions system will not be reformed.

What impact have recent geopolitical events such as the war in Ukraine or the conflicts in the Middle East had on combating money laundering?

The problem of concealing the beneficial owners of legal entities has been exacerbated by war-related events. In particular, the enforcement of international sanctions is made more difficult if the actual beneficial owners of assets are concealed through the intermediary of (Swiss) companies or fiduciary shareholders. The Federal Council's legislative proposals can contribute to greater transparency and legal certainty here. This will also improve the efficiency of the fight against terrorist financing, criminal prosecution and international cooperation.

Questions about the register

Which legal entities are obliged to be entered in the transparency register?

Legal entities under Swiss law, i.e. companies limited by shares (AG), limited liability companies (GmbH), SICAV/SICAF, cooperatives, foundations and associations that have to be entered in the commercial register. Moreover, the requirement also covers foreign-based legal entities which have a close connection with Switzerland and represent a particular risk (e.g. through ownership of land or the operation of a branch).

What obligations do the legal entities subject to the law have?

The affected legal entities must henceforward determine the identity of the beneficial owner(s) and use appropriate means to verify this information. They must report this information to the transparency register, which will be managed by the Federal Office of Justice (FOJ).

What must be reported to the register and when?

After the legal entity has been entered in the commercial register, it has one month to report the identity of its beneficial owner(s), as well as the type and magnitude of the control exercised by them, to the transparency register.

Changes must also be reported within the one-month deadline. Existing legal entities will be given a transitional period in which to report to the new transparency register (directly or in parallel with a change to the commercial register).

What is a "beneficial owner"?

A beneficial owner is defined as any private individual who ultimately controls a legal entity. Either alone or together with a third party, they hold at least 25% of the capital or voting rights in the company, or exert control in some other way (e.g. by exerting significant influence on the decisions of the legal entity). If nobody meets one of these criteria, the most senior member of the governing body is deemed to be the beneficial owner.

Who has access to the information in the transparency register?

For data protection reasons, the transparency register is not public. Access is reserved for the authorities expressly listed in the legislation in the exercise of their statutory duties. The transparency register can also be viewed by financial intermediaries and advisers that are subject to the Anti-Money Laundering Act, in the exercise of their anti-money laundering due diligence obligations with regard to their clients. To ensure a high level of protection for the registered data, access to this data is regulated by a series of legal and technical measures (e.g. restricted visibility of certain data for certain users).

How many legal entities are subject to the registration requirement?

Over 500,000 (485,000 companies, 18,000 foundations, 11,000 associations, 8,000 cooperatives, 3,000 branches of foreign companies). A simplified registration procedure exists for most of them.

How much effort is required from the companies and other legal entities concerned in order to fulfil the registration obligation?

In principle, all companies and legal entities in Switzerland are required to enter their beneficial owners in the federal transparency register. This obligation is based on existing obligations to identify beneficial owners, which have been supplemented. Simplified identification and verification rules and a simplified registration procedure apply to most of them, in particular sole proprietorships, limited liability companies, foundations and associations, provided that the beneficial owners are already entered in the commercial register. According to an externally produced regulatory impact assessment, the proposed new regulations will result in a slight additional administrative burden, but this will have little impact at the level of individual companies. For the vast majority of all companies, the estimated burden will be around 20 minutes in the first year. In the following years, the effort required will drop to a few minutes.

Questions about legal advice and other advisory activities

Why must measures be introduced for legal professions and advisers?

Legal professionals and other advisers perform activities with a high exposure to the risk of money laundering if they support their clients in the founding or structuring of companies, or the sale of real estate. Until now, they have not been subject to special due diligence obligations under anti-money laundering legislation, unlike the financial sector. The draft therefore provides for the introduction of similar obligations, specifically the duty to identify clients and beneficial owners. This contributes to greater transparency regarding legal entities and strengthens the fight against money laundering.

What do the due diligence obligations for advisers comprise?

- Identification duty: the client's identity must be verified and the beneficial owner and the object and purpose of the transaction or service must be identified.
- If the client, or the transaction or service, has a particularly high risk profile, it may be necessary to clarify the origin of the funds or to request additional explanations about the purpose of the requested transaction or service.
- The measures undertaken in connection with due diligence must be appropriately recorded.

Does professional secrecy for lawyers and notaries still apply? Do they have to report protected information to state authorities?

Yes, the professional secrecy for lawyers and notaries remains in place, as confirmed by the expert opinion commissioned by the FDF from Prof Chappuis (Link in German). Supervision is organised in such a way that professional secrecy is maintained. In addition, there is no obligation to report protected information to the Money Laundering Reporting Office Switzerland (MROS), public prosecutors' offices or other state authorities. As under current legislation, the obligation to report to MROS does not apply if the information is covered by professional secrecy, as expressly stipulated in law.

In contrast to the consultation bill, supervision of compliance with due diligence obligations is not the responsibility of the regional bar associations, but of the self-regulatory organisations (SROs) under anti-money laundering legislation. Why?

During the consultation, there was criticism that the regional bar associations were not suitable for this supervision. In addition, standardised application throughout Switzerland was not guaranteed. The Federal Council therefore now proposes that supervision should be carried out by the existing self-regulatory organisations (SROs) under anti-money laundering legislation. This will allow existing expertise to be utilised and ensure uniform practice.

How many lawyers, notaries and advisers are now subject to due diligence obligations?

The due diligence obligations do not apply to all members of the legal professions, but only to those who offer one of the activities listed in the legislation on a professional basis. An ordinance will define what constitutes a professional basis. As there are no detailed statistics in Switzerland on those potentially affected or on their activities, it is not possible to provide an exact figure. Estimates in other jurisdictions with similar regulations assume that 25% to 40% of all lawyers and notaries are subject to anti-money laundering due diligence obligations. For the Swiss market, this estimate should be lower, as the scope of application in Switzerland is narrower. Moreover, some of the approximately 12,000 lawyers are already subject to the AMLA because they act as financial intermediaries.

Questions about sanctions

Why are new provisions against the breaching and circumvention of sanctions under the Embargo Act needed?

The new provisions are mainly aimed at increasing legal certainty. Under new preventive obligations with regard to sanctions under the Embargo Act, financial intermediaries can also be induced to take additional organisational measures to prevent criminal acts.

Questions about the real estate sector and precious metal dealers

Why will all real estate transactions now be subject to due diligence obligations, instead of a threshold?

The proposed solution is based on the premise that cash payments are unusual in business transactions today and must give rise to due diligence obligations even under the current regulations. However, cash payments can still be made.

Why has the threshold for cash payments been lowered?

Cash payments can still be made, but special due diligence obligations apply to payments exceeding CHF 15,000. This threshold has become established internationally, and comes in response to a proposal already discussed by Parliament in 2019.

Further information

Integrity of the financial centre (admin.ch)