

BULLETIN SEPTEMBER 2023

New draft legislation on Anti-Money Laundering in Switzerland

I. INTRODUCTION

On August 30, 2023, the Swiss Federal Council (SFC) launched a consultation procedure on a preliminary draft legislation (the **Draft Bill**) to strengthen Switzerland's anti-money laundering framework by *inter alia* establishing a federal register of ultimate beneficial owners (UBOs) of legal entities. The Draft Bill aims to align Switzerland with international standards set by bodies such as the Financial Action Task Force and the Global Forum on Transparency and Exchange of Information for Tax Purposes. The purpose of this bulletin is to set out some key elements of the Draft Bill.

The consultation procedure on the Draft Bill will last until November 29, 2023. The SFC will then submit the related dispatch to the Swiss Parliament in 2024.

II. NEW CORPORATE TRANSPARENCY ACT

A. Scope of Application

The Draft Bill calls for the introduction of a new Corporate Transparency Act, which would apply to:

- Swiss legal entities governed by Swiss law (*i.e.*, joint-stock companies, limited liability companies, SICAVs, SICAFs, cooperatives, foundations and associations required to register with the Commercial register), with

some exemptions for listed companies, pension funds and legal entities held by public authorities; and

- legal entities governed by foreign law, provided that (a) they have a Swiss branch registered in the Swiss commercial register, (b) their effective management is carried out in Switzerland or (c) they own real estate or intend to acquire real estate in Switzerland.

B. Identification and Verification Duties

Current law provides that any person who alone or by agreement with third parties acquires shares in a company whose participation rights are not listed on a stock exchange, and thus reaches or exceeds the threshold of 25% of the share capital or right to vote must give notice to the company of the natural person for whom it is ultimately acting (*i.e.*, of the UBO). The Draft Bill suggests to define the UBO as any private individual who either individually or jointly with a third party, holds at least 25% of the legal entity's capital or voting rights, or "*otherwise exercises control*" and to deem the most senior member of the management as the UBO should neither of the above criteria be met.

Current law only requires the companies to keep a register of the UBOs that have been notified to them. The Draft Bill, on the other hand, would require the legal entities themselves to identify their UBOs – with the due diligence required in the circumstances – and thus to obtain and have reliable information on their UBOs. Accordingly, the Draft Bill provides for the right and the duty for legal entities to

require cooperation from shareholders and UBOs in order to be able to identify and verify their identity and to record the collected information appropriately.

While the current one-month deadline for the notification of the identity of the UBOs to the legal entity would remain unchanged, the Draft Bill proposes to shorten the deadline for communicating any subsequent changes thereof from three to one month as well as to introduce a one-month period for the legal entity to report the disclosed information to the Register in accordance with the reporting duties described below (*infra*, II.C).

C. Reporting Duties

The Draft Bill envisages the creation of a new centralized and non-public register of UBOs (the **Register**). Legal entities would have the obligation to report to this Register the identity of their UBOs, the nature and extent of the control exercised by them (*i.e.*, percentage of voting rights and ownership interests, respectively) as well as any subsequent changes thereof. The deadline for complying with these reporting duties would be one month after the entity is registered in the Swiss commercial register or, in the case of an entity governed by foreign law, upon becoming subject to the Corporate Transparency Act (*supra*, II.A).

The Register would only be made available for consultation by:

- relevant Swiss authorities (criminal authorities, anti-money laundering authorities, tax authorities);
- financial intermediaries and advisors subject to the Swiss Anti-Money Laundering Act (AMLA) for the purposes of performing an anti-money laundering and KYC due diligence; and
- lawyers carrying out an advisory activity for which the Draft Bill proposes to introduce a duty to perform mandatory anti-money laundering due diligence.

D. Enforcement

The Swiss Federal Department of Finance (FDF) would be (i) the governmental body empowered to verify that the information in the Register is complete, accurate and up-to-date, (ii) to rule on any disputes arising in relation thereof and (iii) to impose penalties for any breach of the Draft Bill, including fines of up to CHF 500,000.

III. OTHER NOTABLE LEGISLATIVE CHANGES

Natural persons and legal entities that trade goods and in doing so accept cash are deemed to be ‘dealers’ pursuant to the AMLA. Under current law, dealers are required to verify the identity of their customers and establish the identity of their UBOs only if they accept more than CHF 100,000 in cash in the course of a commercial transaction of any type.

The Draft Bill proposes two amendments to these rules, namely:

- to require dealers to comply with the above verification and identification duties if they accept more than CHF 15,000 in cash in the course of a commercial transaction involving precious metals and gemstones, with some exemptions for finished products such as jewellery; and
- to require dealers to comply with these duties if they accept any amount of cash in the course of a commercial transaction involving real estate.

In addition, in order to prevent the violation of sanctions based on the Swiss Embargo Act, the Draft Bill calls for the introduction of an obligation for financial intermediaries and advisors to implement appropriate organizational measures.

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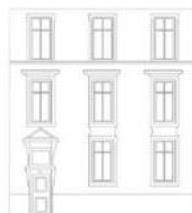
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*Nous aurons le plaisir de vous accueillir
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