

STEP

Lausanne, January 29, 2019

Update on Amendments to AMLA

I. Introduction

- A. 4th FATF mutual evolution report on Switzerland (December 7, 2016)
- B. AMLO-FINMA amendments
- C. Revised agreement on Swiss banks' code of conduct (CDB 20)
- D. AMLA proposed amendments
 - 1. Draft of 14 September 2018
 - 2. Preliminary draft of 1 June 2018

II. AMLO-FINMA Amendments

- Increased monitoring requirements for Swiss financial intermediaries with branches or group companies outside of Switzerland
- Increased risk management duties for domiciliary companies or complex structures
- Reduction of the threshold for cash transactions to CHF 15,000

III. AMLA Proposed Amendments

A. Draft of 14 September 2018

- Criminal organization offence extended to any support
- New offence for Terrorist organization
- MROS may request information based on data received from a foreign authority (art. 11 para 2bis D-AMLA)
- Swiss authority may in exceptional cases transfer information to foreign authorities before the end of the mutual assistance procedure, if this is necessary for the foreign procedure or if there is a serious and impending danger

III. AMLA Proposed Amendments

B. Preliminary draft of 1 June 2018

- Advisers subject to AMLA
- Obligation to verify information on beneficial owners and to regularly check that client data is up to date
- Modification of the suspicious activity reporting system
- Associations involved in collecting or distributing assets abroad for charitable purposes must be entered in the commercial register.

III. AMLA Proposed Amendments

C. Advisers

Individual persons or legal entities who, on a professional basis, prepare or practice the following activities are subject to the AMLA:

- The establishment, management or administration of companies outside Switzerland, domiciliary companies in Switzerland and trusts
- The purchase and sale of, and domiciliary and nominee service for, such entities

III. AMLA Proposed Amendments

C. Advisers

- Due diligence and documentation duties (e.g. identify contracting counterparties and verify beneficial owners)
- Organizational measures (education and internal controls)
- No reporting obligation to MROS, but obligation to refuse or terminate business relationship
- Appointment of external auditor to verify compliance
- Immediate reporting of external auditor to Federal Department of Finance in case of breach (or suspicion of breach) of reporting obligation

III. AMLA Proposed Amendments

D. Modification of the suspicious activity reporting system

- FATF: Dualistic approach (right to report of art. 305ter SCC / duty to report of art. 9 AMLA) leads to confusion: “observations suggest that assets in question might be” vs. “reasonable grounds” for suspicion
- Federal Council: Current case law lowered the threshold for the duty to report by applying a broad definition of “reasonable grounds” (a simple suspicion triggers a duty to report) → no need for a right to report

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