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## **Federal Act on Combating Money Laundering and Terrorist Financing (Anti-Money Laundering Act, AMLA)<sup>1</sup>**

of 10 October 1997 (Status as of 1 January 2019)

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*The Federal Assembly of the Swiss Confederation,*

based on Articles 95 and 98 of the Federal Constitution<sup>2,3</sup>,

and having considered the Federal Council Dispatch dated 17 June 1996<sup>4</sup>,

*decrees:*

### **Chapter 1    General Provisions**

**Art. 1<sup>5</sup>**            Subject matter

This Act regulates the combating of money laundering as defined in Article 305<sup>bis</sup> of the Swiss Criminal Code<sup>6</sup> (SCC), the combating of terrorist financing as defined in Article 260<sup>quinquies</sup> paragraph 1 SCC, and the due diligence required in financial transactions.

**Art. 2**            Scope of application

<sup>1</sup> This Act applies to:

- a. financial intermediaries;

AS **1998** 892

<sup>1</sup> Amended by No I 7 of the FA of 12 Dec. 2014 on the Implementation of the 2012 revision of the Recommendations of the Financial Action Task Force, in force since 1 Jan. 2016 (AS **2015** 1389; BBl **2014** 605).

<sup>2</sup> SR **101**

<sup>3</sup> Amended by No I of the FA of 21 June 2013, in force since 1 Nov. 2013 (AS **2013** 3493; BBl **2012** 6941).

<sup>4</sup> BBl **1996** III 1101

<sup>5</sup> Amended by No I 4 of the FA of 3 Oct. 2008 on the Implementation of the revised Recommendations of the Financial Action Task Force, in force since 1 Feb. 2009 (AS **2009** 361; BBl **2007** 6269).

<sup>6</sup> SR **311.0**

- b. natural persons and legal entities that deal in goods commercially and in doing so accept cash (dealers).<sup>7</sup>

<sup>2</sup> Financial intermediaries are:

- a.<sup>8</sup> banks as defined in Article 1a of the Banking Act of 8 November 1934<sup>9</sup> (BankA) and the persons defined in Article 1b BankA;
- b.<sup>10</sup> fund managers, provided they manage share accounts or themselves distribute shares in collective investment schemes;
- b<sup>bis</sup>.<sup>11</sup> investment companies with variable capital, limited partnerships for collective investments, investment companies with fixed capital and asset managers of collective investments within the meaning of the Collective Investment Schemes Act of 23 June 2006<sup>12</sup>, provided they themselves distribute shares in collective investment schemes;
- c.<sup>13</sup> insurance institutions as defined in the Insurance Supervision Act of 17 December 2004<sup>14</sup> that deal in direct life insurance or offer or distribute shares in collective investment schemes;
- d. securities dealers as defined in the Stock Exchange Act of 24 March 1995<sup>15</sup>;
- d<sup>bis</sup>.<sup>16</sup> central counterparties and central securities depositories in accordance with the Financial Market Infrastructure Act of 19 June 2015<sup>17</sup>;
- d<sup>ter</sup>.<sup>18</sup> payment systems that require authorisation from the Swiss Financial Market Supervisory Authority (FINMA) in accordance with Article 4 paragraph 2 of the Financial Market Infrastructure Act of 19 June 2015;
- e.<sup>19</sup> casinos as defined in the Gambling Act of 29 September 2017<sup>20</sup> (GambLA);

<sup>7</sup> Amended by No I 7 of the FA of 12 Dec. 2014 on the Implementation of the 2012 revision of the Recommendations of the Financial Action Task Force, in force since 1 Jan. 2016 (AS **2015** 1389; BBI **2014** 605).

<sup>8</sup> Amended by Annex No II 15 des Financial Institutions Act of 15 June 2018, in force since 1 Jan. 2019 (AS **2018** 5247; BBI **2015** 8901).

<sup>9</sup> SR **952.0**

<sup>10</sup> Amended by Annex No 3 of the FA of 28 Sept. 2012, in force since 1 March 2013 (AS **2013** 585; BBI **2012** 3639).

<sup>11</sup> Inserted by Annex No II 9 of the Collective Investment Schemes Act of 23 June 2006, (AS **2006** 5379; BBI **2005** 6395). Amended by Annex No 3 of the FA of 28 Sept. 2012, in force since 1 March 2013 (AS **2013** 585; BBI **2012** 3639).

<sup>12</sup> SR **951.31**

<sup>13</sup> Amended by Annex No II 9 of the Collective Investment Schemes Act of 23 June 2006, in force since 1 Jan. 2007 (AS **2006** 5379; BBI **2005** 6395).

<sup>14</sup> SR **961.01**

<sup>15</sup> SR **954.1**

<sup>16</sup> Inserted by Annex No 12 of the Financial Market Infrastructure Act of 19 June 2015, in force since 1 Jan. 2016 (AS **2015** 5339; BBI **2014** 7483).

<sup>17</sup> SR **958.1**

<sup>18</sup> Inserted by Annex No 12 of the Financial Market Infrastructure Act of 19 June 2015, in force since 1 Jan. 2016 (AS **2015** 5339; BBI **2014** 7483).

<sup>19</sup> Inserted by Annex No 4 of the Gambling Act of 18 Dec. 1998 (AS **2000** 677; BBI **1997** III 145). Amended by Annex No II 8 of the Gambling Act of 29 Sept. 2017, in force since 1 Jan. 2019 (AS **2018** 5103; BBI **2015** 8387).

<sup>20</sup> SR **935.51**

f.<sup>21</sup> promoters of large-scale games under the Gambla.

<sup>3</sup> Financial intermediaries are also persons who on a professional basis accept or hold on deposit assets belonging to others or who assist in the investment or transfer of such assets; they include in particular persons who:

- a. carry out credit transactions (in particular in relation to consumer loans or mortgages, factoring, commercial financing or financial leasing);
- b. provide services related to payment transactions, in particular by carrying out electronic transfers on behalf of other persons, or who issue or manage means of payment such as credit cards and travellers' cheques;
- c. trade for their own account or for the account of others in banknotes and coins, money market instruments, foreign exchange, precious metals, commodities and securities (stocks and shares and value rights) as well as their derivatives;
- d.<sup>22</sup> ...
- e. manage assets;
- f. make investments as investment advisers;
- g. hold securities on deposit or manage securities.

<sup>4</sup> This Act does not apply to:

- a. the Swiss National Bank;
- b. tax-exempt occupational pension institutions;
- c. persons who provide their services solely to tax-exempt occupational pension institutions;
- d. financial intermediaries within the meaning of paragraph 3 who provide their services solely to financial intermediaries within the meaning of paragraph 2 or to foreign financial intermediaries who are subject to equivalent supervision.

#### **Art. 2a<sup>23</sup>** Definitions

<sup>1</sup> Politically exposed persons in terms of this Act are:

- a. individuals who are or have been entrusted with prominent public functions by a foreign country, such as heads of state or of government, senior politicians at national level, senior government, judicial, military or political party officials at national level, and senior executives of state-owned corporations of national significance (foreign politically exposed persons);

<sup>21</sup> Inserted by Annex No II 8 of the Gambling Act of 29 Sept. 2017, in force since 1 Jan. 2019 (AS **2018** 5103; BBl **2015** 8387).

<sup>22</sup> Repealed by Annex No II 8 of the Insurance Supervision Act of 17 Dec. 2004, with effect from 1 Jan. 2006 (AS **2005** 5269; BBl **2003** 3789).

<sup>23</sup> Inserted by No I 7 of the FA of 12 Dec. 2014 on the Implementation of the 2012 revision of the Recommendations of the Financial Action Task Force, in force since 1 Jan. 2016 (AS **2015** 1389; BBl **2014** 605).

- b. individuals who are or have been entrusted with prominent public functions at national level in Switzerland in politics, government, the armed forces or the judiciary, or who are or have been senior executives of state-owned corporations of national significance (domestic politically exposed persons);
- c. individuals who are or have been entrusted with a prominent function by an intergovernmental organisation or international sports federations, such as secretaries general, directors, deputy directors and members of the board or individuals who have been entrusted with equivalent functions, (politically exposed persons in international organisations)

<sup>2</sup> The family members and close associates of politically exposed persons are individuals who are closely connected to persons under paragraph 1 either through their family or for social or professional reasons.

<sup>3</sup> The beneficial owners of an operating legal entity are the natural persons who ultimately control the legal entity in that they directly or indirectly, alone or in concert with third parties, hold at least 25 per cent of the capital or voting rights in the legal entity or otherwise control it. If the beneficial owners cannot be identified, the most senior member of the legal entity's executive body must be identified.

<sup>4</sup> Domestic politically exposed persons are no longer regarded as being politically exposed in terms of this Act when 18 months have elapsed since they relinquished their position. The general duties of due diligence for financial intermediaries are reserved.

<sup>5</sup> An international sports federation in terms of paragraph 1 letter c is the International Olympic Committee and the non-governmental organisations that it recognised that regulate one or more official sports at global level.

## **Chapter 2 Duties<sup>24</sup>**

### **Section 1 Financial Intermediaries Duty of Due Diligence<sup>25</sup>**

#### **Art. 3 Verification of the identity of the customer**

<sup>1</sup> When establishing a business relationship, the financial intermediary must verify the identity of the customer on the basis of a document of evidentiary value. Where the customer is a legal entity, the financial intermediary must acknowledge the provisions regulating the power to bind the legal entity, and verify the identity of the persons who enter into the business relationship on behalf of the legal entity.<sup>26</sup>

<sup>24</sup> Amended by No 17 of the FA of 12 Dec. 2014 on the Implementation of the 2012 revision of the Recommendations of the Financial Action Task Force, in force since 1 Jan. 2016 (AS 2015 1389; BBl 2014 605).

<sup>25</sup> Amended by No 17 of the FA of 12 Dec. 2014 on the Implementation of the 2012 revision of the Recommendations of the Financial Action Task Force, in force since 1 Jan. 2016 (AS 2015 1389; BBl 2014 605).

<sup>26</sup> Second sentence inserted by No 14 of the FA of 3 Oct. 2008 on the Implementation of the revised Recommendations of the Financial Action Task Force, in force since 1 Feb. 2009 (AS 2009 361; BBl 2007 6269).

<sup>2</sup> In the case of cash transactions with a customer whose identity has not yet been identified, the duty to verify identity applies only if one transaction, or two or more transactions that appear to be connected, involve a considerable financial value.

<sup>3</sup> Insurance institutions must verify the identity of the customer if the amount of a single premium, the regular premium or the total of the premiums involves a considerable financial value.

<sup>4</sup> If in cases under paragraphs 2 or 3 there is any suspicion of money laundering or terrorist financing, the identity of the customer must be verified even if the relevant amounts have not been reached.<sup>27</sup>

<sup>5</sup> FINMA, the Federal Gaming Board (FGB)<sup>28</sup> and the self-regulatory organisations shall determine what constitutes a considerable financial value within the meaning of paragraphs 2 and 3 in their respective fields and adjust such values as required.<sup>29</sup>

**Art. 4<sup>30</sup>**          Establishing the identity of the beneficial owner

<sup>1</sup> The financial intermediary must identify the beneficial owner with the due diligence required in the circumstances. If the customer is a listed company or a subsidiary over which a listed company has majority control, the identity of the beneficial owner need not be established.

<sup>2</sup> The financial intermediary must obtain a written declaration from the customer as to the identity of the individual who is the beneficial owner if:

- a. the customer is not the beneficial owner or if there is any doubt about the matter;
- b. the customer is a domiciliary company or an operating legal entity; or
- c. a cash transaction of considerable financial value in terms of Article 3 paragraph 2 is being carried out.

<sup>3</sup> In the case of collective accounts or collective deposits, the financial intermediary must require the customer to provide a complete list of the beneficial owners and to give notice of any change to the list immediately.

<sup>27</sup> Amended by No I 4 of the FA of 3 Oct. 2008 on the Implementation of the revised Recommendations of the Financial Action Task Force, in force since 1 Feb. 2009 (AS 2009 361; BBl 2007 6269).

<sup>28</sup> Expression in accordance with Annex No II 8 of the Gambling Act of 29 Sept. 2017, in force since 1 Jan. 2019 (AS 2018 5103; BBl 2015 8387). This amendment has been made throughout the text.

<sup>29</sup> Amended by Annex No 17 of the Financial Market Supervision Act of 22 June 2007, in force since 1 Jan. 2009 (AS 2008 5207; BBl 2006 2829).

<sup>30</sup> Amended by No I 7 of the FA of 12 Dec. 2014 on the Implementation of the 2012 revision of the Recommendations of the Financial Action Task Force, in force since 1 Jan. 2016 (AS 2015 1389; BBl 2014 605).

**Art. 5** Repetition of the verification of the identity of the customer or the establishment of the identity of the beneficial owner

<sup>1</sup> If doubt arises in the course of the business relationship as to the identity of the customer or of the beneficial owner, the verification of identity or establishment of identity in terms of Articles 3 and 4 respectively must be repeated.

<sup>2</sup> In the case of an insurance policy that may be surrendered, the insurance institution must also re-establish the identity of the beneficial owner if, in the event of a claim or the surrender of the policy, the person entitled to benefit is not the same person identified at the time that the insurance contract was concluded.

**Art. 6<sup>31</sup>** Special duties of due diligence

<sup>1</sup> The financial intermediary is required to ascertain the nature and purpose of the business relationship wanted by the customer. The extent of the information that must be obtained, the hierarchical level at which the decision to enter into or continue a business relationship must be taken and the regularity of checks are determined by the risk represented by the customer.

<sup>2</sup> The financial intermediary must clarify the economic background and the purpose of a transaction or of a business relationship if:

- a. the transaction or the business relationship appears unusual, unless its legality is clear;
- b. there are indications that assets are the proceeds of a felony or an aggravated tax misdemeanour under Article 305<sup>bis</sup> number 1<sup>bis</sup> SCC<sup>32</sup> or are subject to the power of disposal of a criminal organisation (Art. 260<sup>ter</sup> no 1 SCC) or serve the financing of terrorism (Art. 260<sup>quinquies</sup> para. 1 SCC);
- c. the transaction or the business relationship carries a higher risk;
- d. the data on a customer, a beneficial owner or an authorised signatory in a business relationship or transaction are identical or very similar to the data provided to the financial intermediary by FINMA under Article 22a paragraph 2, by a self-regulatory organisation under Article 22a paragraph 2 letter c, or by the FGB under Article 22a paragraph 3.

<sup>3</sup> Business relationships with foreign politically exposed persons and their family members or close associates in terms of Article 2a paragraph 2 are deemed in every case to be business relationships with a higher risk.

<sup>4</sup> Business relationships with domestic politically exposed persons and politically exposed persons in international organisations and their family members or close associates in terms of Article 2a paragraph 2 are deemed when combined with one or more further risk criteria to be business relationships with a higher risk.

<sup>31</sup> Amended by No 17 of the FA of 12 Dec. 2014 on the Implementation of the 2012 revision of the Recommendations of the Financial Action Task Force, in force since 1 Jan. 2016 (AS 2015 1389; BBl 2014 605).

<sup>32</sup> SR 311.0

**Art. 7** Duty to keep records

<sup>1</sup> The financial intermediary must keep records of transactions carried out and of clarifications required under this Act in such a manner that other specially qualified persons are able to make a reliable assessment of the transactions and business relationships and of compliance with the provisions of this Act.

<sup>2</sup> The financial intermediary must retain the records in such a manner as to be able to respond within a reasonable time to any requests made by the prosecution authorities for information or for the seizure of assets.

<sup>3</sup> After the termination of the business relationship or after completion of the transaction, the financial intermediary must retain the records for a minimum of ten years.

**Art. 7a<sup>33</sup>** Assets of low value

The financial intermediary may dispense with complying with the duties of due diligence (Art. 3–7) if the business relationship only involves assets of low value and there is no suspicion of money laundering or terrorist financing.

**Art. 8** Organisational measures

Financial intermediaries must take the measures that are required to prevent money laundering and terrorist financing in their field of business.<sup>34</sup> They must in particular ensure that their staff receive adequate training and that checks are carried out.

**Section 1a<sup>35</sup> Dealers' Duties of Due Diligence****Art. 8a**

<sup>1</sup> Dealers under Article 2 paragraph 1 letter b must fulfil the following duties if they accept more than 100,000 francs in cash in the course of a commercial transaction:

- a. verification of the identity of the customer (Art. 3 para. 1);
- b. establishing the identity of the beneficial owner (Art. 4 para. 1 and 2 let. a and b);
- c. duty to keep records (Art. 7).

<sup>33</sup> Inserted by No I 4 of the FA of 3 Oct. 2008 on the Implementation of the revised Recommendations of the Financial Action Task Force, in force since 1 Feb. 2009 (AS 2009 361; BBl 2007 6269).

<sup>34</sup> Amended by No I 4 of the FA of 3 Oct. 2008 on the Implementation of the revised Recommendations of the Financial Action Task Force, in force since 1 Feb. 2009 (AS 2009 361; BBl 2007 6269).

<sup>35</sup> Inserted by No I 7 of the FA of 12 Dec. 2014 on the Implementation of the 2012 revision of the Recommendations of the Financial Action Task Force, in force since 1 Jan. 2016 (AS 2015 1389; BBl 2014 605).

- <sup>2</sup> They must clarify the economic background and purpose of a transaction if:
- a. it appears unusual, unless its legality is clear;
  - b. there are indications that assets are the proceeds of a felony or an aggravated tax misdemeanour under Article 305<sup>bis</sup> number 1<sup>bis</sup> SCC<sup>36</sup> or are subject to the power of disposal of a criminal organisation (Art. 260<sup>ter</sup> no 1 SCC).
- <sup>3</sup> Dealers are subject to the duties under paragraphs 1 and 2 even if the cash payment is made in two or more instalments and the individual instalments are less than 100,000 francs, but when added together exceed this amount.
- <sup>4</sup> They are not subject to the duties if the payments that exceed 100,000 francs are made through a financial intermediary.
- <sup>5</sup> The Federal Council shall specify the details of the duties under paragraphs 1 and 2 and stipulate how they are to be fulfilled.

## Section 2 Duties in the Event of a Suspicion of Money Laundering

### Art. 9 Duty to report

<sup>1</sup> A financial intermediary must immediately file a report with the Money Laundering Reporting Office Switzerland (the Reporting Office) as defined in Article 23 if it:

- a. knows or has reasonable grounds to suspect that assets involved in the business relationship:
  1. are connected to an offence in terms of Article 260<sup>ter</sup> Number 1 or 305<sup>bis</sup> SCC<sup>37</sup>,
  - 2.<sup>38</sup> are the proceeds of a felony or an aggravated tax misdemeanour under Article 305<sup>bis</sup> number 1<sup>bis</sup> SCC,
  3. are subject to the power of disposal of a criminal organisation, or
  4. serve the financing of terrorism (Art. 260<sup>quinquies</sup> para. 1 SCC);
- b. terminates negotiations aimed at establishing a business relationship because of a reasonable suspicion as defined in letter a;
- c.<sup>39</sup> knows or has reason to assume based on the clarifications carried out under Article 6 paragraph 2 letter d that the data passed on by FINMA, the FGB or a self-regulatory organisation relating to a person or organisation corre-

<sup>36</sup> SR 311.0

<sup>37</sup> SR 311.0

<sup>38</sup> Amended by No 17 of the FA of 12 Dec. 2014 on the Implementation of the 2012 revision of the Recommendations of the Financial Action Task Force, in force since 1 Jan. 2016 (AS 2015 1389; BBl 2014 605).

<sup>39</sup> Inserted by No 17 of the FA of 12 Dec. 2014 on the Implementation of the 2012 revision of the Recommendations of the Financial Action Task Force, in force since 1 Jan. 2016 (AS 2015 1389; BBl 2014 605).



sponds to the data of a customer, a beneficial owner or an authorised signatory in a business relationship or transaction.<sup>40</sup>

<sup>1bis</sup> A dealer must immediately file a report with the Reporting Office if it knows or has reasonable grounds to suspect that cash payments made in the course of a commercial transaction:

- a. are connected to an offence under Article 260<sup>ter</sup> number 1 or 305<sup>bis</sup> SCC;
- b. are the proceeds of a felony or an aggravated tax misdemeanour under Article 305<sup>bis</sup> number 1<sup>bis</sup> SCC; or
- c. are subject to the power of disposal of a criminal organisation.<sup>41</sup>

<sup>1ter</sup> The name of the financial intermediary or dealer must appear in any report in accordance with paragraph 1. The identity of the financial intermediary's or dealer's staff who are in charge of the case may be made anonymous in the report, provided it is guaranteed that the Reporting Office and the competent prosecution authority are able to contact them without delay.<sup>42</sup>

<sup>2</sup> Lawyers and notaries are not subject to the duty to report insofar as they are bound in their activities by professional secrecy in terms of Article 321 SCC.

**Art. 9a<sup>43</sup>** Customer orders relating to the reported assets

During the analysis conducted by the Reporting Office under Article 23 paragraph 2, the financial intermediary shall execute customer orders relating to the assets reported under Article 9 paragraph 1 letter a of this Act or under Article 305<sup>ter</sup> paragraph 2 SCC<sup>44</sup>.

**Art. 10<sup>45</sup>** Freezing of assets

<sup>1</sup> The financial intermediary shall freeze the assets entrusted to it that are related to the report under Article 9 paragraph 1 letter a of this Act or under Article 305<sup>ter</sup>

<sup>40</sup> Amended by No I 4 of the FA of 3 Oct. 2008 on the Implementation of the 2012 revision of the Recommendations of the Financial Action Task Force, in force since 1 Feb. 2009 (AS 2009 361; BBl 2007 6269).

<sup>41</sup> Inserted by No I 4 of the FA of 3 Oct. 2008 on the Implementation of the revised Recommendations of the Financial Action Task Force (AS 2009 361; BBl 2007 6269). Amended by No I 7 of the FA of 12 Dec. 2014 on the Implementation of the 2012 revision of the Recommendations of the Financial Action Task Force, in force since 1 Jan. 2016 (AS 2015 1389; BBl 2014 605).

<sup>42</sup> Inserted by No I 7 of the FA of 12 Dec. 2014 on the Implementation of the 2012 revision of the Recommendations of the Financial Action Task Force, in force since 1 Jan. 2016 (AS 2015 1389; BBl 2014 605).

<sup>43</sup> Inserted by No I 7 of the FA of 12 Dec. 2014 on the Implementation of the 2012 revision of the Recommendations of the Financial Action Task Force, in force since 1 Jan. 2016 (AS 2015 1389; BBl 2014 605).

<sup>44</sup> SR 311.0

<sup>45</sup> Amended by No I 7 of the FA of 12 Dec. 2014 on the Implementation of the 2012 revision of the Recommendations of the Financial Action Task Force, in force since 1 Jan. 2016 (AS 2015 1389; BBl 2014 605).

paragraph 2 SCC<sup>46</sup> as soon as the Reporting Office informs it that it has forwarded the report to the prosecution authority.

<sup>1bis</sup> It shall without delay freeze the assets entrusted to it that are related to the report under Article 9 paragraph 1 letter c.

<sup>2</sup> It shall continue to freeze the assets until it receives a ruling from the competent prosecution authority, but at most for five working days from the date on which the Reporting Office gives notice of forwarding the report under paragraph 1 or on which it filed the report with the Reporting Office under paragraph 1<sup>bis</sup>.

**Art. 10a<sup>47</sup>** Prohibition of information

<sup>1</sup> The financial intermediary is prohibited from informing the persons concerned or third parties that it has filed a report under Article 9 of this Act or under Article 305<sup>ter</sup> paragraph 2 SCC<sup>48</sup>. The self-regulatory organisation to which the financial intermediary is affiliated is not regarded as a third party. The same applies to FINMA and the FGB in relation to the financial intermediaries under their supervision.<sup>49</sup>

<sup>2</sup> If the financial intermediary itself is unable to freeze the assets, it may inform the financial intermediary that is able to do so and which is subject to this Act.

<sup>3</sup> It may also inform another financial intermediary subject to this Act that a report has been submitted under Article 9, provided this is required in order to comply with duties under this Act and provided both financial intermediaries:<sup>50</sup>

- a. provide joint services for one customer in connection with the management of that customer's assets on the basis of a contractual agreement to cooperate; or
- b. are part of the same corporate group.

<sup>4</sup> The financial intermediary who has been informed on the basis of paragraph 2 or 3 is subject to the prohibition of information in paragraph 1.

<sup>5</sup> The dealer is prohibited from informing the persons concerned or third parties that it has filed a report under Article 9.<sup>51</sup>

<sup>46</sup> SR 311.0

<sup>47</sup> Inserted by No 14 of the FA of 3 Oct. 2008 on the Implementation of the revised Recommendations of the Financial Action Task Force, in force since 1 Feb. 2009 (AS 2009 361; BBl 2007 6269).

<sup>48</sup> SR 311.0

<sup>49</sup> Amended by No 17 of the FA of 12 Dec. 2014 on the Implementation of the 2012 revision of the Recommendations of the Financial Action Task Force, in force since 1 Jan. 2016 (AS 2015 1389; BBl 2014 605).

<sup>50</sup> Amended by No 17 of the FA of 12 Dec. 2014 on the Implementation of the 2012 revision of the Recommendations of the Financial Action Task Force, in force since 1 Jan. 2016 (AS 2015 1389; BBl 2014 605).

<sup>51</sup> Inserted by No 17 of the FA of 12 Dec. 2014 on the Implementation of the 2012 revision of the Recommendations of the Financial Action Task Force, in force since 1 Jan. 2016 (AS 2015 1389; BBl 2014 605).

<sup>6</sup> The prohibition on providing information under paragraphs 1 and 5 does not apply to protecting personal interests in the context of a civil action or criminal or administrative proceedings.<sup>52</sup>

**Art. 11<sup>53</sup>** Exclusion of criminal and civil liability

<sup>1</sup> Any person who in good faith files a report under Article 9 of this Act or who freezes assets in accordance with Article 10 may not be prosecuted for a breach of official, profession or trade secrecy or be held liable for breach of contract.

<sup>2</sup> This exclusion of prosecution and liability also applies to financial intermediaries that file a report under Article 305<sup>ter</sup> paragraph 2 SCC<sup>54</sup> or to self-regulatory organisations that file a report under Article 27 paragraph 4.

**Section 3<sup>55</sup> Provision of Information**

**Art. 11a**

<sup>1</sup> If the Reporting Office requires additional information in order to analyse a report that it has received in accordance with Article 9 of this Act or Article 305<sup>ter</sup> paragraph 2 SCC<sup>56</sup>, the financial intermediary making the report must on request provide such information that is in its possession.

<sup>2</sup> If, based on this analysis, it becomes apparent that in addition to the financial intermediary making the report, other financial intermediaries are or were involved in a transaction or business relationship, the financial intermediaries involved must on request provide the Reporting Office with all related information that is in their possession.

<sup>3</sup> The Reporting Office shall specify a deadline for the provision of information by the financial intermediaries concerned under paragraphs 1 and 2.

<sup>4</sup> The financial intermediaries are subject to the prohibition of information under Article 10a paragraph 1.

<sup>5</sup> The exclusion of criminal and civil liability under Article 11 applies by analogy.

<sup>52</sup> Inserted by No I 7 of the FA of 12 Dec. 2014 on the Implementation of the 2012 revision of the Recommendations of the Financial Action Task Force, in force since 1 Jan. 2016 (AS 2015 1389; BBl 2014 605).

<sup>53</sup> Amended by No I 4 of the FA of 3 Oct. 2008 on the Implementation of the revised Recommendations of the Financial Action Task Force, in force since 1 Feb. 2009 (AS 2009 361; BBl 2007 6269).

<sup>54</sup> SR 311.0

<sup>55</sup> Inserted by No I of the FA of 21 June 2013, in force since 1 Nov. 2013 (AS 2013 3493; BBl 2012 6941).

<sup>56</sup> SR 311.0

## Chapter 3 Supervision

### Section 1 General Provisions

#### Art. 12<sup>57</sup> Responsibility

The following bodies shall supervise compliance by financial intermediaries with the duties set out in Chapter 2:

- a.<sup>58</sup> for financial intermediaries under Article 2 paragraph 2 letters a to d<sup>ter</sup>, FINMA;
- b.<sup>59</sup> for financial intermediaries under Article 2 paragraph 2 letter e, the FGB;
- b<sup>bis</sup>.<sup>60</sup> under Article 2 paragraph 2 letter f: the Intercantonal Supervisory and Executive Authority under Article 105 GamblA<sup>61</sup>;
- c. for financial intermediaries under Article 2 paragraph 3:
  - 1. the recognised self-regulatory organisations (Art. 24),
  - 2. FINMA, where the financial intermediaries are not affiliated to a recognised self-regulatory organisation.

#### Art. 13<sup>62</sup>

#### Art. 14 Licensing and affiliation requirement

<sup>1</sup> Financial intermediaries within the meaning of Article 2 paragraph 3 that are not affiliated to a recognised self-regulatory organisation must request a licence from FINMA to carry on their business.<sup>63</sup>

<sup>2</sup> The licence shall be granted only if:

- a. the financial intermediary is registered in the Commercial Register as a commercial undertaking or has been officially authorised to carry on business;
- b. the financial intermediary guarantees compliance with its duties in accordance with this Act by means of its internal regulations and organisation; and

<sup>57</sup> Amended by Annex No 17 of the Financial Market Supervision Act of 22 June 2007, in force since 1 Jan. 2009 (AS **2008** 5207; BBl **2006** 2829).

<sup>58</sup> Amended by Annex No 12 of the Financial Market Infrastructure Act of 19 June 2015, in force since 1 Jan. 2016 (AS **2015** 5339; BBl **2014** 7483).

<sup>59</sup> Amended by Annex No II 8 of the Gambling Act of 29 Sept. 2017, in force since 1 Jan. 2019 (AS **2018** 5103; BBl **2015** 8387).

<sup>60</sup> Inserted by Annex No II 8 of the Gambling Act of 29 Sept. 2017, in force since 1 Jan. 2019 (AS **2018** 5103; BBl **2015** 8387).

<sup>61</sup> SR **935.51**

<sup>62</sup> Repealed by Annex No 17 of the Financial Market Supervision Act of 22 June 2007, with effect from 1 Jan. 2009 (AS **2008** 5207; BBl **2006** 2829).

<sup>63</sup> Amended by Annex No 17 of the Financial Market Supervision Act of 22 June 2007, in force since 1 Jan. 2009 (AS **2008** 5207; BBl **2006** 2829).

- c. the financial intermediary itself, as well as the persons responsible for its administration and management, enjoy a good reputation and guarantee compliance with their duties in accordance with this Act.

<sup>3</sup> Lawyers and notaries who act as financial intermediaries must affiliate to a self-regulatory organisation.

**Art. 15<sup>64</sup>** Dealers' duty to verify

<sup>1</sup> Dealers who must fulfil the duties of due diligence under Article 8a shall appoint an audit firm to verify that they are complying with their duties under Chapter Two.

<sup>2</sup> Auditors under Article 5 or audit firms under Article 6 of the Auditor Oversight Act of 16 December 2005<sup>65</sup> which have the required technical expertise and experience may be appointed as the audit firm.

<sup>3</sup> The dealers are obliged to provide the audit firm with all the information and documents required to conduct the audit.

<sup>4</sup> The audit firm shall verify compliance with the duties under this Act and prepare a report thereon for the attention of the responsible management bodies of the dealer audited.

<sup>5</sup> If a dealer fails to comply with its duty to report, the audit firm shall immediately file a report with the Reporting Office if it has reasonable grounds to suspect that:

- a. an offence under Article 260<sup>ter</sup> number 1 or 305<sup>bis</sup> SCC<sup>66</sup> has been committed;
- b. assets are the proceeds of a felony or an aggravated tax misdemeanour under Article 305<sup>bis</sup> number 1<sup>bis</sup> SCC; or
- c. assets are subject to the power of disposal of a criminal organisation.

**Section 2<sup>67</sup> Duty to Report of the Supervisory Authorities**

**Art. 16**

<sup>1</sup> FINMA and the FGB and the Intercantonal Supervisory and Executive Authority under Article 105 GAMBIA<sup>68</sup> shall immediately submit a report to the Reporting Office if they have reasonable grounds to suspect that:<sup>69</sup>

<sup>64</sup> Amended by No I 7 of the FA of 12 Dec. 2014 on the Implementation of the 2012 revision of the Recommendations of the Financial Action Task Force, in force since 1 Jan. 2016 (AS 2015 1389; BBl 2014 605).

<sup>65</sup> SR 221.302

<sup>66</sup> SR 311.0

<sup>67</sup> Amended by Annex No 17 of the Financial Market Supervision Act of 22 June 2007, in force since 1 Jan. 2009 (AS 2008 5207; BBl 2006 2829).

<sup>68</sup> SR 935.51

<sup>69</sup> Amended by Annex No II 8 of the Gambling Act of 29 Sept. 2017, in force since 1 Jan. 2019 (AS 2018 5103; BBl 2015 8387).

- a.<sup>70</sup> a criminal offence under Article 260<sup>ter</sup> no 1, 305<sup>bis</sup> or 305<sup>ter</sup> SCC<sup>71</sup> has been committed;
  - b.<sup>72</sup> assets are the proceeds of a felony or an aggravated tax misdemeanour under Article 305<sup>bis</sup> number 1<sup>bis</sup> SCC;
  - c. assets are subject to the power of disposal of a criminal organisation; or
  - d.<sup>73</sup> assets serve the financing of terrorism (Art. 260<sup>quinquies</sup> para. 1 SCC).
- <sup>2</sup> This duty applies only if the financial intermediary or the self-regulatory organisation has not already submitted a report.

### Section 3<sup>74</sup>

#### Supervision of Financial Intermediaries under Article 2 paragraph 2

##### Art. 17<sup>75</sup>

FINMA and the FGB and the Federal Department of Justice and Police shall issue ordinances specifying the duties of due diligence defined in Chapter 2 for the financial intermediaries under their supervision in terms of Article 2 paragraph 2 and under the gambling legislation, and stipulate how these duties of due diligence must be fulfilled in cases where self-regulation does not apply.

### Section 3a

#### Supervision of Financial Intermediaries under Article 2 paragraph 3<sup>76</sup>

##### Art. 18 Duties of FINMA<sup>77</sup>

<sup>1</sup> FINMA shall have the following duties in terms of its supervision of the financial intermediaries under Article 2 paragraph 3:<sup>78</sup>

<sup>70</sup> Amended by No 14 of the FA of 3 Oct. 2008 on the Implementation of the revised Recommendations of the Financial Action Task Force, in force since 1 Feb. 2009 (AS 2009 361; BBl 2007 6269).

<sup>71</sup> SR 311.0

<sup>72</sup> Amended by No 17 of the FA of 12 Dec. 2014 on the Implementation of the 2012 revision of the Recommendations of the Financial Action Task Force, in force since 1 Jan. 2016 (AS 2015 1389; BBl 2014 605).

<sup>73</sup> Inserted by No 14 of the FA of 3 Oct. 2008 on the Implementation of the revised Recommendations of the Financial Action Task Force, in force since 1 Feb. 2009 (AS 2009 361; BBl 2007 6269).

<sup>74</sup> Amended by Annex No 17 of the Financial Market Supervision Act of 22 June 2007, in force since 1 Jan. 2009 (AS 2008 5207; BBl 2006 2829).

<sup>75</sup> Amended by Annex No II 8 of the Gambling Act of 29 Sept. 2017, in force since 1 Jan. 2019 (AS 2018 5103; BBl 2015 8387).

<sup>76</sup> Inserted by Annex No 17 of the Financial Market Supervision Act of 22 June 2007, in force since 1 Jan. 2009 (AS 2008 5207; BBl 2006 2829).

<sup>77</sup> Amended by Annex No 17 of the Financial Market Supervision Act of 22 June 2007, in force since 1 Jan. 2009 (AS 2008 5207; BBl 2006 2829).

<sup>78</sup> Amended by Annex No 17 of the Financial Market Supervision Act of 22 June 2007, in force since 1 Jan. 2009 (AS 2008 5207; BBl 2006 2829).

- a. it recognises the self-regulatory organisations or withdraws such recognition;
- b. it supervises the self-regulatory organisations and the financial intermediaries directly subordinated to it;
- c. it approves the regulations issued by the self-regulatory organisations in accordance with Article 25 and any amendments thereto;
- d. it ensures that the self-regulatory organisations enforce their regulations;
- e. it specifies in detail the duties of due diligence in terms of Chapter 2 for the financial intermediaries directly subordinated to it and stipulates how these duties must be fulfilled;
- f. it maintains a register of the financial intermediaries directly subordinated to it and of persons to whom it has refused authorisation to act as a financial intermediary.

2 ...<sup>79</sup>

<sup>3</sup> In order to preserve professional secrecy, self-regulatory organisations shall arrange for inspections under this Act (AMLA inspections) to be carried out on lawyers and notaries by lawyers and notaries respectively. The Federal Council shall regulate the special authorisation requirements under Article 9a paragraph 5 of the Auditor Oversight Act of 16 December 2005<sup>80, 81</sup>

<sup>4</sup> The lawyers and notaries instructed to carry out AMLA inspections must meet the following requirements:

- a. lawyer's or notary's practising certificate;
- b. guarantee of that inspections will be carried out properly;
- c. proof of the relevant knowledge of AMLA, practical experience and continuing professional development;
- d. independence from the member being checked.<sup>82</sup>

**Art. 18a<sup>83</sup>** Public directory

<sup>1</sup> FINMA shall maintain a directory of the financial intermediaries under Article 2 paragraph 3 that are affiliated to a self-regulatory organisation. This directory shall be publicly accessible online.

<sup>2</sup> FINMA shall make the data available via remote access.

<sup>79</sup> Repealed by Annex No 7 of the FA of 20 June 2014 (Consolidation of Oversight through Audit Companies), with effect from 1 Jan. 2015 (AS 2014 4073; BBI 2013 6857).

<sup>80</sup> SR 221.302

<sup>81</sup> Amended by Annex No 7 of the FA of 20 June 2014 (Consolidation of Oversight through Audit Companies), in force since 1 Jan. 2015 (AS 2014 4073; BBI 2013 6857).

<sup>82</sup> Inserted by Annex No 7 of the FA of 20 June 2014 (Consolidation of Oversight through Audit Companies), in force since 1 Jan. 2015 (AS 2014 4073; BBI 2013 6857).

<sup>83</sup> Inserted by Annex No 17 of the Financial Market Supervision Act of 22 June 2007, in force since 1 Jan. 2009 (AS 2008 5207; BBI 2006 2829).

**Art. 19<sup>84</sup>****Art. 19a<sup>85</sup>**      Audit

Financial intermediaries directly subordinated to FINMA under Article 2 paragraph 3 must arrange for an audit company licensed by the Federal Audit Oversight Authority under Article 9a of the Auditor Oversight Act of 16 December 2005<sup>86</sup> to carry out an audit under Article 24 of the Financial Market Supervision Act of 22 June 2007<sup>87</sup>.

**Art. 19b<sup>88</sup>****Art. 20<sup>89</sup>**      Consequences of licence withdrawal

If FINMA withdraws the licence from a financial intermediary directly subordinated to it under Article 2 paragraph 3 on the basis of Article 37 of the Financial Market Supervision Act of 22 June 2007<sup>90</sup>, this shall result in dissolution in the case of legal entities and collective and limited partnerships, and in deletion from the Commercial Register in the case of sole proprietorships.

**Art. 21 and 22<sup>91</sup>****Section 3b<sup>92</sup> Passing on Data on Terrorist Activities****Art. 22a**

<sup>1</sup> The Federal Department of Finance (FDF) shall pass on to FINMA and the FGB data that it has received from another State and which has been published by that State on persons and organisations that have been placed on a list in the State con-

<sup>84</sup> Repealed by Annex No 17 of the Financial Market Supervision Act of 22 June 2007, with effect from 1 Jan. 2009 (AS **2008** 5207; BBl **2006** 2829).

<sup>85</sup> Inserted by Annex No 17 of the Financial Market Supervision Act of 22 June 2007, (AS **2008** 5207; BBl **2006** 2829). Amended by Annex No 7 of the FA of 20 June 2014 (Consolidation of Oversight through Audit Companies), in force since 1 Jan. 2015 (AS **2014** 4073; BBl **2013** 6857).

<sup>86</sup> SR **221.302**

<sup>87</sup> SR **956.1**

<sup>88</sup> Inserted by Annex No 17 of the Financial Market Supervision Act of 22 June 2007, (AS **2008** 5207; BBl **2006** 2829). Repealed by Annex No 7 of the FA of 20 June 2014 (Consolidation of Oversight through Audit Companies), with effect from 1 Jan. 2015 (AS **2014** 4073; BBl **2013** 6857).

<sup>89</sup> Amended by Annex No 17 of the Financial Market Supervision Act of 22 June 2007, in force since 1 Jan. 2009 (AS **2008** 5207; BBl **2006** 2829).

<sup>90</sup> SR **956.1**

<sup>91</sup> Repealed by Annex No 17 of the Financial Market Supervision Act of 22 June 2007, with effect from 1 Jan. 2009 (AS **2008** 5207; BBl **2006** 2829).

<sup>92</sup> Inserted by No 17 of the FA of 12 Dec. 2014 on the Implementation of the 2012 revision of the Recommendations of the Financial Action Task Force, in force since 1 Jan. 2016 (AS **2015** 1389; BBl **2014** 605).



cerned due to terrorist activities or their support for terrorist activities on the basis of Resolution 1373 (2001)<sup>93</sup> of the UN Security Council.

<sup>2</sup> FINMA shall pass on the data received from the FDF to:

- a. the financial intermediaries under its supervision in accordance with Article 2 paragraph 2;
- b. the financial intermediaries under its supervision in accordance with Article 2 paragraph 3;
- c. the self-regulatory organisations for the attention of the financial intermediaries affiliated to them.

<sup>3</sup> The duty to pass on data under paragraph 2 letter a also applies to the FGB.

<sup>4</sup> The FDF shall not pass any data on to FINMA or the FGB if, after consulting the Federal Department of Foreign Affairs, the Federal Department of Justice and Police, the Federal Department of Defence, Civil Protection and Sport and the Federal Department of Economic Affairs, Education and Research, it must assume that human rights or principles of the rule of law would be violated.

## **Section 4: Money Laundering Reporting Office Switzerland (the Reporting Office)**

### **Art. 23**

<sup>1</sup> The Federal Office of Police<sup>94</sup> shall manage the Money Laundering Reporting Office Switzerland (the Reporting Office).

<sup>2</sup> The Reporting Office shall examine and analyse the reports received. If necessary, it shall obtain additional information in accordance with Article 11a.<sup>95</sup>

<sup>3</sup> It shall maintain its own data processing system in relation to money laundering.

<sup>4</sup> It must notify the responsible prosecution authority immediately if it has reasonable grounds to suspect that:

- a. an offence as defined in Articles 260<sup>ter</sup> Number 1, 305<sup>bis</sup> or 305<sup>ter</sup> SCC<sup>96</sup> has been committed;
- b.<sup>97</sup> assets are the proceeds of a felony or an aggravated tax misdemeanour under Article 305<sup>bis</sup> number 1<sup>bis</sup> SCC;

<sup>93</sup> [www.un.org](http://www.un.org) > English > Security Council > Security Council Resolutions > 2001 > 5/RES/1373 (2001)

<sup>94</sup> The title of this administrative entity has been amended in application of Art. 16 para. 3 of the Publication O of 17 Nov. 2004 (AS **2004** 4937).

<sup>95</sup> Amended by No I of the FA of 21 June 2013, in force since 1 Nov. 2013 (AS **2013** 3493; BBl **2012** 6941).

<sup>96</sup> SR **311.0**

<sup>97</sup> Amended by No I 7 of the FA of 12 Dec. 2014 on the Implementation of the 2012 revision of the Recommendations of the Financial Action Task Force, in force since 1 Jan. 2016 (AS **2015** 1389; BBl **2014** 605).

- c. assets are subject to the power of disposal of a criminal organisation; or
- d. assets serve the financing of terrorism (Art. 260<sup>quinquies</sup> para. 1 SCC),<sup>98</sup>

<sup>5</sup> The Reporting Office shall inform the financial intermediary concerned within 20 working days whether it will pass on the report under Article 9 paragraph 1 letter a to a prosecution authority or not.<sup>99</sup>

<sup>6</sup> It shall inform the financial intermediary concerned whether it will pass the report under Article 305<sup>ter</sup> paragraph 2 SCC to a prosecution authority or not.<sup>100</sup>

## Section 5 Self-Regulatory Organisations

### Art. 24 Recognition

<sup>1</sup> Organisations are recognised as self-regulatory organisations if they:

- a. have regulations in accordance with Article 25;
- b. supervise their affiliated financial intermediaries with regard to compliance with their duties in terms of Chapter 2; and
- c. ensure that the persons and bodies they instruct to carry out inspections:<sup>101</sup>
  - 1. possess the required specialist knowledge,
  - 2. provide the required guarantees that inspections will be carried out properly, and
  - 3. are independent of the management and administration of financial intermediaries being inspected;
- d.<sup>102</sup> guarantee that the audit companies instructed to carry out inspections meet the same requirements for authorisation as the audit companies for financial intermediaries directed subordinated to FINMA under Article 19a.

<sup>2</sup> The self-regulatory organisations of the licensed transport undertakings under the Public Transport Act of 20 March 2009<sup>103</sup> must be independent of their respective managements.<sup>104</sup>

<sup>98</sup> Amended by No 14 of the FA of 3 Oct. 2008 on the Implementation of the revised Recommendations of the Financial Action Task Force, in force since 1 Feb. 2009 (AS 2009 361; BBl 2007 6269).

<sup>99</sup> Inserted by No 17 of the FA of 12 Dec. 2014 on the Implementation of the 2012 revision of the Recommendations of the Financial Action Task Force, in force since 1 Jan. 2016 (AS 2015 1389; BBl 2014 605).

<sup>100</sup> Inserted by No 17 of the FA of 12 Dec. 2014 on the Implementation of the 2012 revision of the Recommendations of the Financial Action Task Force, in force since 1 Jan. 2016 (AS 2015 1389; BBl 2014 605).

<sup>101</sup> Amended by Annex No 7 of the FA of 20 June 2014 (Consolidation of Oversight through Audit Companies), in force since 1 Jan. 2015 (AS 2014 4073; BBl 2013 6857).

<sup>102</sup> Inserted by Annex No 7 of the FA of 20 June 2014 (Consolidation of Oversight through Audit Companies), in force since 1 Jan. 2015 (AS 2014 4073; BBl 2013 6857).  
SR 745.1

<sup>104</sup> Amended by Annex No II 3 of the Postal Services Organisation Act of 17 Dec. 2010, in force since 1 Oct. 2012 (AS 2012 5043; BBl 2009 5265).

**Art. 25** Regulations

<sup>1</sup> Self-regulatory organisations must issue regulations.

<sup>2</sup> The regulations shall specify the duties of diligence of their affiliated financial intermediaries within the meaning of Chapter 2 and stipulate how these duties must be fulfilled.

<sup>3</sup> They shall further stipulate:

- a. the requirements for the affiliation and exclusion of financial intermediaries;
- b. how compliance with the duties in terms of Chapter 2 is monitored;
- c. appropriate penalties.

**Art. 26** Lists

<sup>1</sup> The self-regulatory organisations must maintain lists of their affiliated financial intermediaries and of persons to whom they refuse affiliation.

<sup>2</sup> They must notify FINMA of these lists and of any amendments thereto.<sup>105</sup>

**Art. 27**<sup>106</sup> Exchange of information and duty to notify

<sup>1</sup> The self-regulatory organisations and FINMA may mutually exchange any information or documents that they require in order to fulfil their duties.

<sup>2</sup> The self-regulatory organisations shall notify FINMA of:

- a. terminations of memberships;
- b. decisions on the refusal of affiliation;
- c. decisions to exclude and the reasons therefor;
- d. the opening of sanctions proceedings that may end in exclusion.

<sup>3</sup> They shall provide FINMA with a report at least once each year on their activities in terms of this Act together with a list of decisions on sanctions issued during the period covered by the report.

<sup>4</sup> They shall submit a report immediately to the Reporting Office if they have reasonable grounds to suspect that:

- a. a criminal offence under Article 260<sup>ter</sup> no 1 or 305<sup>bis</sup> of the Swiss Criminal Code<sup>107</sup> has been committed;
- b.<sup>108</sup> assets are the proceeds of a felony or an aggravated tax misdemeanour under Article 305<sup>bis</sup> number 1<sup>bis</sup> SCC;

<sup>105</sup> Amended by Annex No 17 of the Financial Market Supervision Act of 22 June 2007, in force since 1 Jan. 2009 (AS **2008** 5207; BBl **2006** 2829).

<sup>106</sup> Amended by Annex No 17 of the Financial Market Supervision Act of 22 June 2007, in force since 1 Jan. 2009 (AS **2008** 5207; BBl **2006** 2829).

<sup>107</sup> SR **311.0**

<sup>108</sup> Amended by No I 7 of the FA of 12 Dec. 2014 on the Implementation of the 2012 revision of the Recommendations of the Financial Action Task Force, in force since 1 Jan. 2016 (AS **2015** 1389; BBl **2014** 605).

- c. assets are subject to the power of disposal of a criminal organisation; or
- d.<sup>109</sup> assets serve the financing of terrorism (Art. 260<sup>quinquies</sup> para. 1 SCC).

<sup>5</sup> The duty under paragraph 4 does not apply if a report has already been filed by a financial intermediary affiliated to a self-regulatory organisation.

#### **Art. 28<sup>110</sup>**      Withdrawal of recognition

<sup>1</sup> FINMA shall not withdraw recognition from a self-regulatory organisation under Article 37 of the Financial Market Supervision Act of 22 June 2007<sup>111</sup> without prior warning.

<sup>2</sup> If a self-regulatory organisation has its recognition withdrawn, its affiliated financial intermediaries shall become subject to the direct supervision of FINMA.

<sup>3</sup> They shall be subject to the licensing requirement in Article 14, unless they affiliate to another self-regulatory organisation within two months.

<sup>4</sup> Lawyers and notaries who act as financial intermediaries must affiliate within two months to another self-regulatory organisation if recognition has been withdrawn from the organisation to which they are affiliated.

## **Chapter 4    Administrative Assistance**

### **Section 1    Cooperation among Domestic Authorities**

#### **Art. 29**      Exchange of information among authorities<sup>112</sup>

<sup>1</sup> FINMA, the FGB, the Intercantonal Supervisory and Executive Authority under Article 105 Gambla<sup>113</sup> and the Reporting Office may provide each other with any information or documents required for the enforcement of this Act.<sup>114</sup>

<sup>2</sup> The federal, cantonal and communal authorities shall if requested by the Reporting Office or the central offices of the Federal Criminal Police pass on to the Reporting Office or the said central offices all the data required for the analyses in relation to combating money laundering, its predicate offences, organised crime or the financing of terrorism. The data includes in particular financial information and other sensitive personal data and personality profiles obtained in criminal, administrative

<sup>109</sup> Inserted by No 14 of the FA of 3 Oct. 2008 on the Implementation of the revised Recommendations of the Financial Action Task Force, in force since 1 Feb. 2009 (AS 2009 361; BBl 2007 6269).

<sup>110</sup> Amended by Annex No 17 of the Financial Market Supervision Act of 22 June 2007, in force since 1 Jan. 2009 (AS 2008 5207; BBl 2006 2829).

<sup>111</sup> SR 956.1

<sup>112</sup> Inserted by No 14 of the FA of 3 Oct. 2008 on the Implementation of the revised Recommendations of the Financial Action Task Force, in force since 1 Feb. 2009 (AS 2009 361; BBl 2007 6269).

<sup>113</sup> SR 935.51

<sup>114</sup> Amended by Annex No II 8 of the Gambling Act of 29 Sept. 2017, in force since 1 Jan. 2019 (AS 2018 5103; BBl 2015 8387).

criminal and administrative proceedings, including those from pending proceedings.<sup>115</sup>

<sup>2bis</sup> The Reporting Office may provide, on a case by case basis, the authorities referred to in paragraph 2 with information in individual cases provided the authorities use the information exclusively for combating money laundering, its predicate offences, organised crime or the financing of terrorism. Article 30 paragraphs 2–5 applies by analogy.<sup>116</sup>

<sup>2ter</sup> The Reporting Office may only pass on information from foreign reporting offices with their express consent to the authorities referred to in paragraph 2 for the purposes mentioned in paragraph 2<sup>bis</sup>.<sup>117</sup>

<sup>3</sup> The Reporting Office shall inform FINMA, the FGB and the Intercantonal Supervisory and Executive Authority under Article 105 Gambla of the decisions of the cantonal prosecution authorities.<sup>118</sup>

**Art. 29a<sup>119</sup>** Prosecution authorities

<sup>1</sup> The prosecution authorities shall notify the Reporting Office without delay of any pending proceedings connected with Articles 260<sup>ter</sup> Number. 1, 260<sup>quinquies</sup> paragraph 1, 305<sup>bis</sup> and 305<sup>ter</sup> paragraph 1 SCC<sup>120</sup>. They shall provide the Reporting Office without delay with judgements and decisions on the closure of proceedings, including the grounds therefor.

<sup>2</sup> They shall also notify the Reporting Office without delay of rulings that they have issued on the basis of a report from the Reporting Office.

<sup>3</sup> They may provide FINMA, the FGB and the Intercantonal Supervisory and Executive Authority under Article 105 Gambla<sup>121</sup> with any information and documents that they require in order to fulfil their duties, provided that this is not prejudicial to the criminal proceedings.<sup>122</sup>

<sup>4</sup> FINMA, the FGB and the Intercantonal Supervisory and Executive Authority under Article 105 Gambla shall coordinate any intervention in relation to a financial

<sup>115</sup> Amended by No I 7 of the FA of 12 Dec. 2014 on the Implementation of the 2012 revision of the Recommendations of the Financial Action Task Force, in force since 1 Jan. 2016 (AS 2015 1389; BBl 2014 605).

<sup>116</sup> Inserted by No I 7 of the FA of 12 Dec. 2014 on the Implementation of the 2012 revision of the Recommendations of the Financial Action Task Force, in force since 1 Jan. 2016 (AS 2015 1389; BBl 2014 605).

<sup>117</sup> Inserted by No I 7 of the FA of 12 Dec. 2014 on the Implementation of the 2012 revision of the Recommendations of the Financial Action Task Force, in force since 1 Jan. 2016 (AS 2015 1389; BBl 2014 605).

<sup>118</sup> Amended by Annex No II 8 of the Gambling Act of 29 Sept. 2017, in force since 1 Jan. 2019 (AS 2018 5103; BBl 2015 8387).

<sup>119</sup> Inserted by No I 4 of the FA of 3 Oct. 2008 on the Implementation of the revised Recommendations of the Financial Action Task Force, in force since 1 Feb. 2009 (AS 2009 361; BBl 2007 6269).

<sup>120</sup> SR 311.0

<sup>121</sup> SR 935.51

<sup>122</sup> Amended by Annex No II 8 of the Gambling Act of 29 Sept. 2017, in force since 1 Jan. 2019 (AS 2018 5103; BBl 2015 8387).

intermediary with the competent prosecution authorities.<sup>123</sup> They shall consult with the competent prosecution authorities before passing on any information or documents received.

## Section 2 Cooperation with Foreign Authorities

**Art. 30**<sup>124</sup> Cooperation with foreign reporting offices

<sup>1</sup> The Reporting Office may pass on the personal data and other information that are in its possession or that it may obtain under this Act to a foreign reporting office provided that office:

- a. guarantees that it will use the information solely for the purpose of analysis in the context of combating money laundering and its predicate offences, organised crime or terrorist financing;
- b. guarantees that it will reciprocate on receipt of a similar request from Switzerland;
- c. guarantees that official and professional secrecy will be preserved;
- d. guarantees that it will not pass on the information received to third parties without the express consent of the Reporting Office; and
- e. will comply with the conditions and restrictions imposed by the Reporting Office.

<sup>2</sup> It may pass on the following information in particular:

- a.<sup>125</sup> the name of the financial intermediary or the dealer, provided the anonymity is preserved of the person making the report or who has complied with a duty to provide information under this Act;
- b. account holders, account numbers and account balances;
- c. beneficial owners;
- d. details of transactions.

<sup>3</sup> Information is passed on in the form of a report.

<sup>4</sup> The Reporting Office may consent to information being passed on by the foreign reporting office to a third authority provided the latter guarantees that:

- a. it will use the information solely:
  1. for the purpose of analysis in the context of combating money laundering and its predicate offences, organised crime or terrorist financing, or

<sup>123</sup> Amended by Annex No II 8 of the Gambling Act of 29 Sept. 2017, in force since 1 Jan. 2019 (AS **2018** 5103; BBl **2015** 8387).

<sup>124</sup> Amended by No I of the FA of 21 June 2013, in force since 1 Nov. 2013 (AS **2013** 3493; BBl **2012** 6941).

<sup>125</sup> Amended by No I 7 of the FA of 12 Dec. 2014 on the Implementation of the 2012 revision of the Recommendations of the Financial Action Task Force, in force since 1 Jan. 2016 (AS **2015** 1389; BBl **2014** 605).

2. to institute criminal proceedings relating to money laundering and its predicate offences, organised crime or terrorist financing or to obtain evidence in response to a request for mutual assistance relating to such criminal proceedings;
  - b. they will not use the information to prosecute offences that are not offences predicate to money laundering under Swiss law;
  - c. they will not use the information in evidence; and
  - d. they will preserve official or professional secrecy.

<sup>5</sup> If the request to pass on the information to a foreign third authority concerns a matter that is the subject of criminal proceedings in Switzerland, the Reporting Office shall first obtain the consent of the public prosecutor's office responsible for the proceedings.

<sup>6</sup> The Reporting Office is entitled to make more detailed arrangements on the modalities of cooperation with foreign reporting offices.

**Art. 31**<sup>126</sup> Refusal to provide information

A request for information from a foreign reporting office shall not be granted if:

- a. the request has no connection with Switzerland;
- b. the request requires the application of procedural compulsion or other measures or acts for which Swiss law stipulates mutual assistance procedures or another procedure regulated in special legislation or an international treaty;
- c. national interests or public security and order will be prejudiced.

**Art. 31a**<sup>127</sup> Applicable provisions of the Federal Act of 7 October 1994 on Central Offices of the Federal Criminal Police

Unless this Act provides otherwise in relation to data processing and administrative assistance provided by the Reporting Office, the first and fourth sections of the Federal Act of 7 October 1994<sup>128</sup> on the Central Offices of the Federal Criminal Police apply by analogy.

<sup>126</sup> Amended by No I of the FA of 21 June 2013, in force since 1 Nov. 2013 (AS 2013 3493; BBl 2012 6941).

<sup>127</sup> Inserted by No I of the FA of 21 June 2013, in force since 1 Nov. 2013 (AS 2013 3493; BBl 2012 6941).

<sup>128</sup> SR 360

**Art. 32** Cooperation with foreign prosecution authorities<sup>129</sup>

<sup>1</sup> The cooperation of the Reporting Office with foreign prosecution authorities is governed by Article 13 paragraph 2 of the Federal Act of 7 October 1994<sup>130</sup> on the Central Offices of the Federal Criminal Police.

<sup>2</sup> ...<sup>131</sup>

<sup>3</sup> The name of the person who made the report on behalf of the financial intermediary or the dealer or who complied with the duty to provide information under Article 11a may not be passed on by the Reporting Office to foreign prosecution authorities.<sup>132</sup>

**Chapter 5 Processing of Personal Data****Art. 33** Principle

The processing of personal data is governed by the Federal Act of 19 June 1992<sup>133</sup> on Data Protection.

**Art. 34** Data collections in connection with the duty to report

<sup>1</sup> Financial intermediaries must maintain separate data collections containing all the documents connected with the report filed.

<sup>2</sup> Data from these data collections may be passed on only to FINMA, the FGB, the Intercantonal Supervisory and Executive Authority under Article 105 GambaIA<sup>134</sup>, self-regulatory organisations, the Reporting Office and the prosecution authorities.<sup>135</sup>

<sup>3</sup> The right to information of persons concerned in accordance with Article 8 of the Federal Act of 19 June 1992<sup>136</sup> on Data Protection shall be suspended from the filing of a report under Article 9 paragraph 1 of this Act or under Article 305<sup>ter</sup> paragraph 2 SCC<sup>137</sup> until the time when the Reporting Office informs the financial

<sup>129</sup> Amended by No I of the FA of 21 June 2013, in force since 1 Nov. 2013 (AS 2013 3493; BBl 2012 6941).

<sup>130</sup> SR 360

<sup>131</sup> Repealed by No I of the FA of 21 June 2013, with effect from 1 Nov. 2013 (AS 2013 3493; BBl 2012 6941).

<sup>132</sup> Inserted by No I 4 of the FA of 3 Oct. 2008 on the Implementation of the revised Recommendations of the Financial Action Task Force (AS 2009 361; BBl 2007 6269). Amended by No I 7 of the FA of 12 Dec. 2014 on the Implementation of the 2012 revision of the Recommendations of the Financial Action Task Force, in force since 1 Jan. 2016 (AS 2015 1389; BBl 2014 605).

<sup>133</sup> SR 235.1

<sup>134</sup> SR 935.51

<sup>135</sup> Amended by Annex No II 8 of the Gambling Act of 29 Sept. 2017, in force since 1 Jan. 2019 (AS 2018 5103; BBl 2015 8387).

<sup>136</sup> SR 235.1

<sup>137</sup> SR 311.0



intermediary under Article 23 paragraph 5 or 6 and for as long as assets are frozen in accordance with Article 10.<sup>138</sup>

<sup>4</sup> The data must be destroyed five years after the report is filed.

**Art. 35** Processing by the Reporting Office

<sup>1</sup> The processing of personal data by the Reporting Office is governed by the Federal Act of 7 October 1994<sup>139</sup> on the Central Offices of the Federal Criminal Police. The right of private individuals to information is governed by Article 8 of the Federal Act of 13 June 2008<sup>140</sup> on Federal Police Information Systems.<sup>141</sup>

<sup>2</sup> They may on pass on data from these data files to FINMA, the FGB, the Intercantonal Supervisory and Executive Authority under Article 105 GAmblA<sup>142</sup>, self-regulatory organisations, the Reporting Office and prosecution authorities.<sup>143</sup>

**Art. 35a**<sup>144</sup> Verification

<sup>1</sup> In order to fulfil its duties, the Reporting Office may by means of a computerised access procedure verify whether a person reported or notified to it is listed in any of the following databases:

- a. the National Police Index;
- b. the Central Migration Information System;
- c. the automated Register of Convictions;
- d. the State Security Information System;
- e. the person, file and case management system used in the field of mutual assistance in criminal matters.

<sup>2</sup> The right of access for further information is governed by the provisions applicable to the information system concerned.

<sup>138</sup> Amended by No I 7 of the FA of 12 Dec. 2014 on the Implementation of the 2012 revision of the Recommendations of the Financial Action Task Force, in force since 1 Jan. 2016 (AS **2015** 1389; BBl **2014** 605).

<sup>139</sup> SR **360**

<sup>140</sup> SR **361**

<sup>141</sup> Amended by Annex 1 No 9 of the FA of 13 June 2008 on Federal Police Information Systems, in force since 5 Dec. 2008 (AS **2008** 4989; BBl **2006** 5061).

<sup>142</sup> SR **935.51**

<sup>143</sup> Amended by Annex No II 8 of the Gambling Act of 29 Sept. 2017, in force since 1 Jan. 2019 (AS **2018** 5103; BBl **2015** 8387).

<sup>144</sup> Inserted by Annex 1 No 9 of the FA of 13 June 2008 on Federal Police Information Systems, in force since 5 Dec. 2008 (AS **2008** 4989; BBl **2006** 5061).

## Chapter 6 Criminal Provisions and Procedure

### Art. 36<sup>145</sup>

#### Art. 37<sup>146</sup> Violation of the duty to report

<sup>1</sup> Any person who fails to comply with the duty to report in terms of Article 9 shall be liable to a fine not exceeding 500,000 francs.

<sup>2</sup> If the offender acts through negligence, he or she shall be liable to a fine not exceeding 150,000 francs.

<sup>3</sup> ...<sup>147</sup>

#### Art. 38<sup>148</sup> Violation of the duty to verify

<sup>1</sup> Any dealer that wilfully violates its duty under Article 15 to appoint an audit firm, shall be liable to a fine not exceeding 100,000 francs.

<sup>2</sup> If it acts through negligence, it shall be liable to a fine not exceeding 10,000 francs.

### Art. 39 and 40<sup>149</sup>

## Chapter 7 Final Provisions

### Art. 41<sup>150</sup> Implementation

<sup>1</sup> The Federal Council shall issue the provisions required for the implementation of this Act.

<sup>2</sup> It may authorise FINMA and the FGB to issue implementing provisions on matters of limited importance and in particular on matters of a primarily technical nature.

<sup>145</sup> Repealed by Annex No 17 of the Financial Market Supervision Act of 22 June 2007, with effect from 1 Jan. 2009 (AS **2008** 5207; BBI **2006** 2829).

<sup>146</sup> Amended by Annex No 17 of the Financial Market Supervision Act of 22 June 2007, in force since 1 Jan. 2009 (AS **2008** 5207; BBI **2006** 2829).

<sup>147</sup> Repealed by Annex No 12 of the Financial Market Infrastructure Act of 19 June 2015, with effect from 1 Jan. 2016 (AS **2015** 5339; BBI **2014** 7483).

<sup>148</sup> Amended by No 17 of the FA of 12 Dec. 2014 on the Implementation of the 2012 revision of the Recommendations of the Financial Action Task Force, in force since 1 Jan. 2016 (AS **2015** 1389; BBI **2014** 605).

<sup>149</sup> Repealed by Annex No 17 of the Financial Market Supervision Act of 22 June 2007, with effect from 1 Jan. 2009 (AS **2008** 5207; BBI **2006** 2829).

<sup>150</sup> Amended by No 14 of the FA of 3 Oct. 2008 on the Implementation of the revised Recommendations of the Financial Action Task Force, in force since 1 Jan. 2010 (AS **2009** 361 6401; BBI **2007** 6269).

**Art. 42** Transitional provisions

<sup>1</sup> This Act applies from the date on which it comes into force to financial intermediaries within the meaning of Article 2 paragraph 2. The duty to report in terms of Article 9 applies from this date to all financial intermediaries.

<sup>2</sup> Within one year of this Act coming into force, self-regulatory organisations must apply to the AML Control Authority for recognition and submit the regulations they issue within the framework of self-regulation for approval.

<sup>3</sup> Two years after this Act comes into force, financial intermediaries within the meaning of Article 2 paragraph 3 that are not affiliated to a recognised self-regulatory organisation shall become subject to direct supervision by the AML Control Authority and must apply for a licence in accordance with Article 14.

<sup>4</sup> Within two years of this Act coming into force, lawyers and notaries acting as financial intermediaries must affiliate to a self-regulatory organisation.

**Art. 43** Amendment of current legislation

*Relevant to the French Text only*

**Art. 44** Referendum and commencement

<sup>1</sup> This Act is subject to an optional referendum.

<sup>2</sup> The Federal Council determines the date on which this Act comes into force.

Commencement Date: 1 April 1998<sup>151</sup>

<sup>151</sup> FCD of 16 March 1998.

