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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 18 February 2020)

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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;
- a<sup>bis</sup>.<sup>10</sup> portfolio managers and trustees as defined in Article 2 paragraph 1 letters a and b of the Financial Institutions Act of 15 June 2018<sup>11</sup> (FinIA), and trade assayers as defined in Article 42<sup>bis</sup> of the Precious Metals Control Act of 20 June 1933<sup>12</sup>;
- b.<sup>13</sup> fund management companies as defined in Article 2 paragraph 1 letter d FinIA;
- b<sup>bis</sup>.<sup>14</sup> investment companies with variable capital, limited partnerships for collective investment and investment companies with fixed capital in accordance with the Collective Investment Schemes Act of 23 June 2006<sup>15</sup>, as well as the managers of collective assets in accordance with Article 2 paragraph 1 letter c FinIA;
- c.<sup>16</sup> insurance institutions as defined in the Insurance Supervision Act of 17 December 2004<sup>17</sup> that deal in direct life insurance or offer or distribute shares in collective investment schemes;
- d.<sup>18</sup> securities firms in accordance with Article 2 paragraph 1 letter e FinIA
- d<sup>bis</sup>.<sup>19</sup> central counterparties and central securities depositories in accordance with the Financial Market Infrastructure Act of 19 June 2015<sup>20</sup>;

<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; BBl **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; BBl **2015** 8901).

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

<sup>10</sup> Inserted by Annex No II 15 of the Financial Institutions Act of 15 June 2018, in force since 1 Jan. 2020 (AS **2018** 5247, **2019** 4631; BBl **2015** 8901).

<sup>11</sup> SR **954.1**

<sup>12</sup> SR **941.31**

<sup>13</sup> Amended by Annex No II 15 of the Financial Institutions Act of 15 June 2018, in force since 1 Jan. 2020 (AS **2018** 5247, **2019** 4631; BBl **2015** 8901).

<sup>14</sup> Inserted by Annex No II 9 des Collective Investment Schemes Act of 23 June 2006 (AS **2006** 5379; BBl **2005** 6395). Amended by Annex No II 15 of the Financial Institutions Act of 15 June 2018, in force since 1 Jan. 2020 (AS **2018** 5247, **2019** 4631; BBl **2015** 8901).

<sup>15</sup> SR **951.31**

<sup>16</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; BBl **2005** 6395).

<sup>17</sup> SR **961.01**

<sup>18</sup> Amended by Annex No II 15 of the Financial Institutions Act of 15 June 2018, in force since 1 Jan. 2020 (AS **2018** 5247, **2019** 4631; BBl **2015** 8901).

<sup>19</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; BBl **2014** 7483).

<sup>20</sup> SR **958.1**

d<sup>er</sup>.<sup>21</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>22</sup> casinos as defined in the Gambling Act of 29 September 2017<sup>23</sup> (GamblA);

f.<sup>24</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>25</sup> ...

e.<sup>26</sup> ...

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.

<sup>21</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; BBl **2014** 7483).

<sup>22</sup> Inserted by Annex No 4 of the Gambling Act of 18 Dec. 1998 (AS **2000** 677; BBl **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; BBl **2015** 8387).

<sup>23</sup> SR **935.51**

<sup>24</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>25</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>26</sup> Repealed by Annex No II 15 of the Financial Institutions Act of 15 June 2018, with effect from 1 Jan. 2020 (AS **2018** 5247, **2019** 4631; BBl **2015** 8901).

**Art. 2a<sup>27</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);
- 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.

<sup>27</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).

**Chapter 2 Duties<sup>28</sup>****Section 1 Financial Intermediaries Duty of Due Diligence<sup>29</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>30</sup>

<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>31</sup>

<sup>5</sup> FINMA, the Federal Gaming Board (FGB)<sup>32</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>33</sup>

**Art. 4<sup>34</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>28</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>29</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>30</sup> Second sentence 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>31</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>32</sup> Name corrected by the Federal Assembly Drafting Committee on 31 Jan. 2020, published on 18 Feb. 2020 (AS 2020 501). This modification has been made in the provisions mentioned in the AS.

<sup>33</sup> Amended by Annex No II 15 of the Financial Institutions Act of 15 June 2018, in force since 1 Jan. 2020 (AS 2018 5247, 2019 4631; BBl 2015 8901).

<sup>34</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> 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.

**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>35</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>36</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;

<sup>35</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>36</sup> SR 311.0

d.<sup>37</sup> 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 letter a, by a supervisory organisation under Article 22a paragraph 2 letter b, 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.

#### **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>38</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>39</sup> They must in particular ensure that their staff receive adequate training and that checks are carried out.

<sup>37</sup> Amended by Annex No II 15 of the Financial Institutions Act of 15 June 2018, in force since 1 Jan. 2020 (AS 2018 5247, 2019 4631; BBl 2015 8901).

<sup>38</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>39</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).

## Section 1a<sup>40</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>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>41</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>42</sup>,

<sup>40</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>41</sup> SR 311.0

<sup>42</sup> SR 311.0



- 2.43 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>44</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, a supervisory organisation or a self-regulatory organisation relating to a person or organisation corresponds to the data of a customer, a beneficial owner or an authorised signatory in a business relationship or transaction.<sup>45</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>46</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>47</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.

<sup>43</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>44</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 (AS 2015 1389; BBl 2014 605) Amended by Annex No II 15 of the Financial Institutions Act of 15 June 2018, in force since 1 Jan. 2020 (AS 2018 5247, 2019 4631; BBl 2015 8901).

<sup>45</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>46</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>47</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).

**Art. 9a**<sup>48</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>49</sup>.

**Art. 10**<sup>50</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> paragraph 2 SCC<sup>51</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 <sup>1bis</sup>.

**Art. 10a**<sup>52</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>53</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>54</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>48</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>49</sup> SR 311.0

<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> SR 311.0

<sup>52</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>53</sup> SR 311.0

<sup>54</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>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>55</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>56</sup>

<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>57</sup>

**Art. 11<sup>58</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>59</sup> or to self-regulatory organisations that file a report under Article 27 paragraph 4.

**Section 3<sup>60</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> para-

<sup>55</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>56</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; BBI 2014 605).

<sup>57</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; BBI 2014 605).

<sup>58</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; BBI 2007 6269).

<sup>59</sup> SR 311.0

<sup>60</sup> Inserted by No I of the FA of 21 June 2013, in force since 1 Nov. 2013 (AS 2013 3493; BBI 2012 6941).

graph 2 SCC<sup>61</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.

## Chapter 3 Supervision

### Section 1 General Provisions

#### Art. 12<sup>62</sup> Responsibility

The following bodies shall supervise compliance by financial intermediaries with the duties set out in Chapter 2:<sup>63</sup>

- a.<sup>64</sup> for financial intermediaries under Article 2 paragraph 2 letters a to d<sup>ter</sup>, FINMA;
- b.<sup>65</sup> for financial intermediaries under Article 2 paragraph 2 letter e, the FGB;
- b<sup>bis</sup>.<sup>66</sup> under Article 2 paragraph 2 letter f: the Intercantonal Supervisory and Executive Authority under Article 105 GamblA<sup>67</sup>;
- c.<sup>68</sup> for financial intermediaries under Article 2 paragraph 3, the recognised self-regulatory organisations (Art. 24).

<sup>61</sup> SR 311.0

<sup>62</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>63</sup> Amended by Annex No II 15 of the Financial Institutions Act of 15 June 2018, in force since 1 Jan. 2020 (AS 2018 5247, 2019 4631; BBl 2015 8901).

<sup>64</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>65</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>66</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>67</sup> SR 935.51

<sup>68</sup> Amended by Annex No II 15 of the Financial Institutions Act of 15 June 2018, in force since 1 Jan. 2020 (AS 2018 5247, 2019 4631; BBl 2015 8901).

**Art. 13**<sup>69</sup>**Art. 14**<sup>70</sup> Licensing and affiliation requirement

<sup>1</sup> Financial intermediaries within the meaning of Article 2 paragraph 3 must be affiliated to a self-regulatory organisation.

<sup>2</sup> A financial intermediary within the meaning of Article 2 paragraph 3 is entitled to affiliate to a self-regulatory organisation if:

- a. the financial intermediary guarantees compliance with its duties in accordance with this Act by means of its internal regulations and organisation
- b. the financial intermediary enjoys a good reputation and guarantees compliance with its duties in accordance with this Act
- c. the persons responsible for its administration and management also meet the requirements of letter b; and
- d. its qualified participants enjoy a good reputation and guarantee that their influence is not detrimental to prudent and sound business operations.

<sup>3</sup> The self-regulatory organisation may make affiliation conditional on the financial intermediary operating in specific sectors.

**Art. 15**<sup>71</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>72</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>73</sup> has been committed;

<sup>69</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>70</sup> Amended by Annex No II 15 of the Financial Institutions Act of 15 June 2018, in force since 1 Jan. 2020 (AS **2018** 5247, **2019** 4631; BBl **2015** 8901).

<sup>71</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>72</sup> SR **221.302**

<sup>73</sup> SR **311.0**

- 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>74</sup> Duty to Report of the Supervisory Authorities and the Supervisory Organisation<sup>75</sup>

### Art. 16

<sup>1</sup> FINMA, the FGB, the Intercantonal Supervisory and Executive Authority under Article 105 Gambla<sup>76</sup> and the supervisory organisation in accordance with Article 43a of the Financial Market Supervision Act of 22 June 2007<sup>77</sup> shall immediately submit a report to the Reporting Office if they have reasonable grounds to suspect that:<sup>78</sup>

- a.<sup>79</sup> a criminal offence under Article 260<sup>ter</sup> no 1, 305<sup>bis</sup> or 305<sup>ter</sup> SCC<sup>80</sup> has been committed;
- b.<sup>81</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>82</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.

<sup>3</sup> The supervisory organisation shall submit a copy of the report to FINMA at the same time.<sup>83</sup>

<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 15 of the Financial Institutions Act of 15 June 2018, in force since 1 Jan. 2020 (AS **2018** 5247, **2019** 4631; BBl **2015** 8901).

<sup>76</sup> SR **935.51**

<sup>77</sup> SR **956.1**

<sup>78</sup> Amended by Annex No II 15 of the Financial Institutions Act of 15 June 2018, in force since 1 Jan. 2020 (AS **2018** 5247, **2019** 4631; BBl **2015** 8901). Corrected by the Federal Assembly Drafting Committee on 31 Jan. 2020, published on 18 Feb. 2020 (AS **2020** 501)

<sup>79</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>80</sup> SR **311.0**

<sup>81</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>82</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>83</sup> Inserted by Annex No II 15 of the Financial Institutions Act of 15 June 2018, in force since 1 Jan. 2020 (AS **2018** 5247, **2019** 4631; BBl **2015** 8901).

### Section 3<sup>84</sup> Supervision of Financial Intermediaries under Article 2 paragraph 2

#### Art. 17<sup>85</sup>

In the absence of recognised self-regulation, the duties of due diligence defined in Chapter 2 and their fulfilment shall be regulated by:

- a. FINMA for financial intermediaries under Article 2 paragraph 2 letters a and b to d<sup>1er</sup>;
- b. the competent supervisory authority in accordance with the FINMASA for financial intermediaries under Article 2 paragraph 2 letter a<sup>bis</sup>;
- c. the FGB for financial intermediaries under Article 2 paragraph 2 letter e.

### Section 3a Supervision of Financial Intermediaries under Article 2 paragraph 3<sup>86</sup>

#### Art. 18 Duties of FINMA<sup>87</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>88</sup>

- a. it recognises the self-regulatory organisations or withdraws such recognition;
- b.<sup>89</sup> it supervises the self-regulatory organisations;
- 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. and f.<sup>90</sup> ...

2 ...<sup>91</sup>

<sup>84</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>85</sup> Amended by Annex No II 15 of the Financial Institutions Act of 15 June 2018, in force since 1 Jan. 2020 (AS **2018** 5247, **2019** 4631; BBl **2015** 8901). Corrected by the Federal Assembly Drafting Committee on 24 Sept. 2019 (AS **2019** 5065).

<sup>86</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>87</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>88</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>89</sup> Amended by Annex No II 15 of the Financial Institutions Act of 15 June 2018, in force since 1 Jan. 2020 (AS **2018** 5247, **2019** 4631; BBl **2015** 8901).

<sup>90</sup> Repealed by Annex No II 15 of the Financial Institutions Act of 15 June 2018, with effect from 1 Jan. 2020 (AS **2018** 5247, **2019** 4631; BBl **2015** 8901).

<sup>91</sup> Repealed by Annex No 7 of the FA of 20 June 2014 (Consolidation of Oversight of Audit Companies), with effect from 1 Jan. 2015 (AS **2014** 4073; BBl **2013** 6857).

<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 by lawyers and on notaries by notaries.<sup>92</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>93</sup>

**Art. 18a<sup>94</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.

**Art. 19<sup>95</sup>**

**Art. 19a<sup>96</sup>**

**Art. 19b<sup>97</sup>**

<sup>92</sup> Amended by Annex No II 15 of the Financial Institutions Act of 15 June 2018, in force since 1 Jan. 2020 (AS **2018** 5247, **2019** 4631; BBl **2015** 8901).

<sup>93</sup> Inserted by Annex No 7 of the FA of 20 June 2014 (Consolidation of Oversight of Audit Companies), in force since 1 Jan. 2015 (AS **2014** 4073; BBl **2013** 6857).

<sup>94</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>95</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>96</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 II 15 of the Financial Institutions Act of 15 June 2018, with effect from 1 Jan. 2020 (AS **2018** 5247, **2019** 4631; BBl **2015** 8901).

<sup>97</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 of Audit Companies), with effect from 1 Jan. 2015 (AS **2014** 4073; BBl **2013** 6857).



**Art. 20**<sup>98</sup>

**Art. 21 and 22**<sup>99</sup>

### **Section 3b**<sup>100</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 concerned due to terrorist activities or their support for terrorist activities on the basis of Resolution 1373 (2001)<sup>101</sup> of the UN Security Council.

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

- a.<sup>102</sup> the financial intermediaries under its supervision in accordance with Article 2 paragraph 2 letters a and b<sup>dter</sup>;
- b.<sup>103</sup> the supervisory organisations for the attention of the financial intermediaries in accordance with Article 2 letter a<sup>bis</sup> that are subject to their ongoing supervision;
- 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.

<sup>98</sup> Repealed by Annex No II 15 of the Financial Institutions Act of 15 June 2018, with effect from 1 Jan. 2020 (AS **2018** 5247, **2019** 4631; BBl **2015** 8901).

<sup>99</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>100</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>101</sup> [www.un.org](http://www.un.org) > English > Security Council > Security Council Resolutions > 2001 > 5/RES/1373 (2001)

<sup>102</sup> Amended by Annex No II 15 of the Financial Institutions Act of 15 June 2018, in force since 1 Jan. 2020 (AS **2018** 5247, **2019** 4631; BBl **2015** 8901).

<sup>103</sup> Amended by Annex No II 15 of the Financial Institutions Act of 15 June 2018, in force since 1 Jan. 2020 (AS **2018** 5247, **2019** 4631; BBl **2015** 8901).

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

### Art. 23

<sup>1</sup> The Federal Office of Police<sup>104</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>105</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>106</sup> has been committed;
- b.<sup>107</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. assets serve the financing of terrorism (Art. 260<sup>quinquies</sup> para. 1 SCC).<sup>108</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>109</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>110</sup>

<sup>104</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>105</sup> Amended by No 1 of the FA of 21 June 2013, in force since 1 Nov. 2013 (AS **2013** 3493; BBl **2012** 6941).

<sup>106</sup> SR **311.0**

<sup>107</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>108</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>109</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>110</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).

## 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. provide the guarantee of irrefragable business conduct and ensure that the persons and audit firms they instruct to carry out inspections:<sup>111</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>112</sup> ensure that the audit firms they instruct to carry out inspections and lead auditors fulfil the requirements under Article 24a.

<sup>2</sup> The self-regulatory organisations of the licensed transport undertakings under the Public Transport Act of 20 March 2009<sup>113</sup> must be independent of their respective managements.<sup>114</sup>

### Art. 24a<sup>115</sup> Licensing of audit firms and lead auditors

<sup>1</sup> The self-regulatory organisation shall grant the audit firms and lead auditors the necessary licence and supervise their activity.

<sup>2</sup> The audit firm shall be licensed if:

- a. it is licensed as an auditor by the Federal Audit Oversight Authority in accordance with Article 6 of the Auditor Oversight Act of 16 December 2005<sup>116</sup>;
- b. it is adequately organised for this audit; and
- c. it does not perform any other activity requiring authorisation under the financial market acts in accordance with Article 1 paragraph 1 of the Financial Market Supervision Act of 22 June 2007<sup>117</sup> (FINMASA).

<sup>111</sup> Amended by Annex No II 15 of the Financial Institutions Act of 15 June 2018, in force since 1 Jan. 2020 (AS 2018 5247, 2019 4631; BBI 2015 8901).

<sup>112</sup> Inserted by Annex No 7 of the FA of 20 June 2014 (Consolidation of Oversight of Audit Companies) (AS 2014 4073; BBI 2013 6857). Amended by Annex No II 15 of the Financial Institutions Act of 15 June 2018, in force since 1 Jan. 2020 (AS 2018 5247, 2019 4631; BBI 2015 8901).

<sup>113</sup> SR 745.1

<sup>114</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; BBI 2009 5265).

<sup>115</sup> Inserted by Annex No II 15 of the Financial Institutions Act of 15 June 2018, in force since 1 Jan. 2020 (AS 2018 5247, 2019 4631; BBI 2015 8901).

<sup>116</sup> SR 221.302

<sup>3</sup> The lead auditor shall be licensed to lead audits in accordance with paragraph 1 if he or she:

- a. is licensed as an auditor by the Federal Audit Oversight Authority in accordance with Article 5 of the Auditor Oversight Act;
- b. has the necessary specialist knowledge and the necessary practical experience for performing audits in accordance with paragraph 1.

<sup>4</sup> Article 17 of the Auditor Oversight Act applies by analogy to the self-regulatory organisation's withdrawal of the licence granted to audit firms and lead auditors in accordance with paragraph 1, as well as to its issuing of a reprimand.

#### **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>118</sup>

#### **Art. 26a**<sup>119</sup> Swiss group companies

<sup>1</sup> FINMA may provide for financial intermediaries in accordance with Article 2 paragraph 3 that are Swiss group companies of a financial intermediary in accordance with Article 2 paragraph 2 letters a–d<sup>ter</sup> that proof of compliance with the obligations specified in Chapter 2 may be provided in the audit report for the group.

<sup>2</sup> FINMA shall publish a list of group companies in accordance with paragraph 1.

<sup>117</sup> SR **956.1**

<sup>118</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>119</sup> Inserted by Annex No II 15 of the Financial Institutions Act of 15 June 2018, in force since 1 Jan. 2020 (AS **2018** 5247, **2019** 4631; BBl **2015** 8901).

**Art. 27**<sup>120</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>121</sup> has been committed;
- b.<sup>122</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>123</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>124</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>125</sup> without prior warning.

<sup>2</sup> If a self-regulatory organisation has its recognition withdrawn, its affiliated financial intermediaries must submit a request for affiliation with another self-regulatory organisation within two months.<sup>126</sup>

<sup>120</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>121</sup> SR **311.0**

<sup>122</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>123</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>124</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>125</sup> SR **956.1**

<sup>126</sup> Amended by Annex No II 15 of the Financial Institutions Act of 15 June 2018, in force since 1 Jan. 2020 (AS **2018** 5247, **2019** 4631; BBl **2015** 8901).

3 and 4 ...<sup>127</sup>

## Chapter 4 Administrative Assistance

### Section 1 Cooperation among Domestic Authorities

**Art. 29** Exchange of information among authorities<sup>128</sup>

<sup>1</sup> FINMA, the FGB, the Intercantonal Supervisory and Executive Authority under Article 105 GamBLA<sup>129</sup> and the Reporting Office may provide each other with any information or documents required for the enforcement of this Act.<sup>130</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 criminal and administrative proceedings, including those from pending proceedings.<sup>131</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>132</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>133</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>134</sup>

<sup>127</sup> Repealed by Annex No II 15 of the Financial Institutions Act of 15 June 2018, with effect from 1 Jan. 2020 (AS **2018** 5247; **2019** 4631; BBl **2015** 8901).

<sup>128</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>129</sup> SR **935.51**

<sup>130</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>131</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>132</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>133</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).

**Art. 29a**<sup>135</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>136</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>137</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>138</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 intermediary with the competent prosecution authorities.<sup>139</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>140</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;

<sup>134</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>135</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>136</sup> SR **311.0**

<sup>137</sup> SR **935.51**

<sup>138</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>139</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>140</sup> Amended by No I of the FA of 21 June 2013, in force since 1 Nov. 2013 (AS **2013** 3493; BBl **2012** 6941).

- 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>141</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
  - 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>142</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;

<sup>141</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>142</sup> Amended by No I of the FA of 21 June 2013, in force since 1 Nov. 2013 (AS 2013 3493; BBl 2012 6941).



- 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>143</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>144</sup> on the Central Offices of the Federal Criminal Police apply by analogy.

**Art. 32** Cooperation with foreign prosecution authorities<sup>145</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>146</sup> on the Central Offices of the Federal Criminal Police.

<sup>2</sup> ...<sup>147</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>148</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>149</sup> on Data Protection.

<sup>143</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>144</sup> SR 360

<sup>145</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>146</sup> SR 360

<sup>147</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>148</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>149</sup> SR 235.1

**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 Gambla<sup>150</sup>, the supervisory organisation, self-regulatory organisations, the Reporting Office and the prosecution authorities.<sup>151</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>152</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>153</sup> until the time when the Reporting Office informs the financial intermediary under Article 23 paragraph 5 or 6 and for as long as assets are frozen in accordance with Article 10.<sup>154</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>155</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>156</sup> on Federal Police Information Systems.<sup>157</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>158</sup>, self-regulatory organisations, the Reporting Office and prosecution authorities.<sup>159</sup>

<sup>150</sup> SR **935.51**

<sup>151</sup> Amended by Annex No II 15 of the Financial Institutions Act of 15 June 2018, in force since 1 Jan. 2020 (AS **2018** 5247, **2019** 4631; BBl **2015** 8901). Corrected by the Federal Assembly Drafting Committee on 31 Jan. 2020, published on 18 Feb. 2020 (AS **2020** 501).

<sup>152</sup> SR **235.1**

<sup>153</sup> SR **311.0**

<sup>154</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>155</sup> SR **360**

<sup>156</sup> SR **361**

<sup>157</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>158</sup> SR **935.51**

<sup>159</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).

**Art. 35a**<sup>160</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.

**Chapter 6 Criminal Provisions and Procedure****Art. 36**<sup>161</sup>**Art. 37**<sup>162</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>163</sup>

**Art. 38**<sup>164</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.

<sup>160</sup> Inserted by Annex I 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>161</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>162</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>163</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; BBl **2014** 7483).

<sup>164</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. 39 and 40<sup>165</sup>

## Chapter 7 Final Provisions

**Art. 41**<sup>166</sup> Implementation

1 The Federal Council shall issue the provisions required for the implementation of this Act.

2 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.

**Art. 42**<sup>167</sup> Transitional provision to the Amendment of 15 June 2018

Financial intermediaries as defined in Article 2 paragraph 3 which at the time of the entry into force of the amendment to this Act of 15 June 2018 have FINMA authorisation in accordance with Article 14 must join a recognised self-regulatory organisation. They must submit their request within one year. They may continue to perform their activity until a decision has been made concerning their request.

**Art. 43** Amendment of current legislation

*Relevant to the French Text only*

**Art. 44** Referendum and commencement

1 This Act is subject to an optional referendum.

2 The Federal Council determines the date on which this Act comes into force.

Commencement Date: 1 April 1998<sup>168</sup>

<sup>165</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>166</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; BBl **2007** 6269).

<sup>167</sup> Amended by Annex No II 15 of the Financial Institutions Act of 15 June 2018, in force since 1 Jan. 2020 (AS **2018** 5247, **2019** 4631; BBl **2015** 8901).

<sup>168</sup> FCD of 16 March 1998.