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

of 10 October 1997 (Status as of 1 January 2015)

**Please note:** this translation does not yet include the amendments of 1.1.2016

*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>quinqüies</sup> paragraph 1 SCC, and the due diligence required in financial transactions.

#### **Art. 2**            Scope of application

<sup>1</sup> This Act applies to financial intermediaries.

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

- a. banks as defined in the Banking Act of 8 November 1934<sup>7</sup>;

AS 1998 892

<sup>1</sup> Amended by No. 14 of the Federal Act 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 361 367; BBl 2007 6269).

<sup>2</sup> [BS 1 3]. The provisions mentioned now correspond to Arts. 95, 98, 103 and 123 of the Federal Constitution of 18 April 1999 (SR 101).

<sup>3</sup> Amended by No I of the Federal Act 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. 14 of the Federal Act 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 361 367; BBl 2007 6269).

<sup>6</sup> SR 311.0

<sup>7</sup> SR 952.0

- b.<sup>8</sup> fund managers, provided they manage share accounts or themselves distribute shares in collective investment schemes;
- b<sup>bis</sup>.<sup>9</sup> investment companies with variable capital, limited partnerships for collective investment, investment companies with fixed capital and asset managers within the meaning of the Collective Investment Schemes Act of 23 June 2006<sup>10</sup>, provided they themselves distribute shares in collective investment schemes;
- c.<sup>11</sup> insurance institutions as defined in the Insurance Supervision Act of 17 December 2004<sup>12</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>13</sup>;
- e.<sup>14</sup> casinos as defined in the Gambling Act of 18 December 1998<sup>15</sup>.

<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>16</sup>
- e. manage assets;
- f. make investments as investment advisers;
- g. hold securities on deposit or manage securities.

<sup>8</sup> Amended by Annex No 3 of the Federal Act of 28 Sept. 2012, in force since 1 March 2013 (AS **2013 585**; BBl **2012 3639**).

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

<sup>10</sup> SR **951.31**

<sup>11</sup> Amended by Annex No. II 9 of the Collective Investment Schemes Act of 23 June 2006, in force since 1 Jan. 2007 (SR **951.31**).

<sup>12</sup> SR **961.01**

<sup>13</sup> SR **954.1**

<sup>14</sup> Inserted by Annex No. 4 of the Gambling Act of 18 Dec. 1998, in force since 1. April 2000 (SR **935.52**).

<sup>15</sup> SR **935.52**

<sup>16</sup> Repealed by Annex No. II 8 of the Insurance Supervision Act of 17 Dec. 2004, with effect from 1 Jan. 2006 (SR **961.01**).

<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.

## **Chapter 2: Duties of Financial Intermediaries**

### **Section 1: Duty of Due Diligence**

#### **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>17</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>18</sup>

<sup>5</sup> The Swiss Financial Market Supervisory Authority (FINMA), the Federal Gaming Board 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>19</sup>

<sup>17</sup> Second sentence inserted by No. I 4 of the Federal Act 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 361 367; BBl 2007 6269).

<sup>18</sup> Amended by No. I 4 of the Federal Act 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 361 367; BBl 2007 6269).

<sup>19</sup> Amended by Annex No. 17 of the Financial Market Supervision Act of 22 June 2007, in force since 1 Jan. 2009 (SR 956.1).

**Art. 4** Establishing the identity of the beneficial owner

<sup>1</sup> The financial intermediary must obtain a written declaration from the customer indicating who the beneficial owner is 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;
- c. a cash transaction of considerable financial value in terms of Article 3 paragraph 2 is being carried out.

<sup>2</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 without delay.

**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>20</sup>** Duty to clarify

<sup>1</sup> The financial intermediary is required to identify the nature and purpose of the business relationship wanted by the customer. The extent of the information that must be obtained is 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. it appears unusual, unless its legality is clear;
- b. there are indications that assets are the proceeds of a felony or are subject to the power of disposal of a criminal organisation (Art. 260<sup>ter</sup> No. 1 SCC<sup>21</sup>) or serve the financing of terrorism (Art. 260<sup>quinquies</sup> para. 1 SCC).

**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

<sup>20</sup> Amended by No. 14 of the Federal Act 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 361 367; BBI 2007 6269).

<sup>21</sup> SR 311.0

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>22</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>23</sup> They must in particular ensure that their staff receive adequate training and that checks are carried out.

## 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>24</sup>,
  2. are the proceeds of a felony,
  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.<sup>25</sup>

<sup>22</sup> Inserted by No. 14 of the Federal Act 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 361 367; BBl 2007 6269).

<sup>23</sup> Amended by No. 14 of the Federal Act 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 361 367; BBl 2007 6269).

<sup>24</sup> SR 311.0

<sup>1bis</sup> The name of the financial intermediary must appear in any report in accordance with paragraph 1. The identity of the financial intermediary'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>26</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. 10** Freezing of assets

<sup>1</sup> A financial intermediary must immediately freeze the assets entrusted to it that are connected with the report filed under Article 9.<sup>27</sup>

<sup>2</sup> It must continue to freeze the assets until it receives an order from the competent prosecution authority, but at the most for five working days from the time at which the report is filed with the Reporting Office.

<sup>3</sup> ...<sup>28</sup>

#### **Art. 10a**<sup>29</sup> Prohibition of information

<sup>1</sup> For as long as assets are frozen by decision of the financial intermediary, that intermediary is prohibited from informing the persons affected or third parties of the report under Article 9.

<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 obligations under this Act and provided both financial intermediaries:

- 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>25</sup> Amended by No. 14 of the Federal Act 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 361 367; BBl 2007 6269).

<sup>26</sup> Inserted by No. 14 of the Federal Act 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 361 367; BBl 2007 6269).

<sup>27</sup> Amended by No. 14 of the Federal Act 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 361 367; BBl 2007 6269).

<sup>28</sup> Repealed by No. 14 of the Federal Act of 3 Oct. 2008 on the Implementation of the revised Recommendations of the Financial Action Task Force, with effect from 1 Feb. 2009 (AS 2009 361 367; BBl 2007 6269).

<sup>29</sup> Inserted by No. 14 of the Federal Act 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 361 367; BBl 2007 6269).

<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.

**Art. 11<sup>30</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>31</sup> or to self-regulatory organisations that file a report under Article 27 paragraph 4.

**Section 3:<sup>32</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>33</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>30</sup> Amended by No. 14 of the Federal Act 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 361 367; BBl 2007 6269).

<sup>31</sup> SR 311.0

<sup>32</sup> Inserted by No I of the Federal Act of 21 June 2013, in force since 1 Nov. 2013 (AS 2013 3493; BBl 2012 6941).

<sup>33</sup> SR 311.0

## Chapter 3: Supervision

### Section 1: General Provisions

#### Art. 12<sup>34</sup> Responsibility

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

- a. for financial intermediaries under Article 2 paragraph 2 letters a–d, FINMA;
- b. for financial intermediaries under Article 2 paragraph 2 letter e, the Federal Gaming Board;
- 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>35</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>36</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
- 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.

<sup>34</sup> Amended by Annex No. 17 of the Financial Market Supervision Act of 22 June 2007, in force since 1 Jan. 2009 (SR **956.1**).

<sup>35</sup> Repealed by Annex No. 17 of the Financial Market Supervision Act of 22 June 2007, with effect from 1 Jan. 2009 (SR **956.1**).

<sup>36</sup> Amended by Annex No. 17 of the Financial Market Supervision Act of 22 June 2007, in force since 1 Jan. 2009 (SR **956.1**).



**Art. 15<sup>37</sup>****Section 2:<sup>38</sup> Duty to Report of the Supervisory Authorities****Art. 16**

<sup>1</sup> FINMA and the Federal Gaming Board shall immediately submit a report to the Reporting Office if they have reasonable grounds to suspect that:

- a.<sup>39</sup> a criminal offence under Article 260<sup>ter</sup> No. 1, 305<sup>bis</sup> or 305<sup>ter</sup> SCC<sup>40</sup> has been committed;
- b. assets are the proceeds of a felony;
- c. assets are subject to the power of disposal of a criminal organisation; or
- d.<sup>41</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>42</sup>****Supervision of Financial Intermediaries under Article 2 paragraph 2****Art. 17**

FINMA and the Federal Gaming Board shall specify the duties of due diligence defined in Chapter 2 for the financial intermediaries under their supervision according to Article 2 paragraph 2 and stipulate how these duties must be fulfilled, unless a self-regulatory organisation regulates these duties of due diligence and their fulfilment.

<sup>37</sup> Repealed by Annex No. 17 of the Financial Market Supervision Act of 22 June 2007, with effect from 1 Jan. 2009 (SR **956.1**).

<sup>38</sup> Amended by Annex No. 17 of the Financial Market Supervision Act of 22 June 2007, in force since 1 Jan. 2009 (SR **956.1**).

<sup>39</sup> Amended by No. 14 of the Federal Act 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** 361 367; BBl **2007** 6269).

<sup>40</sup> SR **311.0**

<sup>41</sup> Inserted by No. 14 of the Federal Act 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** 361 367; BBl **2007** 6269).

<sup>42</sup> Amended by Annex No. 17 of the Financial Market Supervision Act of 22 June 2007, in force since 1 Jan. 2009 (SR **956.1**).

### Section 3a: Supervision of Financial Intermediaries under Article 2 paragraph 3<sup>43</sup>

#### Art. 18 Duties of FINMA<sup>44</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>45</sup>

- 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.

<sup>2</sup> ...<sup>46</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>47, 48</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;

<sup>43</sup> Inserted by Annex No. 17 of the Financial Market Supervision Act of 22 June 2007, in force since 1 Jan. 2009 (SR **956.1**).

<sup>44</sup> Amended by Annex No. 17 of the Financial Market Supervision Act of 22 June 2007, in force since 1 Jan. 2009 (SR **956.1**).

<sup>45</sup> Amended by Annex No. 17 of the Financial Market Supervision Act of 22 June 2007, in force since 1 Jan. 2009 (SR **956.1**).

<sup>46</sup> Repealed by Annex No 7 of the Federal Act of 20 June 2014 (Consolidation of Oversight through Audit Companies), with effect from 1 Jan. 2015 (AS **2014** 4073; BBl **2013** 6857). SR **221.302**

<sup>48</sup> Amended by Annex No 7 of the Federal Act of 20 June 2014 (Consolidation of Oversight through Audit Companies), in force since 1 Jan. 2015 (AS **2014** 4073; BBl **2013** 6857).

d. independence from the member being checked.<sup>49</sup>

**Art. 18a**<sup>50</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>51</sup>

**Art. 19a**<sup>52</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>53</sup> to carry out an audit under Article 24 of the Financial Market Supervision Act of 22 June 2007<sup>54</sup>.

**Art. 19b**<sup>55</sup>

**Art. 20**<sup>56</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>57</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.

<sup>49</sup> Inserted by Annex No 7 of the Federal Act of 20 June 2014 (Consolidation of Oversight through Audit Companies), in force since 1 Jan. 2015 (AS **2014** 4073; BBl **2013** 6857).

<sup>50</sup> Inserted by Annex No. 17 of the Financial Market Supervision Act of 22 June 2007, in force since 1 Jan. 2009 (SR **956.1**).

<sup>51</sup> Repealed by Annex No. 17 of the Financial Market Supervision Act of 22 June 2007, with effect from 1 Jan. 2009 (SR **956.1**).

<sup>52</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 Federal Act of 20 June 2014 (Consolidation of Oversight through Audit Companies), in force since 1 Jan. 2015 (AS **2014** 4073; BBl **2013** 6857).

<sup>53</sup> SR **221.302**

<sup>54</sup> SR **956.1**

<sup>55</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 Federal Act of 20 June 2014 (Consolidation of Oversight through Audit Companies), with effect from 1 Jan. 2015 (AS **2014** 4073; BBl **2013** 6857).

<sup>56</sup> Amended by Annex No. 17 of the Financial Market Supervision Act of 22 June 2007, in force since 1 Jan. 2009 (SR **956.1**).

<sup>57</sup> SR **956.1**

**Art. 21 and 22<sup>58</sup>****Section 4: Money Laundering Reporting Office Switzerland (the Reporting Office)****Art. 23**

<sup>1</sup> The Federal Office of Police<sup>59</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>60</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>61</sup> has been committed;
- b. assets are the proceeds of a felony;
- 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>62</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>63</sup>
  1. possess the required specialist knowledge,

<sup>58</sup> Repealed by Annex No. 17 of the Financial Market Supervision Act of 22 June 2007, with effect from 1 Jan. 2009 (SR **956.1**).

<sup>59</sup> The title of this administrative entity has been amended in application of Art. 16 para. 3 of the Publication Ordinance of 17 Nov. 2004 (SR **170.512.1**).

<sup>60</sup> Amended by No I of the Federal Act of 21 June 2013, in force since 1 Nov. 2013 (AS **2013** 3493; BBl **2012** 6941).

<sup>61</sup> SR **311.0**

<sup>62</sup> Amended by No. I 4 of the Federal Act 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** 361 367; BBl **2007** 6269).

<sup>63</sup> Amended by Annex No 7 of the Federal Act of 20 June 2014 (Consolidation of Oversight through Audit Companies), in force since 1 Jan. 2015 (AS **2014** 4073; BBl **2013** 6857).

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>64</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>65</sup> must be independent of their respective managements.<sup>66</sup>

#### **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>67</sup>

#### **Art. 27**<sup>68</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;

<sup>64</sup> Inserted by Annex No 7 of the Federal Act of 20 June 2014 (Consolidation of Oversight through Audit Companies), in force since 1 Jan. 2015 (AS **2014** 4073; BBl **2013** 6857).

<sup>65</sup> SR **745.1**

<sup>66</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).

<sup>67</sup> Amended by Annex No. 17 of the Financial Market Supervision Act of 22 June 2007, in force since 1 Jan. 2009 (SR **956.1**).

<sup>68</sup> Amended by Annex No. 17 of the Financial Market Supervision Act of 22 June 2007, in force since 1 Jan. 2009 (SR **956.1**).

- 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>69</sup> has been committed;
- b. assets are the proceeds of a felony;
- c. assets are subject to the power of disposal of a criminal organisation; or
- d.<sup>70</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>71</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>72</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.

<sup>69</sup> SR 311.0

<sup>70</sup> Inserted by No. I 4 of the Federal Act 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 361 367; BBl 2007 6269).

<sup>71</sup> Amended by Annex No. 17 of the Financial Market Supervision Act of 22 June 2007, in force since 1 Jan. 2009 (SR 956.1).

<sup>72</sup> SR 956.1

## Chapter 4: Administrative Assistance

### Section 1: Cooperation among Domestic Authorities

#### Art. 29 Exchange of information among authorities<sup>73</sup>

<sup>1</sup> FINMA, the Federal Gaming Board and the Reporting Office may provide each other with any information or documents required for the enforcement of this Act.<sup>74</sup>

<sup>2</sup> ...<sup>75</sup>

<sup>3</sup> The Reporting Office shall inform FINMA and the Federal Gaming Board of the decisions of the cantonal prosecution authorities.<sup>76</sup>

#### Art. 29a<sup>77</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>78</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 and the Federal Gaming Board 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>4</sup> FINMA and the Federal Gaming Board shall coordinate any intervention in relation to a financial intermediary with the competent prosecution authorities. They shall consult with the competent prosecution authorities before passing on any information or documents received.

<sup>73</sup> Inserted by No. 14 of the Federal Act 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 361 367; 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 (SR 956.1).

<sup>75</sup> Repealed by No. 14 of the Federal Act of 3 Oct. 2008 on the Implementation of the revised Recommendations of the Financial Action Task Force, with effect from 1 Feb. 2009 (AS 2009 361 367; BBl 2007 6269).

<sup>76</sup> Amended by Annex No. 17 of the Financial Market Supervision Act of 22 June 2007, in force since 1 Jan. 2009 (SR 956.1).

<sup>77</sup> Inserted by No. 14 of the Federal Act 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 361 367; BBl 2007 6269).

<sup>78</sup> SR 311.0

## Section 2: Cooperation with Foreign Authorities

### Art. 30<sup>79</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. the name of the financial intermediary, 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>79</sup> Amended by No I of the Federal Act of 21 June 2013, in force since 1 Nov. 2013 (AS 2013 3493; BBl 2012 6941).



<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>80</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>81</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>82</sup> on the Central Offices of the Federal Criminal Police apply by analogy.

**Art. 32** Cooperation with foreign prosecution authorities<sup>83</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>84</sup> on the Central Offices of the Federal Criminal Police.

2 ...<sup>85</sup>

<sup>3</sup> The name of the person who made the report by the financial intermediary 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>86</sup>

<sup>80</sup> Amended by No I of the Federal Act of 21 June 2013, in force since 1 Nov. 2013 (AS 2013 3493; BBl 2012 6941).

<sup>81</sup> Inserted by No I of the Federal Act of 21 June 2013, in force since 1 Nov. 2013 (AS 2013 3493; BBl 2012 6941).

<sup>82</sup> SR 360

<sup>83</sup> Amended by No I of the Federal Act of 21 June 2013, in force since 1 Nov. 2013 (AS 2013 3493; BBl 2012 6941).

<sup>84</sup> SR 360

<sup>85</sup> Repealed by No I of the Federal Act of 21 June 2013, with effect from 1 Nov. 2013 (AS 2013 3493; BBl 2012 6941).

<sup>86</sup> Inserted by No. 14 of the Federal Act of 3 Oct. 2008 on the Implementation of the revised Recommendations of the Financial Action Task Force (AS 2009 361; BBl 2007 6269).

## 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>87</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 Federal Gaming Board, self-regulatory organisations, the Reporting Office and the prosecution authorities.<sup>88</sup>

<sup>3</sup> The right to information of persons affected in accordance with Article 8 of the Federal Act of 19 June 1992<sup>89</sup> on Data Protection shall be suspended for as long as assets are frozen in accordance with Article 10 paragraphs 1 and 2.

<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>90</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>91</sup> on Federal Police Information Systems.<sup>92</sup>

<sup>2</sup> The exchange of information between the Reporting Office and FINMA, the Federal Gaming Board and the prosecution authorities may be carried out by means of a computerised access procedure (online).<sup>93</sup>

### Art. 35a<sup>94</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:

Amended by No I of the Federal Act of 21 June 2013, in force since 1 Nov. 2013 (AS 2013 3493; BBl 2012 6941).

<sup>87</sup> SR 235.1

<sup>88</sup> Amended by Annex No. 17 of the Financial Market Supervision Act of 22 June 2007, in force since 1 Jan. 2009 (SR 956.1).

<sup>89</sup> SR 235.1

<sup>90</sup> SR 360

<sup>91</sup> SR 361

<sup>92</sup> Amended by Annex 1 No.. 9 of the Federal Act of 13 June 2008 on Federal Police Information Systems, in force since 5 Dec. 2008 (SR 361).

<sup>93</sup> Amended by Annex No. 17 of the Financial Market Supervision Act of 22 June 2007, in force since 1 Jan. 2009 (SR 956.1).

<sup>94</sup> Inserted by Annex 1 No.. 9 of the Federal Act of 13 June 2008 on Federal Police Information Systems, in force since 5 Dec. 2008 (SR 361).

- 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>95</sup>

#### Art. 37<sup>96</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 of up to 500,000 francs.

<sup>2</sup> If the offender acts through negligence, he or she shall be liable to a fine of up to 150,000 francs.

<sup>3</sup> In the event of a repetition of the offence within five years of the conviction taking full legal effect, the fine shall be a minimum of 10,000 francs.

### Art. 38–40<sup>97</sup>

## Chapter 7: Final Provisions

### Art. 41<sup>98</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 Federal Gaming Board to issue implementing provisions on matters of limited importance and in particular on matters of a primarily technical nature.

<sup>95</sup> Repealed by Annex No. 17 of the Financial Market Supervision Act of 22 June 2007, with effect from 1 Jan. 2009 (SR **956.1**).

<sup>96</sup> Amended by Annex No. 17 of the Financial Market Supervision Act of 22 June 2007, in force since 1 Jan. 2009 (SR **956.1**).

<sup>97</sup> Repealed by Annex No. 17 of the Financial Market Supervision Act of 22 June 2007, with effect from 1 Jan. 2009 (SR **956.1**).

<sup>98</sup> Amended by No. 14 of the Federal Act 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).

**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>99</sup>

<sup>99</sup> Federal Council Decree of 16 March 1998 (AS 1998 904)