

# Proposed amendments to Switzerland's anti-money laundering and sanctions framework

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Matthias Gstoehl

*Lalive, Zurich*

[mgstoehl@lalive.law](mailto:mgstoehl@lalive.law)

Benoit Mauron

*Lalive, Genva*

[bamauron@lalive.law](mailto:bamauron@lalive.law)

## Introduction

In this article, we set out the main proposed amendments to Switzerland's anti-money laundering legal framework and sanctions legislation, designed to maintain its integrity and reputation as a global financial centre. Alongside due diligence requirements covering certain consulting activities, the main change is the introduction of a centralised official register of beneficial owners.

## Background

In 2022, the Financial Action Task Force (FATF) – an intergovernmental body tasked with combating money laundering and terrorist financing – finalised the revision of the Anti-Money Laundering Recommendation No 24 ('Recommendation 24').<sup>[1]</sup> Recommendation 24 requires states to record the beneficial owners of legal entities in a centralised official register (internal registers being deemed no longer sufficient).<sup>[2]</sup>

To strengthen Switzerland's integrity as a global financial centre, the Federal Council instructed the Federal Department of Finance (FDF) to submit options for implementing Recommendation 24 in Switzerland. The FDF prepared a draft entitled 'Federal Act on the Transparency of Legal Entities and the Identification of UBOs' (the 'Draft'). This Draft, which went to consultation on 30 August 2023, expands on existing legislation, especially that concerning the ultimate beneficial owners (UBO) of companies.

## Major proposed changes

### *Federal UBO Register*

Under current Swiss legislation, companies must keep a register of beneficial owners,<sup>[3]</sup> with the shareholders of non-listed companies obliged to give notice of the beneficial owner of shares when control reaches or exceeds 25 per cent of the capital or voting rights.<sup>[4]</sup> Non-compliance with this disclosure obligation entails the loss of all shareholder rights.<sup>[5]</sup> In business relationships with companies, financial intermediaries must determine the beneficial owners with due diligence required in the circumstances.<sup>[6]</sup>

The revised Anti-Money Laundering Act (AMLA) entered into force on 1 January 2023, introducing additional obligations for financial intermediaries regarding the identification of beneficial owners.<sup>[7]</sup> It is no longer sufficient to simply identify the contracting party or the beneficial owner where doubts arise during the business relationship (and to verify this information periodically in the event of increased risk); the identity of the beneficial owner must now be established in every case (with appropriate due diligence in the circumstances) and verified with supporting documents regularly, on a risk-based approach.<sup>[8]</sup>

The Draft now under consideration goes further, proposing the introduction of a federal centralised UBO Register in which certain Swiss legal entities would have to register information on their UBO. The Draft defines the UBO as any natural persons controlling the entity through 25 per cent of the votes or shares, or in any other way; if no person fulfils this criterion, the entity should register the main member(s) of its management.<sup>[9]</sup> The information to be registered would include information on their role within the entity (such as the type and extent of their control) and personal information (specifically name, date of birth, nationality and address). The entity would also be obligated to implement necessary measures to ensure that registered information is correct and up to date.<sup>[10]</sup>

The Draft would apply primarily to legal entities under Swiss law. It would also apply to non-Swiss legal entities that: (i) have a branch in Switzerland; (ii) have their central administration in Switzerland; or (iii) own real estate in Switzerland.<sup>[11]</sup> Listed companies or State-owned companies would be out of scope.<sup>[12]</sup> To minimise the administrative obligations, particularly of smaller entities, the Draft provides a simplified reporting procedure.<sup>[13]</sup>

The UBO Register would not be accessible to the public. However, several public authorities such as criminal authorities, the Money Laundering Reporting Office (MROS), or tax authorities would have unlimited direct access. Others, such as the land registry, would be granted access upon request only.<sup>[14]</sup>

Interestingly, lawyers would also have automatic access to the register online to the extent required to discharge their new anti-money laundering due diligence obligations (see below). Any other use is expressly prohibited,<sup>[15]</sup> so it would not be available for use as an asset tracing tool. However, it may, nevertheless, serve this purpose when accessed by prosecutors investigating complaints by private plaintiffs. As the latter are entitled to participate in criminal investigations, access the case file and even adduce and pursue civil claims therein, an indirect use of the central register by private plaintiffs might emerge.

Following the creation of UBO registers in EU Member States, the EU debated whether public accessibility is legal. In its 22 November 2022 ruling, the European Court of Justice (ECJ) determined that public accessibility of such registers constitutes a serious violation of the fundamental rights to respect for private life and to the protection of personal data guaranteed by the EU Charter of Fundamental Rights.<sup>[16]</sup> The Federal Council acknowledged this decision in its explanatory report to the Draft when discussing the non-public nature of the contemplated UBO Register.<sup>[17]</sup>

### *Additional due diligence obligations*

The second major proposal concerns anti-money laundering due diligence rules, which would henceforth also apply to certain consultancy activities (particularly legal advice) that carry a perceived elevated risk of money laundering.<sup>[18]</sup> The structuring of companies, advice on corporate transactions or advice on real estate transactions are considered to be particularly risky. The position of the legal profession (and specifically lawyers' and notaries' duty of professional secrecy) is claimed to be respected – notably by not subjecting lawyers to AMLA reporting obligations for transactional or advisory work unless they act as financial intermediaries.<sup>[19]</sup> Despite this caveat, some political parties have already raised concerns about the weakening of lawyers' professional secrecy it would entail.<sup>[20]</sup>

### *Further measures*

The Draft would also implement a series of measures to prevent the breach or circumvention of sanctions under embargo legislation, notably by requiring law firms to implement organisational preventive measures and to dispense with internal training to their teams.<sup>[21]</sup>

The threshold for cash payments in precious metals trading will be lowered from CHF 100,000 to CHF 15,000. It would still be possible to make cash payments exceeding the proposed limit, but they would be subject to certain due diligence rules. All cash payments in the real estate industry would become subject to anti-money laundering due diligence rules, irrespective of the monetary amount involved.<sup>[22]</sup>

### **Next steps and potential reactions**

The consultation period for the Draft finished at the end of November 2023, and the Federal Council is expected to submit the Draft to Parliament in 2024. So far, responses to the Draft have been mixed.

The Federal Council argues it would make a significant contribution in protecting Switzerland from funds of criminal origin, strengthening the country as a business location with little additional effort to companies.<sup>[23]</sup> It claims that registration would only require around 20 minutes of additional work for any company, and even less in subsequent years.<sup>[24]</sup> It estimates that 97.5 per cent would be able to fulfil the new requirements with either no or very little additional effort.<sup>[25]</sup>

However, this forecast may be overly optimistic given the experience of the internal register implementation, which has required many companies to seek external advice at a high cost.<sup>[26]</sup>


There are also other concerns, such as expanding the AMLA's scope to include an ever-growing number of industries, and the prevention of violations of the sanctions provisions. Sceptics argue that it may stretch the AMLA too thin, resulting in legislation that promises to solve a multitude of issues efficiently but is, in practice, unable to do so.<sup>[27]</sup> There is no discussion of the consequences of additional organisational and due diligence obligations for law firms involved in advisory or transactional work. This may lead to an overall increase in fees or, more realistically, to a further consolidation of the Swiss legal industry market, with smaller structures unable to absorb the related operational costs.


The major Swiss political parties have generally welcomed the proposal, while criticising it in various forms (too far-reaching or not far-reaching enough, depending on the political positioning), especially the proposed criminal sanctions and the access rights to the register.<sup>[28]</sup> Given the lack of majority at Parliament, it is impossible to predict the exact content of the final bill, if any. Watch this space.


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<sup>[1]</sup> FATF, *The FATF Recommendations* (as amended November 2023) at [www.fatf-gafi.org/en/publications/Fatfrecommendations/Fatfrecommendations.html](http://www.fatf-gafi.org/en/publications/Fatfrecommendations/Fatfrecommendations.html) accessed 12 March 2024.

<sup>[2]</sup> FATF, *Public Statement on Revisions to R.24* at [www.fatf-gafi.org/en/publications/Fatfrecommendations/R24-statement-march-2022.html](http://www.fatf-gafi.org/en/publications/Fatfrecommendations/R24-statement-march-2022.html) accessed 12 March 2024.

 Swiss Code of Obligations ('CO') Art 697l.

 Swiss Code of Obligations Art 697j.

 Swiss Code of Obligations Art 697m.

 cf Anti-Money Laundering Act (AMLA) Art 4.

 cf generally regarding AMLA Revision: Othmar Strasser, 'Die Überprüfung der wirtschaftlich berechtigten Person—eine neue Sorgfaltspflicht bei Geldwäschereibekämpfung?' ('Beneficial Ownership Verification—A New Due Diligence in Anti-Money Laundering?') \*Publisher's translation) 116/2020 s 525 et seq and Emmanuel Goldberg, 'Überprüfung des wirtschaftlich Berechtigten und Aktualisierung der Kundendaten nach der

Revision von Geldwäschereigesetz und -verordnung' ('Verification of the beneficial owner and updating of customer data following the revision of the Money Laundering Act and Ordinance' \*Publisher's translation) RR-COMP 1/2023 s 2 et seq.

<sup>[8]</sup> AMLA Art 3 et seq.

<sup>[9]</sup> Draft Art 4.

[10] Draft Art 6.

[11] Draft Art 2.

[12] Draft Art 3.

[13] Draft Art 17.

[14] See Draft Art 28. Swiss Federal Council, *Bundesgesetz über die Transparenz juristischer Personen und die Identifikation der wirtschaftlich berechtigten Personen: Erläuternder Bericht zur Eröffnung des Vernehmlassungsverfahrens (Federal law on the transparency of legal entities and the identification of beneficial owners: Explanatory report on the opening of the consultation process* \*Publisher's translation) (30 August 2023) p 18.

[15] Draft Art 28(3).

[16] Case C-37/20 and C-601/20 *WM v Luxembourg Business Registers* EU:C:2022:912, 22 November 2022, EuGH Rechtssache (Legal matter).

[17] Swiss Federal Council, *Bundesgesetz über die Transparenz juristischer Personen und die Identifikation der wirtschaftlich berechtigten Personen: Erläuternder Bericht zur Eröffnung des Vernehmlassungsverfahrens (Federal law on the transparency of legal entities and the identification of beneficial owners: Explanatory report on the opening of the consultation process* \*Publisher's translation) (30 August 2023) p 18.

[18] Compare AMLA Art 8b et seq.

[19] Federal Act on the Free Movement of Lawyers Art 133 rev.

[20] The Centre Party's statement at [https://die-mitte.ampersand.company/wp-content/uploads/2023/12/05144219/Die-Mitte\\_Bundesgesetz-ueber-die-Transparenz-juristischer-Personen.pdf](https://die-mitte.ampersand.company/wp-content/uploads/2023/12/05144219/Die-Mitte_Bundesgesetz-ueber-die-Transparenz-juristischer-Personen.pdf) accessed 12 March 2024; the Liberal Party's statement at [www.fdp.ch/fileadmin/documents/fdp.ch/pdf/DE/Positionen/2\\_Vernehmlassungen/2023/decembre/20231204\\_VL\\_TJPG\\_Geldwaescherei.pdf](http://www.fdp.ch/fileadmin/documents/fdp.ch/pdf/DE/Positionen/2_Vernehmlassungen/2023/decembre/20231204_VL_TJPG_Geldwaescherei.pdf) accessed 12 March 2024.

[21] Federal Act on the Free Movement of Lawyers Art 13d rev.

[22] See Federal Council, *Federal Council initiates consultation on strengthening the anti-money laundering framework* (30 August 2023) at [www.admin.ch/gov/en/start/documentation/media-releases.msg-id-97561.html](http://www.admin.ch/gov/en/start/documentation/media-releases.msg-id-97561.html) accessed 12 March 2024.

[23] Federal Council, *Federal Council initiates consultation on strengthening the anti-money laundering framework* (30 August 2023).

[24] Federal Council, *Federal Council initiates consultation on strengthening the anti-money laundering framework* (30 August 2023).

[25] Federal Council, *Bundesgesetz über die Transparenz juristischer Personen und die Identifikation der wirtschaftlich berechtigten Personen: Erläuternder Bericht zur Eröffnung des Vernehmlassungsverfahrens (Federal law on the transparency of legal entities and the identification of beneficial owners: Explanatory report on the opening of the consultation process* \*Publisher's translation) (30 August 2023) p 57.

[26] Thomas Nagel, 'Vernehmlassungsvorlage zur Stärkung der Geldwäscherei-Bekämpfung bzw. Transparenzregister: Würdigung des Vorentwurfes' ('Consultation template to strengthen the fight against money laundering and transparency register: appreciation of the preliminary draft' \*Publisher's translation) RR COMP, 6/2023, 2–4, 4.

[27] Thomas Nagel, 'Vernehmlassungsvorlage zur Stärkung der Geldwäscherei-Bekämpfung bzw. Transparenzregister: Würdigung des Vorentwurfes' ('Consultation template to strengthen the fight against money laundering and transparency register: appreciation of the preliminary draft' \*Publisher's translation) RR COMP, 6/2023, 2–4, 4.

[28] See eg, the Social Democratic Party's statement at [www.sp-ps.ch/wp-content/uploads/2023/12/2023-06-16-Vernehmlassungsantwort-SP-Schweiz\\_Transparenz.pdf](http://www.sp-ps.ch/wp-content/uploads/2023/12/2023-06-16-Vernehmlassungsantwort-SP-Schweiz_Transparenz.pdf) accessed 12 March 2024; the Green Party's statement at <https://gruene.ch/vernehmlassungen/bundesgesetz-ueber-die-transparenz-juristischer-personen-und-die-identifikation-der-wirtschaftlich-berechtigten-personen-gesetz-ueber-die-transparenz-juristischer-personen-tjpg> accessed 12 March 2024; the Centre Party's statement at [https://die-mitte.ampersand.company/wp-content/uploads/2023/12/05144219/Die-Mitte\\_Bundesgesetz-ueber-die-Transparenz-juristischer-Personen.pdf](https://die-mitte.ampersand.company/wp-content/uploads/2023/12/05144219/Die-Mitte_Bundesgesetz-ueber-die-Transparenz-juristischer-Personen.pdf) accessed 12 March 2024; the Liberal Party's statement at [www.fdp.ch/fileadmin/documents/fdp.ch/pdf/DE/Positionen/2\\_Vernehmlassungen/2023/decembre/20231204\\_VL\\_TJPG\\_Geldwaescherei.pdf](http://www.fdp.ch/fileadmin/documents/fdp.ch/pdf/DE/Positionen/2_Vernehmlassungen/2023/decembre/20231204_VL_TJPG_Geldwaescherei.pdf) accessed 12 March 2024; and the Swiss People's Party's statement at [www.svp.ch/positionen/vernehmlassungen/bundesgesetz-ueber-die-transparenz-von-juristischen-personen/](http://www.svp.ch/positionen/vernehmlassungen/bundesgesetz-ueber-die-transparenz-von-juristischen-personen/) accessed 12 March 2024.

