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Bill on the transparency of legal entities and other legal constructs

Q&A

General

Why is a new federal law on the transparency of legal entities and other legal constructs needed?

Given the high money laundering risks associated with legal entities and trusts, the legislative amendments are needed in order to strengthen the Swiss framework. The bill aims to ensure that the competent authorities can inform each other about the beneficial owners of a legal entity quickly and efficiently using a centralised register. In this way, money laundering and economic crime can be more effectively prevented.

Why is a revision of the anti-money laundering provisions needed?

Thanks to various due diligence obligations, the financial sector is now well integrated in efforts to prevent money laundering and terrorist financing, but there are gaps in other, non-financial areas in this respect. Criminals can take advantage of these. As money laundering and terrorist financing pose a serious threat to society, the integrity of the financial centre and the stability of the financial system, it is necessary to also include particularly risky activities in the non-financial sector in efforts to prevent and combat financial crime.

Questions about the register

Which legal entities and legal constructs are subject to the bill's provisions?

Legal entities under Swiss law, i.e. AG, GmbH, SICAV/SICAF, cooperatives, foundations and associations that have to be entered in the commercial register. Moreover, the requirement also covers foreign-based legal entities which have a close connection with Switzerland and represent a particular risk (e.g. through ownership of land or the operation of a branch).

What are the obligations of the legal entities subject to the law?

The affected legal entities must henceforward determine the identity of the beneficial owner(s) and use appropriate means to verify this information. They must report this to the register, which will be managed by the Federal Office of Justice (FOJ).

What must be reported to the register and when?

After the legal entity has been entered in the commercial register, it has one month to report the identity of its beneficial owner(s), as well as the type and magnitude of the control

exercised by them, to the federal transparency register. Changes are also subject to a one-month reporting deadline. Legal entities that are already entered in the commercial register will be given a transitional period in which to report to the new register (directly or in parallel with a change to the commercial register).

What is a "beneficial owner"?

A beneficial owner is defined as a private individual who controls a legal entity. Either alone or together with a third party, they hold at least 25% of the capital or voting rights in the company, or exert control in some other way. If nobody meets one of these criteria, the most senior member of management is deemed to be the beneficial owner.

Who has access to the information in the register?

For data protection reasons, the register of beneficial owners is not public. Access is reserved for certain authorities in the exercise of their statutory duties. The register can also be viewed by financial intermediaries and advisers that are subject to the AMLA, so that they can meet their anti-money laundering due diligence obligations with regard to their clients.

How many legal entities are subject to the registration requirement?

Over 500,000 (485,000 companies, 18,000 foundations, 11,000 associations, 8,000 cooperatives, 3,000 branches of foreign companies). A simplified registration procedure exists for most of them.

Questions about legal advice and other advisory activities

Why must measures be introduced for legal professions and advisers?

Legal professionals and other corporate advisers perform activities with a high exposure to the risk of money laundering if they support their clients in the founding or structuring of companies, or the sale of real estate. Until now, they have not been subject to due diligence obligations, unlike the financial sector. The draft therefore provides for the introduction of similar obligations, specifically the duty to identify clients and beneficial owners in a transaction. This contributes to greater transparency regarding legal entities and strengthens the fight against economic crime.

What do the due diligence obligations for advisers comprise?

- Identification duty: the client's identity must be verified. If the client is a legal entity, the beneficial owner as well as the object and purpose of the transaction must be identified.
- If the client or transaction has a particularly high risk profile, it may be necessary to clarify the origin of the funds or to request additional explanations about the purpose of the requested transaction.
- The steps undertaken in connection with due diligence must be appropriately recorded.

Does professional secrecy for lawyers and notaries still apply?

Yes, professional secrecy for lawyers and notaries is maintained. The obligation to report to MROS ceases to apply if the information is subject to professional secrecy.

Questions about sanctions

Why are new provisions against the breaching and circumvention of sanctions under the Embargo Act needed?

The new provisions are mainly aimed at increasing legal certainty. Under new preventive obligations with regard to compulsory measures under the Embargo Act, financial intermediaries can also be induced to take additional measures to prevent criminal acts.

Questions about the real estate sector

Why will all real estate transactions now be subject solely to due diligence obligations, instead of a threshold?

The proposed solution is based on the premise that large cash payments are unusual in business transactions today and must give rise to due diligence obligations even under the current regulations.

Questions about precious metals traders

Why has the threshold for cash payments been lowered?

Cash payments can still be made, but special due diligence obligations apply to payments exceeding CHF 15,000. This threshold has become established internationally, and comes in response to a proposal already discussed by Parliament in 2019.