



# Ordinance on Combating Money Laundering and Terrorist Financing

(Anti-Money Laundering Ordinance, AMLO)

**955.01**

dated 11 November 2015 (version as at 1 January 2016)

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## 2 Other Languages

- DE: Verordnung über die Bekämpfung der Geldwäscherei und der Terrorismusfinanzierung (Geldwäschereiverordnung, GwV)
- FR: Ordonnance sur la lutte contre le blanchiment d'argent et le financement du terrorisme (Ordonnance sur le blanchiment d'argent, OBA)
- IT: Ordinanza relativa alla lotta contro il riciclaggio di denaro e il finanziamento del terrorismo (Ordinanza sul riciclaggio di denaro, ORD)

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*The Swiss Federal Council,*

based on Articles 8a(5) and 41 of the Anti-Money Laundering Act of 10 October 1997<sup>1</sup> (AMLA)  
*decrees:*

## Chapter 1: General Provisions

### ARTICLE 1 Subject

This Ordinance shall govern:

- a. the requirements for the professional practice of financial intermediation;
- b. the due diligence and reporting obligations as per Articles 8a and 9(1<sup>bis</sup>) AMLA that traders must adhere to.

### ARTICLE 2 Scope

1 This Ordinance shall apply to:

- a. financial intermediaries as per Article 2(3) AMLA that are active in or from Switzerland;
- b. traders as per Article 2(1)(b) AMLA that are active in or from Switzerland.

2 The following are deemed to not be financial intermediaries as per Article 2(3) AMLA:

- a. persons performing the following activities:
  1. the mere physical transport or the mere physical storage of assets with exception of those of Article 6(1)(c);
  2. debt collection activities;
  3. the transfer of assets as an accessory service to a primary contractual service;

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<sup>1</sup> SR **955.0**

4. the administration of Pillar 3a pension funds by bank foundations or insurance companies;
5. the rendering of services among group companies;
- b. auxiliary persons of financial intermediaries, who hold a Swiss license for their activities or who are affiliated with a self-regulatory organization (SRO), provided they:
  1. are carefully chosen by the financial intermediary and are subject to their directives and controls,
  2. are incorporated in the organizational measures of the financial intermediary for the prevention of money laundering and terrorist financing pursuant to Article 8 AMLA and are correspondingly trained and educated,
  3. trade exclusively under the name and on behalf of the financial intermediary,
  4. are compensated by the financial intermediary and not the end user,
  5. in the case of a money or asset transfer transaction, are only acting for a single licensed or SRO-affiliated financial intermediary, and
  6. have concluded a written agreement with the financial intermediary regarding compliance with the above-mentioned requirements.

## Chapter 2: Financial intermediaries

### Section 1: Activities

#### ARTICLE 3 Lending Business

In particular the following are not considered to be lending business as per Article 2(3)(a) AMLA:

- a. borrowing;
- b. the provision of interest-free and gratuitous loans;
- c. the provision of loans between a company and its investors if the investor holds a participation of at least 10% of the capital or votes in the company;
- d. the granting of loans between an employer and employee if the employer is obliged to make social security contributions for the employee who is acting as borrower;
- e. borrowing between two related persons (Article 7(5));
- f. the provision of loans that occur as accessories to another legal transaction;

- g. the provision of an operating lease;
- h. contingent liabilities to the benefit of a third party;
- i. trade financing if it is not the contracting party repaying it.

## ARTICLE 4 Services Related to Payment Operations

- 1 A service related to payment operations as per Article 2(3)(b) AMLA is deemed to be such a service if the financial intermediary:
  - a. transfers liquid financial assets to third parties on behalf of its contracting party and in doing so, physically takes possession of these assets, credits them to an own account or orders the transfer of the assets in the name and by the order of the contracting party;
  - b. disburses or manages non-cash payment instruments which its contracting party uses to make payments to third parties;
  - c. carries out money or asset transfer transactions.
- 2 Money or asset transfer transactions are deemed to be the transfer of assets through the acceptance of cash, precious metals, virtual currencies, checks or other payment instruments, and
  - a. the payout of a corresponding sum in cash, precious metals or virtual currencies; or
  - b. through cashless transmission or transfer using a payment or account settlement system.

## ARTICLE 5 Trading Activities

- 1 The following are deemed to be trading activities as per Article 2(3)(c) AMLA:
  - a. the purchase and sale of bank notes, coins, foreign currencies and precious metals used in banking as well as currency exchange, on behalf of third parties;
  - b. trading for own account with legally tendered coins and bank notes;
  - c. trading at an exchange in commodities on behalf of third parties;
  - d. off-exchange trading on behalf of third parties, provided the commodities are highly standardized so that they can be liquidated anytime;
  - e. trading for own account with precious metals used in banking.
- 2 Trading with securities is only deemed to be a trading activity if it is subject to licensing pursuant to the Stock Exchange Act of 24 March 1995<sup>2</sup>.
- 3 Accessory currency exchange is not deemed to be a trading activity.

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<sup>2</sup> SR 954.1

## ARTICLE 6 Further Activities

- 1 The following activities are deemed to be activities pursuant to Article 2(3)(e)–(g) AMLA, provided they are carried out on behalf of third parties:
  - a. asset management for securities and financial instruments;
  - b. the execution of investment orders;
  - c. the safekeeping of securities;
  - d. activities as executive body of a domiciliary company.
- 2 Legal entities, companies, establishments, trusts, fiduciary companies or similar associations that do not engage in any commercial or manufacturing business or any other form of commercial operation are deemed to be domiciliary companies as per this Ordinance.
- 3 The following are not deemed to be domiciliary companies:
  - a. legal entities and companies that aim to safeguard their members' or beneficiaries' interests by means of mutual self-help or that pursue political, religious, scientific, artistic, charitable, sociable or similar aims,
  - b. legal entities and companies that hold a majority of equity interest of one or several operating companies the main business of which is not the management of assets of others (holding companies).

## Section 2: Professional Basis

### ARTICLE 7 General Criteria

- 1 A financial intermediary is deemed to practice its activity on a professional basis if it:
  - a. achieves a gross revenue of more than CHF 50,000 per calendar year with this activity;
  - b. takes up business relationships with more than 20 contractual parties which do business with the company more than once a calendar year or which maintains more than 20 such relationships per calendar year;
  - c. has unlimited control of third-party funds which can exceed CHF 5 million at any one point in time, or
  - d. performs transactions at a volume of more than CHF 2 million per year.
- 2 For the calculation of the transaction volume pursuant to (1)(d), inflows of assets and restructuring within the same account shall not be taken into account. For mutually binding contracts, only the benefit provided by the counterparty must be taken into consideration.

- 3 Activities on behalf of institutions and persons pursuant to Article 2(4) AMLA shall not be taken into account for the determination of the professional basis.
- 4 When determining the professional basis, activities for related parties shall only be taken into account if a gross revenue of more than CHF 50,000 is achieved during the calendar year.
- 5 The following are deemed to be related parties:
  - a. near relatives and in-laws in lineal descent;
  - b. near relatives collaterally related to the third degree;
  - c. spouses and registered partners;
  - d. co-heirs until the conclusion of the inheritance proceedings;
  - e. reversionary heirs or heirs in remainder pursuant to Article 488 of the Swiss Civil Code<sup>3</sup>;
  - f. persons living in a stable relationship with the financial intermediary.

## ARTICLE 8 Lending Business

- 1 The lending business as per Article 2(3) AMLA is deemed to be carried out on a professional basis, if:
  - a. in the process gross revenue of more than CHF 250,000 is achieved within the calendar year; and
  - b. a credit volume of more than CHF 5 million is dealt with at any given time.
- 2 After deduction of the portion used for credit repayment, all remaining income from credit transactions is deemed to be gross revenue.
- 3 If a person carries out both credit transactions as well as another activity that qualifies as a financial intermediary, then the professional basis must be determined separately for both areas. If one of the areas is deemed to be performed on a professional basis then the activities in both areas are deemed to occur on a professional basis.

## ARTICLE 9 Money or Asset Transfer Transactions

The money and asset transfer business is always deemed to be on a professional basis, unless it is carried out for a related party and its gross revenue does not exceed CHF 50,000 per calendar year.

## ARTICLE 10 Trading Activities

For trading activities, gross profit rather than gross revenue shall be applied for the assessment of the criterion pursuant to Article 7(1)(a).

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<sup>3</sup> SR 210

## ARTICLE 11 Change to Professional Basis

- 1 Persons changing from a non-professional to a professional activity must:
  - a. promptly comply with the obligations pursuant to Articles 3-11 AMLA; and
  - b. become affiliated with an SRO within two months following the change or submit an application for a license for the professional practice of activities to the Swiss Financial Market Supervisory Authority (FINMA).
- 2 Until its affiliation with an SRO or until the FINMA has issued an authorization, such financial intermediaries are prohibited from carrying out any activities as a financial intermediary that go beyond those that are absolutely necessary for the preservation of assets.

## ARTICLE 12 Withdrawal or Exclusion from an SRO

- 1 If a financial intermediary who still wants to be professionally active as a financial intermediary withdraws or is excluded from an SRO, it must within two months after the withdrawal or after the final exclusion decision apply for affiliation with another SRO or request an authorization by the FINMA for the professional practice of its activity.
- 2 It may continue its activities with already existing business relationships until the receipt of the decision on the application.
- 3 If within two months the financial intermediary has not applied for affiliation with another SRO or requested an authorization from the FINMA, or if affiliation or authorization was refused, it is prohibited from continuing to be active as a financial intermediary.

# Chapter 3: Traders

## Section 1: General

### ARTICLE 13 Traders

Traders as per Article 2(1)(b) AMLA shall also be persons that commercially trade with goods on behalf and on account of third parties, accepting cash.

### ARTICLE 14 Commercial Trading

- 1 Trading is considered to be commercial if it constitutes an independent economic activity aimed at generating an ongoing income.
- 2 Thereby, it is irrelevant whether the trading is performed as a principal or secondary activity.



## ARTICLE 15 Goods

Goods are deemed to be any tangible movable object which is not real-estate as per Article 187 of the Swiss Code of Obligations (CO)<sup>4</sup> or property for which the purchase is defined in Article 216 CO.

## ARTICLE 16 Involvement of Third Parties

If traders involve a third party to settle a trade by accepting the purchase price in cash, they shall ensure, independent of their relationship with the third party, that the due diligence and reporting obligations of Section II of this Chapter are complied with.

# Section 2: Due Diligence and Reporting Obligations

## ARTICLE 17 Identification of the Contractual Party

- 1 At the conclusion of an agreement, the trader shall identify the contractual party based on the following information:
  - a. Name and first name;
  - b. Address;
  - c. Date of birth; and
  - d. Nationality.
- 2 For contractual parties originating from a country which does not use birth dates or domicile addresses, this information is not necessary.
- 3 The trader shall identify the contractual party by:
  - a. having the contractual party show an official and original identity document with a photograph, i.e. a passport, identity card or driver's license;
  - b. verifying whether the identification document can be associated with the person;
  - c. copying the identification document; and
  - d. indicating on the copy that the original document has been inspected.
- 4 If the contractual party is being represented, its representative shall:
  - a. provide the information as per (1) if the contractual party is a natural person;
  - b. provide the name and domicile of the contractual party if it is a legal person or partnership.

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<sup>4</sup> SR 220

## ARTICLE 18 Establishing the Identity of a Beneficial Owner

- 1 The trader shall identify the beneficial owner by asking the contractual party or its representative whether the contractual party itself is the assets' beneficial owner.
- 2 If the contractual party is not the beneficial owner, the trader shall obtain a written declaration from the contractual party or its representative stating the beneficial owner. The following are considered to be beneficial owners:
  - a. the natural persons on whose account the purchase is made;
  - b. With a purchase on account of a non-listed, operational legal person or partnership:
    1. the natural persons who exert control directly or indirectly, alone or acting in concert with third parties, owning 25 percent or more of the capital or voting rights; or
    2. The natural persons who exert control in other ways
- 3 If no beneficial owners can be determined according to (2)(b), the identity of the highest-ranking member of the governing body shall be determined.
- 4 To determine the beneficial owners, the trader requires the following information:
  - a. Name and first name;
  - b. Address;
  - c. Date of birth; and
  - d. Nationality.
- 5 Article 17(2) is applicable in analogy.
- 6 For the written declaration as per (2), it is sufficient that the contractual party or its representative countersigns the information on the form or document as per Article 21.
- 7 If a legal entity, based on its legal form as an association or foundation, does not have a beneficial owner as per (2) according to Swiss law, this must be documented accordingly.

## ARTICLE 19 Additional Clarifications

- 1 The trader shall verify the background of a transaction, in particular the origin of the funds and their purpose, if it appears to be unusual or if there are any indicators of money laundering.
- 2 Indicators of money laundering are, in particular, if:
  - a. the person pays predominantly with small denomination bank notes;

- b. primarily easily marketable goods with a high degree of standardization are purchased;
  - c. the person does not provide any or only insufficient identification information as per Article 17 or insufficient data to determine the beneficial owner as per Article 18;
  - d. the person provides obviously false or misleading information;
  - e. there are doubts as to the authenticity of the identification documents.
- 3 For a clarification, the trader shall inquire with the contractual party or its representative as to the background and purpose of the transaction, assess the information provided as to the plausibility and then put the performed clarifications in writing.

## ARTICLE 20 Reporting Obligation

- 1 A justified suspicion that triggers a reporting obligation as per Article 9(1bis ) AMLO shall be present if there is concrete evidence or several clues that the cash payment stems from a punishable act, which cannot be dismissed despite additional clarifications as per Article 19.
- 2 It shall also be reported even if the trader is unable to associate the punishable act from which the cash payment stems with a specific criminal offense.
- 3 Any reporting must be done using the reporting form provided by the Money Laundering Reporting Office

## ARTICLE 21 Documentation

- 1 To document the compliance with due diligence and reporting obligations, the traders uses the form in Annex 1 or an equivalent document.
- 2 The form or document must be completed with the following:
- a. all information available on clients that were obtained as per Articles 17 and 18;
  - b. the result of the additional clarifications as per Article 19;
  - c. whether a report as per Article 20 was submitted.
- 3 The form or document must be marked with the date of the transaction settlement and be signed by the trader.
- 4 It must be retained for at least ten years.

## Section 3: Mandating an Audit Firm

### ARTICLE 22

- 1 The trader's duty to mandate an audit firm as per Article 15 AMLO is independent of the obligation to have its (consolidated) annual financial statements audited.
- 2 If the trader does not dispose of an audit firm, the senior management or the governing body shall mandate auditors as per Article 5 or an audit firm as per Article 6 of the Audit Oversight Act of 16 December 2005<sup>5</sup> for the audit.

## Chapter 4: Final provisions

### ARTICLE 23 Repeal and amendment of previous law

The repeal and amendment of other enactments are set out in Annex 2.

### ARTICLE 24 Entry into force

This ordinance enters into force on 1 January 2016.

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<sup>5</sup> SR 221.302

# Form for traders for the compliance with due diligence and reporting obligations

Annex 1  
(Article 21(1))

## IDENTIFICATION OF CONTRACTUAL PARTY (ARTICLE 17 AMLO)

Contractual party:

Name and first name: \_\_\_\_\_

Address: \_\_\_\_\_

Date of birth: \_\_\_\_\_

Nationality: \_\_\_\_\_

Purchase on behalf of a legal person or partnership?    yes ☐    no ☐

Company name: \_\_\_\_\_

Domicile: \_\_\_\_\_

## IDENTIFICATION OF THE BENEFICIAL OWNER (ARTICLE 18 AMLO)

- ☐ The contractual party is at the same time the beneficial owner
- ☐ The contractual party or its representative hereby declares that the following natural person(s) is/are the beneficial owner(s):

Person 1                      Person 2

Name /first name: \_\_\_\_\_

Address: \_\_\_\_\_

Date of birth: \_\_\_\_\_

Nationality: \_\_\_\_\_

Person 3                      Person 4

Name /first name: \_\_\_\_\_

Address: \_\_\_\_\_

Date of birth: \_\_\_\_\_

Nationality: \_\_\_\_\_

Signature of the contractual party or the representative: \_\_\_\_\_

## ADDITIONAL CLARIFICATIONS (ARTICLE 19 AMLO)

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## REPORTING (ARTICLE 20 AMLO)

Notification to MROS                      yes ☐    no ☐

Justified suspicion of: \_\_\_\_\_

Place and date: \_\_\_\_\_

Signature of the trader: \_\_\_\_\_

*Annex 2*  
(Article 23)

## Repeal and amendment of other enactments

I

The Implementing Ordinance on the Professional Activity as Financial Intermediary (OPAFI) of 18 November 2009<sup>6</sup> is repealed.

II

The following enactments are amended as indicated below:

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<sup>6</sup> [AS **2009** 6403]

<sup>7</sup> Amendments may be seen in AS **2015** 4819.

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