

SWITZERLAND

BENEFICIAL OWNERSHIP TRANSPARENCY

Switzerland is fully compliant with two of the G20 Principles. The establishment of a beneficial ownership registry could significantly strengthen the ability of competent authorities to access beneficial ownership information. Moreover, current rules on financial intermediaries customer and beneficial ownership identification requirements should be expanded to include verification of the information provided. A broader range of services provided by DNFBPs should be considered under anti-money laundering rules, and bearer shares should be prohibited.

G20 PRINCIPLE 1: BENEFICIAL OWNERSHIP DEFINITION

Score: 100%

Switzerland is fully compliant with the G20 Principle 1.

The Federal Act on Combating Money Laundering and Terrorist Financing AMLA (Geldwäschereigesetz, GwG) defines beneficial owner as “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.”

Also, Art. 697j par. 1 of the Code of Obligations (OR) describes beneficial ownership for the company limited by shares as “any person who alone or by agreement with third parties acquires shares in a company whose shares are not listed on a stock exchange, and thus reaches or exceeds the threshold of 25 per cent of the share capital or votes must within one month give notice to the company of the first name and surname and the address of the natural person for whom it is ultimately acting (the beneficial owner).”

For the purposes of this assessment, countries that adopt a threshold definition of beneficial ownership or control are considered in line with Principle 1, but Transparency International believes a 25 per cent threshold is not adequate to ensure the accurate and meaningful identification of all individuals who may be the real owners behind companies and trusts. Such a threshold makes it easier for those wishing to remain anonymous to circumvent transparency rules. They only need four family members or associates to be registered as owners, and they no longer need to declare their controlling interests.

G20 PRINCIPLE 2: IDENTIFYING AND MITIGATING RISK

Score: 80%

The Interdepartmental coordinating group on combating money laundering and the financing of terrorism (CGMF) published in 2015 an evaluation of the risks of money laundering and terrorist financing in Switzerland. This evaluation was the first national assessment of money laundering risks undertaken by the country.

The CGMF is a permanent body tasked with coordinating the measures to combating money laundering and terrorist financing. It is headed by the Deputy State Secretary for International Financial Matters (Federal Department of Finance) and comprised of members of: the Federal Tax Administration (Federal Department of Finance); fedpol, the Federal Office of Justice, the Federal Gaming Board (Federal Department of Justice and Police), the Federal Intelligence Service (Federal Department of Defence, Civil Protection and Sport); the Directorate of Public International Law, Sectoral Foreign Policy Division (Federal Department of Foreign Affairs); FINMA, and the Office of the Attorney General of Switzerland.

The report draws on data obtained from public agencies both at the federal and regional levels as well as by private-sector entities, non-governmental organisation and academia (public sources). However, no direct consultation with stakeholders took place. The overall assessment of the risks of money laundering resulted in a medium risk for banks and enhanced risks for universal and private banks. The report did not focus on the money-laundering risks posed by legal entities and arrangements operating in Switzerland.

The evaluation recommended eight measures to improve the current system, including promoting dialogue between the public and private sectors, developing and systemising statistics and specific recommendations for future analyses as well as with regard to the examinations of the areas not covered by the AMLA, namely the real estate sector, the commodities industry, foundations and free ports.

The report was published and is available online.

G20 PRINCIPLE 3: ACQUIRING ACCURATE BENEFICIAL OWNERSHIP INFORMATION

Score 100%

In 2015, Switzerland adopted new rules aimed at enhancing transparency of unlisted companies. Companies limited by shares not listed on the stock exchange and limited liability companies are now required to maintain a bearer shares register and a beneficial ownership register.¹

According to the provision, any person who, acting alone or by agreement with third parties acquires shares in an unlisted company, and reaches or exceeds the threshold of 25 per cent of the share capital or the voting rights, must notify the company of name, surname and address of the beneficial owner of the shares within one month from the acquisition. The beneficial owner is defined as the natural person for whom the acquirer is ultimately acting.

This information needs to be maintained in a manner that it can be accessed in Switzerland at any time. Shareholders are required to inform the company about changes in share ownership. Moreover, it is the responsibility of the board of directors to ensure that shareholders do not exercise their rights, such as voting and dividend rights, until they fulfil their reporting obligations.

G20 PRINCIPLE 4: ACCESS TO BENEFICIAL OWNERSHIP INFORMATION

Score: 21%

In the absence of a central beneficial ownership registry, competent authorities in Switzerland rely on beneficial ownership information maintained by legal entity themselves or collected by financial institutions. The law mentions some competent authorities who should be granted access to beneficial ownership information, but does not specify all of them. In the case of beneficial ownership registers maintained by unlisted companies, the law only states that competent authorities should be able to access it in Switzerland at any time. In the case of financial institutions the law states they need to respond to request made by the Public Prosecutor's Office within a reasonable time. The law also provides that FINMA, the Federal Gaming Board, self-regulatory organisation, the Reporting Office and prosecution authorities are allowed to request from financial institutions further information and documents related to suspicious transactions reports.

¹ For the purposes of this assessment we only consider private, that is non-publicly traded, legal entities. That is because companies operating in the stock market are usually better regulated and subject to more transparency rules. On the other hand, private companies (limited liability and others) operate in a less regulated

Authorities may also consult basic company information recorded in sub-national company registries. However these registries don't include any information on beneficial ownership.

Currently, the public does not have access to beneficial ownership information. Competent authorities are also unable to access this information without having to request it to the company or financial institution, which could potentially tip companies or individuals off that there might be an ongoing investigation. Within this framework, Switzerland cannot be considered compliant with the principle.

G20 PRINCIPLE 5: TRUSTS

Score: 50%

Domestic trusts are not available in Switzerland, but foreign trusts are accepted as legal entities. The trustee is not legally required to maintain beneficial ownership information related to all parties to the trust, unless he/she is a professional trustee, in which case anti-money laundering obligations apply.

Trustees of foreign trusts operating in the country are also not required to disclose information on the parties to the trust proactively when entering in a business relationship with financial institutions or DNFBPs. The Swiss system relies on due diligence duties of financial intermediaries and of some DFNPs that are required to obtain a written declaration from the trustee as to the identity of the individual who is the beneficial owner.

G20 PRINCIPLE 6: ACCESS TO BENEFICIAL OWNERSHIP OF TRUSTS

Score: 33%

Foreign trusts with connections to Switzerland are not required to register with a competent authority. Therefore, access by competent authorities to beneficial ownership information on trusts is only available upon request through professional trustees, who are usually financial institutions or DNFBPs with anti-money laundering obligations.

The public does not have access to beneficial ownership information of trusts.

and more opaque environment and are therefore more prone to be misused for corruption and money laundering.

G20 PRINCIPLE 7: DUTIES OF BUSINESS AND PROFESSIONS

Score: 55%

Financial Institutions

Score: 56%

Prior to establishing a business relationship with a client or assisting a client with a transaction, as part of the due diligence process, financial institutions are required to request a written declaration from the customer attesting the identity of the beneficial owner. According to the law, this should be done if (i) the customer is not the beneficial owner or if there is any doubt about the matter; (ii) the customer is a domiciliary company or an operating legal entity; or (iii) a cash transaction of considerable financial value is being carried out.

The law however does not require financial institutions to verify the identity of the beneficial owner; there is no obligation to independently verify the veracity of the information provided by the customer. A revision of the anti-money laundering rules, which is currently under discussion, considers introducing the requirement for financial institutions to verify the identity of the beneficial owner.

Enhanced due diligence is required when the client is a domestic foreign politically exposed person (PEP) or a family member or close associate of the PEP. Business relationships with foreign politically exposed persons and their family members or close associates are deemed in every case to be business relationships with a higher risk. In the case of domestic PEPs and their family members or close associates, business relationships are deemed as high risk when combined with one or more further risk criteria, which may include indications that assets are the proceeds of a felony or an aggravated tax misdemeanor, unusual transactions, among others.

The law establishes that 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.

According to the law, if the financial institution does not manage to identify the beneficial owner of a customer, the relationship should not be established or should be terminated. Nevertheless, they are only required to submit a suspicious transaction report if there is enough suspicion of money laundering. If this is the case, a suspicious transaction report must be submitted to the Money Laundering Reporting Office (MROS) of the Federal Department of Justice and Police.

Financial institutions as well financial institutions' directors and senior managers are subject to sanctions for non-

compliance with the law. Failure to comply with the duty to report under the anti-money laundering law is punishable with a fine of up to 500 000 CHF or 150 000 CHF if acting through negligence. The Swiss Financial Market Supervisory Authority (FINMA) also has a broad range of enforcement tools available in case of non-compliance, including reprimands, bans, and disgorgement, among others.

DNFBPs

Score: 54%

The anti-money laundering law covers certain activities undertaken by DNFBPs such as trusts and corporate service providers (TCSPs), accountants, and lawyers. When acting on a professional basis and carrying out financial transactions on behalf of the clients, these professionals are considered financial intermediaries and subject to the same rules that apply to financial institutions (see above). However, the law does not cover other professional services that do not involve cash flows such as the establishment of companies or other complex legal arrangements.

Other DNFBPs, such as real estate agents, dealers in precious metals and luxury goods are only required to conduct due diligence and identify the beneficial owner of clients if they accept more than 100 000 CHF in cash in the course of a commercial transaction, in which case they are considered by the law as "dealers". Transactions of lower value or not in cash are not subject to due diligence. In addition, dealers are not required to conduct enhanced due diligence in the case of PEPs.

The anti-money laundering law defines casinos as financial intermediaries and therefore requires them to undertake customer due diligence and identify the beneficial owners.

Given that not all services provided by DNFBPs which often offer money laundering risks are covered by the anti-money laundering law, Switzerland is considered only partially compliant with the principle.

G20 PRINCIPLE 8: DOMESTIC AND INTERNATIONAL COOPERATION

Score: 79%

Investigations into corruption and money laundering require that authorities have access to relevant information, including regarding beneficial ownership. In Switzerland, there is no centralised database that can be used by domestic or foreign authorities to consult information on legal ownership and ultimate control. Domestic authorities can consult available sub-national registries containing information on legal ownership or request information held by legal entities and financial intermediaries.

There are no significant restrictions to share information across domestic authorities. The anti-money laundering law

provides that competent authorities such as FINMA, the Federal Gaming Board, the Federal Criminal Police, the Reporting Office, prosecution authorities may upon request share information or documents required for the analyses in relation to combatting money laundering, its predicate offences, organized crime or financing of terrorism.

There are also no significant restrictions on sharing information with international authorities. Foreign competent authorities have access to beneficial ownership information maintained by domestic authorities upon motivated request. According to the anti-money laundering law, *“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.*

It may pass on the following information in particular:

- a. *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.”*

Swiss competent authorities are allowed to use their power and investigative techniques to respond to a request from foreign judicial or law enforcement authorities.

G20 PRINCIPLE 9: BENEFICIAL OWNERSHIP INFORMATION AND TAX EVASION

Score: 75%

Tax authorities in Switzerland do not have direct access to beneficial ownership information. They are however allowed to use their powers to request information from other authorities and legal entities.

Switzerland is a member of the OECD global standard for the international automatic exchange of information in tax matters. It has actively participated in the preparation of the standard. The AEOI (Automatic Exchange of Information) has been in force with the collection of data since January 2017. Data exchange will start in 2018. Switzerland has signed a bilateral agreement with the EU and other states.

G20 PRINCIPLE 10: BEARER SHARES AND NOMINEES

Score: 38%

Bearer shares

Score: 25%

Bearer shares are allowed in Switzerland. New rules adopted in 2015 established some measures to enhance transparency. According to the new law, any person who acquires bearer shares in a company whose shares are not listed on a stock exchange must give notice of the acquisition, together with their first name and surname or business name and their address to the company within one month. The company has to maintain a register of bearer shareholders.

In addition, the shareholder must prove ownership of the registered share and identify themselves as follows:

- a. as a natural person: by means of an official identity document with photograph, in particular the original or a copy of a passport, identity card or driving license;
- b. as a Swiss legal entity: by means of an extract from the commercial register;
- c. as a foreign legal entity: by means of a current certified extract from a foreign commercial register or an equivalent document.

While these measures are important steps to increase transparency, the fact that bearer shares can still be issued poses serious money laundering risks. Therefore, Switzerland is not considered compliant with this principle.

A revision of the corporate law, which is currently under discussion, considers prohibiting the use of bearer shares.

Nominee shareholders and directors

Score: 50%

Nominee shareholders and directors are allowed in Switzerland. Nominee shareholders are required to disclose the name of the beneficial owner to the company, but not to competent authorities upon registration of the company.

Professional nominee directors of domiciliary companies are financial intermediaries and as such required to be licensed and subjected to anti-money laundering obligations. On the other hand, professional nominee directors for operating companies are not considered as financial intermediaries and therefore do not need to be licensed or comply with anti-money laundering obligations.