FATF-Implementation – Impact of the Amendments on Financial Intermedia

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- **Swiss anti-money laundering regulations aligned with international standards**
- **New provisions on shareholders' reporting/notification duties, PEPs, CDB 16**
- **New laws effective 1 January 2016**

1. Current Regulatory Regime

On 12 December 2014, the Swiss parliament adopted the Federal Act on the Implementation of the 2012 FATF Recommendations (FATF-Implementation Act) to align Swiss anti-money laundering regulations with international standards. The amendments to the Code of Obligations (CO) have already entered into force on 1 July 2015, while the amendments to the Anti-Money Laundering Act (AMLA) and the Penal Code (PC) came in force on 1 January 2016. As a consequence, the Swiss Bankers Association also updated its "Agreement on the Swiss Banks' Code of Conduct with regard to the Exercise of Due Diligence of 2008 (CDB 08)" and published the 2016 version of its selfregulatory provisions (CDB 16). Like the revised AMLA and the Anti-Money Laundering Ordinance of the Financial Market Supervisory Authority (FINMA-AMLO), the CDB 16 entered into force on 1 January 2016.

2. Amendments to CO with respect to Swiss Private Stock Corporations

In its updated version the CO provides for more transparency of shareholdings in privately held Swiss stock corporations. This means that shareholders have to comply with the now implemented reporting and notification duties.

All in all, the new provisions of the Code of Obligations (CO), in particular on the shareholders' reporting (notification) duties, which (among others) entered into force on 1 July 2015, go beyond mere FATFcompliance.

On 31 December 2015, the transition period of six months had eventually elapsed. In this period, the shareholders were supposed to identify and report their existing shareholding of

bearer shares. In addition, they had to reveal the existing ultimate beneficial owner(s) to respective privately held Swiss stock corporations (or, if so provided, to financial intermediaries) if the shareholding of bearer shares is above a threshold of 25%. Thus, by no later than 31 December 2015, the shareholders and the privately held Swiss stock corporations had to definitely comply with the newly enacted obligations.

3. Amendments to AMLA and PC

The revised anti-money laundering regulations provide, inter alia, a revised definition of politically exposed persons (PEPs) which has effects on the financial intermediaries' specific duty of care. Also, the changes to the PC and AMLA will result in qualified tax offences being considered predicate offences to money laundering in Switzerland. The amended PC only applies, however, to qualified tax offences from 1 January 2016 onwards. The new law has no retroactive effect.

4. CDB 16, the update of CDB 08 provisions

As mentioned above, the Swiss Bankers Association matched the methods for identifying the contracting party as well as establishing the controlling persons and the beneficial owners with the revised AMLA and FINMA-AMLO. The CDB 16 now include a sophisticated definition of controlling person and explicitly distinguish between the beneficial owner of operational legal entities or partnerships and the beneficial owner of assets. As such the CDB16- provisions specify the duty to exercise due diligence regarding the identification of the contracting parties and/or the establishment of the controlling persons and beneficial owners.

5. Key Points for Market Participants

The changes have the effect that financial intermediaries will be required to adapt their specific "lines of defense" to avoid being held liable from a criminal and/or financial market law perspective.

Due to the tight timeframe the financial intermediaries had to internalize and adapt to the amendments to AMLA and PC as well as CO by the end of December 2015 (as further specified in our Paper).

In addition, financial intermediaries falling under the CDB 16's scope of applicability had to provide for a profound understanding of the amendments concerning the duty to exercise due diligence, by no later than 1 January 2016 (as further specified in our Paper).

Robert Furter



Senior Counsel
Attorney at law

Pestalozzi Attorneys at Law Ltd
Feldeggstrasse 4
8008 Zurich
Switzerland
T +41 44 217 91 55
robert.furter@pestalozzilaw.com