# The Revised AMLO-FINMA and Its Impact on Global Risk Management and High-Risk Relationships

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- **Two of the changes entering into effect on 1 January 2020 concern global risk management and high-risk relationships and transactions.**
- **Financial intermediaries with foreign affiliates will be expected to conduct internal on-the-spot-checks in branches and group companies.**
- **The combination of only two (horizontal) domicile companies could suffice to constitute a complex structure and thus be classified as "high-risk".**

## 1. Introduction

On 18 July 2018, the Swiss Financial Market Supervisory Authority (FINMA) published its revised Anti-Money Laundering Ordinance (AMLO-FINMA). The revised AMLO-FINMA will be in effect as of 1 January 2020 (simultaneously with the new Swiss banks' code of conduct, CDB 20). Two of the relevant changes concern global risk management and high-risk (banking) relationships and transactions.

The amendments to the AMLO-FINMA reflect, among other things, shortcomings of the regulatory framework regarding the financial intermediaries' global risk management as well as (banking) relationships linked to high-risk customers and countries or complex structures. The revised AMLO-FINMA has a particular impact on Swiss financial intermediaries that have branches or group companies outside of Switzerland.

The purpose of this newsletter is to provide an overview on these changes and their potential consequences.

Pestalozzi Rechtsanwälte AG
Feldeggstrasse 4
CH-8008 Zürich
T +41 44 217 91 11
zrh@pestalozzilaw.com

Pestalozzi Avocats SA
Cours de Rive 13
CH-1204 Genève
T +41 22 999 96 00
gva@pestalozzilaw.com

pestalozzilaw.com

## 2. Global Risk Management

From a Swiss regulatory perspective, it is believed that financial intermediaries with branches or group companies outside of Switzerland are exposed to higher money laundering and terrorism financing risks. FINMA thus expects that these financial intermediaries take risk-based measures and approaches particularly regarding their selection of branches and group companies that should be subject to on-site inspections, the frequency of these on-site inspections, and any sampling inspections.

For example, FINMA holds that "desktop reviews" should not replace or substitute on-site inspections, and the group's compliance function should more strictly monitor money laundering and terrorism financing risks of foreign affiliates where shortcomings have been recognised.

Therefore, to adequately record, limit, and supervise the legal and reputational risks, the revised article 6 AMLO-FINMA now explicitly requires that a financial intermediary with foreign affiliates ensure that the financial intermediary's AML-office, or any other independent "task force", provide not only a periodic risk analysis on a consolidated basis but also have available at least an annual standardised report containing sufficient quantitative and qualitative information on the branches and group companies.

Furthermore, the branches and group companies must autonomously and, in a timely manner, inform the financial intermediary about any substantial changes concerning the legal and reputational risks -particularly if significant assets or politically exposed persons are involved- and about the business relationships and transactions that might be significant from a global risk perspective.

In addition, the group's compliance function must regularly conduct internal on-the-spot-checks in branches and group companies. Samples of individual business relationships must also be prepared and provided.

As a result, the revised article 6 AMLO-FINMA (more specifically) determines the financial intermediaries' requirements for complying with the Swiss AML-rules concerning the global management of legal and reputational risks.

The financial intermediary, however, may have some flexibility in determining in-group guidelines as to when and how often branches and group companies should report to the group and how frequently they should administer risk analyses.

## 3. High-Risk Business Relationships and Complex Structures in relation to Domicile Companies

Financial intermediaries are required to define criteria indicating business relationships with high risks. This specific obligation or duty of care is not new. The revised article 13 AMLO-FINMA will, however, explicitly add to the high-risk criteria that domicile or business operations of contracting parties in one of the countries, which the Financial Action Task Force (FATF) flagged as "High Risk" or "Non-cooperative", shall constitute a high-risk business relationship. The same applies to transactions coming from or going into such a "FATF high-risk or non-cooperative country".

In any case, and pursuant to the revised AMLO-FINMA, the following are considered high-risk: business relationships with persons domiciled in a high-risk country as well as transactions coming from or going into such a country, where FATF calls (via a public statement) for more diligence or for taking counter-measures. To comply with the specific AML-obligations, a Swiss financial intermediary need not refer to a country list that a Swiss authority or FINMA has provided.

Further, the revised article 13 AMLO-FINMA will include specifications as to the complex structures of domicile companies. Accordingly, such structures are high risk if domicile companies are used in connection with other domicile companies, with an enterprise, or with shareholders that hold the shares on a fiduciary basis. Also, it will be deemed high-risk if domicile companies are established in nontransparent jurisdictions, if there are no reasonable grounds for establishing a domicile company, or if the company is established for short term asset investments.

FINMA holds that vertical as well as horizontal structures, regarding domicile companies, fulfill the high-risk criterion. Even though financial intermediaries have discretion as to the implementation of such a high-risk criterion, they must be aware that limiting the criterion only to multiple, vertical structures may not be AML-compliant. The combination of only two (horizontal) domicile companies, for example, could already suffice to constitute a complex structure and thus be classified as "high-risk".

A financial intermediary must ascertain, based on periodic risk analyses, whether such high-risk criteria are relevant for its business activities. For its business activities, it must specify all relevant criteria in internal guidelines and must be compliant with such guidelines whenever high-risk business activities are assessed.

## 4. Comment

These discussed amendments to the AMLO-FINMA require Swiss financial intermediaries to reassess their high-risk criteria catalogues as well as their internal guidelines to provide adequate risk management tools as soon as the revised AMLO-FINMA comes into effect on 1 January 2020. Hence, Swiss financial intermediaries will be obliged to introduce and implement increased reporting, monitoring, and control procedures.

These changes have been only a part of an overall revision of anti-money laundering rules, parts of which have already been included in the current revision, and parts of which will

follow in the revisions of the next couple of years.

## Oliver Widmer

Partner
Attorney at law
Head Financial Services

Pestalozzi Attorneys at Law Ltd
Feldeggstrasse 4
8008 Zurich
Switzerland
T +41 44 217 92 42
oliver.widmer@pestalozzilaw.com



## 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

