

Proposed introduction of a Federal Register of Beneficial Owners

The Federal Council proposes to strengthen the overall Swiss anti-money laundering framework. This Insight focuses on the key measure of the proposed introduction of a central register of ultimate beneficial owners.

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On 30 August 2023, the Swiss Federal Council launched a consultation process on a package of law reforms aimed at strengthening the anti-money laundering (AML) framework in Switzerland. The main proposal of the reform is the creation of a central federal register (the "**UBO Register**") in which Swiss legal entities and certain foreign entities would have to register information on their ultimate beneficial owners ("**UBO**"). This register would replace the current rules governing UBO identification within Swiss companies and would be in line with international standards and with developments in other jurisdictions: in the European Union, member states have been implementing UBO registers for several years as a result of the EU Directive 2015/849; an UBO register will also be introduced in the USA in 2024.

While this Insight focuses on the UBO Register, the proposed package also contains measures in other areas, such as know-your-customer and AML obligations for certain activities in legal and advisory professions, as well as regulations on currency transactions in the real estate and precious metal sectors. It would also broaden the supervisory regime for compliance with

international sanctions in the financial sector.

Obligations of legal entities

The proposed Federal Act on the Transparency of Legal Entities and the Identification of UBOs (the "**Draft**") would impose a series of disclosure and information gathering duties for legal entities and other structures in Switzerland.

- **Scope.** The Draft would apply primarily to legal entities under Swiss law (i.e. AG, GmbH, SICAV/SICAF, cooperatives, foundations and associations entered in the commercial register). It would also apply to non-Swiss legal entities, if they (i) have a branch in Switzerland, (ii) have their central administration in Switzerland, or (iii) own real estate in Switzerland. It would not apply to companies listed on a stock exchange and their subsidiaries.
- **Identification of the UBO.** Under current Swiss law, corporate entities are already required to identify their UBOs (for Swiss AGs under Article 697j to 697m of the Swiss Code of Obligations). The current provisions would be replaced by the Draft, which would expand on this obligation by also requiring any person becoming the UBO of a Swiss entity to disclose it to the relevant entity.
- **Definition of UBO.** It is intended that the definition of UBO under the Draft would be aligned with the AML definition. UBO is defined as any natural person holding (directly or indirectly) at least 25% of the capital or the voting rights of the entity, or who exercises control over the entity through other means. The UBO may consist of several persons acting in concert.
- **Nominees.** Nominee directors and nominee shareholders would have to disclose the nominee relationship to the entity and the identity of the person on whose behalf they are acting.
- **Trusts.** The Draft contains specific rules for trusts. UBOs of trust would be deemed to be the settlor, the trustee, the protector, the beneficiary and any other person exercising control over the trust. The identification duties would fall upon the trustee. The information would however not be included in the UBO Register.

Key contemplated features of the UBO Register

The Draft contemplates the creation of the UBO Register, which would be a new type of register maintained by the federal government and containing information about the UBOs of legal entities. Its main proposed characteristics are summarized below.

- **Information to register.** The UBO Register would contain information on the UBO of the entities listed above, including the type and the extent of their control over the entity. It would also contain information enabling the identification of the registered entities and individuals. For entities, this would include the corporate name, the seat and the IDE number. For individuals, it would include name, date of birth, nationality, address, as well as the AVS/AHV number.
- **Registration deadline.** A transitional period would be provided for existing legal entities to report the identity of their beneficial owner(s), as well as the type and magnitude of the control exercised by them to the UBO Register. New legal entities would have one month to do so,

while changes in the registered beneficial owner information would also be subject to a one-month reporting deadline.

- The **authority managing the register** would be the Federal Department of Justice and Police.
- **Potential sanction.** Failure to comply with UBO registration requirements, both intentionally and by negligence, would be subject to criminal sanctions. Fines of up to CHF 5,000 could also be imposed on shareholders, on UBOs themselves or on third parties within the chain of ownership if they do not collaborate with requests from the authority.
- **Accessibility.** The UBO Register would not be publicly accessible. However, access would be given to certain Swiss authorities to conduct their statutory duties (e.g. criminal authorities, AML authorities, as well as tax authorities) as well as to certain financial intermediaries for the purpose of performing their KYC/AML due diligence obligations, such as banks and asset managers.

Next steps

The consultation process will last until 29 November 2023. It is contemplated that the Draft would then be submitted to the Swiss Parliament in 2024. Debates are anticipated to be lively, in particular in connection with privacy considerations, as well as in relation to the proposed amendment to the anti-money laundering framework related to legal professions, which had already been proposed in 2019, but rejected by the Parliament.

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