

# Federal Act on Combating Money Laundering in the Financial Sector (Anti-Money Laundering Act, AMLA)

of 10 October 1997 (Status as on 19 December 2006)

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*The Federal Assembly of the Swiss Confederation,*  
based on Articles 31<sup>bis</sup> paragraph 2, 31<sup>quater</sup>, 34 paragraph 2 and 64<sup>bis</sup>  
of the Federal Constitution<sup>1</sup>,  
and having considered the Federal Council Dispatch dated 17 June 1996<sup>2</sup>,  
*decrees:*

## Chapter 1: General Provisions

### Art. 1 Subject matter

This Act regulates the combating of money laundering as defined in Article 305<sup>bis</sup> of the Swiss Criminal Code<sup>3</sup> (SCC) and the due diligence required in financial transactions.

### Art. 2 Scope of application

<sup>1</sup> This Act applies to financial intermediaries.

<sup>2</sup> Financial intermediaries are:

- a. banks as defined in the Banking Act of 8 November 1934<sup>4</sup>;
- b.<sup>5</sup> fund managers, provided they manage share accounts and they offer or distribute shares in collective capital investments;
- b<sup>bis</sup>.<sup>6</sup> investment companies with variable capital, limited partnerships for collective capital investments, investment companies with fixed capital and asset managers within the meaning of the Collective Investments Act of 23 June 2006<sup>7</sup>, provided they offer or distribute shares in collective capital investments;

AS 1998 892

<sup>1</sup> [BS 1 3]. The provisions mentioned now correspond to Arts. 95, 98, 103 and 123 of the Federal Constitution of 18 April 1999 (SR 101).

<sup>2</sup> BBI 1996 III 1101

<sup>3</sup> SR 311.0

<sup>4</sup> SR 952.0

<sup>5</sup> Wording according to Annex No. II 9 of the Collective Investments Act of 23 June 2006, in force since 1 Jan. 2007 (SR 951.31).

<sup>6</sup> Inserted by Annex No. II 9 of the Collective Investments Act of 23 June 2006, in force since 1 Jan. 2007 (SR 951.31).

<sup>7</sup> SR 951.31

- c.<sup>8</sup> insurance institutions as defined in the Insurance Supervision Act of 17 December 2004<sup>9</sup> that deal in direct life insurance or offer or distribute shares in collective capital investments;
- d. securities dealers as defined in the Stock Exchange Act of 24 March 1995<sup>10</sup>;
- e.<sup>11</sup> casinos as defined in the Gambling Act of 18 December 1998<sup>12</sup>.

<sup>3</sup> Financial intermediaries are also persons who on a professional basis accept or hold on deposit assets belonging to others or who assist in the investment or transfer of such assets; they include in particular persons who:

- a. carry out credit transactions (in particular in relation to consumer loans or mortgages, factoring, commercial financing or financial leasing);
- b. provide services related to payment transactions, in particular by carrying out electronic transfers on behalf of other persons, or who issue or manage means of payment such as credit cards and travellers' cheques;
- c. trade for their own account or for the account of others in banknotes and coins, money market instruments, foreign exchange, precious metals, commodities and securities (stocks and shares and value rights) as well as their derivatives;
- d. ...<sup>13</sup>
- e. manage assets;
- f. make investments as investment advisers;
- g. hold securities on deposit or manage securities.

<sup>4</sup> This Act does not apply to:

- a. the Swiss National Bank;
- b. tax-exempt occupational pension institutions;
- c. persons who provide their services solely to tax-exempt occupational pension institutions;
- d. financial intermediaries within the meaning of paragraph 3 who provide their services solely to financial intermediaries within the meaning of paragraph 2 or to foreign financial intermediaries who are subject to equivalent supervision.

<sup>8</sup> Wording according to Annex No. II 9 of the Collective Investments Act of 23 June 2006, in force since 1 Jan. 2007 (SR **951.31**).

<sup>9</sup> SR **961.01**

<sup>10</sup> SR **954.1**

<sup>11</sup> Inserted by Annex No. 4 of the Gambling Act of 18 Dec. 1998, in force since 1. April 2000 (SR **935.52**).

<sup>12</sup> SR **935.52**

<sup>13</sup> Repealed by Annex No. II 8 of the Insurance Supervision Act of 17 Dec. 2004, with effect from 1 Jan. 2006 (SR **961.01**).

## Chapter 2: Duties of Financial Intermediaries

### Section 1: Duty of Due Diligence

#### **Art. 3** Verification of the identity of the customer

<sup>1</sup> On entering into a business relationship, the financial intermediary must verify the identity of the customer on the basis of a document of evidentiary value.

<sup>2</sup> In the case of cash transactions with a customer whose identity has not yet been identified, the duty to verify identity applies only if one transaction, or two or more transactions that appear to be connected, involve a considerable financial value.

<sup>3</sup> Insurance institutions must verify the identity of the customer if the amount of a single premium, the regular premium or the total of the premiums involves a considerable financial value.

<sup>4</sup> If in cases under paragraphs 2 or 3 there is any suspicion of money laundering, the identity of the customer must be verified even if a considerable financial value is not involved.

<sup>5</sup> The supervisory authorities (Arts. 16 and 17) and the self-regulatory organisations (Art. 24) determine what constitutes a considerable financial value within the meaning of paragraphs 2 and 3 in their respective fields and adjust such values as required.

#### **Art. 4** Establishing the identity of the beneficial owner

<sup>1</sup> The financial intermediary must obtain a written declaration from the customer indicating who the beneficial owner is if:

- a. the customer is not the beneficial owner or if there is any doubt about the matter;
- b. the customer is a domiciliary company;
- c. a cash transaction of considerable financial value in terms of Article 3 paragraph 2 is being carried out.

<sup>2</sup> In the case of collective accounts or collective deposits, the financial intermediary must require the customer to provide a complete list of the beneficial owners and to give notice of any change to the list without delay.

#### **Art. 5** Repetition of the verification of the identity of the customer or the establishment of the identity of the beneficial owner

<sup>1</sup> If doubt arises in the course of the business relationship as to the identity of the customer or of the beneficial owner, the verification of identity or establishment of identity in terms of Articles 3 and 4 respectively must be repeated.

<sup>2</sup> In the case of an insurance policy that may be surrendered, the insurance institution must also re-establish the identity of the beneficial owner if, in the event of a claim or the surrender of the policy, the person entitled to benefit is not the same person identified at the time that the insurance contract was concluded.

**Art. 6** Special duty to clarify

The financial intermediary must clarify the economic background and the purpose of a transaction or of a business relationship if:

- a. it appears unusual, unless its legality is clear;
- b. there are indications that assets are the proceeds of a felony or are subject to the power of disposal of a criminal organisation (Art. 260<sup>ter</sup> No. 1 SCC<sup>14</sup>).

**Art. 7** Duty to keep records

<sup>1</sup> The financial intermediary must keep records of transactions carried out and of clarifications required under this Act in such a manner that other specially qualified persons are able to make a reliable assessment of the transactions and business relationships and of compliance with the provisions of this Act.

<sup>2</sup> The financial intermediary must retain the records in such a manner as to be able to respond within a reasonable time to any requests made by the prosecution authorities for information or for the seizure of assets.

<sup>3</sup> After the termination of the business relationship or after completion of the transaction, the financial intermediary must retain the records for a minimum of ten years.

**Art. 8** Organisational measures

Financial intermediaries must take the measures that are required to prevent money laundering in their field of business. They must in particular ensure that their staff receive adequate training and that checks are carried out.

**Section 2: Duties in the Event of a Suspicion of Money Laundering****Art. 9** Duty to report

<sup>1</sup> A financial intermediary who knows or has reasonable grounds to suspect that assets involved in the business relationship are connected to an offence in terms of Article 305<sup>bis</sup> SCC<sup>15</sup>, or that the assets are the proceeds of a felony or are subject to the power of disposal of a criminal organisation (Art. 260<sup>ter</sup> No. 1 SCC) must immediately file a report with the Money Laundering Reporting Office Switzerland (“MROS”) as defined in Article 23.

<sup>2</sup> Lawyers and notaries are not subject to the duty to report insofar as they are bound in their activities by professional secrecy in terms of Article 321 SCC.

<sup>14</sup> SR 311.0

<sup>15</sup> SR 311.0

**Art. 10** Freezing of assets

<sup>1</sup> A financial intermediary must immediately freeze the assets entrusted to it that are connected with the report filed.

<sup>2</sup> It must continue to freeze the assets until it receives an order from the competent prosecution authority, but at the most for five working days from the time at which the report is filed with MROS.

<sup>3</sup> It must not inform the parties concerned or other persons of the report during the period in which it has imposed a freezing of the assets.

**Art. 11** Exclusion of criminal and civil liability

The financial intermediary that files a report in accordance with Article 9 of this Act or Article 305<sup>ter</sup> paragraph 2 SCC<sup>16</sup> and freezes the assets concerned may not be prosecuted for a breach of official, professional or trade secrecy or held liable for breach of contract if it has acted with the diligence required in the circumstances.

**Chapter 3: Supervision****Section 1: General Provisions****Art. 12** Financial intermediaries as defined in Article 2 paragraph 2

The supervision of compliance by the financial intermediaries as defined in Article 2 paragraph 2 with the duties set out in Chapter 2 is carried out by the supervisory authorities established by special legislation.

**Art. 13** Financial intermediaries as defined in Article 2 paragraph 3

<sup>1</sup> The supervision of compliance by the financial intermediaries as defined in Article 2 paragraph 3 with the duties set out in Chapter 2 is carried out by:

- a. their recognised self-regulatory organisations (Art. 24);
- b. the Anti-Money Laundering Control Authority as defined in Article 17 (“the AML Control Authority”) in the case of financial intermediaries that are not affiliated to a recognised self-regulatory organisation.

<sup>2</sup> Supervision may be carried out by a supervisory authority established by special legislation if:

- a. the financial intermediary belongs to a group that is subject to supervision by special legislation in terms of Article 12 that includes supervision of compliance with the duties in accordance with this Act;
- b. the financial intermediary fulfils the requirements of Article 14 paragraph 2;

<sup>16</sup> SR 311.0

- c. the financial intermediary provides the supervisory authority established by special legislation with all the information and documents that it requires in order to carry out its duties; and
- d. the group guarantees that it will monitor and enforce compliance by the financial intermediary with the duties in accordance with this Act.<sup>17</sup>

#### **Art. 14** Licensing and affiliation requirement

<sup>1</sup> Financial intermediaries within the meaning of Article 2 paragraph 3 that are neither affiliated to a recognised self-regulatory organisation nor are subject to supervision carried out by a supervisory authority established under special legislation in terms of Article 13 paragraph 2 must obtain a licence to carry on their business from the AML Control Authority.<sup>18</sup>

<sup>2</sup> The licence is granted only if:

- a. the financial intermediary is registered in the Commercial Register as a commercial undertaking or has been officially authorised to carry on business;
- b. the financial intermediary guarantees compliance with its duties in accordance with this Act by means of its internal regulations and organisation; and
- c. the financial intermediary itself, as well as the persons responsible for its administration and management, enjoy a good reputation and guarantee compliance with their duties in accordance with this Act.

<sup>3</sup> Lawyers and notaries who act as financial intermediaries must affiliate to a self-regulatory organisation.

#### **Art. 15** Coordination

The supervisory authorities established by special legislation and the AML Control Authority must ensure that the provisions applicable in their respective areas of supervision are equivalent.

### **Section 2: Supervisory Authorities established by Special Legislation**

#### **Art. 16**

<sup>1</sup> The supervisory authorities established by special legislation must specify the duties of due diligence in terms of Chapter 2 for the financial intermediaries under their supervision and stipulate how these duties must be fulfilled, provided these duties of due diligence and their fulfilment are not specified by a self-regulatory organisation.

<sup>17</sup> Inserted by Annex No. II 8 of the Insurance Supervision Act of 17 Dec. 2004, in force since 1 Jan. 2006 (SR **961.01**).

<sup>18</sup> Wording according to Annex No. II 8 of the Insurance Supervision Act of 17. Dec. 2004, in force since 1 Jan. 2006 (SR **961.01**).

<sup>2</sup> In addition to the measures they are authorised to take under the relevant supervision legislation, the supervisory authorities may take measures in accordance with Article 20.

<sup>3</sup> They submit notifications in accordance with Article 21.

### **Section 3: The Anti-Money Laundering Control Authority**

**Art. 17** Federal Office responsible

The AML Control Authority is managed by the Federal Finance Administration.

**Art. 18** Duties

<sup>1</sup> The AML Control Authority has the following duties:

- a. it grants recognition to the self-regulatory organisations or withdraws such recognition.
- b. it supervises the self-regulatory organisations and the financial intermediaries directly subordinated to it.
- c. it approves the regulations issued by the self-regulatory organisations in accordance with Article 25 and any amendments thereto.
- d. it ensures that the self-regulatory organisations enforce their regulations.
- e. it specifies in detail the duties of diligence in terms of Chapter 2 for the financial intermediaries directly subordinated to it and stipulates how these duties must be fulfilled.
- f. it maintains a register of the financial intermediaries directly subordinated to it as well as of persons to whom it has refused authorisation to act as a financial intermediary.

<sup>2</sup> It may carry out on-the-spot inspections. It may instruct auditors of its own choice to carry out inspections.

<sup>3</sup> In relation to self-regulatory organisations of lawyers and notaries, it must instruct auditors to carry out the inspections. The auditors are governed by the same duties of confidentiality as lawyers and notaries.

**Art. 19** Right to information

The AML Control Authority may request the self-regulatory organisations as well as the financial intermediaries directly subordinated to it and their auditors to provide all the information and documents that it requires in order to carry out its duties.

**Art. 20** Measures

<sup>1</sup> If it comes to the knowledge of the AML Control Authority that financial intermediaries directly subordinated to it have committed violations of this Act, the AML

Control Authority must take the measures required to restore compliance with the law. It may in particular:

- a. in the case of failure to comply with an enforceable decision, publish the decision in the Official Commercial Gazette or otherwise bring it to the attention of the public, provided it has given advance warning of such a measure;
- b. withdraw the licence to act as a financial intermediary in terms of Article 14 if a financial intermediary or the persons entrusted with its administration or management no longer fulfil the requirements therefor or they have repeatedly or seriously violated their statutory duties.

<sup>2</sup> If the licence is withdrawn from a legal entity, a general or limited partnership or sole proprietorship that acts primarily as a financial intermediary, the AML Control Authority must order its dissolution, or in the case of sole proprietorships its deletion from the Commercial Register.

#### **Art. 21**           Duty to notify

If the AML Control Authority has reasonable grounds to suspect that an offence as defined in Articles 260<sup>ter</sup> No. 1, 305<sup>bis</sup> or 305<sup>ter</sup> SCC<sup>19</sup> has been committed or that assets are the proceeds of a felony or subject to the power of disposal of a criminal organisation, it must notify MROS, provided a report has not already been filed by a financial intermediary directly subordinated to it or by a self-regulatory organisation.

#### **Art. 22**<sup>20</sup>       Fees and supervision charge

<sup>1</sup> The AML Control Authority levies fees for decisions and services. In addition, it levies an annual supervision charge on the self-regulatory organisations and the financial intermediaries directly subordinated to it.

<sup>2</sup> The supervision charge covers the costs of supervision insofar as these are not covered by the income from the fees. It is assessed on the basis of the costs incurred by the AML Control Authority in the previous year.

<sup>3</sup> The supervision charge is calculated in the case of the self-regulatory organisations on the basis of the gross earnings and the number of their members, and in the case of the financial intermediaries directly subordinated to the AML Control Authority on the basis of the gross earnings and the size of the business.

<sup>4</sup> The Federal Council regulates the details, in particular the fee rates, the chargeable costs of supervision and the apportionment of the supervision charge among the self-regulatory organisations and the financial intermediaries directly subordinated to the AML Control Authority.

<sup>19</sup> SR 311.0

<sup>20</sup> Wording according to No. I 17 of the Federal Act of 19 Dec. 2003 on the Budgetary Relief Programme 2003, in force since 1 Jan. 2006 (AS 2004 1633 1647; BBl 2003 5615).

## Section 4: Money Laundering Reporting Office Switzerland (MROS)

### Art. 23

<sup>1</sup> The Federal Office of Police<sup>21</sup> manages the Money Laundering Reporting Office Switzerland (MROS).

<sup>2</sup> MROS examines the reports received and takes measures in accordance with the Federal Act of 7 October 1994<sup>22</sup> on the Central Offices of the Federal Criminal Police.

<sup>3</sup> It maintains its own data processing system in relation to money laundering.

<sup>4</sup> If it has reasonable grounds to suspect that an offence as defined in Articles 260<sup>ter</sup> Number 1, 305<sup>bis</sup> or 305<sup>ter</sup> SCC<sup>23</sup> has been committed or that assets are the proceeds of a felony or are subject to the power of disposal of a criminal organisation, it must notify this to the responsible prosecution authority immediately.

## Section 5: Self-Regulatory Organisations

### Art. 24 Recognition

<sup>1</sup> Organisations are recognised as self-regulatory organisations if they:

- a. have regulations in accordance with Article 25;
- b. supervise their affiliated financial intermediaries with regard to compliance with their duties in terms of Chapter 2; and
- c. ensure that the persons and audit companies they instruct to carry out inspections:
  1. possess the required specialist knowledge,
  2. provide the required guarantees that inspections will be carried out properly, and
  3. are independent of the management and administration of financial intermediaries being inspected.

<sup>2</sup> The self-regulatory organisations of the PTT operations<sup>24</sup> in terms of the PTT Organisation Act of 6 October 1960<sup>25</sup> and of the Swiss Federal Railways in terms of

<sup>21</sup> The title of this administrative entity has been amended in application of Art. 16 para. 3 of the Publication Ordinance of 17 Nov. 2004 (SR 170.512.1).

<sup>22</sup> SR 360

<sup>23</sup> SR 311.0

<sup>24</sup> Now SwissPost

<sup>25</sup> [AS 1961 17, 1970 706 1619, 1977 2117, 1979 114 Art. 68 679, 1987 600 Art. 17 No. 4, 1992 288 Annex No. 31 581 Annex No. 3, 1993 901 Annex No. 16, 1995 3680 No. II 4 5489 No. II, AS 1997 2465 Annex No. 1]. See now the Federal Act of 30 April 1997 on the Organisation of Federal Postal Services (SR 783.1).

the Federal Act of 23 June 1944<sup>26</sup> on the Swiss Federal Railways must be independent of their respective managements.

#### **Art. 25** Regulations

<sup>1</sup> Self-regulatory organisations must issue regulations.

<sup>2</sup> The regulations specify the duties of diligence of their affiliated financial intermediaries within the meaning of Chapter 2 and stipulate how these duties must be fulfilled.

<sup>3</sup> They further stipulate:

- a. the requirements for the affiliation and exclusion of financial intermediaries;
- b. how compliance with the duties in terms of Chapter 2 is monitored;
- c. appropriate penalties.

#### **Art. 26** Lists

<sup>1</sup> The self-regulatory organisations must maintain lists of their affiliated financial intermediaries and of persons to whom they refuse affiliation.

<sup>2</sup> They must provide the AML Control Authority with these lists as well as with any amendments thereto.

#### **Art. 27** Duty to provide information and to notify

<sup>1</sup> The self-regulatory organisations must notify the AML Control Authority of financial intermediaries to which they refuse affiliation or which they have excluded.

<sup>2</sup> They must provide the AML Control Authority with a report at least once every year on their activities in terms of this Act.

<sup>3</sup> They must keep an appropriate documentary record of inspections carried out and of the penalty procedures for the attention of the AML Control Authority.

<sup>4</sup> If they have reasonable grounds to suspect that a criminal offence as defined in Article 260<sup>ter</sup> Number 1 or 305<sup>bis</sup> SCC<sup>27</sup> has been committed or that assets are the proceeds of a felony or subject to the power of disposal of a criminal organisation, they must immediately notify MROS, provided a report has not already been filed by an affiliated financial intermediary.

<sup>26</sup> [BS 7 195; AS 1962 359, 1968 1221 No. II para. 1, 1977 2249 No. I 813, 1979 114 Art. 69, 1982 1225, 1986 1974 Art. 53 No. 6, 1987 263, 1997 3017. AS 1998 2847 Annex No. 1]. See now Federal Act of 20 March 1998 on the Swiss Federal Railways (SR 742.31).

<sup>27</sup> SR 311.0

**Art. 28**            Withdrawal of recognition

<sup>1</sup> If a self-regulatory organisation no longer fulfils the requirements for recognition or if it violates its statutory duties, the AML Control Authority may withdraw its recognition. A warning that such a measure may be taken must be given in advance.

<sup>2</sup> If a self-regulatory organisation has its recognition withdrawn, its affiliated financial intermediaries become subject to the direct supervision of the AML Control Authority and must obtain authorisation in accordance with Article 14 for their activities, unless they affiliate to another self-regulatory organisation within two months.

<sup>3</sup> Lawyers and notaries who act as financial intermediaries must affiliate within two months to another self-regulatory organisation if recognition has been withdrawn from the organisation to which they are affiliated.

**Chapter 4: Administrative Assistance****Section 1: Cooperation among Domestic Authorities****Art. 29**

<sup>1</sup> The supervisory authorities established by special legislation, the AML Control Authority and MROS may provide each other with any information or documents required for the enforcement of this Act.

<sup>2</sup> The cantonal prosecution authorities must notify MROS of any pending proceedings in connection with Article 260<sup>ter</sup> Number 1, 305<sup>bis</sup> and 305<sup>ter</sup> SCC<sup>28</sup> and provide it with judgements and decisions on the closure of proceedings.

<sup>3</sup> MROS must inform the AML Control Authority or the relevant supervisory authority established by special legislation of the decisions of the cantonal prosecution authorities.

**Section 2: Cooperation with Foreign Authorities****Art. 30**            Supervisory authorities established by special legislation

For supervisory authorities in terms of Article 12, cooperation with foreign authorities is governed by the applicable special federal legislation.

**Art. 31**            AML Control Authority

<sup>1</sup> In order to fulfil its duties, the AML Control Authority may request foreign authorities responsible for supervision of the financial markets to provide information or documents.

<sup>2</sup> It may provide information or documents that are not accessible to the public to foreign authorities responsible for supervision of the financial markets only if these authorities:

- a. use such information exclusively for the direct supervision of financial intermediaries;
- b. are bound by official or professional secrecy; and
- c. do not pass on this information to the relevant authorities and bodies entrusted with supervisory duties in the public interest without the prior consent of the AML Control Authority or a general authorisation contained in an international treaty. The passing on of information to prosecution authorities is unlawful if mutual assistance in criminal matters would be excluded. The AML Control Authority decides in consultation with the Federal Office of Police<sup>29</sup>.

<sup>3</sup> If the information to be passed on by the AML Control Authority relates to individual clients of financial intermediaries, the Federal Act of 20 December 1968<sup>30</sup> on Administrative Procedure applies.

### **Art. 32** MROS

<sup>1</sup> The cooperation of MROS with foreign prosecution authorities is governed by Article 13 paragraph 2 of the Federal Act of 7 October 1994<sup>31</sup> on the Central Offices of the Federal Criminal Police.

<sup>2</sup> MROS may also pass on personal data to equivalent foreign authorities if this is provided for in an act or international treaty or if:

- a. the information is required exclusively to combat money laundering;
- b. it is required to justify a Swiss request for information;
- c. it is in the interests of the person concerned and that person has consented or his consent may be presumed in the circumstances.

## **Chapter 5: Processing of Personal Data**

### **Art. 33** Principle

The processing of personal data is governed by the Federal Act of 19 June 1992<sup>32</sup> on Data Protection.

<sup>29</sup> Title in accordance with unpublished Federal Council Decree of 19 Dec. 1997.

<sup>30</sup> SR 172.021

<sup>31</sup> SR 360

<sup>32</sup> SR 235.1

**Art. 34** Data collections in connection with the duty to report

<sup>1</sup> Financial intermediaries must maintain separate data collections containing all the documents connected with the report filed.

<sup>2</sup> Data from these data collections may be passed on only to supervisory authorities, self-regulatory organisations, MROS and the prosecution authorities.

<sup>3</sup> The right to information of persons affected in accordance with Article 8 of the Federal Act of 19 June 1992<sup>33</sup> on Data Protection is suspended for as long as assets are frozen in accordance with Article 10 paragraphs 1 and 2.

<sup>4</sup> The data must be destroyed five years after the report is filed.

**Art. 35** Processing by MROS

<sup>1</sup> The processing of personal data by MROS is governed by the Federal Act of 7 October 1994<sup>34</sup> on the Central Offices of the Federal Criminal Police.

<sup>2</sup> MROS may exchange information with the supervisory authorities established by special legislation, the AML Control Authority and the prosecution authorities by means of a computerised access procedure (online connection).

**Chapter 6: Criminal Provisions and Procedure****Art. 36** Operating without a licence

<sup>1</sup> Anyone who acts as a financial intermediary within the meaning of Article 2 paragraph 3 without a licence in terms of Article 14 or without being affiliated to a self-regulatory organisation is liable to a fine of up to 200 000 francs. If the offence is repeated the fine is a minimum of 50 000 francs.

<sup>2</sup> The foregoing offence may also be committed through negligence.

**Art. 37** Violation of the duty to report

Anyone who fails to comply with the duty to report in terms of Article 9 is liable to a fine of up to 200 000 francs,

**Art. 38** Failure to comply with a decision

Anyone who fails to comply with a decision issued by a supervisory authority established by special legislation or by the AML Control Authority is liable to a fine of up to 50 000 francs, provided the decision makes reference to the penalty that may be imposed under this Article,.

<sup>33</sup> SR 235.1

<sup>34</sup> SR 360

**Art. 39** Prosecution and prescription

<sup>1</sup> The offences in terms of Articles 36–38 are governed by the Federal Act of 22 March 1974 on Administrative Criminal Law<sup>35</sup>. The authority responsible for prosecution and judgement is the Federal Department of Finance.

<sup>2</sup> The prosecution of offences prescribes after five years. In the event that the prescription is interrupted, the prescriptive period may be extended by a maximum of one half.

**Art. 40** Legal remedies

<sup>1</sup> In the case of decisions issued by the supervisory authorities, the procedure is governed by the relevant special legislation.

<sup>2</sup> The general provisions on the administration of federal justice also apply.

**Chapter 7: Final Provisions****Art. 41** Implementation

The supervisory authorities established by special legislation and the AML Control Authority issue the provisions required for the implementation of this Act in their area of responsibility, insofar as such provisions are not already issued in an appropriate form as part of self-regulation.

**Art. 42** Transitional provisions

<sup>1</sup> This Act applies from the date on which it comes into force to financial intermediaries within the meaning of Article 2 paragraph 2. The duty to report in terms of Article 9 applies from this date to all financial intermediaries.

<sup>2</sup> Within one year of this Act coming into force, self-regulatory organisations must apply to the AML Control Authority for recognition and submit the regulations they issue within the framework of self-regulation for approval.

<sup>3</sup> Two years after this Act comes into force, financial intermediaries within the meaning of Article 2 paragraph 3 that are not affiliated to a recognised self-regulatory organisation become subject to direct supervision by the AML Control Authority and must apply for a licence in accordance with Article 14.

<sup>4</sup> Within two years of this Act coming into force, lawyers and notaries acting as financial intermediaries must affiliate to a self-regulatory organisation.

**Art. 43** Amendment of current legislation

*Relevant to the French Text only*

<sup>35</sup> SR 313.0

**Art. 44** Referendum and commencement

<sup>1</sup> This Act is subject to an optional referendum.

<sup>2</sup> The Federal Council determines the date on which this Act comes into force.

Commencement Date: 1 April 1998<sup>36</sup>

<sup>36</sup> Federal Council Decree of 16 March 1998 (AS **1998** 904)

