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**Federal Act
on the Restitution of Assets of Politically Exposed Persons
obtained by Unlawful Means
Restitution of Illicit Assets Act (RIAA)**

of 1 October 2010

The Federal Assembly of the Swiss Confederation,
based on Article 54 paragraph 1 of the Federal Constitution¹, and
having examined the Federal Council Dispatch of 28 April 2010²,

decrees:

Section 1: Subject Matter

Art. 1

The present Act governs the freezing, forfeiture and restitution of assets of politically exposed persons or their close associates in cases where a request for mutual assistance in criminal matters cannot produce an outcome owing to the failure of state structures in the requesting state in which the politically exposed person exercises or exercised office (country of origin).

Section 2: Freezing of Assets

Art. 2 Conditions

The Federal Council may order the freezing of assets in Switzerland with a view to the instigation of forfeiture proceedings under this Act, providing the following conditions are fulfilled:

- a. The assets have been secured provisionally in the context of a process of mutual assistance in criminal matters instigated at the request of the country of origin.
- b. Powers of disposal over the assets rest with:
 1. individuals who exercise or have exercised a high public office abroad (politically exposed persons). This category includes specifically heads of state or government, high-ranking politicians, high-ranking members of the administration, judiciary, armed forces or national political parties, and senior executives of state-owned corporations of national importance, or
 2. natural or legal persons who are closely associated with politically exposed persons for family, personal or business reasons (close associates).
- c. The country of origin is unable to satisfy the requirements of legal assistance proceedings owing to the total or substantial collapse, or the unavailability, of its national judicial system (failure of state structures).
- d. The safeguarding of Swiss interests demands that the assets be frozen.

¹ SR 101

² Federal Gazette 2010 2995

Art. 3 Duration

¹ Assets remain frozen until a legally binding ruling on their forfeiture is made.

² If no forfeiture proceedings are instigated within ten years of the freezing order taking effect, the freeze shall be lifted.

Art. 4 Amicable settlement

¹ The Federal Council may instruct the Federal Department of Foreign Affairs (FDFA), while the asset freeze is in force, to seek an amicable settlement that permits the full or partial restitution of the frozen assets. Articles 8–10 apply by analogy to such restitution.

² The amicable settlement must be approved by the Federal Council.

³ If the Federal Council approves the amicable settlement, the asset freeze shall be lifted.

Section 3: Forfeiture

Art. 5 Procedure

¹ At the request of the FDFA, the Federal Council may instruct the Federal Department of Finance (FDF) to take legal action before the Federal Administrative Court to enable frozen assets to be forfeited.

² The Federal Administrative Court shall decide on the forfeiture of assets on the basis of the following criteria:

- a. The power of disposal is held by a politically exposed person or his or her close associates;
- b. They have been obtained by unlawful means; and
- c. They have been frozen by the Federal Council pursuant to this Act.

³ No statute of limitations in respect of criminal prosecution or penalties may be invoked.

⁴ Should mutual legal assistance proceedings in criminal matters resume, forfeiture proceedings shall be suspended until a legally binding ruling has been issued in respect of the legal assistance proceedings.

Art. 6 Presumption of unlawful origin

¹ The presumption that assets are of unlawful origin applies where

- a. the wealth of the person who holds powers of disposal over the assets has been subject to an extraordinary increase that is connected with the exercise of a public office by the politically exposed person; and
- b. the level of corruption in the country of origin or surrounding the politically exposed person in question during their term of office is or was acknowledged as high.

2 The presumption ceases to apply if it can be demonstrated that in all probability the assets were acquired by lawful means.

Art. 7 Third-party rights

The following categories of asset may not be seized:

- a. those over which a Swiss authority can lay claim;
- b. those to which a person who is not a close associate of the politically exposed person has acquired rights *in rem* in good faith:
 1. in Switzerland, or
 2. abroad, if they are the object of a judicial decision which can be recognised in Switzerland.

Section 4: Restitution

Art. 8 Principle

The objectives of the restitution of forfeited assets are the following:

- a. to improve the living conditions of the people of the country of origin, or
- b. to strengthen the Rule of Law in the country of origin and to fight the impunity of criminals.

Art. 9 Procedure

¹ Seized assets shall be returned in the form of financing for programmes of public interest.

² The details of restitution may be governed by an agreement between Switzerland and the country of origin.

³ Such an agreement may govern, in particular

- a. the nature of the programmes of public interest that are to be financed by the assets that have been returned;
- b. the way in which the returned assets are to be used;
- c. the parties involved in restitution;
- d. checks and monitoring with regard to how the returned assets are being used.

⁴ The Federal Council is responsible for concluding such an agreement.

⁵ If no agreement can be reached with the country of origin, the Federal Council itself shall determine the process of restitution. In particular, it may return the forfeited assets via international or national institutions and order supervision by the FDFA.

Art. 10 Procedural costs

¹ A flat-rate charge of no more than 2.5 per cent of the seized assets may be debited for the account of the Confederation or the cantons to cover the costs of freezing and returning the assets.

² The Federal Council shall determine this flat-rate charge on a case-by-case basis.

Section 5: Legal Redress and Cooperation between Authorities

Art. 11 Appeal

¹ Orders issued by the Federal Council to freeze assets may be challenged by an appeal to the Federal Administrative Court.

² The appeal does not have a suspensive effect. Article 55 paragraph 2 of the Federal Act of 20 December 1968 on Administrative Procedure³ does not apply.

³ No objection may be raised on the grounds of unreasonableness.

⁴ Proceedings and means of legal redress are otherwise governed by the general provisions on the administration of justice at federal level.

Art. 12 Cooperation between authorities

1 The Federal Office of Justice shall notify the FDFA when a request for mutual legal assistance in criminal matters concerning assets frozen in Switzerland of politically exposed persons or their close associates has proven unsuccessful.

2 At the request of the FDFA or the FDF, federal and cantonal authorities must provide all such information as is required to enforce this Act.

Section 6: Final Provisions

Art. 13 Amendments to current law

Amendments to current law are set out in the Appendix.

Art. 14 Transitional provisions

1 Assets already frozen on the commencement of this Act on the basis of a Federal Council order issued pursuant to Article 184 paragraph 3 of the Federal Constitution, because a request for mutual legal assistance in criminal matters has proven unsuccessful, shall remain frozen until a decision on their forfeiture enters into force in accordance with this Act.

2 The asset freeze shall be lifted if forfeiture proceedings have not been instigated within one year of the entry into force of this Act.

³ *Federal Act on Administrative Procedure*, SR 172.021

Art. 15 Referendum and commencement

- 1 This Act is subject to an optional referendum.
- 2 The Federal Council shall determine the commencement date.

Amendments to current law

The following federal acts are amended as described below:

1. Federal Act of 17 June 2005 on the Federal Administrative Court⁴

Art. 33 b point. 3

Appeals are permissible against rulings:

- b. of the Federal Council concerning:
 - 3. the freezing of assets pursuant to the Federal Act of 1 October 2010 on the Restitution of Assets of Politically Exposed Persons Obtained by Unlawful Means⁵;

Art. 35 d

The Federal Administrative Court shall rule as the court of first instance on the following subjects of legal action:

- d. petitions for the forfeiture of assets pursuant to the Federal Act of 1 October 2010 on the Restitution of Assets of Politically Exposed Persons Obtained by Unlawful Means⁶.

Art. 44 para. 3

3 Court costs and compensation are governed by Articles 63–65 of the Administrative Procedure Act⁷.

2. Federal Act of 11 April 1889 on Debt Collection and Bankruptcy⁸

Art. 44

Objects that have been seized under federal or cantonal criminal or fiscal law or pursuant to the Federal Act of 1 October 2010 on the Restitution of Assets of Politically Exposed Persons Obtained by Unlawful Means⁹ shall be realised in accordance with these laws.

⁴ *Federal Act on the Federal Administrative Court*, SR 173.32

⁵ SR ...

⁶ SR ...

⁷ *Federal Act on Administrative Procedure*, SR 172.021

⁸ *Federal Act on Debt Collection and Bankruptcy*, SR 281.1

⁹ SR ...

