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The New Advisor Regime under the Revised Swiss Anti-Money Laundering Act: Qualifying Mandates in Practice

The revised Anti-Money Laundering Act (AMLA) entered into force on 1 October 2026. For the first time, it brings certain advisory activities within its scope, regardless of whether the advisor ever holds or moves client assets. Lawyers, notaries, tax advisors, fiduciaries and real estate professionals must now assess whether their activities are subject to AMLA. This newsletter sets out a practical framework for that assessment. A key point for corporate and transactional practice: the term non-operating legal entities covers domiciliary companies in accordance with existing practice.

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1. Background

Swiss Parliament approved the revised Anti-Money Laundering Act on 26 September 2025. The modification introduces due diligence requirements for certain advisory activities. On 12 June 2026, the Federal Council set the date of entry into force of the revised AMLA per 1 October 2026.

2. Who Is an Advisor?

The revised AMLA defines two categories of advisors:

- Participation in financial transactions (Art. 2 para. 3bis AMLA): This covers natural persons and legal entities that, on a professional basis and on behalf of third parties, participate in financial transactions, including the arrangement of financing, in connection with specified legal transactions.
- Domiciliary services (Art. 2 para. 3ter AMLA): This covers natural persons and legal entities that, on a professional basis, provide a legal entity with an address or premises as its domicile or registered office for a period exceeding six months.

Subjection is activity-based and not tied to a profession: anyone who carries out one of these activities on a professional basis must comply with the AMLA. The new regime is designed to capture only advisory activities with an elevated money laundering risk and describes its approach as consistently risk-based.

Whether an activity is conducted on a professional basis is assessed per advisor and not per mandate, as is the case for financial intermediaries. Where a person acts both as a financial intermediary and as an advisor, the two activities are in principle assessed separately.

The requirement to act on behalf of third parties can be decisive in real estate development. A professional who secures a property and then sets non-negotiable terms on which other investors may participate acts on its own account and is not an advisor. If the terms of entry are negotiated, or if the professional acts for a consortium or third parties from the outset, it also acts on behalf of third parties.

For the first category, we recommend a three-step test for each mandate:

(1) Does the mandate relate to one of the legal transactions listed in Art. 2 para. 3bis AMLA?
(2) Does the specific activity amount to participation in a financial transaction, i.e., does it causally contribute to that legal transaction?
(3) Does a general exception apply?

3. The Relevant Legal Transactions

The revised AMLA lists five categories of relevant legal transactions. This list is exhaustive.

3.1. Sale or Purchase of Real Estate

This first category covers the purchase and sale of immovable property within the meaning of Art. 655 para. 2 of the Civil Code, including promises to sell and preliminary sales. It also covers legal acts with an economically equivalent effect on the power of disposal over real estate. Relevant examples include:

- the transfer of a majority interest in a real estate company, including holding companies whose purpose is to hold real estate companies;
- chain transactions and property exchanges;
- the creation of a usufruct or building right against compensation;
- advising a borrower on the financing of a real estate acquisition.

On the other hand, participation in the following activities is generally deemed to be out of scope:

- the transfer of minority stakes in real estate companies;
- the purchase and sale of an operating company or group that holds real estate (caution is warranted, however, where a company's assets consist predominantly of real estate, or where its price is driven more by its real estate than by its business);
- advising a bank that finances a real estate transaction for a third party;
- the creation, modification or cancellation of easements, limited real rights

or mortgages;

- public-law restrictions on property;
- advice after a transaction has been completed, such as on warranty claims;
- the mere administration of condominium property, including the management of a renewal fund, as long as the administrator is not involved in the sale; a community of condominium owners is not a non-operating legal entity;
- the mere publication of offers on a portal accessible to prospective buyers.

Real estate mandates come within the scope of the AMLA once the parties have declared their intention to enter into a sales contract. Real estate brokerage is in scope as soon as both parties have declared their intention to conclude a sale contract, at which point the parties are identifiable to the broker. For due diligence work, the general causality test must apply: the relevant question is at what point the activity contributes causally to the conclusion of a sales contract. In our view, drafting the agreement, structuring the acquisition, arranging financing or preparing transaction documents for a specific transaction therefore suffices, even before both parties have formally declared their intention to sign. General advice on real estate taxation or on the conditions for selling real estate holdings does not. The same causality test applies to mortgage brokerage.

3.2. Creation of Non-Operating Legal Entities in Switzerland, and of Any Legal Entity Abroad

The concept of a **non-operating legal entity** (Art. 2a para. 6 AMLA) is central to four of the five categories. It covers legal persons, companies, establishments, foundations, trusts, fiduciary companies and similar arrangements that were not established or managed to conduct or support the operational activities of a business or group. Domiciliary companies are the typical example.

During the parliamentary debate, a limitation of the definition to the existing AMLO concept of the domiciliary company was rejected. The Federal Council declined to define the term further in the ordinance. Self-regulatory organisations (SROs) have just published an FAQ in coordination with the State Secretariat for International Finance, which asserts that the term non-operating entity corresponds in principle to that of the domiciliary company (Art. 6 para. 2 and 3 AMLO; Art. 2 lit. a AMLO- FINMA; see also FINMA Circular 2011/1, margin no. 102 et seq.). We support this interpretation which allows advisors to rely on a concept that has been applied by financial intermediaries for many years, rather than on an open- ended new term.

Accordingly, a company whose primary purpose is to manage the assets of the beneficial owner and to generate income or capital gains derived from those assets, without engaging in any business activities of its own, qualifies as a non-operating legal entity. Domiciliary companies are typically non-operating legal entities.

By contrast, an operating company is a company (i) which has its own business activities or (ii) which holds, directly or indirectly, a majority interest in a company engaged in business activities and whose purpose is not limited to holding third-party assets. As a rule, holding companies, acquisition or bid companies in group structures or in private equity structures are operating companies.

The consequences are significant. Four of the five categories of relevant legal transactions (Art. 2 para. 3bis lit. b to e AMLA) require the involvement of a non-operating company; for the creation of entities (lit. b), this applies to Swiss entities. Advice on the incorporation of a Swiss operating company therefore falls outside the advisor regime. On the other hand, the creation of any legal entity abroad remains covered, whether operating or not.

Advising a bank on acquisition financing where a BidCo is set up for a third-party acquisition is, in our view, outside the scope in both cases. The same should go for the establishment of a BidCo in a private equity transaction.

3.3. Management or Administration of a Non-Operating Legal Entity

All ongoing administrative work for non-operating entities is covered, including accounting and audit. This includes:

- preparatory work relating to the appointment or powers of governing bodies, including de facto bodies;
- managing an entity under a power of attorney;
- changes to the beneficiaries of a trust;
- reorganising a company's shareholding.

The listed activities that are out of scope include the mere provision of corporate governance advice without any link to a financial transaction as well as mere bookkeeping that is limited to recording transactions that have already taken place, without advice on the entity's organisation, management or structure. Acting as a board member or manager of a non-operating entity is not an advisory activity, since it already constitutes financial intermediation.

3.4. Contributions to and Distributions from a Non-Operating Legal Entity

This category covers any activity relating to a capital increase of a non-operating entity, including convertible instruments. Examples are preparing documents for the general meeting or board, drafting minutes, and opening a capital contribution account. It also covers any form of profit distribution by such non-operating entity. Consistent with this reasoning, we concur that advice on other financing transactions is not covered by the new regulation. The contribution of a non-operating entity into an operating entity and distributions from an operating entity to a non-operating entity are also not covered by the new rules.

Start-up companies are typically not non-operating entities. Advice in financing rounds or the issuance of convertible instruments by start-up companies are out of scope.

3.5. Sale or Purchase of Legal Entities through a Non-Operating Legal Entity

This category covers the acquisition or

sale of companies, or of majority interests in them, where the buyer or the seller is a non-operating entity. It includes involvement in planning and implementing the transaction, as well as mergers and demergers involving a non-operating entity. Whether the target is operating or not is irrelevant. Sell-side advisers are not covered where the buyer acquires through a non-operating vehicle, provided they do not participate in structuring the buyer's acquisition structure.

3.6. Domiciliary Services

For domiciliary services, no causality requirement applies. Providing premises, including by way of lease, is covered where the company does not carry any effective activity at those premises. Indicators include additional services such as receiving or forwarding mail, or the use of the same address as the registered office of several companies. In this context, renting premises to a company under a lease is not covered if the company carries out an effective activity there, as indicated for example by employees, a secretariat or other signs of business conducted on site.

A temporary workstation under a contract of up to six months is not covered. A dedicated space, however small, from which a company carries on its effective activity is not covered either. A workstation allocated according to availability and combined with a c/o address at the provider is, in principle, in scope.

4. Participation in a Financial Transaction: The Causality Requirement

For the legal transactions listed above (but not for domiciliary services), the advisor must participate in a financial transaction connected to the legal transaction. Under Art. 12d AMLO, this means advice that causally contributes to a relevant legal transaction.

Participation covers any activity, including advice, that constitutes a causal contribution to the relevant legal transaction without which the transaction would not be implemented. Causality is assessed ex ante, so it is irrelevant whether the transaction is ultimately completed. There are good arguments that not every minor contribution is enough, and that involvement of a certain intensity is required. The activity must relate to a specific legal transaction: purely planning-related or abstract clarifications and information on the legal situation without an identifiable link to an actually envisaged transaction are not covered. Typically covered is the following:

- advising on the legal, tax or accounting structure of a transaction;
- drafting contracts, including pre-contractual documents;
- conducting due diligence and preparing the related documents;
- taking or advising on implementation steps, such as commercial register filings or opening bank relationships.

Out of scope are:

- purely abstract or general legal analyses;
- preparation of memoranda on the conditions that apply generally in Switzerland to certain types of transactions, without reference to a specific transaction;
- due diligence work performed as an external service provider without further involvement in the transaction;
- preparation of pitches, preliminary discussions and fee estimates before an engagement is agreed, even where they contain relevant proposals;
- advice to individuals on occupational or private pension planning without a link to a real estate transaction or a legal entity.

5. General Exceptions

Even where a relevant transaction and a causal contribution exist, AMLA does not apply in a number of cases. Those most relevant in legal practice are:

- **Family and estate matters**: This covers transactions connected to family law, matrimonial property, inheritance or gifts, or between related persons within the meaning of Art. 2 para. 2 lit. a of the Financial Institutions Act. Executors are not covered as long as they act within their mandate and under state supervision. Where an estate partition involves a real estate company, allocation within the family is exempt, while advice on a sale to a third party is covered.
- **Smaller transactions**: This covers sales or purchases of real estate or legal entities with a value below CHF 5 million, provided the purchase price is paid and received exclusively through banks or other financial intermediaries subject to AMLA. For condominium developments, each sale of a unit under a separate contract is in principle assessed separately, unless several sales are linked, for example to circumvent the threshold.
- **Owner-occupied residential property**: This covers the purchase of residential property in Switzerland for own use, or as replacement property within the meaning of Art. 12 para. 3 lit. e Federal Law on the Harmonization of Direct Taxes of the Cantons and Municipalities. The test follows the deferral of real estate gains tax: holiday homes and second homes that are not permanently and exclusively owner-occupied do not qualify, and the exception does not extend to the developer selling the unit or to the professionals acting for it.
- **Agricultural property**: This covers transfers of agricultural businesses or land under the Rural Land Act to persons who will farm them themselves.
- **Land consolidation**: This covers transfers of real estate for land consolidation or similar operations.
- **Acting as a corporate body**: This covers board or similar roles for operating legal entities, charitable foundations and operating associations domiciled in Switzerland.
- **Creation of Foundations upon death**.
- **Proceedings**: This covers lawyer and notary activities in connection with judicial, criminal, administrative or arbitral proceedings. It includes representation, as well as advice on preparing, conducting, avoiding or enforcing the outcome of proceedings and ancillary activities (Art. 2 para. 4 lit. f AMLA).
- **Authentication**: The mere authentica-

tion of documents without ancillary advice.

The exceptions apply only to advisors and do not change the practice for financial intermediaries. Where an exception applies, no AMLA file documenting compliance with due diligence obligations needs to be kept.

6. Clients Who Are Financial Intermediaries or Listed Companies

The rules of various SROs provide for simplified due diligence if relevant advice is addressed to (i) listed companies, or (ii) supervised financial intermediaries.

7. Due Diligence, Professional Secrecy and Supervision

The core due diligence obligations of advisors are the identification of the client, the establishment of the beneficial owner and the documentation of compliance (Art. 8b AMLA, referring to Art. 3, 4 and 7 AMLA). Organisational measures and reporting obligations also apply. The obligations follow a risk-based approach, and the SROs define their scope for their members in regulations that require FINMA approval.

For lawyers and notaries, professional secrecy is safeguarded in two ways. First, they are not required to file a suspicious activity report where the information is covered by professional secrecy. Attorneys and notaries providing purely advisory services will generally not be required to report. Second, SRO audits follow a two-stage procedure conducted by auditors who are themselves lawyers or notaries. At the first stage, the auditor reviews the advisor's internal regulations and procedures and a list of the mandates subject to AMLA, with a sufficient description of each mandate and of the activity performed, without accessing client data covered by professional secrecy. Only where there are objective indications of a breach of due diligence obligations, such as inadequate internal regulations or training, or the opening of criminal or disciplinary proceedings, may professional secrecy be lifted at a second stage, either with the client's consent or by order of the compulsory measures court. The review concerns only the advisor's compliance, not the client's conduct, and the SRO may not pass client information on to other authorities.

8. What Advisors Need to Do Now

Advisors who act on a professional basis must perform AMLA due diligence towards their contracting parties from 1 October 2026 and must file an application to join a SRO by 1 December 2026 at the latest. The due diligence obligations under Art. 3–11 AMLA apply immediately, not only once the advisor has joined an SRO. They also apply to ongoing mandates that qualify as advisory activity under AMLA. From 1 October 2026 until the relevant SRO has decided on the application, advisory activity may only be continued within existing business relationships. Advisors may continue to advise existing clients, including on new transactions, but may accept new clients only for transactions that fall under one of the exceptions of Art. 2 para. 4ter AMLA.

In practice, we recommend that advisors:

- Screen new mandates at intake: Apply the three-step test to every new mandate and document the outcome, including where the conclusion is that AMLA does not apply. An AMLA file is not required where an exception applies but an internal record of the assessment remains advisable.
- Review ongoing mandates: Existing mandates that now qualify require identification of the contracting party and establishment of the beneficial owner without delay if not completed yet.
- Maintain a list of AMLA mandates: In view of the two-stage audit procedure, keep an up-to-date list of mandates subject to AMLA with a description of each mandate and of the activity performed, and adopt internal regulations on responsibilities, mandate intake, training and internal controls.
- Prepare the SRO application: SROs require regulations, supporting evidence and, as a rule, a designated AML contact person. The application should therefore not be left to the last weeks before the deadline. Given the transitional restriction on accepting new clients, early filing is commercially important.
- Monitor the evolving practice: Applicable concept will be shaped by SRO practice and requirements.

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