

Newsletter No.

178

Fight against money laundering and terrorist financing: Additional transparency obligations apply to associations (*Vereine*) as of 1 January 2023.

In 2021, the law on associations was revised with the declared purpose of improving “*the transparency of associations with an increased risk of terrorist financing*”. The implementing provisions, including exceptions, have now been enacted. In particular, certain charitable or non-profit associations will now be subject to mandatory registration in the Commercial Register. Additionally, all associations subject to registration are obliged to keep a register of members and must be able to be represented by a person domiciled in Switzerland. An 18-month transition period applies.



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Overview over the revised law on associations: Extended obligation to register in the Commercial Register, introduction of a register of members etc.

In the course of the revision of the Anti-Money Laundering Act in 2021, significant amendments were also made to the law governing associations. For numerous associations, this results in additional obligations. The recently published implementing provisions specify these obligations, but also the exceptions. The new law on associations will enter into force on 1 January 2023. Existing associations will have to comply with the new obligations within 18 months of this date.

Background

In 2016, the Financial Action Task Force (FATF) published its fourth Mutual Evaluation Report on Switzerland. With regards to associations, the report criticized incomplete transparency regulations regarding charitable organizations and non-profit organizations, which would constitute a particular risk in connection with terrorist financing, and formulated recommendations accordingly.

In order to implement the FATF's recommendations, the Swiss lawmaker on 19 March 2021 passed a revised Federal Act on Combating Money Laundering and Terrorist Financing (Anti-Money Laundering Act, AMLA). In this context, among other things, significant amendments were made to the law of associations (Art. 60 *et seqq.* of the Swiss Civil Code [CC]).

Certain provisions of the AMLA revision have already entered into force. On 31 August 2022, the Swiss Federal Council decided to put the revised law on associations and the corresponding amendments to the Ordinance on the Commercial Register (CRO) into force as of 1 January 2023.

Extension of the obligation to register in the Commercial Register to certain charitable or non-profit associations

In principle, an association is not required to be entered in the Commercial Register, unless it conducts a commercial operation in pursuit of its objects or is subject to an audit requirement (Art. 61 CC).

In the future, an association will also be **subject to mandatory registration** if it **"mainly collects or distributes abroad, directly or indirectly, assets which are intended for charitable, religious, cultural, educational or social purposes"** (Art. 61 Para. 2 No. 3 revCC; Art. 90 Para. 1 Let. c revCRO). An association that meets these requirements remains, nevertheless, **exempt** from the obligation to register if (Art. 61 Para. 2^{ter} revCC; Art. 90 Para. 2 revCRO):

- a. Neither the assets collected, nor the assets distributed, annually exceed the value of CHF 100,000 in the last two financial years;
- b. The distribution of the assets is performed through a Financial Intermediary in the meaning of the AMLA; and
- c. At least one person authorized to represent the association is domiciled in Switzerland.

In essence, the **consequences** of the registration in the Commercial Register are (1) that the identity of the members of the committee (*i.e.* the board of an associa-

tion) and the representatives of the association with signature power, as well as the articles of association, are publicly accessible and (2) that the association is subject to debt enforcement by way of bankruptcy (instead of seizure) (Art. 39 Para. 1 No. 11 of the Federal Act on Debt Enforcement and Bankruptcy [DEBA]).

However, the transparency brought by the registration of committee members can be problematic for the category of associations concerned (e.g. for associations active in the field of human rights). Therefore, for “*other associations*” (meaning associations that do not fall under Art. 90 Para. 1 Let. a and b revCRO) – i.e. associations in the meaning of Art. 61 Para. 2 No. 3 revCC and associations that are voluntarily registered – a new “**discretion mechanism**” applies: According to Art. 92 Let. k revCRO, (only, but) “*at least one member of the committee and at least one person authorized to represent the association and domiciled in Switzerland*” must be entered in the Commercial Register; notably, these criteria can be combined in one person (committee member domiciled in Switzerland and authorized to represent the association) (cf. Explanations of the Federal Council dated 31 August 2022). This regulation is intended in particular to protect traveling committee members (cf. media release of the Federal Council dated 31 August 2022).

Register of members for all associations subject to registration

The other major change affects **all associations subject to registration**: In the future, they must keep a register of members (Art. 61a revCC). The following requirements apply in this regard:

- **Content**: Members must be entered with their first and last names or company name and address.
- **Accessibility**: The register must be kept in such a way that it can be accessed in Switzerland at any time. In particular, one person domiciled in Switzerland and having power of representation must have access to

the register of members (Art. 69 Para. 2 revCC).

- **Retention**: The details of each member and any supporting documents must be retained for five years after the member has been removed from the register.

The **form** of the register of members is, however, not prescribed.

The absence of a register of members is considered a **defect in the organization** of the association, which entitles a member or a creditor, or under certain circumstances the Office of the Commercial Register, to request the court to take the measures required (Art. 69c Para. 1 revCC; Art. 939 of the Code of Obligations [CO]).

Representation of the associations subject to registration by a person domiciled in Switzerland

All associations subject to registration will now have to be able to be represented by a person domiciled in Switzerland; this person must have access to the register of members (Art. 69 Para. 2 revCC).

Formalities for associations not subject to registration that register voluntarily

Additional obligations may also apply to **associations not subject to registration** that voluntarily register in the Commercial Register. In particular, certain **additional supporting documents** must be submitted to the Office of the Commercial Register, if such an association is not represented by a person domiciled in Switzerland, or applies for the deletion of its entry from the Commercial Register (Art. 90a Para. 4, 92 Let. j and 93 Para. 2 revCRO).

Criminal liability for violating legal obligations of associations

Under current law, any person who (intentionally) causes an authority responsible for the Commercial Register to make a false entry in the Register or withholds from such an authority information which is required to be entered in the Register

shall be liable to a custodial sentence not exceeding three years or to a monetary penalty (Art. 153 of the Swiss Criminal Code [SCC]; cf. also Art. 940 CO). This criminal law provision is relevant in connection with the extended obligation to register in the Commercial Register (Art. 61 Para. 2 No. 3 revCC).

In the future, anyone who intentionally violates the obligations of associations under Art. 61a (obligation to keep a register of members) and 60 Para. 2 revCC (representation by a person domiciled in Switzerland) will be liable to a fine (Art. 327b revSCC).

18-month transition period

The existing associations affected by the amendments are granted an 18-month transition period starting **from the entry into force** of the revision of 19 March 2021 (i.e. from 1 January 2023, insofar as the law on associations is concerned) in order to comply with the new obligations, meaning (Art. 6b^{bis} Final Title revCC):

- the obligation to be entered in the Commercial Register (Art. 61 Para. 2 No. 3 revCC) for associations that are newly subject to registration; as well as
- the obligation to keep a register of members (Art. 61a revCC); and
- the obligation to be represented by a person domiciled in Switzerland and having access to the register of members (Art. 69 Para. 2 revCC) for all associations subject to registration.

With regard to the applicability of Art. 90a Para. 4 and 92 Let. j revCOR to existing associations that voluntarily register in the Commercial Register, an 18-month transition period is also provided for (Art. 181b revCOR).

Conclusion

Additional obligations will apply to many associations starting 2023. In particular, associations that pursue charitable activities, or non-profit organizations that are

constituted as an association, should examine whether they are now subject to registration in the Commercial Register. In addition, all associations (already previously or newly) subject to registration must in the future keep a register of members and be able to be represented by a person domiciled in Switzerland. Finally, associations that are not subject to registration and are registered voluntarily may also be subject to additional documentation requirements towards the Commercial Register Office. The associations concerned will have 18 months from the beginning of next year to comply with the new obligations.

The Walder Wyss Newsletter provides comments on new developments and significant issues of Swiss law. These comments are not intended to provide legal advice. Before taking action or relying on the comments and the information given, addressees of this Newsletter should seek specific advice on the matters which concern them.

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