SwissHoldings
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By email to: FATF.Publicconsultation@fatf-gafi.org

Bern, 3 December 2021

Comments of SwissHoldings on the draft amendments to Recommendation 24

Dear Sir/Madam,

SwissHoldings, the Federation of industrial and service groups in Switzerland, comprises 59 of the largest groups in Switzerland, which together account for around 70% of the total market capitalisation of the Swiss Stock Exchange. We are pleased to comment on the proposal as follows:

We welcome the public consultation on Recommendation 24 and Interpretative Note and welcome the opportunity to comment.

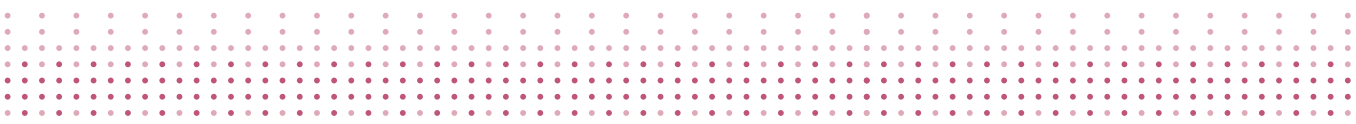
1. Regarding the register and the tightening of the rules on beneficial owners

We are very pleased that the FATF continues to leave it up to the individual countries to decide whether to establish a register concerning beneficial owners or to take other measures.

However, the tightening of obligations regarding beneficial owners must be avoided. This applies in any case and in particular insofar as this triggers additional obligations for the companies.

The current system, in which the banks have the main responsibility for the information as control intermediaries, has proven its worth in terms of combating money laundering. A tightening of the obligations for the companies would cause an unnecessary administrative burden and may even lead to poorer quality of the information. In some cases, the companies are further away from the information than the banks.

The factor of legal certainty must also be taken into account. Switzerland and other countries have recently undertaken various revisions of their laws against the background of the FATF and Global Forum recommendations. If too many such revisions are made in too short a period of time, this will damage legal certainty and lead to newly introduced regulations being less effective.



Furthermore, in our view, it is important that data protection and the security of the beneficial owners are given due consideration. In particular, we consider it problematic if it is required that beneficial owner information must be publicly available. There should be no public access to beneficial owner information unless an interested party (e.g. a bank) can demonstrate a specific interest. Disclosure of personal information should be limited to what is absolutely necessary for KYC purposes (e.g. display of residence, but not address).

Important exception for listed companies: It is further crucial that an exception is provided (even more explicitly) for listed companies. Transparency is already ensured through listing via existing financial market legislation. The exemption of listed companies and their subsidiaries from the obligation to report their Ultimate Beneficial Owners to banks, financial institutions and public registers is, after all, also provided for in Art. 3(6)(a)(i) EU Directive 2015/849 and Art. 4(1) of the Swiss AMLA. If the FATF regulations are tightened, it is important that this exemption is applied globally, i.e. that it is included in the FATF recommendations.

2. Regarding the risk-based approach to the verification of beneficial ownership information

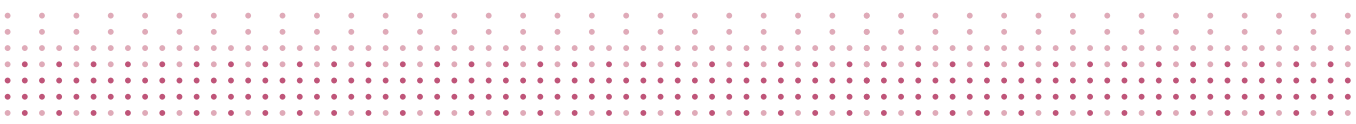
It is important that a risk-based approach is taken to the verification of beneficial ownership information. Accordingly, listed companies should also be exempt from the obligation to provide beneficial ownership information, as their disclosure is already guaranteed by the applicable financial market legislation.

3. Regarding the extension to foreign companies

The proposed extraterritorial application of Recommendation 24 is problematic with respect to fundamental concepts of public law. The purpose of Recommendation 24 is that countries should take measures to prevent the abuse of legal persons for money laundering or terrorist financing within their own territories. It is a general principle of public law and national sovereignty (unless there is a dispute under international law) that countries enact and apply legislation with respect to their own territory and not extraterritorially. We oppose any violation of this principle. In addition, it should be noted that such a regulation results inevitably in a conflict with foreign law and the possibility that in the end none of the parties involved is able to rely on the information. This should be avoided at all costs.

4. Regarding bearer shares

Switzerland already has very effective regulations regarding transparency in bearer shares. Bearer shares are now only permitted in Switzerland if a company lists equity securities on a stock exchange or if the bearer shares are intermediated securities within the meaning of the Federal Intermediated Securities Act of 3 October 2008 (FISA). The owners of these bearer shares must then identify themselves as such and voting rights at the General Meeting can only be exercised by those who provide the name and place of residence of the beneficial owner when attending (this is provided for in the rules of the adopted Company Law Reform, which is expected to come into force at the beginning of 2023). We reject any regulations that would lead to a tightening of these strict Swiss rules.



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Footnote 14 on listed companies: The proposed provision in footnote 14 is of particular importance. It is central that listed companies remain exempt from the obligation to immobilise physical bearer shares and from the prohibition to issue new physical bearer shares. Disclosure of all relevant Ultimate Beneficial Owners that may potentially exert an influence on a listed company is already ensured under current law, regardless of whether shares are issued as physical bearer shares, physical registered shares or intermediated securities. According to Art. 120 FMIA, anyone who acquires (directly, indirectly or as a group) more than 3% of the voting rights is obliged to disclose their identity. There is therefore no need to oblige listed companies to immobilise physical bearer shares and to impose a ban on the issue of new physical bearer shares. On the contrary, this would lead to an excessive restriction of their freedom without benefit.

Furthermore, it would make sense for the exception in footnote 14 to state more clearly that, in the case of listed companies, the exception applies both to existing shares and to the issue of new shares, i.e. to state even more clearly that, under this exception, the issue of new shares is still possible in the case of listed companies.

5. Regarding nominee arrangements

We would also like to speak out clearly against the planned tightening of nominee arrangements. The most important aspect to be corrected with regard to nominee arrangements concerns nominee directors. In Switzerland, members of a board of directors must be natural persons. It is perfectly legitimate for major shareholders to have an interest in appointing one or more nominee directors in order to influence the management of the company in which they are invested. A board of directors is able to take decisions only with a majority of the directors and they must be in the best interests of the company. It is therefore entirely legitimate and logical for a majority shareholder to have an interest in nominating a majority of board members to ensure its control on the board. 'Flagging' nominee directors would be an administrative burden with little or no impact on the actual objective of preventing money laundering or terrorist financing. Accordingly, the envisaged regulations concerning nominee directors must be rejected.

If you have any questions, please do not hesitate to contact us.

We remain with best regards,

SwissHoldings Secretariat

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