

## DIRECTIVE 3

RELATING TO THE IDENTIFICATION OF THE BENEFICIAL OWNER OF THE ASSETS  
WHICH ARE THE SUBJECT OF THE BUSINESS RELATIONSHIP

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Beneficial owner

- 1 Any natural person who has the ability to benefit from or dispose of, for their own profit, the assets which are the subject of the business relationship shall be considered to be the beneficial owner.
- 2 If the financial intermediary is not certain that the contracting party is the beneficial owner of the assets which are the subject of the business relationship, or if he knows that they are different persons, and when there are indicia of money laundering or terrorism financing, the financial intermediary must obtain from the contracting party a written declaration attesting to the identity of the beneficial owner.
- 3 A doubt about whether the contracting party is the beneficial owner may arise in particular:
  - a. when a person who does not have any close links with the contracting party has a power of attorney that allows assets to be withdrawn;
  - b. when the assets that are remitted are clearly out of proportion to the financial situation of the contracting party;
  - c. when the contacts with the contracting party lead the financial intermediary to make other unusual observations;
  - d. when the business relationship is established without a meeting having taken place with the contracting party.

If the financial intermediary does not obtain a written declaration because it has no doubt that the contracting party is indeed the beneficial owner of the assets which are the subject of the business relationship, it must document the fact so as to be able to justify this lack of a written declaration.

## Exemptions from the obligation to identify

- 4 The financial intermediary shall be exempted from obtaining information about the beneficial owner of the assets which are the subject of his business relationships, from his contracting parties if they legally exercise in Switzerland the activity of financial intermediaries within the meaning of Art. 2, subs. 2, MLA and Art. 2, subs. 4 letter b, MLA, or legally exercise abroad the activities mentioned in Art. 2, subs. 2 letter d, MLA and manage accounts while being subject to regulations and supervision equivalent to those of the MLA.<sup>1</sup>
- 5 A financial intermediary who carries out a cash transaction outside of any lasting business relationship may waive obtaining a written declaration by the contracting party attesting to the identity of the beneficial owner when one or more apparently interconnected transactions do not reach CHF 15, 000.-. For transactions with virtual currencies, this threshold is set at CHF 1,000.<sup>1</sup>

- 6 However, the financial intermediary must always obtain from the contracting party a written declaration indicating the identity of the beneficial owner:
- if there is any doubt that the contracting party, the controlling owner, where legal entities are concerned, and the beneficial owner of the assets are the same persons;
  - if the contracting party is a domiciliary company;
  - in the case of transfers of funds or assets to abroad;
  - if a Swiss authority has warned against widespread abuse or against a particular contracting party or in general against the business establishments of the country in which the contracting party has its domicile or registered office;
  - if there are indicia of money laundering or terrorism financing;
  - when a business relationship is established by correspondence;
  - in the case of a simple partnership.<sup>1</sup>

#### Domiciliary company

- 7 A domiciliary company is a legal entity or a partnership whose active management bodies, activity exercised or assets owned are held principally in trust for the account of a third party beneficial owner.

The following in particular are indicia of the existence of a domiciliary company:

- a. it does not have its own business establishments,
- b. it does not have any personnel of its own,
- c. it does not engage in a commercial or manufacturing activity or another commercially operated activity,
- d. it does not exercise effective control over the assets which it holds.

If, despite the presence of one of these indicia, the contracting party is not a domiciliary company, the financial intermediary shall place an explanatory written note in the file.

#### Information required

- 8 The financial intermediary must obtain the following information from the contracting party about the beneficial owner, in so far as it is available: the surname, first names, date of birth, complete address of permanent residence and the nationality or nationalities;

#### Collective investments

- 9 When the contracting party holds collective investments or is constituted as an unlisted holding company:
- if it is for the account of up to twenty beneficial owners, the financial intermediary must always obtain a declaration concerning the identity of all the beneficial owners;
  - if it is for the account of more than twenty beneficial owners and if the forms of investment or holding company, or their promoter or sponsor, are not subject to

adequate regulation and supervision with regard to the fight against money laundering and terrorism financing, the financial intermediary is required to obtain a declaration concerning the beneficial owners who hold more than 5% of the collective investments or the holding company.

#### Form of declaration

- 10 The written attestation of the identity of the beneficial owner must be dated and signed by the contracting party. If the latter is not a natural person, the attestation must be signed by its authorised bodies. If the contracting party is represented by an attorney, a power of attorney must be produced, signed by the contracting party or his authorised bodies.
- 11 The original of the attestation, and a photocopy of the possible power of attorney of its signatory, shall be kept in the file of the business relationship.

#### Failure of verification

- 12 No transaction may be carried out before the documents and information required to identify the beneficial owner of the assets that are the subject of the business relationship are obtained in full. If the contracting party eludes the duty to provide a written declaration attesting to the identity of the beneficial owner, or if a doubt persists, despite an attempt to clarify, as to the identity of the beneficial owner, the financial intermediary shall refuse to establish the business relationship or, if necessary, immediately break it off in accordance with Directive 13 <sup>1</sup>.

<sup>1</sup> In accordance with Committee resolution of 20 March 2023 and FINMA ratification of 25 April 2023