

The register, access and control

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The register is kept electronically by the Federal Office of Justice in Bern.¹ It is not public. Full online access is reserved for the control unit, for the criminal prosecution authorities, the tax authorities, the Money Laundering Reporting Office, FINMA and other authorities with statutory tasks in the fight against money laundering and terrorist financing. Financial intermediaries and other persons subject to the AMLA have access to the extent required for their due diligence.² The decision against public access reflects the judgment of the Court of Justice of the European Union of 22 November 2022 in *WM and Sovim*. The Court held that general public access to the beneficial ownership registers of the Member States violated the rights to privacy and to the protection of personal data. The Italian register, discussed below, is shaped by the same judgment.³

Control is exercised by a unit of the Federal Department of Finance (*Kontrollstelle*). It categorizes entities by risk, carries out risk-based checks, may issue directives and has access to the information systems of other authorities.⁴ Financial intermediaries and authorities who discover a discrepancy between the register and their own information must report it within thirty days.⁵ The discrepancy report turns every bank in Lugano into a check on the register. A bank that has identified a different beneficial owner under the CDB than the one recorded in the register must notify the discrepancy. The control unit then examines it with the company.

1 Sanctions

Intentional breaches of the duties to report or to disclose are punishable by fines of up to CHF 500,000. Disregarding an order of the control unit is punishable by a fine of up to CHF 100,000.⁶ For repeated violations the law provides for the suspension of the shareholders' voting and economic rights and, as a last resort, for the dissolution and liquidation of the company.⁷ The criminal sanction is directed at the persons responsible

within the company, which in practice means the board members. For the many Lugano lawyers and fiduciaries who sit on the boards of client companies as fiduciary directors, the risk is personal. A fiduciary director who reports a nominee as beneficial owner, or who fails to update the report after a change, exposes himself to a fine that far exceeds his annual fee.

For the practitioner. Steps for a Lugano board member or fiduciary before 1 April 2027: - Draw up a list of all companies in which the firm holds board seats or acts as domicile, including foreign companies with Ticino real estate or effective management in Lugano. - For each company, reconcile the share register, the former register under Art. 697I CO, the Form A or Form K held by the bank and the documents of any fiduciary or trust holding. - Determine the beneficial owner under the 25 per cent and control tests, and document the reasoning where the subsidiary rule (most senior manager) applies. - Check whether the simplified procedure is available, and file through EasyGov.swiss before the deadline. - Establish an internal procedure that captures changes of control within one month.

2 Notes

1. Grant Thornton (above); Homburger (above). ↩
2. TJPG, final vote text (above), provisions on access; Forvis Mazars (above). ↩
3. Court of Justice of the European Union (Grand Chamber), judgment of 22 November 2022, joined cases C-37/20 and C-601/20, WM and Sovim SA v Luxembourg Business Registers, ECLI:EU:C:2022:912, <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:62020CJ0037>. The Court declared Art. 1 point 15 lit. c of Directive (EU) 2018/843 invalid insofar as it amended Art. 30 para. 5 lit. c of Directive (EU) 2015/849 to require access for any member of the general public, as an interference with Arts. 7 and 8 of the Charter of Fundamental Rights that was not limited to what is strictly necessary. ↩
4. Homburger (above); TJPG, final vote text (above), provisions on the control unit. ↩
5. law.ch, June 2026 (above), on the thirty-day period. ↩
6. Grant Thornton (above); TJPG, final vote text (above), penal provisions. ↩

7. Homburger (above). ↩

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