GETTING THE DEAL THROUGH

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in 19 jurisdictions worldwide

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Anti-Money Laundering 2013

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Switzerland

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Domestic legislation

1 Domestic law

Identify your jurisdiction's money laundering and anti-money laundering (AML) laws and regulations. Describe the main elements of these laws.

Switzerland provides far-reaching instruments to combat money laundering and terrorist financing. The implemented instruments contain regulatory preventive measures under administrative law, repressive measures under penal law and law enforcement, international cooperation measures and soft law regulation such as the Swiss Bankers' Association's (SBA) (www.swissbanking.org/en/home/) Agreement on the Swiss Banks' Code of Conduct with Regard to the Exercise of Due Diligence (CDB 08), available at shop.sba.ch/11008_e.pdf, likely to be published in an amended version in mid 2013, and the anti-money laundering regulations of the various self-regulatory organisations (SROs); the list of certified SROs is available at www.finma.ch/E/BEAUFSICHTIGTE/Pages/sro.aspx).

Most importantly, in connection with the regulation for the combat of money laundering, in 1998 Switzerland enacted its own anti-money laundering law, the Federal Act of 1997 on Combating Money Laundering and Terrorist Financing in the Financial Sector (AMLA, www.admin.ch/ch/e/rs/9/955.0.en.pdf), which regulates the combat of money laundering and terrorist financing.

The AMLA is a framework law. It sets out the principles that are specified in detail in an implementing regulation. This approach puts the authorities in a position to adapt the principles to the concrete business activities they are supervising. The SROs (see question 2) accordingly set out in detail the obligations of the AMLA in their regulations.

The AMLA is based on the respective provisions set forth in the Swiss Penal Code (PC) (www.admin.ch/ch/e/rs/3/311.0.en.pdf), which define money laundering as any act that attempts to conceal the origin, or prevent the discovery or the confiscation of assets, whereby the offending person knows or has to assume that they derive from a criminal offence (article 305bis, PC).

Furthermore, the PC defines terrorist financing as accumulating assets or putting assets at the disposal of any attempt to finance a violent criminal act that aims to intimidate the population or to compel a state or an international organisation to perform or abstain from performing an act (article 260, quinquies PC).

A major part of the AMLA provisions detail the due diligence duties in connection with a financial intermediary's handling of third party assets (ie, assets that are not owned by the financial intermediary (FI)). Among others, the AMLA obliges the FI to duly identify the contractual party and to duly determine the beneficial owner (BO), if any. In connection with the determination of the BO, the CDB 08's very detailed provisions, although originally not an official legislatory act but a code of conduct privately agreed among the Swiss banks, represent the de facto minimal standard to which an FI is well advised to implement and adhere. The SROs' regulations follow, as a rule, the system of the CDB08 and the Swiss Financial Market Supervisory Authority (FINMA) declared it is part of the supervisory standard that needs to be adhered to by each bank and securities' dealer.

The AMLA's provisions are further detailed in a variety of directives, ordinances, circulars and explanatory notes issued by FINMA (www.finma.ch/e/pages/default.aspx). The most important respective acts are the FINMA anti-money laundering ordinance (GwV-FINMA) (www.admin.ch/ch/d/sr/9/955.033.0.de.pdf), available in German, French and Italian only), the ordinance on professional practice of financial intermediation (VBF) (www.admin.ch/ch/d/sr/9/955.071.de.pdf), available in German, French and Italian only and the FINMA-Circular 2011/1 Financial Intermediation under AMLA (www.finma.ch/d/regulierung/Documents/finma-rs-2011-01.pdf, available in German, French and Italian only).

Additionally, Switzerland has been a member of the Financial Action Task Force on Money Laundering (FATF) (www.fatf-gafi.org/) since the latter's creation in 1989. Switzerland has actively participated in the work involved in revising the 40 Recommendations. In April 2012, the Federal Council (Switzerland's executive power) took note of and welcomed the revised FATF recommendations. Moreover, the Federal Council appointed an interdepartmental working group under the leadership of the Federal Department of Finance to draft recommendations on implementing the revised FATF recommendations and a consultation draft by the first quarter of 2013. The said draft was published on 27 February 2013 and the consultation period will end by 15 June 2013. While industry experts state that the revised recommendations will only require minor amendments of the existing Swiss anti-money laundering regime, the SBA published the following comments worth taking note of:

- *The SBA acknowledges the need to revise and improve the recommendations from time to time, and therefore welcomes the proposals in principle.*
- *The SBA has always expressed scepticism concerning the addition of tax crimes to the list of predicate offences. The SBA welcomes the fact that the FATF leaves it up to the respective countries to define the terms of the crime as predicate offence for money laundering.*
- *The SBA expects Switzerland to follow the FATF's recommendations relating to tax crimes as predicate offences for money laundering. In addition to the existing criminal offence of tax fraud, a qualified criminal offence must be defined that includes bad faith and a high volume threshold in addition to the forgery of documents. This will also meet the FATF's requirement that only serious crimes and not trivial offences should be considered predicate offences for money laundering.*
- *The SBA also welcomes the fact that the FATF recognises the Swiss regulations for listed companies with regard to bearer shares (share register). Switzerland must now work on a practicable solution for non-listed companies with bearer shares.*

- *The exchange of financial data between financial information units (FIUs) for the purposes of analysis is aimed at improving the fight against money laundering and is therefore understandable in principle.*
- *However, it is absolutely essential that the exchange of information between FIUs adheres strictly to data protection requirements. Financial data shall therefore only be exchanged between FIUs in connection with specific cases, and shall only be transmitted to other authorities with a written approval of the MROS and in accordance with the provisions of Swiss data protection law. This will prevent the normal administrative and judicial assistance procedures from being circumvented.*

Money laundering

2 Criminal enforcement

Which government entities enforce your jurisdiction's money laundering laws?

In Switzerland, anti-money laundering regulation is regulated exclusively at state (federal) level. However, offences of anti-money laundering regulation are, as a rule, prosecuted by the cantonal state prosecution authorities (article 29, AMLA). Under article 24 of the Federal Criminal Procedure Act (http://www.admin.ch/ch/e/rs/3/312.0.en.pdf), the Federal Prosecutor's Office may be competent if money laundering is done abroad or if it is done in several cantons and there is no clear focus on one canton. The federal prosecutor may again delegate the investigation to the cantonal state prosecutors (article 25, paragraph 2, Federal Criminal Procedure Act). The Federal Criminal Police and the Federal Prosecutor's Office therefore usually prosecute cases that have an international dimension, involve several cantons, or which deal with money laundering and terrorist financing, organised crime, bribery and white-collar crime. Switzerland has a specialised Federal Criminal Court ruling on such cases brought before it by the federal attorney general.

An investigation by the criminal authorities is often triggered by the regulatory authorities filing a criminal complaint against the alleged offender. FINMA, in particular its Money Laundering and Market Analysis section, is responsible for the enforcement of Switzerland's anti-money laundering regulation in the banking sector. For the non-banking or para-banking sector, self-regulatory bodies, namely, the aforementioned SROs, are in charge of supervising FIs.

In turn, the Money Laundering Reporting Office, Switzerland, (MROS, www.fedpol.admin.ch/content/fedpol/en/home/themen/kriminalitaet/geldwaescherei.html) is Switzerland's central money laundering reporting office and functions as a relay and filtration point between financial intermediaries and the law enforcement agencies. MROS is an administrative unit with specialised tasks, organised as a section within the Federal Office of Police. It is responsible for receiving and analysing suspicious activity reports (SARs) in connection with money laundering. A template form for such an SAR is available under http://www.fedpol.admin.ch/content/dam/data/kriminalitaet/geldwaescherei/formular-e.doc. When receiving an SAR, MROS will, as a rule, by means of a computerised access procedure, verify whether a person reported or notified to it is listed in any of the following databases:

- the National Police Index;
- the Central Migration Information System;
- the automated Register of Convictions;
- the State Security Information System; or
- the person, file and case management system used in the field of mutual assistance in criminal matters (article 35a, AMLA).

If, having conducted the aforementioned checks, MROS deems a specific report relevant and worth further investigation, MROS forwards the information to the law enforcement bodies, usually the cantonal prosecutors and, in cases of particular complexity, the federal prosecutor (see above).

3 Defendants

Can both natural and legal persons be prosecuted for money laundering?

Under Swiss anti-money laundering regulation, both natural and legal persons may be prosecuted for money laundering offences if they meet the requirements under the PC.

As a general rule, a crime that is committed in the context of a legal entity's business carried out in accordance with its purposes is only attributed to the legal entity if it is not possible to attribute the particular offence to a specific natural person within the legal entity due to the insufficient organisation of such legal entity. However, if the circumstances to be judged are connected to money laundering (or criminal organisations, the financing of terrorism, or active bribery), a legal entity may be penalised irrespective of any natural person's criminal liability. This is the case when the legal entity is responsible for failing to take all reasonable organisational measures in order to prevent the offence.

4 The offence of money laundering

What constitutes money laundering?

Anybody committing an act capable of preventing the investigation into the origin of, the discovery of or the seizure of assets that as he, she, or it knows or has to assume originate from a crime, may be punished by imprisonment or by a fine (article 305bis, paragraph 1, PC). It is disputed whether the crime can also be committed by omission. However, it is sufficient that the person was aware of the fact that the assets originated from a criminal activity; although the crime cannot be committed by negligence alone, the wording 'has to assume' indicates a broad understanding of the acting person's intent.

A financial institution cannot be prosecuted for its customers' money laundering crimes unless such financial institution was itself in breach of its own anti-money laundering obligations.

Furthermore, article 305ter, PC stipulates that anybody who, acting in a professional capacity, accepts, stores, helps to invest or to transfer third-party assets and who omits to use due diligence to determine the BO's identity, will be punished by imprisonment or by a fine.

5 Qualifying assets and transactions

Is there any limitation on the types of assets or transactions that can form the basis of a money laundering offence?

The term 'asset' is interpreted extensively and includes any increase or non-reduction of assets and its surrogates as well as the reduction or non-increase of liabilities. No limitation applies to what types of transactions can form the basis of a (criminal law) money laundering offence; regulatory obligations, however, only apply to certain financial intermediaries as outlined below.

6 Predicate offences

Generally, what constitute predicate offences?

Anything defined as a 'crime' under Swiss law may qualify as a predicate offence. A crime is defined as a criminal act that can be punished by more than three years of imprisonment (article 10, paragraph 2, PC). Consequently, a long list of possible predicate offences applies. Examples are drug trafficking, fraud, theft, embezzlement, human trafficking, bribery, product piracy, counterfeiting of goods, insider trading or share manipulation. Criminal infringements of the laws of other jurisdictions also serve as predicate offences; however, it is required that the act be a criminal offence both under the applicable foreign law and under Swiss law. According to current revision efforts regarding anti-money laundering legislation as a result of the FATF 40 Recommendations revised in February 2012, severe violations of tax law shall constitute a predicate offence. It remains to be seen

if, and to what extent, the various jurisdictions will implement the relatively vague indications of the pertaining FATF Recommendations. As mentioned, Switzerland released the draft revised regulation for consultation at the end of February 2013.

7 Defences

Are there any codified or common law defences to charges of money laundering?

There are no specific defences to the charge of money laundering, but all defences generally available may apply.

8 Resolutions and sanctions

What is the range of outcomes in criminal money laundering cases?

Under the PC, the maximum penalty for money laundering offences is imprisonment of up to three years or a monetary penalty, in severe cases of up to five years imprisonment combined with a monetary penalty of up to 1.5 million Swiss francs.

9 Forfeiture

Describe any related asset freezing, forfeiture, disgorgement and victim compensation laws.

Assets derived from a crime may be confiscated by the state. Courts may order the forfeiture of assets of which a criminal organisation disposes. If such assets are no longer available, compensatory assets of a corresponding value are confiscated. Assets held by a third party may also be confiscated unless such party has acquired the assets bona fide without knowledge of the grounds for forfeiture and has paid an appropriate amount or forfeiture would be unreasonably burdensome. Forfeiture may be ordered in addition to other penalties and also irrespective of the criminal liability of a person or legal entity.

An FI having a 'well-founded suspicion' (a term that itself entails complex interpretation questions) that assets involved in a transaction or business relationship may originate from money laundering or the like must file an SAR with MROS and concurrently freeze the assets under its control and connected to the report. If MROS confirms the relevance of the SAR, it regularly passes the case on to the cantonal prosecution authorities (or, in certain cases, to the Federal Prosecutor's Office, see question 2). If the competent prosecuting authority does not issue a freezing order, the assets must be released after five working days. During this period, the FI must not inform the affected or any other third parties (which, in practice, can put the FI in quite a delicate position when approached by the contracting party within the five-day period).

10 Limitation periods

What are the limitation periods governing money laundering prosecutions?

The limitation period for money laundering is seven years and in certain cases 15 years (article 97, PC).

11 Extraterritorial reach

Do your jurisdiction's money laundering laws have extraterritorial reach?

Provided that an act is of a criminal nature both under the laws of Switzerland and under the laws of the foreign jurisdiction in which it is committed, money laundering offences committed abroad can be prosecuted in Switzerland.

AML requirements for covered institutions and individuals

12 Enforcement and regulation

Which government entities enforce your jurisdiction's AML regime and regulate covered institutions and persons?

Supervision and enforcement

FINMA, in particular its Money Laundering and Market Analysis section, is responsible for the enforcement of Switzerland's anti-money laundering regulation in the banking sector. FINMA analyses the applicable anti-money laundering regulations and takes the appropriate steps to amend these where necessary. For the non-banking or para-banking sector, self-regulatory bodies, the aforementioned SROs, are in charge of supervising the FIs. The latter are obliged to apply for membership within an SRO in the absence of which the FI is not permitted to conduct financial intermediation services. The 11 currently available SROs in Switzerland are licensed and supervised by FINMA. Whether a FI is a member of an SRO, and if so to which SRO he, she or it is a member, may be found in FINMA's search engine available at www.finma.ch/e/beaufsichtigte/sro/Pages/sro-mitglieder.aspx.

If an FI in the para-banking sector prefers, he, she or it may also apply for direct supervision by FINMA as a so-called directly subordinated financial intermediary (DSFI).

FINMA summarises its activities as follows (emphasis added, see www.finma.ch/e/finma/Pages/Ziele.aspx for the full text):

> *In its role as state supervisory authority, FINMA acts as an oversight authority of banks, insurance companies, exchanges, securities dealers, collective investment schemes, distributors and insurance intermediaries. It is* ***responsible for combating money laundering*** *and, where necessary, conducts restructuring and bankruptcy proceedings, and issues operating licences for companies in the supervised sectors. Through its supervisory activities, it ensures that supervised institutions comply with the requisite laws, ordinances, directives and regulations, and continue at all times to fulfil the licensing requirements.*

FINMA imposes sanctions and provides administrative assistance to the extent permissible by law. It also supervises the disclosure of shareholdings, conducts the necessary proceedings, issues orders and, where wrongdoing is suspected, files criminal complaints with the Swiss Federal Department of Finance FDF. Moreover, FINMA supervises public takeover bids and, in particular, is the complaints body for appeals against decisions of the Takeover Board (TOB). Finally, FINMA also acts as a regulatory body: it participates in legislative procedures, issues its own ordinances and circulars where authorised to do so, and is responsible for the recognition of self-regulatory standards.

Additionally, FINMA engages in the work of the Swiss FATF delegation. It is also responsible for dealing with issues relating to financial crime, such as the financing of terrorism, organised crime, corruption, proliferation financing and embargo provisions. FINMA may also initiate criminal investigations by informing the Federal Prosecutor's Office.

The Swiss Federal Gaming Board (SFGB, http://www.esbk.admin.ch/esbk/en/home.html) supervises the casinos.

MROS's key task is to act as a hub between the FIs and the criminal prosecution authorities. The supervisory authorities, MROS and the law enforcement bodies have established a coordinating committee. Further coordination bodies exist between FINMA and the SROs as well as among the SROs themselves.

Ongoing and periodic assessment of the financial intermediaries and their customers or business partners

FINMA issued directives providing for individual risk-related audit intervals. Depending on the individual FI's risk classification, these audit intervals vary from one to a maximum of three years.

According to the AMLA, the FIs are, among other things, requested to verify the contracting party's and the BO's identity as soon as related doubts arise in the course of any given business relationship or, in certain cases, in the conduct of establishing a business relationship (which, in practice, can pose very difficult questions to the FI as to how the FI has to act to be compliant).

13 Covered institutions and persons

Which institutions and persons must carry out AML measures?

The AMLA applies to any entity or natural person qualifying as an FI in the scope of the AMLA. Article 2, AMLA contains a (non-exhaustive) list of persons qualifying as FIs.

One major first group of FIs includes the professional servicers within the financial sector such as banks, certain categories of fund managers, investment companies with variable capital, limited partnerships for collective capital investments, investment companies with fixed capital, asset managers within the meaning of the Collective Investment Schemes Act (www.admin.ch/ch/d/sr/9/951.31.de.pdf), certain categories of insurance providers, securities dealers, and casinos. These institutions are subject to complete prudential supervision.

A further major group represents the non-banking or parabanking sector, which is subject to limited supervision. According to the relevant catch-all provision (article 2, paragraph 3, AMLA), legal or natural persons 'who, on a professional basis, accept or hold or deposit assets belonging to third parties or who assist in the investment or transfer of such assets', qualify as FIs pursuant to the AMLA. These are asset managers and credit institutions, inter alia those offering financial leasing, commodities traders, traders in banknotes, precious metals, as well as lawyers and notaries engaging in financial intermediation.

According to article 7 of the VBF, persons below the following thresholds do not qualify as FIs:

- gross profit equal to or in excess of 20,000 Swiss francs per annum;
- contractual arrangements with more than 20 parties per annum;
- unlimited authority to dispose of third party assets in excess of 5 million Swiss francs; and
- the conduct of transactions in excess of 2 million Swiss francs per annum.

14 Compliance

Do the AML laws in your jurisdiction require covered institutions and persons to implement AML compliance programmes? What are the required elements of such programmes?

Yes. The GwV-FINMA, the CDB08 as well as the SROs' regulations provide for risk-based client identification and transaction monitoring. FIs are requested to implement a KYC risk management programme, which is normally done by implementing respective internal AML directives. High-risk business relationships or transactions must be defined accordingly and assessed more thoroughly, for instance with respect to the assets' origins. Where necessary, plausibility checks must be made and documented. All cross-border wire transfers must include details about the funds' remitters.

In our experience it is most important that the internal AML directive of FIs are tailor-made to his, her or its business. If an AML audit conducted by FINMA or an SRO determines discrepancies in the FI's conduct of business compared with his, her or its directives, the FI may be sanctioned even if such discrepancy does not represent a breach of AML regulation.

The implementation of computer-based transaction monitoring systems is mandatory for banks, securities dealers, fund managers, investment companies and asset managers of collective investments. FIs are requested to implement (preferably tailor-made) written internal guidelines or directives. Also, an FI-internal competence centre for combating money laundering must be established. The individuals in charge of such duty have to file a variety of personal records with the SRO or FINMA to evidence their qualification to do so. They must be trained in AML matters on a regular basis.

In February 2013, the Federal Council proposed changes to the AMLA that would provide for additional compliance obligations of the covered institutions and persons, who become obligated to check whether funds received have been declared.

15 Breach of AML requirements

What constitutes breach of AML duties imposed by the law?

The obligations under the AMLA contain due diligence obligations, the obligation to file SARs and the obligation to freeze assets related to the SAR. Any breach of such obligations constitutes a breach of AML duties. Switzerland has implemented the FATF 40 Recommendations in its anti-money laundering regulation. Consequently, an FI is obliged to carry out a variety of specific due diligence duties under the AMLA (articles 3 to 11, AMLA). Due to the FI's position as guarantor, a criminal offence may also be committed by way of omission of specific duties (article 11, PC). The FI's duties include due diligence obligations such as:

- the verification of the identity of the contracting party;
- the determination of the BO;
- the establishment, monitoring and regular amendment of a written 'client history';
- in certain cases the clarification of the economic background and purpose of a transaction or business relationship;
- appropriate record keeping of customer, BO and transaction data; and
- the implementation and maintenance of adequate internal organisational measures (eg, by implementation of formal internal directives, the establishment of an AML department and the training of staff).

The FI is further obliged to report 'well-founded' suspicions of money laundering to MROS by filing an SAR with the latter. In the event of such suspicion, the FI is requested to freeze any related assets while it is prohibited to inform the affected party of the matter during the following five days. Non-compliance with the reporting duty may be sanctioned by fines up to 500,000 Swiss francs (article 37, AMLA). The law addresses tipping off of clients in article 10, paragraph 2, AMLA. After the FI has filed an SAR and frozen the assets connected to the report, the FI must not inform those affected or third parties of the report during a term of, at most, five days.

16 Customer and business partner due diligence

Describe due diligence requirements in your jurisdiction's AML regime.

When starting a business relationship, the FI must verify the contracting party's identity by assessing and photocopying the (potential) contracting party's official documents and noting name, date of birth, nationality and home address. If the contracting party is a legal entity, the identity of the natural person who acts on behalf of it and such natural person's power to legally bind the entity must also be verified and documented in the FI's AML records.

Whenever the contracting party is not identical to the BO or doubts exist in this regard, or whenever the contracting party is a domiciliary company or a cash transaction of significant amount is made, the FI must determine the BO's identity. In addition thereto, the contracting party is requested to render a respective written declaration in what is known as Form A (available under shop.sba.ch/11008_e.pdf, page 42) or the corresponding form of the competent SRO.

If transactions or business relationships seem unusual or if there are indications that involved assets are related to criminal actions, the FI has a special obligation to clarify their economic background and purpose.

17 High-risk categories of customers, business partners and transactions

Do your jurisdiction's AML rules require that covered institutions and persons conduct risk-based analyses? Which high-risk categories are specified?

Yes. On the basis of an ordinance, Switzerland implements the economic sanctions of the United Nations against individuals and entities belonging or related to Osama Bin Laden, the al-Qaeda Group or the Taliban. Any assets or resources attributed to such persons and entities listed by the United Nations, are frozen. It is also prohibited to, directly or indirectly, transfer assets or provide funds or resources to these persons and entities. The assets remain frozen until the list or ordinance is modified. Transactions for or on behalf of the said persons or entities moreover qualify as suspicious transactions and are subject to reporting duties under the AMLA.

In addition, based on a United Nations Resolution, the United States compiles lists of persons and entities deemed to be terrorists (the 'Bush lists', named after a decree issued by former United States president, George W Bush). In Switzerland, the supervisory authorities forward these lists to the FIs with the order to apply enhanced due diligence. The FIs check their business relationships accordingly and undertake thorough assessments if a listed person or entity is among its business partners. The FIs must file an SAR with the MROS if suspicion in the sense of the AMLA is confirmed. The assets related to the such report must be frozen (see above).

According to the implementing regulations, decisions to enter into a business relationship with politically exposed persons (PEPs) must be taken with senior corporate body involvement and such relationships must be adequately monitored.

18 Record keeping and reporting requirements

Describe the record keeping and reporting requirements for covered institutions and persons.

The financial intermediaries must keep records of transactions and assessments undertaken according to the AMLA in a way that allows the supervisory authorities, the SROs and the prosecuting authorities to review such files and the transactions' compliance with the provisions of the AMLA. The records must be kept for a minimum of 10 years after a transaction's execution or the termination of the business relationship. Most importantly, the aforementioned authorities emphasise keeping up a reliable paper trail of any transactions involving financial intermediation.

With respect to reporting requirements, see question 12.

Financial intermediaries who submit SARs and freeze assets may not be prosecuted for a breach of professional, commercial or official secrecy. They may also not be held liable for a breach of contract if they have acted with due care in fulfilling their duties under the AMLA.

19 Privacy laws

Describe any privacy laws that affect recordkeeping requirements, due diligence efforts and information sharing.

FIs are prevented by professional secrecy (in the case of banks, securities traders and managers of collective investment schemes) and by data protection laws to disclose their findings to third parties other than through the legal means provided by the reporting rights and obligations of the AMLA and the PC.

As for record keeping requirements and due diligence efforts, see question 16.

20 Resolutions and sanctions

What is the range of outcomes in AML controversies? What are the possible sanctions for breach of AML laws?

In 2011 (the annual report for 2012 was not yet available when drafting this chapter), MROS registered a significant increase in the number of SARs filed. MROS reports having received a total of 1,625 SARs, an increase of 40 per cent over 2010. According to MROS, the total asset value involved rose to a record sum of over 3 billion Swiss francs in 2011.

If FINMA is to discover an FI violating its anti-money laundering obligations, FINMA shall take necessary measures to restore legality. In severe cases, this may even result in the liquidation of the FI as a result of FINMA revoking the FI's licence. SROs may, in contrast to FINMA, also impose fines on financial intermediaries. As a rule, an FI will be expelled by the SRO if the FI is not adhering to his, her, or its anti-money laundering duties. The FI is then submitted to direct supervision by FINMA, which may take further action against it.

As explained, Swiss banks are parties to the CDB08. By agreeing to said regulation, the Swiss banks have agreed to be sentenced with fines of up to 10 million Swiss francs. In practice, until the present date, fines imposed by the SBA under the CDB08 fall within a range of some thousand Swiss francs up to, to the best of our knowledge, approximately 500,000 Swiss francs.

21 Limitation periods

What are the limitation periods governing AML matters?

AML offences fall under the statute of limitations of seven years pursuant to article 52 of the Federal Act on the Swiss Financial Market Supervisory Authority (www.admin.ch/ch/e/rs/9/956.1.en.pdf).

22 Extraterritoriality

Do your jurisdiction's AML laws have extraterritorial reach?

In practice, the following FIs fall under the territorial scope of the AMLA:

- FIs incorporated in Switzerland, even if they render their financial services (exclusively) abroad; and
- FIs incorporated abroad who employ persons in Switzerland who, on a commercial basis inside or outside Switzerland, enter into transactions on their behalf or bind them legally (called formal or factual branch offices).

In contrast, the following FIs fall outside the scope of the AMLA:

- FIs incorporated abroad who employ persons in Switzerland who do not enter into transactions on their behalf or do not legally bind them (eg, representation and mere advisory services); and
- FIs incorporated abroad who render cross-border services, seconding persons employed abroad only on a temporary basis to Switzerland for negotiation purposes or in order to conclude individual contracts.

Civil claims

23 Civil claims and private enforcement

Enumerate and describe the required elements of a civil claim or private right of action against money launderers and covered institutions and persons in breach of AML laws.

A complaint may be made by any legal or natural person by way of a filing with MROS. If MROS passes the claim on to prosecution authorities, the latter are in charge of further investigating the facts and, possibly, bring a claim before the court.

A civil law claim may be made based on the regular Swiss civil law regulations in the case a party was damaged by the other party acting fraudulently (contract, tort or unjust enrichment).

Update and trends

In 2012 , the Federal Council (ie, Switzerland's executive government) initiated a number of strategic steps in the area of financial market policy, a core aspect of which shall be 'combating financial crime more intensively' (see the Federal Council's Report on International Financial and Tax Matters 2013 (the Report), page 6, available at www.sif.admin.ch/00714 /index.html?lang=en). Within the frame of such a strategy, the Federal Council prepared its concept for new due diligence requirements for financial institutions, the so-called financial integrity strategy, *Weissgeldstrategie*. The Federal Council states in the Report on page 6 that 'when accepting new assets, financial intermediaries should take into account not only the risks of money laundering and terrorist financing, but also tax considerations. This can be done using corresponding self-regulation provisions that are recognised and monitored by the supervisory authority'.

In addition thereto, as mentioned above, the Swiss authorities are in the course of deciding as to how the closely linked revised FATF recommendations published in February last year are to be implemented in Switzerland's AML regulation. For both proposals, consultation by interested parties was initiated on 27 February 2013, which shall be completed by 15 June 2013. It remains to be seen at what point in time proposals for amended regulations will be forwarded to the Swiss Parliament for discussion, finalisation and implementation.

While Switzerland's present AML regime is widely in accordance already with the revised FATF regulation, certain specific aspects require some elaboration. According to the Federal Council, the AML consultation draft includes the following key initiatives (see page 30 of the Report and the summary available under www.news.admin.ch/message/index.html?lang=en&msg-id=47934):

- qualification of serious tax offences as a predicate offence to money laundering;
- increase in the transparency of legal entities (disclosure obligation for holders of bearer and registered shares of unlisted companies in order to enhance the transparency of legal entities);
- clarification of due diligence requirements with respect to the determination of beneficial owners;
- extension of due diligence requirements to domestic PEPs as well as persons working for international organisations using a risk based approach;
- introduction of an obligation for payments for purchases above a certain monetary threshold to be processed via a financial intermediary subject to the AMLA, namely, purchases of real estate and movables may be paid for in cash only up to a sum of 100,000 Swiss francs. It is mandatory for payments of larger sums to be processed via a financial intermediary subject to the AMLA; and
- optimisation of the powers of the MROS.

The consultation documentation regarding the revised AMLA are available under www.admin.ch/ch/d/gg/pc/pendent.html#EFD (German, French and Italian versions only).

Finally, in fulfilling the revised FATF Recommendations, Switzerland's Stock Exchange Act is to be amended to make the offences of insider trading and price manipulation qualify as crimes. The respective legislative revision is expected to enter into force on 1 May 2013 .

24 Supranational

List your jurisdiction's memberships of supranational organisations that address money laundering.

Switzerland has been a member of FATF and has played an active role in its activities since its establishment in 1989. The MROS is a member of the Egmont Group, which is an international association of 'Financial Intelligence Units (FIU)' whose objective is to foster a safe, prompt and legally admissible exchange of information in order to combat money laundering and terrorist financing.

25 Anti-money laundering assessments

Give details of any assessments of your jurisdiction's money laundering regime conducted by virtue of your membership of supranational organisations.

The results of Switzerland's most recent FATF mutual evaluation in 2005 were very good. Given that the deficiencies identified by FATF were only minor, Switzerland was able to undergo a simplified process for this mutual examination compared with countries such as, Germany or the United States. In 2011, Switzerland published its biennial update report.

26 FIUs

Give details of your jurisdiction's Financial Intelligence Unit (FIU).

Switzerland's FIU is MROS. It is an administrative service of the Federal Office of Police. It can be contacted at the following address:
Federal Office of Police
Money Laundering Reporting Office Switzerland (MROS)
Nussbaumstrasse 29
3003 Bern
Switzerland
Telephone: +41 31 323 40 40
Fax: +41 31 323 39 39

As mentioned, the MROS is a member of the Egmont Group. For further details see questions 2, 15 and 20.

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27 Mutual legal assistance

In which circumstances will your jurisdiction provide mutual legal assistance with respect to money laundering investigations? What are your jurisdiction's policies and procedures with respect to requests from foreign countries for identifying, freezing and seizing assets?

Switzerland grants judicial assistance in criminal matters in money laundering investigations provided that the requesting country can show that the alleged offence is a criminal act both under the requesting country's laws and under Swiss law. The request, as a rule, has to specify the assets concerned and the suspect persons (ie, no 'fishing expeditions'); however, as a result of recent discussions about the scope of banking secrecy, Swiss authorities have recently also permitted requests that referred to a group of persons determined by general patterns of behaviour and not named individually. In such cases, professional secrecy is usually lifted. The same is true for the FATCA agreement entered into between Switzerland and the United States in late 2012 (which remains subject to the parliament's approval). In all likelihood, the said regulation will enter into force in Switzerland in 2014.

Upon request, Switzerland may also freeze and seize assets belonging to a suspect. This can be effected either by complying with a request received from a foreign authority (through judicial assistance proceedings) or, in particular if a request received is deemed not to be sufficient, for example, for formal reasons, by opening an AML investigation on its own initiative in Switzerland and by freezing the assets in these national AML proceedings, which then permits the foreign authority to amend its request.

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