Combating Money Laundering in Switzerland

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This brochure was published on the occasion of a media event, held on 25 October 2002 in Berne and updated on the occasion of the media event, held on 30 October 2003 in Berne.

Foreword to the second edition

This second edition of the brochure entitled “Combating Money Laundering in Switzerland” deals with recent developments in combating money laundering at the national and international levels. Included in this is the complete revision of the Ordinance on the due diligence obligations of the Money Laundering Control Authority (MLCA) and the planned reorganisation of insurance broker supervision, as well as the revised standards of the Financial Action Task Force (FATF). Mention is also made of the initial experience in implementing the new Money Laundering Ordinance of the Swiss Federal Banking Commission (SFBC) and with the newly-opened casinos.

There are also descriptions of the activities of the individual authorities in the field of combating money laundering as was the case in the first edition. The statistics section has also been updated for the new publication. A new edition was needed because the brochure became rather popular after its release on 25 October 2002, and was also considered to be a valuable tool by the authorities themselves. One year after its appearance it had, however, lost some ground in terms of its validity.

The authors

Foreword to the first edition

Combating Money Laundering: Switzerland in the front line

Money laundering is the most significant economic phenomenon concomitant of organised crime. The problem has become additionally accentuated with the increasing complexity of the financial markets. At the international level, combating money laundering is a key issue. In addition since the autumn of 2001, international bodies have been devoting their utmost attention to combating the financing of terrorism which is related to this problem area.

In order to avoid the misuse of the financial centres by criminal organisations and to contain money laundering and the financing of terrorism, worldwide uniform regulations and standards are needed which can be condensed into a comprehensive body of legislation on an international and national level. Therefore, the international community strives to close the loopholes in the existing regulations with more comprehensive rules on due diligence relating to financial transactions.

Switzerland supports international efforts and actively cooperates in these developments. It is a member of the most important international bodies dealing primarily with this topic, e.g. the Financial Action Task Force on Money Laundering and the Egmont Group. On the one hand Switzerland is engaged in elaborating regulations and strives for harmonised standards at the high level of Swiss legislation. On the other hand it also takes care of the enforcement of these rules, whether this is through the national supervisory and prosecution authorities or by supporting foreign authorities by means of legal or administrative assistance according to the applicable law. It should also be mentioned at this point that Swiss banking secrecy is not applicable when legal assistance is to be provided in the fight against crime.

Switzerland is one of the pioneers of client identification which in turn is one of the main pillars of combating money laundering. For this reason early international measures to combat money laundering were strongly influenced by Swiss solutions. In this way the Swiss Agreement on Professional Standards relating to due diligence in the banking sector in the 1970s was the basis for the 40 recommendations drawn up by the Financial Action Task Force on Money Laundering in 1990.

Swiss measures for preventing and combating money laundering are very ambitious and can also be judged as progressive. In 1997 Switzerland incorporated into law the obligations of due diligence relating to combating money laundering for all financial intermediaries. By extending the rules in the banking and non-banking sector, Switzerland was breaking new ground

and the corresponding regulations compared to today are still far-reaching. In the summer of 2002 the International Monetary Fund, in the context of an extensive examination of the Swiss financial sector, certified that Switzerland's anti money laundering system is broadly in line with international best practices.

The system to combat money laundering in Switzerland is a complex body composed of preventive components belonging to administrative law and repressive components contained in the criminal law. The preventive concept integrates not only four supervisory bodies, the self-regulating bodies recognised by the Control Authority and the Money Laundering Reporting Office but also the financial intermediaries of the banking and non-banking sector. The aims of combating money laundering can only be achieved if all financial intermediaries exercise due care in their financial operations, identifying clients and the beneficial owners and where necessary conduct more detailed clarification accordingly documented, which can be referred back to in the case of criminal proceedings. Another important aspect in the implementation of this concept at the supervisory level is a good and extensive coordination and cooperation between the different authorities.

The aim of this brochure is to provide an insight into the puzzle of the Swiss anti money laundering system. This information should also serve the purpose of enhancing interest and understanding of a wider public in this area.

Kaspar Villiger, President of the Swiss Confederation

Table of contents

List of abbreviations

art.	article
BankA	Banking Act
BIS	Bank for International Settlements
CC	Classified Compilation of the Federal Law
CDB	Agreement on the Swiss banks' code of conduct with regard to the exercise of due diligence 1998 of the Swiss Bankers Association
EU	European Union
FA	Federal Act
FATF	Financial Action Task Force on Money Laundering
FDJP	Federal Department of Justice and Police
f. / ff	following
FFD	Federal Finance Department
FIU	Financial Intelligence Unit(s)
FOPI	Swiss Federal Office of Private Insurance
FSAP	Financial Sector Assessment Program
GEWA	Data Processing System for Combating Money Laundering (managed by MROS)
IAIS	International Association of Insurance Supervisors
IFA	Investment Funds Act
IMF	International Monetary Fund
IOSCO	International Organisation of Securities Commissions
ISA	Insurance Supervision Act
let.	Letter
MLA	Money Laundering Act
MLCA	Money Laundering Control Authority

MLO	Ordinance of the Swiss Federal Office of Private Insurance on Combating Money Laundering
MLO SFBC	SFBC Money Laundering Ordinance
MROS	Money Laundering Reporting Office Switzerland
MROSV	Ordinance on the Money Laundering Reporting Office
OC	Official Compilation of Federal Laws and Decrees
OCU-MLA	Ordinance of the Money Laundering Control Authority concerning the Financial Intermediation in the Non-Banking Sector as a Commercial Undertaking
OSFGB-MLA	Ordinance of the SFGB on Due Diligence Obligations of Casinos in Combating Money Laundering
p.	page
para.	paragraph
PC	Penal Code
PEP	Politically Exposed Persons
SBA	Swiss Bankers Association
SFBC	Swiss Federal Banking Commission
SFGB	Swiss Federal Gaming Board
SIA	Swiss Insurance Association
SRO	Self-Regulating Organisation(s)
SESTA	Stock Exchange Act

Table of Legislation and Implementing Regulations

Banking Act	FA of 8 November 1934 on Banks and Savings Banks (BankA, CC 952.0)
Gaming Act	FA of 18 December 1998 on Casinos and Gambling (CC 935.52)
Insurance Supervision Act	FA of 23 June 1978 on the Supervision of Private Insurance (ISA, CC 961.01)
Investment Funds Act	FA of 18 March 1994 on Investment Funds (IFA, CC 951.31)
Life Insurance Act	FA of 18 June 1993 on Direct Life Insurance (CC 961.61)
MLO	Ordinance of 30 August 1999 of the Swiss Federal Office of Private Insurance on Combating Money Laundering (CC 955.032)
MLO SFBC	Ordinance of the SFBC of 18 December 2002 concerning the Prevention of Money Laundering (SFBC Money Laundering Ordinance, CC 955.022)
Money Laundering Act	FA of 10 October 1997 on the Prevention of Money Laundering in the Financial Sector (MLA, CC 955.0)
MROSV	Ordinance of 16 March 1998 on the Money Laundering Reporting Office (CC 955.23)
OCU-MLA	Ordinance of 20 August 2002 of the Money Laundering Control Authority concerning the Financial Intermediation in the Non-Banking Sector as a Commercial Undertaking (CC 955.20)
---	Ordinance of 25 November 1998 of the Money Laundering Control Authority concerning Obligations of Due Diligence of Directly Subordinated Financial Intermediaries (CC 955.033.2)
OSFGB-MLA	Ordinance of 28 February 2000 of the SFGB on Due Diligence Obligations of Casinos in Combating Money Laundering (CC 955.021)

Penal Code	Penal Code of 21 December 1937 (PC, CC 311.0)
SFBC ML Guidelines	Guidelines of 26 March 1998 on the Prevention and Combating of Money Laundering (Circ.-CFB (French) or EBK-RS (German) 98/1; published on the website of SFBC)
Stock Exchange Act	FA of 24 March 1995 on Stock Exchanges and Trading in Securities (SESTA, CC 954.1)

The Obligations and the System of Supervision Established under the Money Laundering Act

1 Basic aspects

1.1 The objectives of the MLA

The objective of the Federal Act on the Prevention of Money Laundering in the Financial Sector of 10 October 1997 (Money Laundering Act, MLA) is to establish a complete set of operative provisions to thwart and combat money laundering. In practical terms, this law introduced two new aspects. It extended the obligations[1] already imposed in the banking sector since 1977 to the professional financial intermediaries of the non-banking sector as a whole. The corresponding new supervisory role was assigned to the Money Laundering Control Authority (MLCA) which was set up by the same law. The MLA which came into effect on 1 April 1998 also introduced the obligation to report where money laundering is suspected and created the Money Laundering Reporting Office Switzerland (MROS) to which the report is to be made.

1.2 Obligations of due diligence

The MLA defines the obligations of due diligence applicable to natural persons and legal entities subject to it. The obligations, whose aim it is to avert money laundering, deal with the verification of the identity of the contracting party and the identification of the beneficial owner, the renewed verification of identity and a particular obligation to clarify. Also covered is the obligation to establish and retain documents, the obligation of financial intermediaries to organise themselves internally appropriately, and the obligation to report suspicions if they are based on reasonable grounds.

[1] These obligations are defined in the Agreement on the Swiss Banks' Code of Conduct with regard to the exercise of due diligence (CDB). The sixth version of this agreement has been in force under the denomination CDB 03 since 1 July 2003.

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1.3 Supervisory system

The MLA is implemented by four Swiss Federal supervisory authorities, those being: the Swiss Federal Banking Commission (SFBC), the Swiss Federal Office of Private Insurance (FOPI), the Swiss Federal Gaming Board (SFGB) and the Money Laundering Control Authority (MLCA). The first three supervisory authorities simultaneously administer the specific supervisory laws governing their sector, so-called special laws[2] and the Money Laundering Act. The supervisory authority of the MLCA stems exclusively from the Money Laundering Act and encompasses the supervision of the financial intermediaries directly subordinated to the MLCA and of the self-regulating organisations (SROs) it recognises, which in turn monitor the financial intermediaries affiliated to them.

The Money Laundering Act is a framework law. This means that it sets out fundamental principles which have to be specified in detail, an example of which would be the obligations of due diligence. This is why the authorities implementing the aforementioned law enact implementing regulations. This allows the authorities to adapt the detailed rules to the field of activity they are in charge of monitoring. The SROs set out in detail the obligations of the MLA in their regulations.

1.4 Reporting of suspicion to the MROS

1.4.1 Obligation to report

In 1998 the obligation to report suspicions of money laundering constituted an innovation in the entire financial sector. It complemented the right to report suspicions[3] which already existed. Where there is reasonable ground to suspect that money laundering has occurred reporting becomes compulsory. It is incumbent upon the intermediary who knows or presumes, on the basis of reasonable grounds, that assets implicated in a transaction or a business relationship are linked to money laundering[4] or originate from another crime as defined in the Swiss Penal Code[5] or that a criminal organisation exercises the power to dispose of these assets[6].

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2 These laws include the Banking Act, the SESTA as well as the IFA for the SFBC, the Insurance Supervision Act and the Life Insurance Act for the FOPI and the Gaming Act for the SFGB.

3 The type of suspicion a financial intermediary may have may range from mere doubt to certitude. The situation may arise whereby communication with the competent authorities may be justified but not mandatory. The right to report to the authorities indications fuelling suspicion that valuables originate from a crime is furthermore made provision for in the law (art. 305ter para. 2 of the Penal Code).

4 Art. 305bis Penal Code.

5 Art. 9 Penal Code.

6 Art. 9 MLA defines this concept with reference to Art. 260ter section 1 of the Penal Code.

Reports are to be addressed to the MROS which acts as an intermediate body, providing an interface and filtering function between the intermediaries and the prosecuting authorities. MROS is attached to the Federal Office of Police.

1.4.2 The MROS and its filtering function

It is the task of the MROS to analyse the reports submitted by the financial intermediaries. In order to determine the subsequent action to be taken, it carries out appropriate research. If a suspicion is confirmed, it forwards the reports to the appropriate prosecuting authoritiy. Since 1 January 2002, the date when measures extending the prosecuting competencies of the Swiss Confederation[7] came into force, the reports are forwarded, depending upon competency, either to the Office of the Attorney-General of Switzerland or to the cantonal prosecuting authorities.

2 Intermediaries subject to the Money Laundering Act

2.1 Activities subject to complete supervision

The supervisory authorities assigned under the so-called special laws (laws on banking, the Stock Exchange and securities trading, investment funds, life insurance institutions and gaming[8]) to supervise the activities of financial intermediaries[9], have in addition to their primary responsibilities[10] the task of ensuring that those financial intermediaries subject to these laws respect the obligations in theMLA. The Money Laundering Act does not restrict the competence of the supervisory authorities due to the special laws. Thus a financial institution could find itself facing a withdrawal of recognition should it gravely violate anti-money laundering legislation.

2.1.1 Banks and securities dealing

Those supplying the following financial services are subject to supervision by the SFBC relating to the applicable special laws and the MLA:

a) banks as defined in the Banking Act,
b) fund managers insofar as they keep unit accounts or themselves offer or distribute shares in investment funds,
c) securities dealers as defined in the Stock Exchange Act.

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7 Art. 340bis of the Penal Code.

8 Cf. cross-reference of art. 2 para. 2 of the MLA to five special laws mentioned (BankA, SESTA, IFA, Insurance Supervision Act and Gaming Act).

9 I.e. the supervisory authorities set up by special laws in accordance with art. 16 MLA.

10 Cf. in particular the prudential supervision carried out by the SFBC on banks and securities dealers, as well as that carried out by the FOPI on life insurance companies.

2.1.2 Insurance Institutions

Life insurance companies and insurance institutions which offer or distribute shares in investment funds are also subject to the MLA. The Swiss Federal Office of Private Insurance (FOPI) thus simultaneously implements MLA supervisory measures alongside supervisory laws specific to private insurance.

2.1.3 Casinos

Casinos come under the supervision of the Swiss Federal Gaming Board and are also subject to the Money Laundering Act. The Gaming Act additionally makes provisions for specific preventive measures, e.g. the payment of winnings as a cheque to the bearer is not permissible[11].

2.2 The section of the financial market covered by the MLCA

Any financial intermediary who is not already subject to one of the supervisory authorities instituted through a special law (Swiss Federal Banking Commission, Swiss Federal Office of Private Insurance and Swiss Federal Gaming Board) must either join a SRO recognised by the MLCA or must make an application to the MLCA for a licence to exercise its activities. This section of the market is generally called the non-banking sector.

2.2.1 The activities covered

The financial activities in the non-banking sector covered by the MLA are enumerated by the law[12] in a non-conclusive list by way of examples. Furthermore, the law defines in a general clause (i.e. in a catch-all provision) those persons as financial intermediaries who, on a professional basis[13], accept, or hold in custody, assets belonging to third parties or assist in investing or transferring these. The list mentioned in particular covers persons who:

a) undertake credit-granting activities, that is to say activities similar to banking activities but differing in that funds are not raised from the public and that refinancing of the intermediary stems from equity

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11 Art. 28 Gaming Act.

12 Art. 2 para. 3 MLA.

13 If one of the following thresholds is crossed in a calendar year, the activity qualifies as being done on a professional basis (i.e. as a commercial undertaking): gross revenue of over CHF 20,000, business relations with more than 10 contracting parties, asset management for third parties amounting to more than CHF 5 million and a total transaction sum amounting to more than CHF 2 million (cf. art. 4 - 7 of the OCU-MLA). Money exchange activities carried out as an accessory business qualifies as activity on a professional basis if the financial intermediary carries out or is prepared to carry out one or several interlinked exchange operations amounting to more than CHF 5,000 (art. 8 of the OCU-MLA).

capital or to a large extent from the group to which they belong[14]. Factoring and finance leasing are mentioned explicitly;

b) provide payment transaction services, for example electronic transfers[15]. This concerns particularly the significant area of activity of payment transaction services dealt with by the Swiss PostFinance, as well as similar services such as those relating to credit cards, debit cards, banker's drafts and traveller's cheques as well as electronic money.
c) trade in banknotes, coins or precious metals and are not banking companies, e.g. independent bureaux de change[16];
d) distribute shares of an investment fund and who are not subject to the SFBC, and consequently come under the umbrella of the MLCA[17];
e) as natural persons or legal entities, manage assets without having authorisation from the SFBC as a bank or individual to manage securities[18]. The law is aimed at any person administering the valuables of others on a professional basis and who also has the authority to dispose thereof. The investment adviser authorised to deal on behalf of his client is also subject to the law[19]. However, the law is not directed at the pure financial adviser who has no power to manage the assets. Holding in custody and managing securities on a professional basis are also covered[20].

2.2.2 The MLCA and the SROs

The financial intermediaries not supervised by one of the three supervisory authorities mentioned[21] may choose one of the following:

- they may become affiliated to one of the SROs recognised and supervised by the MLCA, which henceforth will then be in charge of the intermediary's supervision as the sole authority, or
- place itself under the authorisation and direct supervision of the MLCA.

The legislator conferred a significant role on the SROs in the implementation of the MLA. The latter took the principle of self-regulation strongly into

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14 Art. 2 para. 3 let. a MLA.

15 Art. 2 para. 3 let. b MLA.

16 Art. 2 para. 3 let. c MLA.

17 Art. 2 para. 3 let. d MLA. Whereas the senior management of investment funds are subject to banking supervision, those distributing i.e. selling on a professional basis units in an investment fund and who are not part of the senior management of the fund or the custodian bank are not subject to supervision by the SFBC although their operation depends on the authorisation of the latter.

18 Art. 2 para. 3 let. e MLA.

19 Art. 2 para. 3 let. f MLA.

20 Art. 2 para. 3 let. g MLA.

21 SFBC, FOPI and SFGB.

account by allowing the intermediaries to set up their own SRO, allowing them to act broadly substituting official supervision due to being recognised by the MLCA.

The mission of the SROs as much as the MLCA is to make sure that the obligations of due diligence are respected and to to set out in detail these obligations for the financial intermediaries directly affiliated. One major function of the MLCA which differs from that of SROs is that the former must provide supervision of the latter. Whereas the MLCA is an official body, the SROs are subject to private law as far as their organisation and also the relationship with their members is concerned even though they exercise a legal, supervisory function.

3 Obligations of due diligence

The Money Laundering Act defines the basic obligations natural persons or legal entities have subject to this law[22].

3.1 Identification

3.1.1 Verification of identity of the contracting party

Prior to commencing business relationships, the financial intermediary must identify the contracting party on the basis of a conclusive document. In the case of cash transactions with a contracting party who has not yet been identified, the duty of identification shall exist only if one or more transactions which appear to be inter-connected exceed a considerable amount defined by the supervisory authority concerned[23]. In practical terms, if the contracting party is a natural person who comes forward personally, the financial intermediary must check their identity by examining and photocopying an official document (passport, identity card or similar document), as well as noting the surname, the first name, the date of birth, the nationality and the home address.

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[22] Art. 3 - 9 MLA.

[23] The considerable amounts dealt with under art. 3 para. 2 and 3 MLA is set for example:
a) at CHF 5,000 for exchange operations carried out by financial intermediaries directly subordinated to the MLCA (art. 14 Ordinance of 25th November 1998 of the MLCA concerning Obligations of Due Diligence of Directly Subordinated Financial Intermediaries),and
b) at CHF 25,000 for bank cash transactions (art. 2 of the Agreement of the Swiss Banks' Code of Conduct 03, art. 14 of the Money Laundering Ordinance of the SFBC) as well as for life insurance contracts with a single premium (or involving periodic premiums of more than CHF 25,000 per contract within 5 years, art. 5 MLO).

3.1.2 Identification of the beneficial owner

The financial intermediary must obtain from the contracting party a written declaration as to who the beneficial owner is whenever:

a) the contracting party is not identical to the beneficial owner or doubt exists in this regard;
b) the contracting party is a domiciliary company;
c) a cash transaction of considerable amount is undertaken[24].

In the case of collective accounts or collective custody accounts, the financial intermediary must require that the contracting party produces a complete list of the economic beneficiaries and that every change to the list is reported without delay.

3.1.3 Renewed verification of the identity of the contracting party and special obligation to clarify

Renewed verification of the identity of the contracting party or of the identity of the beneficial owner must be carried out by the financial intermediary during the course of the business relationship should doubts arise as to the identity of the contracting party or beneficial owner. This is why for example, in the case of an insurance contract whose value can be redeemed, the insurance institutions must establish anew the identity of the beneficial owner when the rightful claimant in case of a claim or redemption is not identical with the person at the time of entering into the contract.

The financial intermediary has a special obligation to clarify if:

a) the transaction or business relationship appears unusual, unless its legality is apparent;
b) indications exist that valuables originate from a crime or that a criminal organisation exercises the power of disposition thereover.

3.2 Obligation to establish and retain documents

The obligations mentioned above regarding identification would have only little strength if the intermediary was not bound to record the results of his examinations and to retain them. The financial intermediary must establish documents concerning the transactions undertaken and concerning the investigations in a manner that the supervisory authorities, the SRO and the prosecuting authorities can gather the necessary information which allow a reliable judgement to be made regarding the transactions and the business relationship as well as the compliance with the obligations relating to the MLA and which are needed for their further investigations in their clarification. According to the MLA the financial intermediary must retain the documents

[24] Cf. preceding note and art. 4 para. 1 let. c MLA.

for at least ten years after the cessation of the business relationship or after execution of the transaction.

3.3 Organisational measures

The financial intermediaries shall take the internal organisational measures necessary to prevent money laundering. These measures must be commensurate with the size of the financial intermediary and nature of its activities. They shall ensure in particular that their personnel is adequately instructed.

3.4 Obligation to report suspicion

The obligation to immediately report the MROS is incumbent upon any financial intermediary who knows or who has a reasonable ground to suspect that the assets implicated in a transaction or a business relationship originate from a crime in accordance with the Swiss Penal Code. The financial intermediary must block immediately the assets entrusted to him and which are in connection with the report and this until he receives a decree from the competent judicial authority but for no longer than five working days. During this period, he may inform neither those affected nor third parties of the report[25].

The financial intermediary who makes a report and blocks assets may not be prosecuted for violation of official, professional or commercial secrecy nor made liable for breach of contract if he has acted with due care dictated by the circumstances.

4 The system of supervision

4.1 Supervision : authorisation and control

The entire activities of financial intermediaries subject to complete supervision by the SFBC, the FOPI or the SFGB are initially authorised and then comprehensively supervised. The authorisation requirements and those relating to legal supervision of the MLA are covered in these processes. Other financial intermediaries covered by the MLA must join a SRO or apply for a licence to the MLCA. They are thereby subject to supervision which is restricted to the observance of the obligations of the MLA. Their activities which are not subject to the MLA are not monitored. They must periodically, as a rule annually, have a special audit report drawn up and submitted, in

[25] Art. 10 para. 3 MLA, so-called “no tipping off” rule.

which the auditor verifies the observance of the obligation to prevent money laundering by the financial intermediary.

4.2 Measures and sanctions if the law is violated

Should the MLCA learn of an authorised financial intermediary no longer respecting the conditions of authorisation or violating its legal obligations of due diligence and/or the obligation to report, the MLCA may take the necessary measures to restore legality, whereby it observes the principle of proportionality. If appropriate, this can lead to the liquidation of the financial intermediary.

If a SRO discovers that a financial intermediary is not adhering to its obligations in accordance with the MLA, as a rule the financial intermediary is expelled. The financial intermediary then comes under the supervision of the MLCA which can then take action against it.

The MLA provides for fines under administrative criminal law in the event of its provisions not being upheld. These fines concern in particular exercising activities subject to the MLA without authorisation or affiliation to a SRO and the violation of the obligation to report[26]. To be clearly distinguished from this are the crime of money laundering and the offence of insufficient diligence in financial transactions, provided for in the Swiss Penal Code[27].

4.3 Coordination between the authorities

The MLA makes provisions for cooperation and coordination between the federal authorities in charge of combating money laundering. Generally speaking this law generates constructive dialogue between the authorities, the MLCA and the SRO, as well as between the financial intermediaries and the supervisory authorities. In this way it still additionally reinforces the effectiveness and suitability of the anti-money laundering provisions set up by the different parts of the financial sector.

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[26] Art. 36 and 37 MLA.

[27] Art. 305bis and art. 305ter, para. 1 Penal Code.

International Developments in the Fight against Money Laundering and the Role of Switzerland

1 Objectives

Switzerland plays an active role at the international level in the fight against and prevention of money laundering. It is involved in the development of international standards and negotiations on international agreements related to the fight against money laundering and terrorism, and works closely with other countries within the framework of international cooperation.

Important aims behind Switzerland's commitment at the international level are

- to use international cooperation to render the fight against money laundering and against the financing of terrorism more efficient,
- to harmonise international standards at the high level set by Switzerland in order to maintain a level playing field internationally and
- to promote the reputation of Switzerland's financial centre as a well regulated financial centre which complies with international standards aimed at preventing the abuse of financial centres for the purposes of money laundering and financing terrorism.

A brief introduction to the main international bodies and instruments is set out below.

2 Financial Action Task Force (FATF)

The FATF is the most important body in international cooperation against money laundering. Established during the G7 Summit in Paris in 1989, it now has 31 members[1]. The role of the FATF is to identify money laundering methods, issue recommendations for effective anti-money laundering measures and harmonise money laundering policies at the international level through the formulation of minimal international standards.

[1] The FATF is an independent international body whose Secretariat is housed at the OECD. The 29 member countries and governments of the FATF are: Argentina, Austria, Belgium, Brazil, Canada, Denmark, Finland, France, Germany, Greece, Hong Kong, China, Iceland, Ireland, Italy, Japan, Luxembourg, Mexico, the Kingdom of the Netherlands, New Zealand, Norway, Portugal, Russia, Singapore, South Africa, Spain, Sweden, Switzerland, Turkey, the United Kingdom and the United States. Two international organisations are similarly members of the FATF: the European Union and the Gulf Co-operation Council.

2.1 The Forty Recommendations of the FATF (2003)

Adopted on 7 February 1990 and last modified in June 2001, the Forty Recommendations of the FATF [2] are recognized as a reference with respect to the measures that a country should put in place to combat efficiently money laundering. The Recommendations set the minimal standards applicable in relation to: the definition of underlying offences, client and beneficiary identification, treatment of higher risk transactions or relations, establishment of records, communication on suspect relations or transactions, extension of the scope of the regime applicable to financial intermediaries to certain non-financial professions (lawyers, accountants, real estate agents, etc.), treatment of bearer shares and trusts, the supervision and the competent authorities, the tasks of the reporting office and administrative and judicial assistance. In the context of the modification of the Forty Recommendations, the Swiss delegation has actively promoted the adoption of international standards corresponding to the high level applied in Switzerland. Therefore, the Swiss legislation will only require modifications with respect to a few issues.

2.2 FATF Recommendations on Terrorist Financing (2001)

The terrorist attacks against the United States on 11 September 2001 broadened the scope of the fight against money laundering. The FATF issued eight Special Recommendations on Terrorist Financing[3] in October 2001. These Special Recommendations envisage that all countries implement the United Nations resolutions against terrorist financing immediately, ratify the International Convention for the Suppression of the Financing of Terrorism, criminalise the financing of terrorism and oblige all institutions operating in the financial sector to report suspicions of terrorist financing[4]. These recommendations from the FATF have been incorporated into the Swiss legal system on 1 October 2003 through an amendment to the Criminal Code and other federal laws[5] as well as through the SFBC money

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2 SFBC Bulletin 31, p. 19 ff, see also http://www.fatf-gafi.org/40Recs_en.htm.

3 Available on the Internet http://www.fatf-gafi.org/SRecsTF_en.htm.

4 The FATF has published special information for use in identifying links with terrorist organizations and terrorist financing ("Guidance for Financial Institutions in Detecting Terrorist Financing"). It is available on the Internet at http://www.fatf-gafi.org/pdf/GuidFITF01_en.pdf.

5 See http://www.admin.ch/ch/f/as/2003/3043.pdf.

laundering ordinance[6] and its counterpart by the Money Laundering Control Authority[7].

3 Basel Committee for Banking Supervision

The Basel Committee for Banking Supervision was established at the Bank for International Settlements by the central bank governors of the Group of Ten countries at the end of 1974[8]. It provides a forum for regular cooperation between the member countries on issues related to banking supervision. The Committee formulates general supervisory standards and guidelines, but does not hold any formal, supranational supervisory powers.

3.1 Basel Committee for Banking Supervision "Customer Due Diligence Paper" (October 2001)

At the end of 2001, the Basel Committee for Banking Supervision issued the minimum standards for client identification[9] drawn up by a working group of representatives of the Basel Committee itself and the Offshore Group of Banking Supervisors. These are the latest due diligence standards for banks, and supplement the principles for effective banking supervision issued in September 1997 (in particular, principle 15, which deals with the verification of the client's identity)[10].

Switzerland was heavily involved in the formulation of these standards. It was on Switzerland's initiative that the rule specifying that business relationships with politically exposed persons, or PEP, could only be entered into with the express approval of senior management was incorporated into the Basel standards[11] and will now be included in the revision of the FATF's Forty Recommendations[12].

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6 See "Combating Money Laundering: an Important Task for the Swiss Federal Banking Commission", SFBC contribution, section 5, p. 44 ff.

7 See the revision project posted online for consultation : http://www.gwg.admin.ch/f/aktuell/pdf/gwv_kst_f.pdf.

8 The Committee is made up of representatives of central banks and banking authorities in the following 13 countries: Belgium, Germany, France, Italy, Japan, Canada, Luxembourg, the Netherlands, Sweden, Switzerland, Spain, the United Kingdom and the United States.

9 Basel Committee on Banking Supervision, Customer due diligence for banks, October 2001, available on the Internet at http://www.bis.org/publ/bcbs85.htm.

10 SFBC Bulletin 33, p. 73 ff.

11 Basel Committee on Banking Supervision, Customer due diligence for banks, October 2001, annotation 41– 44, available on the Internet at http://www.bis.org/publ/bcbs85.htm.

12 See Recommendation 6, available on internet : http://www.fatf-gafi.org/40Recs_en.htm.

3.2 Basel Committee for Banking Supervision "Consolidated KYC Risk Management" (August 2003)

Following the terrorist attacks against the United States on 11 September 2001, the legal experts of the G10 Member States had agreed on the necessity of closer cooperation on the fight against the financing of terrorism. In this context, the experts focussed on closer cooperation between supervisory authorities and the introduction of a centralized system to monitor risks within internationally active banking groups[13]. The document – entitled "Consolidated KYC Risk Management"[14] published by the Basel Committee – contains details relative to the requirements of such a monitoring system. This system should enable the identification of legal risks as well as reputational risks on a consolidated basis. The text of the document was published and put in consultation in August 2003. The harmonization of standards of diligence within a group coupled with the transmission of information between the relevant bodies of the subsidiaries and parent companies should ensure the identification and supervision of higher risk relations on a comprehensive and consolidated basis, even where such relations are entered into by foreign entities of the group. The new SFBC Ordinance has already incorporated these standards into Swiss law.

4 International Organization of Securities Commissions (IOSCO)

Numerous IOSCO reports and resolutions bear on the implementation of an AML/CFT scheme by national securities regulators. The IOSCO Technical Committee issued an initial "Report on Money Laundering" in 1992[15]. In 2002, IOSCO established a Task Force on Client Identification and Beneficial Ownership to examine the range of individual member's customer due diligence programs. The Task Force will take into account the revisions of the FATF 40 + 8 Recommendations. IOSCO follows closely the ongoing work of the FATF.

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[13] Sharing of financial records between jurisdictions in connection with the fight against terrorist financing, Summary of a meeting of representativesof Supervisors and Legal Experts of G10 Central Banks and Supervisory Authorities on 14 December 2001, Basel, Switzerland, available on the BIS-website: http://www.bis.org/publ/bcbs89.pdf.

[14] See : http://www.bis.org/publ/bcbs101.pdf.

[15] Report on Money Laundering, IOSCO Public Document No. 26, at http://www.iosco.org/iosco.html.

5 The International Association of Insurance Supervisors (IAIS)

In 2002, the IAIS adopted «Anti-Money Laundering Notes for Insurance Supervisors and Insurance Entities»[16]. As to the rules on diligence and cooperation between supervision and criminal authorities, the Notes reflect to a large extent the FATF Recommendations in relation to the rules on diligence duties and cooperation between supervisory and criminal authorities.

The modifications to the Insurance Core Principles and Methodology[17] was adopted on 3 October 2003. These principles now include rules on the prevention of the financing of terrorism.

6 G 7 + Switzerland: "Supervisors' PEP working paper 2001"

The problem of conducting business with politically exposed persons has also been recognised at the international level as being in need of regulation, due in no small part to the publicity surrounding the Abacha case. Upon Switzerland's initiative, a first meeting of representatives from judicial and banking supervisory bodies in the G7 countries and Switzerland took place in Lausanne in November 2000. The meeting focussed on the PEP issue and discussed what had been learned from the Abacha case. The recommendations on the handling of accounts linked to PEPs drawn up subsequent to the meeting ("Supervisors' PEP working paper 2001"[18]) are intended as a basis for regulations governing business relationships with PEP.

7 International Monetary Fund (IMF)

In November 2001, the International Monetary Fund launched an action plan aimed at expanding the IMF's mandate in respect of combating money laundering and terrorist financing. A central pillar of this action plan is the formulation of a comprehensive methodology and procedure for assessing compliance with international money laundering standards in all IMF countries. The Financial Sector Assessment Program (FSAP) is an important

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16 Anti-money laundering guidance notes for insurance supervisors and insurance entities, January 2002, available online : http://www.iaisweb.org/framesets/pas.html.

17 Insurance core principles and methodology, October 2003, available online: http://www.iaisweb.org/framesets/pas.html.

18 Available on the Internet at http://www.ebk.admin.ch/f/aktuell/neu090702-03f.pdf .

evaluation procedure, which can also be used to assess a country's anti-money laundering provisions.

7.1 FATF AML / CFT[19] methodology

The methodology developed jointly by the IMF, the World Bank and the FATF in conjunction with the Basel Committee, the International Organisation of Securities Commissions (IOSCO) and the Egmont Group[20], contains criteria for assessing compliance with and implementation of anti-money laundering provisions, in particular the FATF's recommendations. It is intended as an aid in the assessment of anti-money laundering systems in individual countries within the framework of the FSAP as well as the FATF's country assessments, and to ensure that the assessments carried out are of equal value, even if they are carried out by different institutions. The methodology was approved by the FATF Plenary at the beginning of October 2002 and will now be subject to revision on the basis of the new FATF recommendations.

7.2 Financial Sector Assessment Program (FSAP)

The IMF's FSAP is an important procedure for assessing compliance with minimum international standards. Although the FSAP is geared primarily to analysing and reinforcing the stability of the financial system at the national and international levels, anti-money laundering measures also fall within the scope of the FSAP's assessment. The IMF conducted an FSAP evaluation of Switzerland in 2001[21]. The IMF rated the Swiss banking sector's anti-money laundering provisions as adequate and in compliance with international standards. The IMF's assessment of securities dealers was less clear-cut, although the securities sector basically applies the same regulations as the banking sector. A point which came in for particular criticism in the report was the fact that the identification of the beneficial owner does not have to be routinely verified. A comprehensive report on Switzerland's FSAP assessment was published in June 2002[22].

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19 Anti-Money Laundering / Combating Financing of Terrorism.

20 See "The Money Laundering Reporting Office Switzerland: Organisation, Role and Activities", MROS, section 3, p. 65.

21 See FFD press release from 3 June 2002, available on the Internet at http://www.efd.admin.ch/e/dok/medien/rohstoff/2002/06/iwf.pdf.

22 Report available at http://www.efd.admin.ch/d/dok/berichte/2002/06/iwf_stabilitaetsbericht.pdf.

8 The Wolfsberg Group – international self-regulation

In 2002, a group of leading international banks established a body whose objective is to develop global guidelines for combating money laundering in private banking. The big Swiss banks played a major role in this international initiative[23].

8.1 Wolfsberg Principles (October 2000)

The Wolfsberg Principles[24], approved in October 2000, deal with various aspects of the "know your customer" principle in transactions between wealthy private clients and the private banking departments of financial institutions as well as with the identification of and follow-up on unusual or suspicious activities. These principles were revised for the first time in May 2002.

8.2 Wolfsberg Statement on the Suppression of the Financing of Terrorism (January 2002)

In January 2002, the group of banks decided to extend the Wolfsberg Principles to include combating terrorism. In a special statement, the Wolfsberg Group declared that it was committed to working closely with government agencies in the fight against terrorism and called upon authorities to support them in the identification of activities aimed at financing terrorism[25].

8.3 Wolfsberg Anti-Money Laundering Principles for Correspondent Banking (November 2002)

In November 2002, the Wolfsberg Group has adopted principles on the relevant diligence duties in relation to correspondent banking[26]. Similarly to the principles developed in the context of fighting money laundering, these principles are based on risk differentiation analysis.

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[23] The following international banking groups are members: ABN Amro N.V., Banco Santander Central Hispano, S.A., Bank of Tokyo-Mitsubishi Ltd., Barclays Bank, Citigroup, Credit Suisse Group, Deutsche Bank AG, Goldman Sachs, HSBC, J.P. Morgan Chase, Société Générale and UBS AG. The banks work closely with international anti-money laundering experts and Transparency International, an international NGO active in the fight against corruption.

[24] "Global Anti-Money-Laundering Guidelines for Private Banking" (Wolfsberg AML Principles) available on the Internet at http://www.wolfsberg-principles.com.

[25] "Wolfsberg Statement on the suppression of the financing of terrorism", January 2002, available on the Internet at http://www.wolfsberg-principles.com.

[26] Available online : http://www.wolfsberg-principles.com/wolfsberg_principles_correspondent.html.

9 United Nations

The United Nation's Convention on combating terrorism and the Resolutions of the Security Council provide the framework under international law for the fight against money laundering and against the financing of terrorism. Below is a brief description of the two most important conventions:

9.1 Terrorist financing convention (December 1999)

The International Convention for the Suppression of the Financing of Terrorism of 9 December 1999[27] states that terrorist financing constitutes an offence in its own right; in other words, it can be punished regardless of whether a terrorist act is actually perpetrated or not. In addition, the Convention sets out measures aimed at facilitating international cooperation and thwarting the preparation and implementation of financial activities to be used for the purposes of terrorism. On 23 September 2003, Switzerland ratified the Convention together with the International Convention for the Suppression of Terrorist Bombings of 15 December 1997[28]. The necessary modifications to the Criminal Code[29] entered into force on 1 October 2003.

9.2 United Nations Convention against Transnational Organized Crime[30]

Switzerland was one of the 121 countries which signed the United Nations Convention against Transnational Organized Crime in Palermo on 12 December 2000. With the Convention, the signatories undertook to recognise as an offence membership of a criminal association, money laundering, corruption and the obstruction of justice, and to amend their national laws accordingly. In addition, the Convention set out principles governing mutual assistance and extradition.

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27 International Convention for the Suppression of the Financing of Terrorism A/RES/54/109 http://untreaty.un.org/English/Terrorism/Conv12.pdf.

28 Available on internet: http://untreaty.un.org/French/Terrorism/Conv11.pdf.

29 Message presented to Parliament in connection with the international conventions on the suppression of the financing of terrorism and the suppression of terrorist bombings as well as in connection with the amendment of the Criminal Code and further federal legislation; available in German, French and Italian at www.ofj.admin.ch/themen/terror/bot-d.pdf.

30 United Nations Convention against Transnational Organized Crime, http://www.uncjin.org/Documents/Conventions/dcatoc/final_documents_2/convention_eng.pdf.

10 The Council of Europe

At the European level, the conventions of the Council of Europe[31] in respect of the fight against money laundering and criminal activities as well as in the area of international mutual assistance are of significance to Switzerland.

10.1 The Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime[32], 8 November 1990

Switzerland ratified the Council of Europe's Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime of 8 November 1990 on 2 March 1993. Along with the law governing mutual assistance in criminal matters, this Convention allows Switzerland to cooperate effectively at the international level in the fight against transnational crime.

10.2 Council of Europe Convention on Mutual Assistance in Criminal Matters[33], 20 April 1959

Switzerland ratified this Convention on 20 December 1966. It came into force on 20 March 1967. In accordance with the provisions of the Convention, contracting parties undertake to afford each other the widest measure of mutual assistance in proceedings in respect of offences the punishment of which falls within the judicial authorities of the requesting party.

Switzerland also provides mutual assistance in criminal matters on the basis of bilateral mutual assistance agreements (such as that concluded with the United States on 25 May 1973)[34]. In addition, Switzerland has signed supplementary agreements with Germany, Austria and France which allow judicial and administrative authorities to address the appropriate authorities in the respective country directly[35].

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31 The Council of Europe was established on 5 May 1949 and today has 45 member states.

32 Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, Strasbourg, 8 November 1990. Available on the Internet at http://Conventions.coe.int/treaty/en/Treaties/Html/141.htm.

33 Available on the Internet at http://conventions.coe.int/treaty/en/Treaties/Html/030.htm.

34 Available on the Internet, in German, French and Italian, at www.admin.ch/ch/d/sr/c0_351_933_6.html.

35 For Germany, see www.admin.ch/ch/d/sr/c0_351_913_61.html, for Austria, see www.admin.ch/ch/d/sr/c0_351_916_32.html and for France see www.admin.ch/ch/d/sr/c0_351_934_92.html.

Money Laundering Control Authority: Role, Organisation and Activity

1 Role and activity of the Money Laundering Control Authority (MLCA)

1.1 Financial intermediaries affected

Financial intermediaries who, on a professional basis accept, hold in deposit or assist in the investment or transfer of assets belonging to others are subject to the Money Laundering Act and consequently to supervision as are banks, securities dealers, investment fund managers, life insurance companies and casinos. According to the law and the practices of the MLCA, this definition applies in particular to asset managers and credit institutions, particularly those offering financial leasing, commodities brokers (in the case of stock exchange trading for third parties), traders in banknotes, coins and precious metals, bureaux de change, money and value remitters, investment fund distributors and representatives, securities dealers not subject to the Stock Exchange Act, formal and actual executive organs of non-operative companies established under the laws of Switzerland or of a foreign country, as well as lawyers managing assets in addition to their usual activities.

These financial intermediaries can either affiliate themselves to a self-regulating organisation (SRO) recognised and supervised by the MLCA or submit to direct supervision by the MLCA. They are therefore subject to supervision, however, unlike financial intermediaries subject to comprehensive supervision on the basis of a special law[1], the supervision of the MLCA limits its focus to the obligations set out in the MLA.

1.2 Recognition and supervision of self-regulating organisations

SROs are generally associations governed by private law provided for under the MLA, which assume supervision functions as set out in the Act. When it affiliates itself to an SRO, a financial intermediary places itself under SRO

[1] These laws are the Banking Act, the SESTA, the IFA, the Insurance Supervision Act, the Life Insurance Act and the Gaming Act.

jurisdiction and commits itself to observe the statutes and internal regulations.

It is incumbent upon the MLCA to recognise and supervise the SROs. It has recognised 12 SROs to date. The MLCA approves the regulations set by the SROs as well as any modifications made to these regulations, and ensures that the SROs enforce these regulations. Supervision is based on an annual report drawn up by the SROs and on an annual audit of the SROs conducted by the MLCA.

In the event that an SRO no longer fulfils the conditions for recognition, or in the event that it violates its legal obligations, the MLCA may withdraw the SRO's recognition, albeit after having first clearly informed the SRO of its intention to take such a measure. In case of such a withdrawal, the financial intermediaries affiliated to the SRO in question come under the direct supervision of the MLCA, unless they join another SRO within a period of two months.

In principle, any SRO is entitled to recognition by the MLCA, as long as it fulfils the conditions laid down by the law and has a sufficient number of qualified staff to carry out its tasks without incurring a conflict of interests. The SRO must guarantee that the financial intermediaries affiliated to it will observe their legal obligations at all times.

1.3 Authorisation and supervision of the financial intermediaries directly subordinated to the MLCA

A financial intermediary that is neither subordinated to a supervision authority under special law nor affiliated to an SRO may only engage in activities falling under the MLA if it has been granted a licence by the MLCA. The MLCA fulfils the same tasks with regard to the financial intermediaries directly subordinated to it as the SROs do with regard to their affiliated members.

The MLCA grants a licence as soon as the financial intermediary fulfils all the requirements of the MLA and the related implementation provisions. Furthermore, the on-going compliance with the licensing conditions is assessed through an annual audit conducted by one of the audit agencies recognised by the MLCA and chosen by the financial intermediary, or, conducted by the MLCA itself.

When the MLCA discovers that a financial intermediary no longer fulfils the conditions of its licence or violates the obligations laid down by law, namely the obligations of due diligence and reporting, it will take the necessary corrective measures while observing the principle of proportionality.

1.4 Definition of the financial intermediaries' obligations of due diligence

As the Money Laundering Act is a framework law, the MLCA has set out in detail the obligations of due diligence for directly subordinated financial intermediaries in an Ordinance[2]. This Ordinance is presently undergoing a total revision. For their part, the SROs have set out in detail the obligations of due diligence laid down in the MLA for the financial intermediaries that are affiliated to them in their own respective regulations.

1.5 Market supervision

The MLCA identifies financial intermediaries engaging in their activities illegally. When an illegally operating financial intermediary is discovered, the MLCA takes the necessary measures to restore legality. If the conditions for granting a licence are not fulfilled the MLCA then demands the cessation of activities covered by the MLA. If the illegal activity constitutes the financial intermediary's main or exclusive activity, these measures can extend to the liquidation of the financial intermediary concerned.

However, market supervision is limited to determining whether or not an activity falls under the MLA's scope of application, and consequently whether or not such activity should be authorised. It does not focus on the way in which the financial intermediaries provide their services or honour their obligations in relation to their clients.

1.6 Accreditation of audit agencies

The MLCA can conduct on-site inspections of directly subordinated financial intermediaries or commission an audit agency to conduct these inspections. The MLCA therefore provides accreditation to those audit agencies requesting it as long as they fulfil the strict conditions established in the terms and conditions.

Every financial intermediary licensed by the MLCA is obliged to choose an MLA control body to conduct the annual audit from the list of accredited audit agencies. If no accredited agency is mandated, the MLCA will conduct the annual audit itself. The MLCA has an influence on the auditing process by providing the appropriate documentation and detailed requirements with regard to the MLA audit report.

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[2] Ordinance of 25 November 1998 of the Money Laundering Control Authority concerning Obligations of Due Diligence of Directly Subordinated Financial Intermediaries.

2 Organisation of the MLCA

The MLCA is a division of the Swiss Federal Finance Administration. The MLCA is divided into four sections reflecting the nature of its tasks.

2.1 "Self-regulating organisations" (SRO) Section

The main tasks of the SRO Section include the recognition and supervision of SROs. It can also, if necessary, prompt the withdrawal of this recognition. In addition, it provides approval of SRO statutes, regulations, directives and training programmes, including any modifications, as well as of internal management changes. The SRO Section examines the SRO annual reports and checks that the corresponding regulations are applied. In addition, it advises the SROs on organisational issues and provides assistance in response to any general problems or questions.

In order to ensure that self-regulation functions smoothly, the MLCA and the SROs must continuously exchange information. For this reason, meetings between the MLCA and the SROs are held on a regular basis. The coordination conference with the SROs, organised annually by the MLCA, and the SRO forum, a joint meeting of SROs that takes place several times a year and which is also attended by representatives of the MLCA and MROS provide further opportunities for views to be exchanged.

It is not within the MLCA's jurisdiction to intervene directly when a financial intermediary affiliated to an SRO violates the obligations stemming from the law. In such a case, the MLCA passes any information it has on to the SRO in question which then sets in motion the sanctioning procedure based on its regulations. If this procedure results in the exclusion of the financial intermediary, the latter comes under the direct supervision of the MLCA which then may take any necessary measures, including the liquidation of the financial intermediary in question.

2.2 "Directly Subordinated Financial Intermediaries" Section

The main tasks of this section include the licensing of financial intermediaries directly subordinated to the MLCA as well as their continuous supervision. The yearly reports drawn up by the external MLA auditors provide an overview of the financial intermediary's application of the obligations contained in the MLA and represent an important part of the supervision procedure. In the case of violation of the MLA, orders are given by this section to take measures to restore legality. These measures include the withdrawal of the operating licence and the liquidation of the financial intermediary.

2.3 Audit Section

The Audit Section works closely with the three other sections on all MLA audits, whether these audits are conducted by MLCA staff or by accredited auditors.

MLA audits of financial intermediaries licensed by the MLCA are generally entrusted to accredited auditors. These agencies take on the MLCA's task of conducting an annual audit to check if licensed financial intermediaries observe the legal obligations stemming from the MLA and its implementing provisions. The Audit Section supervises MLA auditing activities conducted by these external auditors, in particular by examining reports filed by these auditors, and by conducting its own audits of the licensed financial intermediaries through random on-site inspections.

MLCA staff, on the other hand, systematically conduct SRO audits themselves, with one exception provided for by the law. This enables it to ensure that each SRO continues to fulfil the conditions for recognition.

General supervision tasks of the Audit Section also include the continuous evaluation and development of supervision policies applicable to the SROs and financial intermediaries.

2.4 Market Supervision Section

The Market Supervision Section is responsible in particular for identifying financial intermediaries operating illegally, placing them under supervision or prohibiting them from engaging in illegal activity. In the event that an illegally operating financial intermediary does not cease its activities, the MLCA will oblige it to do so, if necessary by liquidating the field of activity in question or by liquidating the entire company if financial intermediation constitutes the major part of its activity.

The starting point for investigations tends to be information provided by financial intermediaries, the SROs or other authorities, or information provided by private individuals, active research conducted by the section staff (e.g. Internet filtering) or information broadcast by the media.

3 New developments relating to the MLCA

3.1 Issues of subordination

The legal definition of activities in the non-banking sector subject to the provisions of the MLA leaves so much leeway for interpretation that it has been an issue for the MLCA ever since its creation. The MLCA continuously receives requests from potential financial intermediaries from the non-

banking sector who would like to find out whether or not their planned activity falls under the scope of the MLA.

In some cases, the answer is simple because it is taken directly from the legal text itself.

The situation is different for many other activities. Consequently, the MLCA has repeatedly found itself having to clarify the wording of the MLA or interpret the general clause[3] (i.e. the catch all provision). This is why, in 2002, the MLCA published an implementing ordinance that clarified the criteria for distinguishing between non-professional and professional activities. As far as the non-banking sector is concerned, the MLA only covers financial intermediation activities carried out by financial intermediaries on a professional basis.[4]

In recent months, the MLCA has developed its practices concerning the following questions: the territorial applicability of the MLA; an activity in the financial sector as a prerequisite of the applicability of the general clause; the applicability of the MLA to public activities; the applicability of the MLA to the transport of valuables, the custody of assets, the credit business, services relating to payment transactions, trading in raw materials, banknotes, coins and precious metals; the applicability of the MLA to group companies, organs of domiciliary companies, auxiliary personnel of a financial intermediary; the non-applicability of the MLA to debt collection activities, transport of goods with a cash-on-delivery order, organs of operative companies; and the construction of the notion of securities.

Further clarification is in progress. When the MLCA makes a decision of principle that could affect numerous financial intermediaries, it publishes the new practice on its website[5] to make it accessible to the greatest number of people possible.

3.2 The due diligence obligations of the financial intermediaries

3.2.1 The total revision of the Ordinance

A total revision of the MLCA's 1998 Ordinance on the due diligence obligations of financial intermediaries directly subordinated to the MLCA became necessary in view of the experience gained with the Ordinance, the further development of international standards and the revision of the due diligence obligations applicable to the banking sector. The revision of the Ordinance has been prepared over the last few months and will enter into

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3 Art. 2 al. 3 first sentence MLA.

4 Ordinance of 20 August 2002 of the Money Laundering Control Authority concerning Financial Intermediation in the Non-Banking Sector as a Commercial Undertaking (OCU-MLA).

5 http://www.gwg.admin.ch.

force on 1 January 2004. As far as is practicable and appropriate, the new regulation has been harmonised with regulations applicable to the banking sector.

3.2.2 Risk-oriented approach

The most important change is the risk-oriented approach that the financial intermediaries will have to apply in future in their work in the prevention of money laundering. As far as the special duty to clarify the background and purpose of relationships or transactions is concerned, the financial intermediary will have to separate the clients and their transactions into at least two categories, one with a regular and one with a higher money laundering risk. The financial intermediaries themselves will have to develop the relevant criteria for the categorisation, taking into account the nature of their particular business. Business relationships involving PEPs and transactions involving more than CHF 100,000 in cash, bearer shares or precious metals will always be considered to belong to the high risk category. In addition, the financial intermediaries will have to introduce a monitoring system for their business relations and transactions.

3.2.3 Distinction according to size regarding internal organisation

In future, the requirements regarding a financial intermediary's internal organisation will depend on its size. If a financial intermediary employs more than five people to handle transactions covered by the MLA, it will have to have written internal guidelines in place for the implementation of the law and a set of internal controls. For financial intermediaries employing fewer than five people, the requirements regarding internal organisation will be greatly simplified. A competence centre for combating money laundering will have to be established by all financial intermediaries. However, this task and the internal controls may be outsourced to competent external persons.

3.2.4 An outline of further changes

Special rules will be introduced for money and value remitters.

New threshold amounts will apply for the identification of the contracting partner and for establishing the identity of the beneficial owner in the case of one-off transactions.

The Ordinance will outline more clearly the modalities for severing questionable business relationships.

It will also allow for third parties to be involved in the implementation of the MLA's due diligence obligations, whether this is another financial intermediary or any other third party. The liability, however, will always remain with the financial intermediary responsible in accordance with the MLA.

The formalism in connection with the identification of the contracting partner will, to a large extent, be reduced. For example, a broader selection of documents will be acceptable for the identification of the contracting partner. The same is true for the group of persons that will be able to authenticate copies of identification documents.

A general section at the start of the Ordinance will contain definitions and some basic principles concerning entering into business relationships.

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Eidgenössische Bankenkommission
Commission fédérale des banques
Commissione federale delle banche
Swiss Federal Banking Commission

Combating Money Laundering: an Important Task for the Swiss Federal Banking Commission

1 Supervisory aims of the Swiss Federal Banking Commission (SFBC)

The SFBC is entrusted with the autonomous surveillance of banks, securities dealers, stock exchanges, investment funds and mortgage bond issuers[1]. In executing this task, it applies Swiss federal legislation governing banks[2], stock exchanges[3] and securities trading, and investment funds[4]. Since 1998, it has also acted as a "supervisory authority under specific surveillance legislation" monitoring compliance with the Money Laundering Act. The SFBC's activity has a number of aims:

1.1 Protection of creditors and investors

The SFBC's task is, wherever possible, to prevent depositors from incurring losses due to the collapse of a bank. Investors are protected through adherence to the regulations of the Stock Exchange and Investment Funds Acts.

1.2 Functional and system protection

The supervisory authority is to help stabilising the financial markets and prevent the collapse of individual institutions from triggering contagion problems and chain reactions throughout the financial markets.

1.3 Protection of trust and reputation: includes combating money laundering

Finally, the supervisory authority is responsible for maintaining and promoting public confidence in the Swiss financial sector and the individual financial intermediaries while safeguarding and strengthening their good reputation.

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1 Art. 23 para. 1 BankA.

2 Banking Act.

3 Stock Exchange Act.

4 Investment Funds Act.

To this end, it is important to prevent financial intermediaries from being misused by money launderers or even acting as their accomplices.

2 The SFBC's fight against money laundering began well before 1998

In fact, the SFBC was combating money laundering long before the Money Laundering Act came into force in 1998.

2.1 Practice regarding irreproachable business conduct (since 1972)

Since being authorized to do so following a partial amendment of the Banking Act in 1972, the SFBC has repeatedly taken action against banks who failed in the duty to exercise due diligence imposed on them by the provisions of the Banking Act. In a number of decisions, it developed the concept of a special obligation on the part of banks to investigate in greater detail the background and purpose of any unusual transactions which have no visible lawful purpose. The Swiss Federal Supreme Court has supported the SFBC's practice in various decisions[5].

2.2 Participation in the elaboration of the FATF Recommendations (1989 – 1990)[6]

In 1989, the SFBC presented its practice of special investigative duty as part of the consultations leading to the "Financial Action Task Force" (FATF)[7] recommendations. It was incorporated into recommendation 14, on which Article 6 of the Money Laundering Act is itself based. The current Director of the SFBC Secretariat headed the Swiss delegation to the FATF during this decisive phase.

2.3 SFBC Money Laundering Guidelines (1991/1998)

The SFBC implemented the FATF Recommendations in the Money Laundering Guidelines[8] addressed to the banks in 1991, which were adapted in 1998 to comply with the new Money Laundering Act. These guidelines were re-

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5 For example: Swiss Federal Supreme Court Decision 111 Ib 126.

6 For further explanations on FATF, see "International Developments in the Fight against Money Laundering and the Role of Switzerland", section 2, p. 21 ff.

7 SFBC Bulletin 31, p. 19 ff, see also http://www1.oecd.org/fatf/pdf/40Rec_en.pdf.

8 Official texts exist only in French (http://www.ebk.admin.ch/f/publik/rundsch/98-1.pdf) and German (http://www.ebk.admin.ch/d/publik/rundsch/98-1.pdf).

placed by the SFBC Money Laundering Ordinance[9], which entered into force on July 1, 2003.

2.4 Practice regarding politically exposed persons "PEP" (since 1986)

Following the Marcos affair in 1986, the SFBC publicly stated for the first time its expectation that decisions on business relationships with politically exposed persons should be taken at a bank's top management level. Even before the new provisions of the Swiss Criminal Code on corruption came into force, the SFBC also announced in 1994 that accepting assets, which are identifiably the proceeds of corruption, was not compatible with the guarantee of irreproachable business conduct as required by the Banking Act. It reinforced this stance with its investigations and rulings in the Montesinos and Abacha cases[10]. In this area too, an international standard has been developed in recent years, which the SFBC expressly welcomes and wholeheartedly endorses.

3 The SFBC supervises a core area of the financial sector

The SFBC as the money laundering supervisory authority responsible for banks and securities dealers covers a key section of the Swiss financial market. Although the SFBC's money laundering supervisory role only encompasses around 400 out of a total of some 6,700 financial intermediaries who are subject to the Money Laundering Act, they are (together with the insurers) the most important in economic terms.

3.1 Central role of the banks and securities dealers in asset management

The value of assets managed in securities accounts in the banks in Switzerland amounted to CHF 3,320 billions at the end of 2001. In the course of the sharp fall on the stock exchange, in 2002 this figure dropped by 14% to CHF 2,870 billions[11]. In 2002, the total value of funds deposited on saving accounts in Switzerland and investment accounts for clients in Switzerland amounted to CHF 316 billions[12].

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9 See section 5.

10 http://www.ebk.admin.ch/e/archiv/2000/neu14a-00.pdf and http://www.ebk.admin.ch/e/archiv/2001/m1113-01e.pdf .

11 Leaflet "Swiss Financial Center", 2003, published by the Federal Department of Finance, available online at : http://www.efd.admin.ch/e/dok/faktenblaetter/finanzplatz/bedeutung.pdf.

12 See "SFBC: statistical information", p. 71.

3.2 Only banks and securities dealers may manage assets in their own name

In addition, all Swiss asset managers may only open an account with a bank or a securities dealer in the name of their client. If they do this in their own name, they become securities dealers and require an SFBC license in accordance with the Stock Exchange Act. This means that the clients of independent asset managers are usually also clients of a bank, which has to comply with all the due diligence obligations on their behalf. In other words, the current regulation provides for two identification obligations concerning the same client: one imposed on the asset manager and the other on the bank. In this connection, the bank may rely on the information provided by the asset manager. However, as the bank bares the final responsibility, it must be in possession of all relevant documents.

4 Regulatory framework for the SFBC's fight against money laundering

4.1 Banking, Stock Exchange and Investment Funds Act

Under the Banking Act and Stock Exchange Act, the Board of Directors and top management of a bank or securities dealer must "ensure irreproachable business conduct". The Investment Funds Act contains a similarly formulated requirement for the executives of fund management companies. This requirement for the conduct of business is called into question whenever one such responsible person violates the due diligence provisions designed to combat money laundering.

4.2 Penal Code

As a result, the provisions of the Swiss Penal Code in general and those on money laundering[13] and on the failure to exercise due diligence in financial transactions[14] are also relevant for the SFBC's supervisory function. During the preliminary stage of its administrative proceedings, the SFBC determines whether these provisions have been violated. It is not tied to the interpretation of the criminal courts, but can set more stringent regulatory standards. In addition, its proceedings are not primarily aimed at natural persons, but concentrate on preventative measures for banks and securities dealers.

[13] Art. 305bis Penal Code.

[14] Art. 305ter Penal Code.

4.3 Money Laundering Act

With respect to the institutions under its supervision, the SFBC is the authority responsible for the enforcement of the obligations imposed by the Money Laundering Act These include : the due diligence obligations (of which the special duty to investigate unusual transactions referred to above is an important example), organizational obligations or the obligation to report where there are reasonable grounds to suspect that money is being laundered. Pursuant to the Money Laundering Act, the SFBC as a supervisory authority instituted by a specific surveillance legislation is entrusted to giving concrete form to the due diligence obligations.

4.4 SFBC Money Laundering Ordinance

Until July 1, 2003, the task of defining the due diligence obligations was achieved via the Money Laundering Guidelines issued by the SFBC[15]. Since then, a new ordinance has replaced these guidelines. It stipulates in detail when special investigations must be carried out into unusual transactions, define organizational requirements and the action to be taken when money laundering is suspected.

4.5 Agreement on the Swiss banks' code of conduct with regard to the exercise of due diligence (CDB) as self-regulation

In contrast, the "Swiss banks' code of conduct with regard to the exercise of due diligence"[16], concluded by the banks in the form of an agreement under civil law, deals mainly with the issue of how the banks should verify the identity of their contracting partners and of any other beneficial owners of invested assets. This document - revised in 2002 and submitted for approval to the SFBC – sets out minimum standards in relation to the identification of clients by institutions supervised by the SFBC. The SFBC is also informed of all the decisions made by the CDB Supervisory Board, which can impose "civil fines" of up to 10 million Swiss francs on banks (but not on the employees concerned). The SFBC then determines whether additional measures against the concerned employees (guaranty of irreproachable business conduct) or the institution (compliance with the terms of the license) are necessary under administrative law. It is usually already aware of the most serious cases anyway.

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15 The latest version being the SFBC Guidelines 98/1. Official texts exist only in French (http://www.ebk.admin.ch/f/publik/rundsch/98-1.pdf) and German (http://www.ebk.admin.ch/d/publik/rundsch/98-1.pdf).

16 Latest version, available online at : http://www.swissbanking.org/en/1116_e.pdf.

5 The forthcoming SFBC Money Laundering Ordinance

In line with its intention published at the time of its investigation into the Abacha affair in the autumn of 2000, the SFBC has conducted an amendment procedure to the current Money Laundering Guidelines. The ordinance was put in consultation in June 2002 and was adopted by the SFBC on December 18, 2002 in a slightly modified version[17]. The modified text entered into force on July 1, 2003, with a transitory period extending to July 1, 2004 for more complex dispositions, such as the implementation of transaction monitoring systems or the classification of clientele according to risk factors. It increases the standards of due diligence in various areas.

5.1 Additional investigations of higher-risk business relationships

The ordinance requires different levels of due diligence depending on the risk involved. For instance, while all clients still need to be identified in the same way (with a copy of an official identity document), in the case of higher-risk business relationships, banks and securities dealers must carry out additional investigations, for instance into the origins of the assets. This means that they must first define risk categories for their particular business activity and use them to identify and flag all existing and new higher-risk business relationships. For such higher-risk business relationships, the bank must obviously verify more than the client's identity. Where necessary, additional investigations must be carried out, checked for plausibility and documented.

5.2 Electronic transaction monitoring systems

With the exception of very small institutions, all banks and securities dealers now have to use electronic systems to monitor transactions. This will help to identify unusual transactions, which must then be evaluated within an appropriate period of time and should, where necessary, lead to additional investigations into the relevant business relationships.

5.3 Rules on politically exposed persons and the fight against corruption

The ordinance maintains the rules of the old Money Laundering Guidelines regarding business relationships with politically exposed persons. The decision on whether to begin, continue or terminate such a relationship must be taken at top management level. The acceptance of any assets derived from

[17] Official versions only available in German, French and Italian; in this connection see the links under "Federal rules" on the SFBC website: http://www.ebk.admin.ch/e/regulier/index.htm. An unofficial translation of the ordinance is available under http://www.ebk.admin.ch/e/aktuell/m032703-03e.pdf.

criminal activity, which includes corruption and misuse of public funds, either in Switzerland or abroad, is clearly prohibited.

5.4 Misuse of the financial system by terrorists

Banks and securities dealers may not maintain business relationships with persons or organizations that they suspect of having links to terrorist organizations. If they discover such a business relationship, they must notify the Money Laundering Reporting Office Switzerland (MROS) immediately.

5.5 Global monitoring of reputational risks

International banks must also record, limit and monitor all their risks on a global level, and this includes reputational risks arising from business relationships that are not investigated with due diligence. For this reason, the basic principles also apply to domestic and foreign entities of the group. Swiss banking groups could be at a competitive disadvantage if the Swiss rules do not correspond to local law or practices. In such cases, the SFBC must find a solution together with the authorities and institutions concerned in each individual case.

5.6 Implementation of the new Ordinance

Besides the provision for a transitory period for the entry into force of certain complex disposition, the ordinance provides for the introduction of a control system to monitor implementation. The objective is to ensure an adequate implementation by the financial intermediaries. In this context, banks, securities dealers and investment fund management have been required to produce a preliminary report on their implementation progress before September 30, 2003. These institutions have until June 30, 2004 to set up a system allowing for the application of the dispositions of the ordinance (transaction monitoring, identification of higher risk relations). External Auditors will be required to look into the implementation of the ordinance as part of their 2004 annual audits.

6 The SFBC's guiding principles in its fight against money laundering

In connection with its investigation into Abacha, the SFBC summarized the principles guiding its efforts to combat money laundering in its 2000 annual report[18].

[18] Only available in German (http://www.ebk.admin.ch/d/publik/bericht/jb00.pdf, p. 22) or French (http://www.ebk.admin.ch/f/publik/bericht/jb00.pdf, p. 164).

6.1 Compliance with due diligence obligations is key

The SFBC does not view a violation of the due diligence obligations contained in the Money Laundering Act and its own Money Laundering Guidelines (since July 1, 2003 : the Money Laundering Ordinance) as a peccadillo or gentlemen's' offence. On the contrary, compliance with them is essential with regard to maintaining confidence in and safeguarding the reputation of Switzerland's financial services industry as mentioned above. The SFBC views any violation of due diligence obligations clearly as regulatory relevant and take the necessary sanctions in this regard. The SFBC does not leave this to the criminal prosecution authorities, who are generally only able to act after the fact and in a repressive rather than preventative way.

6.2 Serious violations of obligations are pursued consistently with regulatory measures

Accordingly, the SFBC consistently pursues all serious violations of obligations, either by initiating proceedings itself (within the scope of application of its Money Laundering Ordinance) or by notifying the criminal justice or due diligence authorities responsible for pursuing such cases. Parallel proceedings are also possible in accordance with overlapping sanction rules.

6.3 Responsible managers risk sanctions

Under the Banking Act and the Stock Exchange Act, the Board of Directors and top executive management of a bank or securities dealer must "ensure irreproachable business conduct". If the Board of Directors and top management of a bank or securities dealer are responsible for serious violations of due diligence obligations or organizational inadequacies in combating money laundering, they risk punishment by administrative order from the SFBC prohibiting them from performing their functions in their current position or in similar positions with other companies under the supervision of the SFBC for a set period.

6.4 Organizational weaknesses must be rectified quickly and effectively

If the SFBC identifies organizational weaknesses, it issues where necessary an order prescribing their speedy and effective rectification. This order may be accompanied by a requirement for an examination by a statutory auditing firm or the SFBC itself.

6.5 Withdrawal of license in the event of ongoing organizational weaknesses

If a bank does not comply with such an order, or repeated or ongoing serious organizational weaknesses are apparent, it risks having its license withdrawn.

6.6 International harmonization of due diligence standards is required

Not least to ensure global competitiveness, the SFBC supports all efforts towards international harmonization of the high standards at which it already operates nationally. To this end, it is involved in international committees and bilateral negotiations and also actively initiates discussion on any regulatory discrepancies between countries.

Combating money laundering in private insurance

1 The area of supervision of the FOPI

The Federal Office of Private Insurance (FOPI) is part of the Federal Department of Finance (FDF) and ensures that private insurance companies are able to fulfil their obligations towards policyholders at all times[1].

To this end, the FOPI monitors the business activity of the private insurance institutions, which are subject to state supervision, that is to say life, accident and property insurers and reinsurers. State insurance institutions such as AHV, SUVA and military insurance, and also certain pension funds and foreign reinsurers are excluded. Health insurance schemes are subject to FOPI supervision only in respect of supplementary health insurance.

The fight against money laundering also plays a part in insurance supervision. Of the total premium volume of 51 thousand million Swiss francs (of which 34 thousand million Swiss francs relate to life insurance policies), slightly over 20 thousand million Swiss francs are relevant for supervisory purposes aiming at combating money laundering. In enforcing the Money Laundering Act, inspections of the insurance companies play a central part in the supervisory activity of the office. Therefore, the fight against money laundering is a point, which is checked in every inspection. In working out the annual inspection plan the capital investment section responsible defines the appropriate points to be checked.

In addition, the Office participates in the preparation of legislation and also in working out money laundering rules at international level, and provides information in response to relevant enquiries.

[1] Cf. the website of the Federal Office of Private Insurance (FOPI): www.bpv.admin.ch.

2 Action to combat money laundering by the FOPI

2.1 Purpose and area of application of the Money Laundering Act in relation to the insurers

In accordance with the Money Laundering Act[2] the FOPI monitors the measures taken by the life insurance companies to prevent money laundering. The duties of the life-insurance companies include in particular the identification of the contracting party and the determination of the beneficial owner; clarifying the purpose of an insurance transaction which seems unusual or if grounds exist for suspicion that the assets concerned stem from a crime or are subject to the power of disposition of a criminal organisation; the safe custody of documents which support the investigations undertaken; and in addition the duty to ensure adequate training of staff and proper checks.

If a life insurer knows or has reasonable grounds to suspect that money laundering is present in a business relationship, the insurer must submit a report to the competent Money Laundering Reporting Office (MROS) in the Federal Police Office.

2.2 The principle of self-regulation

The Money Laundering Act leaves room for the development of a system of self-regulation by the financial intermediaries affected. The life insurance institutions have made use of this possibility. In 1998, the Swiss Insurance Association (SIA) created a self-regulating organisation, the SRO-SIA. However, a system of self regulation does not exempt the supervisory authorities specially designated by law, i.e. in this case the FOPI, from fulfilling their duties of supervision towards the financial intermediaries placed under their control. Thus, in accordance with the Money Laundering Act, supervision of compliance by the insurance institutions with the obligations imposed by the MLA (i.e. the due diligence duties and the reporting obligation in case of suspicion of money laundering) lies with the FOPI, irrespective of whether an insurance institution is affiliated to the SRO-SIA or not. The FOPI monitors the insurance institutions not affiliated to the SRO-SIA which are subject to the Money Laundering Act, exclusively and directly. Such institutions are required to provide information about their activities in the field of combating money laundering, by completing an annual questionnaire. The majority of life-insurance companies, which have their registered office in Switzerland, are affiliated to the SRO-SIA. Only three companies have not joined this organisation.

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2 Art. 12 MLA.

2.2.1 The Swiss Insurance Association self regulating organisation (SRO-SIA)

The SRO-SIA sets out a detailed set of regulations on the duties defined in the Money Laundering Act[3]. The regulations require the affiliated companies to set up a specialist office within the company for combating money laundering. They provide for a system of controls and sanctions. If, for example, a company is in breach of the duties incumbent upon it, the SRO-SIA management board can impose sanctions, which can range from a warning to a fine of up to 1 million Swiss francs

Insurance company self-regulation organisations - currently only the SRO-SIA already referred to exists - must be recognised by the FOPI and are also subject to its supervision. They must maintain a register of the affiliated companies. The FOPI must be informed annually about the activities of the SRO. If the SRO is in breach of the relevant regulations, the FOPI can in an extreme case withdraw its recognition.

2.3 FOPI directive on combating money laundering

The FOPI has set out in concrete terms the duties imposed by the Money Laundering Act by issuing an official directive and has laid down how these are to be fulfilled by the insurance institutions[4]. The FOPI Directive on Combating Money laundering (MLD) came into force on 30 August 1999. It also forms the basis for the SRO regulations.

This directive makes clear the duties of the insurance institutions, defines the basic conditions for self-regulation in the insurance sector, describes the responsibilities of the FOPI in the area of money laundering, and lists the measures available to it to fulfil these responsibilities. The directive applies to all insurance institutions within the meaning of the Insurance Supervision Act[5,] which exercise an activity in the area of direct life insurance, or offer or sell shares in investment funds. The provisions are set out as minimum provisions; the SRO can provide for additional or more stringent provisions.

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3 Identification of the contracting party, determining the economic beneficiary, determining the payee, clarification of the background and purpose of a transaction, duty of documentation.

4 Art. 16 MLA.

5 Federal Act of 23 June 1978 on the Supervision of Private Insurance (Insurance Supervision Act, ISA).

2.3.1 Definition of obligations imposed by Section 2 of the Money Laundering Act

2.3.1.1 Identification of the contracting partner

The directive in particular lays down the sum above which identification of the contracting party is obligatory, i.e. it expresses in concrete terms the concept of "substantial value". Identification must take place, when a single-life insurance contract is concluded, if the single premium or the periodical premiums exceed the sum of 25,000 Swiss francs per contract within a period of five years. A duty of identification also arises in the case of a payment of over 25'000 Swiss francs into a premium account for the benefit of a single-life insurance, where no insurance contract yet exists, and also in the case of the sale of shares in investment funds[6].

2.3.1.2 Establishing the beneficial owner

The insurance institution must obtain from the contracting party a written declaration stating who the beneficial owner is, particularly if the contracting party is not the beneficial owner or if doubts arise in this respect, especially if the contracting party is acting as the authorised agent of a third party.

2.3.1.3 Duty of documentation

The life-insurance institutions must prepare documentary evidence about the insurance contracts, which have been concluded, and about the identifications and investigations. Third parties with a knowledge of the subject - the FOPI in particular - are therefore able at any time to form a reliable judgement on how the insurance institution is fulfilling the provisions of the Money Laundering Act and of the Directive and is identifying the policyholder and the establishing the identity of the economic beneficiary (documents to be kept for at least 10 years).

2.3.1.4 Reporting duty

The duty to report irregularities is governed by the provisions of the Money Laundering Act. The insurance institutions are required to inform the FOPI of reports made to the MROS.

2.3.1.5 Organisational measures

Every insurance institution subject to the Money Laundering Act must appoint a responsible body within the company, which has responsibility for monitoring the provisions of the Money Laundering Act and the FOPI Directive, and

6 Art. 5 MLD.

for adequate training of its staff in relation to the measures to combat money laundering.

2.3.2 Defining the legal framework for the private insurance companies' SRO

The SRO must be recognised by the FOPI. They are subject to the supervision of the FOPI and must maintain a register of the affiliated companies. They must inform the FOPI of changes to this list. The FOPI is to be informed annually about the activities of the SRO.

2.3.3 Specifying the responsibilities and measures of the FOPI to combat money laundering

The FOPI approves the regulations issued by the SRO. It monitors the effective application of these regulations by the SRO and that the insurance institutions which are not affiliated to an SRO are fulfilling the duties imposed by section two of the Money Laundering Act. In addition, the FOPI communicates the decisions of the Financial Action Task Force on Money Laundering (FATF) to the SRO-SIA and to the life insurance institutions directly subject to its authority by circular letter for implementation.

The FOPI can carry out on-site inspections or instruct audit boards to carry out the checks. In the case of contravention to the Directive the FOPI, in addition to the measures available to it in accordance with the legislation on the supervision of insurance activity, can also resort to measures to restore the proper situation in accordance with the Money Laundering Act[7]. It can withdraw an insurance institution's licence, if it is repeatedly or grossly in breach of its legal obligations in accordance with money laundering law.

2.4 Current activities - permanent tasks

The legal provisions give rise to a series of permanent tasks for the FOPI in the battle against money laundering:

- Scrutinising the annual SRO report;
- Updating the list of members of the SRO-SIA and the list of non-members;
- Training events (active and passive);
- Examining the measures specific to the company on the occasion of inspections at the company offices;
- Continuous updating of the provisions of the law and directive;
- Answering questions from associations, companies and third parties concerning the application of MLA provisions.

7 Art. 20 MLA.

3 Developments

Two terms stand out in the most recent developments: supervision of intermediaries and Liechtenstein.

On 9 May 2003, the Federal Council adopted the “message” on the complete revision of the Insurance Supervision Act[8]. In this, provisions are made for independent intermediaries (brokers) to have to be listed in a register. Without this register listing, any business activity is prohibited. The register is managed by the Federal Office of Private Insurance (FOPI). In connection with this innovation, by amending the Money Laundering Act, it is also recommended transferring money-laundering supervision of the independent intermediaries to FOPI (up to now the task of the Money Laundering Control Authority). The proposal is currently being debated by the Council of States.

Swiss insurers operating in Liechtenstein must also undergo a money laundering check relating to their activities in Liechtenstein. Up to now the question of responsibility was not dealt with in the law. Hitherto, the FOPI ordinance pointed to supervision of the measures in Liechtenstein business as coming within the competence of the FOPI, however, taking into account the Liechtenstein limits on customer identification. From next year, this rule is only valid for business done from Switzerland via the route of so-called freedom to provide services. Business done by a branch of a Swiss company in Liechtenstein is now subject to money laundering supervision in Liechtenstein. This change is in part the result of the creation of effective money laundering supervision in the Principality of Liechtenstein and will be agreed upon within the scope of the agreement on direct insurance between Switzerland and Liechtenstein, concluded on 19 December 1996[9].

[8] Official Federal Gazette of 10 June 2003, p. 3789

[9] CC 0.961.514

The Fight against Money Laundering in and through Casinos

1 Money laundering risks in casinos

There are basically three ways in which casinos can be misused for money laundering purposes.

1.1 First Level: The player

Playing in a casino is used as a pretext to justify increases in assets. This is the first level of risk. A money launderer who wants to channel an unusually high sum of money back into circulation through a bank can pass off the transaction by saying that he won it at a casino.

Casinos also act as bureaux de change. Original notes originating from a kidnap ransom, for example, can be exchanged for unsuspicious notes, although any business offering a bureau de change service runs this risk.

1.2 Second Level: Casinos offering financial services

At the second level casinos offering actual financial services, whether in the form of deposits or accounts for the players, can also be appealing to money launderers. Casinos can also serve as international transport agents where, for example, it is possible to play in Vienna, have the winnings (or other assets) credited to an account, carry on playing in Zurich and there collect the money at the casino or transfer it to another casino in Las Vegas. This would create an additional non-banking network through which funds could illegally be transferred quickly, and through relatively unknown routes. It is also conceivable that a casino which has payments to make to a player does so by directly paying a bank transfer into the player's account rather than paying him in the form of cash or a signed cheque, thereby opening up an additional channel for dirty money to enter the financial system.

1.3 Third Level: The casino as a front company

Abuses of casinos are conceivable at the third level by using the management or an employee in a key position. It is to be expected that employees in the casino milieu are subjected to corruption advances. If money launderers can make use of the financial channels of the casino business, they have created the perfect front company. It is particularly important, therefore, to examine the interests of the casino operators. It must also be possible to assess licensees in a thorough manner, participations must be disclosed, and transparency regarding the financial ownership of the casino operation must be the rule.

2 Legislation to minimise money laundering risks

2.1 Casinos subject to the Money Laundering Act

In order to deal with risks at the first and to some extent the second level, the Gaming Act stipulates[1] that casinos in Switzerland are subject to the Money Laundering Act. Casinos are bound to the same duties of due diligence as banks, insurance institutions and other financial intermediaries.

2.2 Special legal provisions

The risks outlined above were already known when the legislative work on the Gaming Act was in progress as were the regulations in the Money Laundering Act.

Specific money laundering risks, particularly at the third level, have already been taken into account under special provisions in the Gaming Act.

2.2.1 Licence provisions

The conditions for issuing licences are aimed at identifying the interests behind the casino operators and the financial ownership of the casino.

A licence can only be issued to a public limited company if it is established under Swiss law, its share capital is split into registered shares and its Board members are resident in Switzerland.

A further requirement is that the applicant and the main business partners and their beneficial owners as well as shareholders and their beneficial owners have sufficient equity, are of good reputation and can give a guarantee of irreproachable business activity. In addition, the applicants and shareholders must have proved the legitimate origin of the money available.

[1] Art. 34 FGA.

People with a direct or indirect participation in excess of 5% in the capital and people or groups of people with voting rights whose share is in excess of 5% of the total voting rights are deemed to be beneficial owners. People who hold such a participation must also make a declaration to the Board as to whether they hold the shares on their own behalf or on behalf of third parties and whether they have granted option facilities or similar rights for these participations.

These requirements should bring the necessary transparency to relations and ensure that possible dependencies are disclosed and reduced to a minimum.

2.2.2 Taxation of casinos

Over and above standard business taxes, casinos are liable for tax on their gross gaming revenue. Gross gaming revenue is calculated as the difference between the game stakes and the winnings paid out. This tax revenue is earmarked as revenue for the equalisation fund of the Swiss old age and surviving dependants insurance (AHV). The tax rate is between 40% and 80%. This additional tax burden on casinos makes it far less attractive to use the casino for laundering dirty money on a grand scale.

2.2.3 Further provisions relating to money laundering risks

The Gaming Act and its Ordinance also stipulate that winnings can only be registered if the casino is able to check the origin of the stakes and the actual winnings. The casino may not accept or issue any personal cheques. If the casino writes out a cheque to a player, the following note is added: "This document does not confirm either stakes or winnings", thereby making the front for dubious asset increases more difficult. The casino may not provide loans or advance payments, and players' deposit account credits may not receive interest. Only "in-house" tokens, i.e. tokens that the casino itself has distributed, may be used in the casino. No foreign tokens will be exchanged for cash either. When setting up a guest account, close attention will be paid to compliance with the duties of due diligence. The money to be paid into a player's guest account can only be paid through a bank in a Financial Action Task Force (FATF) country. No cash payments or payments by third parties into the guest account may be made. Any eventual reimbursement of any remaining balance may only be made into a player's account at the branch from which the payment into the guest account originated.

3 Revision of the FATF's Forty Recommendations

As past of the last revision of the FATF’s 40 Recommendations (June 2003), the obligations of due diligence and the duty to report suspicions were

extended to cover casinos. In particular, the threshold applicable for occasional/one-off financial transactions has been set at USD/EUR 3,000. Consequently, the Swiss Federal Gaming Board ordinance on combating money laundering - which currently provides for an identification threshold on cashier transactions of CHF 15,000 or of CHF 5,000 respectively if the transaction is conducted in foreign currency – will be amended to conform with these new recommendations in the near future.

4 Activities of the Swiss Federal Gaming Board (SFGB)

4.1 SFGB's tasks

4.1.1 Introduction

The SFGB with its competent secretariat is an independent administrative authority of the Swiss Confederation which is affiliated for administrative purposes to the Federal Department of Justice and Police (FDJP). It began operating when the Gaming Act came into force on 1 April 2000. The Gaming Act regulates gambling for money, licensing, operation and the taxation of casinos.

When the Gaming Act came into force, Switzerland had no actual casino with table games such as roulette or black jack. Only the new Act made it possible to issue licences to operate the "Grand Jeu". The SFGB's main activity initially was to check and assess licence applications. Great attention was paid to the risk of casinos being used by money launderers as the good reputation, the guarantee of an irreproachable business activity and the legitimate origin of funds could be checked very carefully. The first casino to obtain a definite licence started operating at the end of June 2002. 20 casinos will be in operation by the end of 2003. The SFGB's focus now is on the supervision of these casinos.

4.1.2 Tasks

As with the Swiss Federal Banking Commission (SFBC) the SFGB's remit consists of monitoring compliance of establishments with the legal provisions. This consists mainly of the following:

- Monitoring of the management and gaming operation of casinos
- Casinos' compliance with obligations under the Money Laundering Act
- Implementation of security and social policy in casinos.

Under the security policy the casino must set out its measures to ensure compliance with the Money Laundering Act. The security programme must

also demonstrate how unauthorised operations and incidents can be detected in good time.

In addition the SFGB secretariat carries out its own criminal checks in respect of breach of the Gaming Act. The Board is the adjudicating authority under Swiss administrative criminal law. Proceedings are mainly directed against illegal gaming in places other than casinos.

5 Monitoring of casinos

5.1 Supervision by the SFGB

The SFGB directly supervises casinos and carries out its own on-site checks. As part of its tasks it may nominate the audit agency to carry out specific assignments.

Casinos must by law have their accounting audited each year by a financially and legally independent auditing body. The nominated auditor must produce a concluding report as part of this audit. The auditing body then submits the auditing report to the SFGB. As part of this audit the audit agency has to comment on the suitability of the casino's agreed measures to prevent criminal behaviour in general and to combat money laundering in particular.

Alongside this, the SFGB will also monitor compliance with the Money Laundering Act and the provisions of the Gaming Act as part of their on-site inspections.

5.1.1 SFGB sanctions

As part of its supervisory role, the SFGB may ask casinos, trade and manufacturing concerns with gaming facilities and their audit agencies for the necessary information and documentation. In the event of breaches of the Gaming Act or other such abuses, the Board can implement the necessary measures for restoring the appropriate legal conditions and eliminating the abuses. It can order the implementation of precautionary measures for the duration of the investigation such as the suspension of the operating licence. Legal proceedings can in serious cases lead to a restriction or withdrawal of the licence.

5.2 The SFGB as a special supervisory authority in the field of money laundering

The Money Laundering Act assigns the supervisory authorities under special law the task of implementing the duties of due diligence for financial intermediaries audited by them. Due note must be taken in this connection of the provisions concerning duties of due diligence under self-regulation.

A self-regulation body organised by the Swiss Casino Association has been in existence since 1999. In view of the fixed licences for casinos, the SRB's existing regulations were completely revised with a view to ensuring that the regulations, organisation and supervisory and training programmes met the standard of the self-regulation bodies recognised by the Control Authority. The SRB has been in constant contact with the SFGB. The Board was able to give its approval to the SRB SCA regulations in June 2002, which it considers to

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MROS Money Laundering
Reporting Office Switzerland

The Money Laundering Reporting Office Switzerland: Organisation, Role, and Activities

1 Organisation of the Money Laundering Reporting Office Switzerland (MROS)

1.1 Creation of MROS: 1998

The Law on the Prevention of Money Laundering in the Financial Sector (Money Laundering Act) entered into force on 1 April 1998 thereby introducing for the first time into Swiss Law the obligation to report[1] to complete the former right of notification enshrined in the Swiss Penal Code[2]. While the latter merely invited financial intermediaries to report any suspicion of money laundering to the criminal prosecution authorities, the new Money Laundering Act drafted in 1997 made it an obligation under the sanctions of law for financial intermediaries to report their reasonable grounds to suspect money laundering to MROS (The Money Laundering Reporting Office Switzerland).

Attributed upon its creation with a four-member staff hailing from the world of finance, MROS currently has eight members. Taking into account the substantial increase in the number of incoming reports (see section 6) along with the diverse categories of financial intermediaries who are affected by the obligation to report, MROS has with the passage of time included into its ranks the know-how of specialists from among the prosecuting authorities, the banking sector, insurance institutions, and the legal profession.

MROS is part of the Services Division of the Federal Office of Police within the Federal Department of Justice and Police. This organizational incorporation, however, vests it neither with the status of a prosecuting

1 Art. 9 MLA.

2 Art. 305ter Penal Code, in force as of 1 August 1994.

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authority, nor with that of the police. Instead, it assures MROS the status of independence, as was the lawmakers' intention. Thus, within this structure, it is designated as an administrative authority whose role is that of a hub between financial intermediaries and the criminal prosecution authorities.

1.2 The Three Pillars within the Federal Office of Police for the Combat of Money Laundering

As of 1 January 2002, new competencies were conferred upon the Swiss Confederation in terms of white-collar crime, organized crime, and money laundering. In function with this, the Federal Office of Police established an appropriate structure based on three distinct pillars:

- The Money Laundering Reporting Office
- The Federal Criminal Police / Money Laundering Division
- The Analysis and Prevention Service.

The Money Laundering Division within the Federal Criminal Police is in charge of investigating cases of money laundering under the auspices of the Swiss Attorney General's Office. Divided into four commissariats, it comprises a staff of 35 members.

The Analysis and Prevention Service, already existing before the 1 of January 2002, now boasts experts in criminology who have been tasked with analyzing the money-laundering phenomenon and establishing typological paradigms to facilitate the work of all those authorities engaged in the combat of money laundering.

2 The Processing of Reports within Five Days

2.1 The Chronological Order

To enhance procedural efficiency and rapidity, an form has been placed at the disposal of financial intermediaries at the MROS website[3]. It is an absolute requirement that this questionnaire be filled out. It facilitates the integral processing of a report without subsequently having to importune the financial intermediary for additional information. The report will be first forwarded by fax and then confirmed by surface mail.

The processing of a report is conducted within the extremely limited time frame of five working days set down in the Law[4]. The financial intermediary is obliged to freeze the assets linked to his report from the moment that he has notified MROS. Once the deadline of five working days has elapsed, the

3 www.admin.ch/bap.

4 Art. 10 MLA.

financial intermediary is authorized to free the assets, as long as he has not received a legal injuction to freeze.

This implies that MROS must ensure that the report is processed, i.e., that a decision is made – should it prove necessary – to transmit the report for follow up to the criminal prosecution authorities, within a suitable lapse of time (between three and four days). The latter, in turn, undertake a routine assessment of the facts and notify the financial intermediary of any eventual legal injunction to freeze.

This firt steps impacts on all further actions undertaken. At the same time, they serve to portray the efficacy of the anti-money-laundering measures which Switzerland has deployed.

The operations involved in processing a report begin with pertinent research, including consultation of the following databases:

- VOSTRA criminal records
- RIPOL wanted persons
- AUPER requests for international assistance in criminal matters
- JANUS organized crime

in order to verify whether or not there is any information on record concerning the persons and companies mentioned in the report of the financial intermediary. Should it be deemed useful, MROS also consults public-domain databases such as Reuters and Dun & Bradstreet.

All of the reports received are entered into a specific database managed by MROS which goes by the name of GEWA. The same holds true for any requests for information sent to MROS by its international counterparts[5], as well as the verdicts pronounced by Swiss courts with respect to money laundering cases.

Should it happen that the report contains even one or several references to connections abroad, for instance the nationality of the persons or the domicile of the companies implicated, not to mention events related to the money laundering which took place abroad, MROS's status as a member of the Egmont[6] Group enables it to question its foreign colleagues.

2.2 Reasonable grounds to suspect

One of the principal characteristics of Swiss legislation on money laundering is the requirement that there exist reasonable ground to suspect money

5 See section 3 below.

6 See section 3 below.

laundering[7] as a condition – by means of a report to MROS - for the initiation of a criminal investigation.

This condition is fulfilled either right from the start based on the facts contained in the financial intermediary's report, or at a later point as a function of the results obtained by MROS from its analysis of the facts and consultation of databases. It may also be the result of the two happening simultaneously.

The notion of "reasonable grounds to suspect" is not a legally completely definded notion. Its interpretation is left to the criminal prosecution authorities. This is the reason why MROS bases its decision to transmit a report upon the analysis conducted and the indications accumulated, leaving to the criminal prosecution authorities the task of establishing the formal proof of money laundering. In case of doubt, the decision to transmit prevails over that of dropping the matter.

2.3 Filing the Report in the Database

In the event that the report together with the analysis and the research carried out by MROS are unable to substantiate the suspicion, the report is filed away after having been entered into the GEWA database (approximately 20% of reports received are not passed on to the prosecuting authorities). It is essential that all of the individual elements of a closed case be included into the database since this will make it possible, should need arise, to review the decision to close the matter and to revive the case if, later on, new elements should emerge in connection with another case or with the receipt of a tip coming in from any of the authorities.

2.4 Transmission to the Prosecuting Authorities

With the advent of new articles in the Criminal Code vesting the Confederation with enhanced authority with respect to money laundering and organized crime[8], MROS forwards to the Attorney General's Office (Public Prosecutor) approximately 40% of the reports it receives. Previously, all reports had been transmitted to the cantonal prosecuting authorities by virtue of the rules of jurisdiction.

The implementation of the various criteria in terms of attribution of competence is discussed at regular meetings held between MROS and the Attorney General's Office.

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7 Art.9 MLA.

8 Art. 340bis Penal Code, in force as of 1 January 2002.

It is important to point out that if the competence of an authority to which MROS has submitted a report is later denied, the same authority remains nonetheless obliged to take the first steps regarding seizure, namely a court order to freeze the assets, before declining jurisdiction for a given case.

3 MROS: Financial Intelligence Unit (FIU)

As mentioned above, considering the international dimension of Switzerland's financial center, the phenomenon of money laundering often reveals a cross-border aspect. This explains why MROS, being the Swiss Financial Intelligence Unit (FIU), must cooperate closely with its foreign counterparts. Lawmakers have provided a legal basis[9].

The different national FIUs are united within an international meeting forum called the Egmont Group comprising 82 members. MROS represents Switzerland in Egmont, participating in the plenary meetings as well as in the special working groups[10].

The nature of the information transmitted via a protected network are only related top money laundering. The disclosure of information exchanges can take place only if the FIU which transmitted the information has mentioned its expressed agreement. In 2002, this privileged information channel enabled MROS to reply to requests of foreign FIUs concerning approximatively one thousand persons and companies. This information network is very important for MROS in performing its task. The network is in constant expansion as, little by little, new States join up in the combat of money laundering by creating their own FIUs.

4 Typology of Money Laundering

4.1 National Typology

The prosecuting authorities are obliged to inform MROS of all investigations pending in connection with money laundering and organized crime and provide judgements and dismissal for lack of evidence[11].

This information is then entered into the GEWA database, thus placing at the disposal of MROS an overall survey of the money-laundering phenomenon in Switzerland.

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9 Art. 32 MLA.

10 Such as the legal working group and the "outreach working group".

11 Art. 29 para. 2 MLA.

At present, MROS has – in cooperation with the cantonal prosecuting authorities – undertaken to update the data contained in the database so as to be able to produce a complete situation update on verdicts and procedures underway.

4.2 International Typology

As a member of the Financial Action Task Force on Money Laundering (FATF), Switzerland also participates in the annual workshops on typology organized by the typology working group. MROS, as a member of the Swiss delegation to FATF, plays an active role in developing typology models based on its own experience, and in this same way has access to the contributions which other members make in the field of money-laundering typology.

5 MROS and the Phenomenon of Terrorism

Above and beyond those assets proceeding from crime, the obligation to report also targets those assets over which a criminal or terrorist organization[12] exercises the power of control.

In this way, at the time the 11 September 2001 events took place in the United States, Switzerland already disposed of a legal framework obliging financial intermediaries to notify MROS about the existence of assets being held by terrorists or destined to serve as funding for terrorist acts.

Taking into consideration the fact that the Federal Public Prosecutor had initiated criminal proceedings within the context of these terrorist attacks, all of the reports received from financial intermediaries were transmitted to this Authority.

In 2001 95 reports of possible funding of terrorist groups were sent to MROS involving 37 Million Swiss Francs in blocked assets. In 2002 the number dropped sharply to 15 reports and 1,6 Million Swiss Francs blocked.

6 Evolution and Trends

6.1 Volume of Reports

While the yearly increase in the number of reports statistically represented something close to 5 % during the initial phase of MROS operation, ever since 2001 the increase registered has been quite significant:

[12] Art. 260ter section 1 Penal Code.

- 1999 303 reports
- 2000 311 reports
- 2001 417 reports (+34%)
- 2002 652 reports (+56%)

The manner in which reports have been received until August 31st 2003 points towards another 50% increase compared to 2002.

6.2 Banking and Non-banking Sectors

Even though reports from the banking-sector grew in 2002, reports from the non-banking sector outweighed those from the banking sector (58% against 42%) for the first time in MROS-history.

This trend can be attributed to an improved reporting practice by the financial intermediaries who perform services as money transmitters.

This observation leads to the assertion that, as opposed to the banking sector whose experience in combating money laundering dates back to over 20 years, financial intermediaries hailing from the non-banking sector have been slowly but surely making the anti-money-laundering norms their own. Their ever-growing participation in implementing the Law on Money Laundering can indeed be looked on as source of gratification.

Statistical Information[1]

Of the 12 Self-Regulating Organisations (SRO) recognised by the MLCA, 7 are sector-related, 3 are general SRO, the others are the SRO Swiss Post and the SRO Swiss Federal Railways SBB.

Affiliated / authorised financial intermediaries in the non-banking sector:

- SRO affiliations (as of 31st August 2003): 5884
- Authorisations granted by the MLCA: 221
- Applications for authorisation pending at the MLCA: 96

Approximate subdivision of financial intermediaries according to sector[2]:

- Asset Management: 43%
- Fiduciaries: 29%
- Attorneys and Notaries: 20%
- Bureaux de Change: 2%
- Money transfer: 3%
- Distributors of shares in Investment Funds: 7%
- Other: 4%

Liquidation of illegally operating financial intermediaries by the MLCA in the year 2003: 3

Auditors accredited to MLCA: 97

Audits carried out by the MLCA:

- SRO audits: 7
- Market supervision audits: 8
- Audits of intermediaries directly authorised bythe MLCA: 21
- Audits during the authorisation procedure: 10

Personnel: 25 full time jobs, all filled.

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1 If not otherwise mentioned, the numbers refer to the status as of 30th September 2003.

2 Because a financial intermediary may be active in sereral sectors, the total is more than 100%.

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Eidgenössische Bankenkommission
Commission fédérale des banques
Commissione federale delle banche
Swiss Federal Banking Commission

SFBC: statistical information

Number of financial intermediaries subject to the MLA supervision of the SFBC (source: Annual Report SFBC 2002):

- Banks: 368 (377)
- Securities dealers: 82 (77)
- Fund management companies 48 (47)

Total value of **fiduciary investments with banks in Switzerland** (source: Die Banken in der Schweiz 2002, published by the Swiss National Bank, p. 38): CHF 339,4 billions (in 2001: 407,2 billions).

Total number of **savings accounts at banks in Switzerland** (source: Die Banken in der Schweiz 2002, Table 20.4 and 20.5, Swiss National Bank): 14,584 millions which correspond to a total asset value of CHF 236 billions.

Total number of **investment accounts of clients in Switzerland** (source: Die Banken in der Schweiz 2002, Table 21.2, Swiss National Bank): 4,939 millions which correspond to a total asset value of CHF 80 billions.

Total number of **staff in SFBC's Secretariat** as at 1 September 2003: 134 (as per 1 September 2002: 123), with approximately 46 members of staff involved in AML monitoring.

Number of **persons employed by banks in Switzerland** (source: Die Banken in der Schweiz 2002, Table 52, Swiss National Bank): 104'527 (in 2001: 106'871).

Statistical data from the insurance sector

Supervisory activity in the insurance sector

Of the total premium volume of CHF 51 thousand million, CHF 34 thousand million relate to life insurance policies. In turn, slightly over CHF 20 thousand million of this is relevant for supervisory purposes aiming at combating money laundering.

In 2002, 26 companies in Switzerland were conducting life insurance business (of which 2 had their head office abroad). In respect of the fight against money laundering, the Federal Office of Private Insurance directly supervises 3 companies; the Self Regulating Organisation of the Swiss Insurance Association (SRO-SIA) supervises the others.

SRO-SIA

Reporting

The duty of reporting of the members under the regulations serves to check fulfilment of the duties of due diligence by the member companies. In 2002 all member companies complied with their reporting duty.

Statistics

In 2002 the specialist offices within the companies received 404 notifications (previous year: 121) in accordance with Art. 9 para 3 of the SRO regulations (reports of irregularities by company employees).

In 171 cases (2001: 64) of dubious behaviour the specialist offices felt obliged to carry out in-depth investigations in accordance with Article 6 MLA. A total of 9 (2001: 6) reports were made to the Money Laundering Reporting Office.

Statistical information

Number of staff at SFGB per 2003	35
Number of casinos per 2003	20
Number of “recognised” audit firms	5
Number of “recognised” auditors	15
Gross gambling revenue 2002 (in millions CHF)	297
Taxes on casinos 2002 (in millions CHF)	122
Number of casinos employees per 2003 (approx.)	1’500
Number of MLA identifications per 2002	1’634
Number of reports to MROS per 2002	4

fedpol.ch
MROS Money Laundering
Reporting Office Switzerland

MROS Statistics 2002 (2001)

Total Number of Reports	652 (417)
Number sent to Prosecuting Authorities	515 (380)

Category of Financial Intermediary:

Banks	271 (255)
Payment Transfer Services	280 (55)
Fiduciary / Trust Companies	42 (33)
Investment Counselors, Asset Managers	24 (38)
Insurance Institutions	9 (6)
Law Firms	12 (9)
Currency Exchange Bureaus	1 (2)
Credit Card Companies	1 (7)
Casinos	4 (8)
Other	8 (4)

Total Amount (in CHF) of Financial Assets linked to the Reports: 666 mln (2.7 bln)

Geographic Origin of the Reports:

Zurich	47% (32%)
Geneva	19% (32%)
Bern	14% (15%)
Ticino	7% (9%)
Other	13% (12%)

Weblinks

BIS	e	www.bis.org
FOPI	d,f,i,e	www.bpv.admin.ch
SFBC	d,f,e	www.ebk.admin.ch
Federal Autorities	d,f,i,e	www.admin.ch
SFGB	d,f,i,e	www.esbk.admin.ch
EU	d,f,i,e	www.europa.eu.int
FATF	f,e	www.fatf-gafi.org
IMF	d,f.e	www.imf.org
MLCA	d,f,i,e	www.gwg.admin.ch
MROS	d,f,i,e	www.bap.admin.ch/d/themen/geld/i_index.htm
SBA	d,f,e	www.swissbanking.org
CC	d,f,i	www.admin.ch/ch/d/sr/sr.html

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Eidgenössische Spielbankenkommission ESBK
Commission fédérale des maisons de jeu CFMJ
Commissione federale delle case da gioco CFCG
Swiss Federal Gaming Board SFGB

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