Switzerland: Anti-Money Laundering Comparative Guide

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1. LEGAL AND ENFORCEMENT FRAMEWORK

1.1 Which legislative and regulatory provisions constitute the anti-money laundering, counter-terrorist financing and general financial crime prevention (collectively, 'AML') regime in your jurisdiction, from a regulatory (preventive/sanctions) and enforcement (civil/criminal penalties) perspective? Are there any legislative and regulatory requirements that apply below the national level (ie, at a state or regional level)?

The provisions governing the combating of money laundering derive from one federal act, one Federal Council ordinance and one ordinance of the Swiss Financial Market Supervisory Authority (FINMA). These are:

- the Federal Act on Combating Money Laundering and Terrorist Financing (AMLA);
- the Ordinance of the Federal Council on Combating Money Laundering and Terrorist Financing (AMLO); and
- the Ordinance of the Swiss Financial Market Supervisory Authority on Combating Money Laundering and Terrorist Financing (AMLO-FINMA).

In addition, provisions on the Money Laundering Reporting Office (MROS) are contained in the Ordinance of the Federal Council on the MROS.

With respect to the Swiss financial market infrastructure, the Federal Act on Financial Market Infrastructure and Market Conduct in Securities and Derivatives Trading and the Federal Act on the Swiss National Bank (SNB) are also relevant.

AML in the gambling sector is governed by:

- the Ordinance of the Federal Department of Justice and Police; and
- the Ordinance of the Swiss Federal Gaming Board on Combating Money Laundering and Terrorist Financing.

AML in relation to precious metals is governed by the Ordinance of the Federal Office for Customs and Border Security on Combating Money Laundering and Terrorist Financing.

The Swiss Banks' Code of Conduct with Regard to the Exercise of Due Diligence (CDB), issued by the Swiss Bankers Association (SBA), is another important (self-regulatory) tool in fighting money laundering and terrorist financing.

From a criminal law point of view, the Swiss Penal Code (SPC) sanctions:

- money laundering (Article 305*bis*);
- insufficient diligence in financial transactions (Article 305*ter*); and
- terrorist financing (Article 260*quinquies*).

The AMLA also contains criminal provisions, such as violation of the reporting obligation (Article 9 of the AMLA).

1.2 Which bilateral and multilateral instruments on AML have effect in your jurisdiction?

At the multilateral level, Switzerland is a member of the Financial Action Task Force, an intergovernmental body whose purpose is to set international standards to prevent global money laundering and terrorist financing and whose recommendations are the main driving force behind the successive changes to the Swiss AMLA regime.

In addition, Switzerland has ratified and enacted many conventions, such as:

- the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances;
- the 1990 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime;
- the 1999 International Convention for the Suppression of the Financing of Terrorism;
- the 2000 United Nations Convention against Transnational Organized Crime;
- the 2001 Council of Europe Convention on Cybercrime; and
- the 2003 United Nations Convention against Corruption.

Switzerland has concluded a large number of bilateral treaties, such as:

- the Agreement between the Government of the Swiss Confederation and the Government of Canada regarding the Sharing of Forfeited or Confiscated Assets and their Equivalent Funds; and
- the Declaration of Intent between the Competent Authorities of Switzerland and Belgium concerning Cooperation in Exchanging Financial Information Relating to Money Laundering.

1.3 Which public sector bodies and authorities are responsible for enforcing the AML laws and regulations? What powers do they have?

The Swiss Financial Market Supervisory Authority (FINMA) is Switzerland's financial markets regulator.

FINMA supervises the financial institutions to which it has granted a licence to engage in financial activity (eg, banks, insurers, managers of collective assets, fund managements companies, securities firms and financial markets infrastructure providers) and monitors their compliance with the AML legislation.

It has many different enforcement tools, including:

- prohibition from practising a profession;
- publication of a supervisory ruling;
- confiscation; and
- revocation of a licence.

Portfolio managers and trustees are also licensed and supervised by FINMA. However, their ongoing supervision (including AMLA duties) is performed by a supervisory organisation (SO), which is approved and supervised by FINMA. In the event of irregularities, the SO can set a deadline to comply with the law. If the breach is not resolved, the SO cannot sanction itself but will notify FINMA, which can exercise its enforcement power.

The SNB plays an important role in relation to financial markets infrastructure, both in Switzerland and also, in certain circumstances, abroad. The SNB focuses in particular on financial infrastructure that is designated as systemically important (eg, the Swiss Interbank Clearing payment system operated by SIX Interbank Clearing on the SNB's behalf).

According to the AMLA, casinos as defined in the Federal Gambling Act are financial intermediaries. The Swiss Federal Gaming Board is the regulator of casinos and monitors their compliance with AML obligations.

Promoters of large-scale games under the Swiss Federal Gaming Board are also financial intermediaries under the AMLA. The Swiss Gambling Supervisory Authority supervises large-scale gambling operators, including money-laundering risks.

The Central Office for Precious Metals Control supervises the compliance of trade assayers and group companies with their obligations under the AMLA.

1.4 Are there any self-regulatory organisations or professional associations? What powers do they have?

There are three forms of self-regulation:

- voluntary self-regulation;
- self-regulation recognised as a minimum standard by FINMA; and
- mandatory self-regulation.

The SBA is an example of voluntary self-regulation (private basis). As part of its many objectives and activities, the SBA has issued the CDB, which has been approved by FINMA. A supervisory board has been appointed by the SBA to investigate and sanction breaches of the CDB. A fine up to CHF 10 million can be imposed.

Some financial intermediaries are not subject to licensing and supervision by FINMA. Thus, for AML supervision purposes, they have a mandatory obligation to be affiliated to a self-regulatory organisation (SRO) (Article 2(2), Article 12(c) and Article 24 of the AMLA). These SROs are recognised by FINMA. They supervise affiliated financial intermediaries to ensure compliance with their AML duties and can sanction any irregularities. They issue regulations which set out the duties of diligence.

As mentioned in question 1.3, FINMA is responsible for the licensing and supervision of insurers. However, in relation to money-laundering obligations, insurers can choose not to be supervised by FINMA but by the SRO of the Swiss Insurance Association (SRO-SIA) (on FINMA's behalf). FINMA has recognised the SRO-SIA's regulations as minimum standards, which means that they apply not only to members but to all participants in the sector.

1.5 What is the general approach of the financial services regulators in enforcing the AML laws and regulations?

FINMA's main tasks include:

- supervising licence holders; and
- enforcing the anti-money laundering legislation.

Within the framework of its activities, FINMA must ensure that the laws relating to the financial markets are followed. To this end, FINMA has a broad range of tools at its disposal, such as the means:

- to conduct investigations;
- to take measures; and
- to sanction any breach of obligations by regulated entities.

FINMA's enforcement activities involve the following steps:

- informal investigation of a suspected violation;
- initiation and conduct of enforcement proceedings;
- the issue of a contestable ruling or discontinuation of proceedings;
- potential challenge of the ruling before the courts; and
- execution of FINMA's legally binding orders.

1.6 What are the statistics regarding past and ongoing AML procedures in your jurisdiction?

In August 2021, the second *Report on the National Evaluation of the Risks of Money Laundering and Terrorist Financing in Switzerland* by the Interdepartmental Coordinating Group on Combating Money Laundering and the Financing of Terrorism was published.

The report compares the suspicious activity reports (SARs) received by the MROS during the 2004-2014 and the 2015-2019 periods. This analysis reveals that the annual average number of SARs has increased substantially:

	Total	**Annual average**
2004-2014	12,244	1,113.09
2015-2019	23,792	4,758.40

According to the report, there has been no fundamental change to the risk of money laundering and terrorist financing in Switzerland. However, risk awareness among financial intermediaries has grown.

The seven main predicate offences identified during both periods were:

- bribery;
- fraud;
- misappropriation;
- criminal mismanagement;
- criminal organisation;
- computer fraud; and
- aggravated tax misdemeanours.

The statistics in the MROS's annual reports are also a useful tool. Its 2022 report revealed the following:

- In 2022, the MROS received 7,639 SARs, corresponding to an average of 30 reports per working day and an increase of 1,675 more than the previous year (28%). This was the largest increase since the 2018 reporting year (+31%).
- Most SARs came from the banking sector (91.63%), as in previous years.
- The MROS sent 1,232 notifications to the prosecution authorities in 2022 – 17% fewer than in 2021 (1,486). This illustrates the importance of the MROS as a filter.

1.7 What reporting activities exist for reporting suspicious activities and/or transactions (SARs)? Are there any specific powers to identify the proceeds of crime or to require an explanation as to the source of funds?

Duty of due diligence: Under the AMLA, financial intermediaries and professional dealers that accept payments in cash are subject to many due diligence requirements, including the obligation:

- to verify the identity of customers and beneficial owners; and
- to clarify the economic background and the purpose of a transaction or of a business relationship in certain circumstances, such as where there are indications that the assets are linked to money laundering.

Duty to report a well-founded suspicion: According to Article 9 of the AMLA, financial intermediaries and professional dealers must immediately file a report with the MROS if:

- they know or have reasonable grounds to suspect that assets involved in the business relationship are:
    - connected to Article 260*ter* (criminal or terrorist organisation) or Article 305*bis* (money laundering) of the SPC;
    - the proceeds of a felony or an aggravated tax misdemeanour under Article 305*bis* number 1*bis* of the SPC;
    - subject to the power of disposal of a criminal or terrorist organisation; or
    - being used to finance terrorism (Article 260*quinquies*(1) of the SPC);

- they terminate negotiations aimed at establishing a business relationship because of such suspicion; or
- they know or have reason to assume, based on the clarifications carried out under Article 6(2)(d) of the AMLA, that data on a person or organisation received by FINMA, an SO or an SRO (under Article 22a(2) or (3) of the AMLA) corresponds to the data of:
    - a customer;
    - a beneficial owner; or
    - an authorised signatory of a business relationship or transaction.

Under Federal Court case law, once a suspicion has been identified, a financial intermediary must continue its investigations until the situation is clarified – either:

- the transaction that appeared suspicious is lawful; or
- the suspicions were well founded and the matter should be referred to the MROS.

Right to report a mere suspicion: According to Article 305*ter*(2) of the SPC, financial intermediaries should report to the MROS any observations which indicate that assets originate from a felony or an aggravated tax misdemeanour. Thus, a report can be filed if there is a mere likelihood, a doubt or even a sense of unease about a business relationship.

1.8 Is there a central authority for reporting (ie, a Financial Intelligence Unit (FIU) responsible for assessing SARs reported from relevant entities subject to AML requirements)? Does this authority work internationally?

The AMLA established the MROS. Although this entity is managed by the Federal Office of Police, it is not a police authority *per se* but an administrative authority with special tasks.

The MROS receives and analyses reports from financial intermediaries in accordance with Article 9 of the AMLA and Article 305*ter*(2) of the SPC (see question 1.7). After analysing the report, if appropriate, the MROS can forward it to the criminal prosecution authorities.

Thus, the MROS is a filter between financial intermediaries and the law enforcement agencies.

The AMLA also provides for administrative mutual assistance between the MROS and foreign authorities. On 1 July 2021, Article 11a(2)*bis* of the AMLA came into force. This new provision allows the MROS to request information from financial intermediaries about a transaction or a business relationship that is the subject of a request or spontaneous information from a foreign reporting office, even if no SAR has been filed in Switzerland.

The MROS is also a member of the Egmont Group, a body of 166 financial intelligence units that provides a platform for the secure exchange of expertise and financial intelligence to combat money laundering and terrorist financing.

1.9 What relevant public or private corporate or other registers exist to assist with conducting and/or validating AML information, ultimate beneficial owners etc; and what details must be disclosed?

Switzerland has several registers and regulations in place to assist with conducting and validating AML information.

The Commercial Register is a cantonal-level register. It contains information on 'commercially managed' companies, including the following:

- company name;
- year of establishment;
- registered office;
- purpose;
- authorised representatives;
- capital structure; and
- auditing body, if applicable.

Anyone can request excerpts from the register in return for payment of a fee and thus obtain information on a company. Excerpts can also be consulted online.

The federal authorities exercise a high level of surveillance and maintain a central register. It is updated every day and can be accessed through the Central Business Name Index, Zefix.

Information on beneficial owners is not publicly available through the Commercial Register, except for the shareholders of limited liability companies.

In addition, pursuant to the Swiss Code of Obligations, Swiss limited companies have a duty to keep an internal register of beneficial owners, including their full names and addresses. These registers are not publicly accessible.

1.10 How do such registers interoperate with one another and do they do so internationally?

The Commercial Register is a public database maintained by the cantonal authorities which contains information related to companies' legal structure, authorised representatives and general company details. It aims to provide transparency and legal certainty regarding commercial entities in Switzerland.

Registers of beneficial owners are maintained by companies themselves and are not publicly accessible.

Thus, these registers do not directly interoperate with each other.

2. Scope of application

2.1 Can both individuals and companies be prosecuted under the AML legislation?

Articles 305*bis* and 305*ter* of the Swiss Penal Code (SPC) regulate the criminal offences of:

- money laundering; and
- failure to exercise due diligence in relation to financial transactions.

Individuals can be prosecuted for these offences under the Criminal Code.

The criminal liability of legal persons is regulated by Article 102 of the SPC, which provides for two hypotheses:

- A felony or misdemeanour is committed in the company in the exercise of its commercial activities in accordance with the objectives of the company, and it is not possible to attribute this act to any specific natural person due to inadequate organisation of the company (subsidiary liability).
- For certain offences (eg, money laundering), the company is liable irrespective of the criminal liability of any natural persons, provided that it has failed to take all reasonable organisational measures that are required in order to prevent such an offence (primary liability).

The SPC's provisions are supplemented by the Federal Act on Combating Money Laundering and Terrorist Financing (AMLA), which provides that a financial intermediary's failure to report constitutes a punishable offence under administrative criminal law in accordance with Article 37 of the AMLA. This offence can only be committed by a person that is subject to the obligation to report in accordance with Article 9 – that is, a financial intermediary.

Both natural persons and legal persons can be prosecuted for violation of the duty to report. However, criminal proceedings are generally directed against:

- the natural persons in charge of making the report (eg, the compliance officer of a bank); and
- in a subsidiary manner, the legal entity itself.

2.2 Can foreign companies be prosecuted under the AML legislation?

Foreign companies can be prosecuted under the AML legislation in Switzerland under certain circumstances.

The AML regime is primarily set out in the AMLA, which outlines the obligations of entities that are subject to AML regulations. Foreign companies operating in Switzerland – whether through subsidiaries, branches or other business arrangements – can be subject to the Swiss AML laws if they engage in activities covered by the act.

Thus, if a foreign company falls within the scope of the AMLA, it can be subject to prosecution for any violations.

2.3 Does the AML legislation have extraterritorial reach?

The AMLA does not explicitly state its territorial scope of application.

Unless otherwise regulated by the law or international obligations, public law provisions – including those of the AMLA – are generally governed by the principle of territoriality. According to this principle, public law applies only within the state in which it was enacted. Therefore, for Swiss law to apply, a factual situation must occur or have its effects in Switzerland.

Although some provisions on the territorial scope of application of the AMLA do exist in the Ordinance of the Federal Council on Combating Money Laundering and Terrorist Financing and the Ordinance of the Swiss Financial Market Supervisory Authority on Combating Money Laundering and Terrorist Financing (AMLO-FINMA), there is no uniform regulation for financial intermediaries.

Article 305*bis* of the SPC regulates the criminal offence of money laundering.

The assets involved in money laundering originate from a predicate offence, which is defined as a felony or a qualified tax offence. A predicate offence can be committed abroad, provided that it:

- is punishable under the laws of the foreign jurisdiction; and
- meets the essential elements of a felony or a qualified tax offence under Swiss law.

2.4 Are there restrictions on financial institutions' accounts for foreign shell banks? Which types of firms are subject to such restrictions?

According to Article 8(b) of the AMLO-FINMA, financial intermediaries may not maintain any business relationships with banks without a physical presence at their place of

incorporation (shell banks), unless they are part of a financial group that is subject to appropriate consolidated supervision.

2.5 Are there cross-border transaction reporting requirements? If so, what must be reported under what circumstances and to whom?

There is no requirement to report cross-border transactions to Swiss authorities automatically.

2.6 Does money laundering of the proceeds of foreign crimes constitute an offence in your jurisdiction?

If a predicate offence is a crime committed abroad which is punishable under the laws of the jurisdiction in which it occurred, the perpetrator can be prosecuted for money-laundering acts in Switzerland under Article 305*bis* of the SPC.

3. AML offences

3.1 What AML offences are recognised in your jurisdiction and what do they involve? Are there any codified or common law defences?

The prevention of money laundering is based on the Federal Act on Combating Money Laundering and Terrorist Financing (AMLA). The law aims to:

- combat money laundering as defined in Article 305*bis* of the Swiss Penal Code (SPC);
- combat terrorist financing as defined in Article 260*quinquies*(1) of the SPC; and
- ensure that the necessary due diligence is conducted in financial transactions.

The most important criminal provisions are found in the SPC, as follows:

- Articles 102 and 102a (corporate criminal liability);
- Article 260*ter* (criminal or terrorist organisation);
- Article 260*quinquies* (terrorist financing);
- Article 305*bis* (money laundering); and
- Article 305*ter* (insufficient diligence in financial transactions and the right to report).

Under Article 305*bis* of the SPC, anyone who carries out an act that is aimed at frustrating the identification of the origin, the tracing or the forfeiture of assets which he or she knows or must assume originate from a felony or aggravated tax misdemeanour will be liable to:

- a custodial sentence not exceeding three years; or
- a monetary penalty.

According to case law, such actions must be examined on a case-by-case basis. To constitute an offence, such actions must be capable of preventing the prosecution authorities from gaining access to assets derived from a crime in the specific circumstances. It is not necessary for such an obstruction to have actually happened, as money laundering is an abstract endangerment offence which can be punished independently of the result.

3.2 How are predicate offences defined in your jurisdiction? Is tax evasion a predicate offence for money laundering?

Article 305*bis*(1) of the SPC states that anyone who carries out an act that is aimed at frustrating the identification of the origin, the tracing or the forfeiture of assets which he or she knows or must assume originate from a felony or aggravated tax misdemeanour will be criminally liable.

Thus, under Swiss law, the predicate offence must be a felony or a qualified tax offence.

Felonies are offences that carry a custodial sentence of more than three years (Article 10(2) of the SPC).

An aggravated tax misdemeanour is any of the offences set out in:

- Article 186 of the Federal Act of 14 December 1990 on Direct Federal Taxation; or
- Article 59(1), clause 1 of the Federal Act of 14 December 1990 on the Harmonisation of Direct Federal Taxation at Cantonal and Communal Levels, if the tax evaded in any tax period exceeds CHF 300,000.

3.3 What reporting offences exist (eg, failure to disclose, tipping-off and prejudicing or obstructing an investigation)?

Article 37 of the AMLA penalises the violation of the obligation to report suspicions that assets are linked to money laundering, terrorist financing or a criminal organisation, as defined in Article 9.

Article 305*ter* of the SPC:

- applies to persons that accept, hold in safe custody or assist in the investment or transfer of assets belonging to a third party; and
- penalises violations of the obligation to verify the identity of beneficial owners through the due diligence required by the circumstances.

Article 38 of the AMLA penalises violations of the obligation to appoint an audit firm for professional dealers under Article 15 (natural persons and legal entities that deal in goods commercially and accept cash in doing so).

Other general criminal provisions will likely apply to financial intermediaries in money-laundering matters in case of the obstruction of criminal or administrative investigations.

3.4 Do any restrictions or thresholds (eg, in terms of parties, asset type or transaction value) serve to limit the types of activities that constitute AML offences?

Article 8a of the AMLA sets out a threshold for professional dealers to be subject to the due diligence duties under the AMLA.

If dealers accept more than CHF 100,000 in cash in the course of a commercial transaction, they must:

- verify the identity of the customer;
- establish the identity of the beneficial owner; and
- keep records.

They must also clarify a transaction where there are:

- suspicions of money laundering; or
- links to a criminal or terrorist organisation or to terrorist financing.

They must also report their suspicions; violation of this requirement constitutes a criminal offence.

With respect to financial intermediaries, the Ordinance of the Swiss Financial Market Supervisory Authority on Combating Money Laundering and Terrorist Financing (AMLO-FINMA) applies to financial intermediaries such as banks (Article 3(1)).

The AMLO-FINMA sets out a list of money-laundering indicators for business relationships or transactions that involve increased risks. Individually, these indicators do not automatically give rise to sufficient suspicions of money laundering. However, a combination of several of these indicators may suggest that money laundering is taking place. Examples include the following:

- A customer regularly receives transfers from a bank based in a country that is designated as high risk by the Financial Action Task Force or repeatedly makes transfers to such a country;
- Large amounts of small bills (Swiss or foreign) are exchanged for large bills; or

- Large amounts of precious metals are purchased or sold by walk-in customers.

4. Compliance

4.1 Is implementing an AML compliance programme a regulatory requirement in your jurisdiction? If so, what aspects must this cover? Are there any criteria and/or conditions that a money laundering reporting officer or any other person responsible for AML must observe?

The specific criteria and conditions for AML compliance may vary depending on:

- the type of financial intermediary;
- the nature of the business; and
- the level of risk associated with the company's activities.

For example, the Ordinance of the Swiss Financial Market Supervisory Authority on Combating Money Laundering and Terrorist Financing (AMLO-FINMA) sets out certain requirements which apply to financial intermediaries that are subject to supervision by the Financial Market Supervisory Authority (FINMA).

According to Article 24(1) of the AMLO-FINMA, a financial intermediary must appoint one or more qualified individuals to act as a specialised service for combating money laundering and terrorist financing. This service should provide all necessary support and advice to line managers and executive management for the implementation of the ordinance. In addition, according to Article 24(2), the specialised service should:

- prepare internal guidelines on combating money laundering and terrorist financing; and
- plan and monitor internal training on combating money laundering and terrorist financing.

4.2 What customer and business partner due diligence (know your customer/client due diligence) requirements apply in this regard? Do any look-through requirements apply? Are there any simplified or enhanced due diligence requirements for certain types of persons and activities?

The Federal Act on Combating Money Laundering and Terrorist Financing (AMLA) sets out many due diligence requirements for financial intermediaries, such as the following:

- Verification of the identity of the customer: When establishing a business relationship, a financial intermediary should verify the identity of the customer based on a document of evidentiary value. If the customer is a legal entity, the financial intermediary should:
    - acknowledge the provisions regulating the power to bind the legal entity; and
    - verify the identity of the persons who enter into business relationships on behalf of the legal entity (Article 3(1) of the AMLA).
- Establishing the identity of beneficial owners: Financial intermediaries must:
    - identify beneficial owners through the due diligence required in the circumstances; and
    - verify their identity to ensure that they know who all beneficial owners are.

  If the customer is a listed company or a subsidiary over which a listed company has majority control, the identity of the beneficial owner need not be established (Article 4(1) of the AMLA).
- Ongoing verification or establishment of the identity of customers or beneficial owners: If doubt arises in the course of the business relationship as to the identity of a customer or beneficial owner, the verification or establishment of identity in terms of Articles 3 and 4 must be repeated (Article 5(1) of the AMLA).
- Special duties of due diligence: A financial intermediary must clarify the economic background and the purpose of a transaction or of a business relationship in certain circumstances (Article 6(2) of the AMLA).
- Duties in the event of suspicions of money laundering: These include reporting to the Money Laundering Reporting Office (MROS) of the Federal Department of Justice and Police.

The specific criteria and conditions for AML compliance may vary depending on:

- the type of financial intermediary;
- the nature of the business; and
- the level of risk associated with the company's activities.

4.3 What due diligence requirements apply in relation to ultimate beneficial owners?

The due diligence requirements regarding ultimate beneficial owners primarily stem from Article 4 of the AMLA, which provides that the financial intermediary must:

- identify the beneficial owner with the due diligence required in the circumstances and verify its identity in order to ensure that it knows who the beneficial owner is. If the customer is a listed company or a subsidiary over which a listed company has majority control, the identity of the beneficial owner need not be established;
- obtain a written declaration from the customer as to the identity of the individual who is the beneficial owner in specific cases; and

- in the case of collective accounts or collective deposits, require the customer to:
    - provide a complete list of the beneficial owners; and
    - give immediate notice of any change to the list.

Further specific requirements can be found in AML laws and self-regulatory agreements which will depend, for example, on:

- the type of financial intermediary; and
- the type of supervision to which it is subject.

4.4 Which books and records requirements have relevance in the AML context? What privacy laws apply?

In Switzerland, several books and records requirements, as well as privacy laws, have relevance in the AML context, including the following.

The AMLA provides that a financial intermediary must keep records of transactions carried out and of clarifications required under the act in such a manner that other specially qualified persons can make a reliable assessment of:

- transactions and business relationships; and
- compliance with the act's provisions (Article 7(1) of the AMLA).

The financial intermediary must periodically check the required records to ensure that they are up to date and update them if necessary. The periodicity, scope and type of checking and updating are based on the risk posed by the customer (Article 7(1)*bis* of the AMLA). The financial intermediary must retain the records in such a manner as to be able to respond within a reasonable time to any requests made by the prosecution authorities for information or for the seizure of assets (Article 7(2) of the AMLA). The records must be kept for a minimum of 10 years after:

- termination of the business relationship; or
- completion of the transaction (Article 7(3) of the AMLA).

The Federal Act on Financial Services and the Federal Act on Financial Institutions and their ordinances, which can apply in conjunction with the AMLA, also regulate records requirements and compliance with AML regulations.

Of relevance with regard to privacy are:

- the Swiss banking secrecy rules;
- the Federal Act on Data Protection; and

- the criminal provision of the Federal Act on Financial Institute relating to professional confidentiality.

However, AML regulations may override certain aspects of privacy laws when it comes to:

- reporting suspicious activities; and
- cooperating with law enforcement and regulatory authorities.

4.5 What other compliance best practices should a company implement to mitigate the risk of AML violations?

The financial intermediary must set out criteria indicating the presence of increased risks. The following criteria in particular should be considered, depending on the financial intermediary's area of activity:

- the registered office or domicile of the contracting party, the controller or the beneficial owner of the assets – in particular, if it is established in a country which the Financial Action Task Force (FATF) considers to be high risk or non-cooperative, as well as the nationality of the contracting party or the beneficial owner of the assets;
- the nature and location of the activity of the contracting partner or the beneficial owner of the assets – in particular, where an activity is carried out in a country which the FATF considers to be high risk or non-cooperative;
- the absence of a meeting with the contracting partner and the beneficial owner;
- the type of services or products solicited;
- the size of the assets handed over;
- the country of origin or destination of frequent payments, in particular for payments made from or to a country which the FATF considers to be high risk or non-cooperative;
- the complexity of the structures, particularly in the case of the use of several domiciliary companies or a domiciliary company with fiduciary shareholders in a non-transparent jurisdiction, without any clearly understandable reason or for the purpose of investing assets in the short term; and
- frequent transactions involving increased risks.

A bank must record individually, for the criteria listed in Article 13(2) of the AMLO-FINMA, whether they are relevant to its business activity. It must also take the relevant criteria into account when identifying business relationships with increased risks.

Pursuant to Article 25(2) of the AMLO-FINMA, a bank must also conduct a money-laundering risk analysis, taking into account:

- its business activities; and

- the nature of its established business relationships.

4.6 Are companies obliged to report financial irregularities or actual or potential AML violations?

According to Article 9(1) of the AMLA, financial intermediaries and professional dealers must immediately file a report with the MROS in the following circumstances:

- They know or have reasonable grounds to suspect that assets involved in the business relationship:
    - are connected to Article 260*ter* (criminal or terrorist organisation) or Article 305*bis* (money laundering) of the Swiss Penal Code (SPC);
    - are the proceeds of a felony or an aggravated tax misdemeanour under Article 305*bis*(1)*bis* of the SPC;
    - are subject to the power of disposal of a criminal or terrorist organisation; or
    - serve the financing of terrorism (Article 260*quinquies*(1) of the SPC);
- They terminate negotiations aimed at establishing a business relationship because of such a suspicion; or
- They know or have reason to assume, based on the clarifications carried out under Article 6(2)(d) of the AMLA, that data on a person or organisation received by FINMA, a supervisory organisation or a self-regulatory organisation (under Article 22a(2) or (3) of the AMLA) corresponds to the data of a customer, a beneficial owner or an authorised signatory of a business relationship or transaction.

The Federal Court has ruled that once a suspicion has been identified, the financial intermediary must continue its investigations until the situation has been clarified – either:

- the transaction that appeared suspicious is lawful; or
- the suspicions were well founded and the matter should be referred to the MROS.

4.7 Does failure to implement an adequate AML programme constitute a regulatory and/or criminal violation in your jurisdiction?

Failure by financial intermediaries to comply with the AMLA can constitute both regulatory and criminal violations.

From a regulatory perspective, financial intermediaries have numerous duties in relation to combating money laundering, such as:

- customer due diligence;
- ongoing monitoring;
- risk assessment; and
- internal controls.

In case of breach, financial intermediaries can face regulatory sanctions imposed by the competent authorities, such as FINMA.

Under certain circumstances, the failure to comply with AML duties can also lead to criminal liability:

- Breach of the reporting duty to the MROS set forth in Article 9 of the AMLA is a criminal offence under Article 37 of the AMLA (see question 1.7); and
- A failure to report founded suspicions according to Article 9 of the AMLA may also trigger criminal prosecution under Article 305*bis* of the SPC if the specific conditions of such offence are fulfilled.

5. Enforcement

5.1 Can companies that voluntarily report AML violations or cooperate with investigations benefit from leniency in your jurisdiction?

Companies that are subject to the Federal Act on Combating Money Laundering and Terrorist Financing (AMLA) – that is, financial intermediaries and professional dealers – must file a report with the Money Laundering Reporting Office Switzerland (MROS) if they know or have reasonable grounds to suspect that assets involved in the business relationship are connected to money laundering (see questions 1.7 and 4.6).

However, they cannot expect to benefit from leniency from the criminal authorities simply by complying with their duty to report.

The cooperation of an offender with investigations, on the other hand, may be taken into account by the criminal authorities when determining the sentence.

5.2 Can the existence of an AML compliance programme constitute a defence to charges of AML violations?

In accordance with Articles 102(1) and (2) of the Swiss Penal Code (SPC), a company can be held criminally liable in two situations (see question 2.1):

- A felony or misdemeanour is committed in the company in the exercise of commercial activities in accordance with the objectives of the company and it is not possible to attribute this act to any specific natural person due to inadequate organisation of the company.
- For certain offences such as money laundering, the company is liable irrespective of the criminal liability of any natural persons, provided that it failed to take all reasonable organisational measures that are required to prevent such an offence.

Hence, in case of money laundering, a robust and effective compliance programme is a necessary element in helping the company to demonstrate that it has adequate organisation or has taken all necessary organisational measures to prevent the commission of the offence.

5.3 What other defences are available to companies charged with AML violations?

In certain circumstances, the criminal authorities may discontinue the proceedings if the offender makes reparation for the damage caused (see question 5.4).

5.4 Can companies negotiate a pre-trial settlement through plea bargaining, settlement agreements or similar?

Plea bargaining does not exist under Swiss criminal law.

The obligation to prosecute is a fundamental principle of the Swiss criminal procedural law. The criminal authorities must initiate and conduct proceedings when they are aware or have reason to suspect that an offence has been committed, provided that the offence is not prosecuted only on complaint. In case of money laundering, the offender will be prosecuted e*x officio* – that is, irrespective of whether a complaint has been filed.

However, in accordance with Article 53 of the SPC, the criminal authorities will refrain from prosecuting an offender who, among other things:

- has made reparation for the loss, damage or injury or made every reasonable effort to right the wrong that he or she has caused; and
- has admitted the offence.

Under Article 358(1) of the Swiss Penal Procedure Code (SPPC), the accused may request the prosecutor to conduct accelerated proceedings at any time before charges are brought. This is possible if the accused:

- admits the essential facts of the case; and
- acknowledges, at least in principle, the civil claims.

5.5 What penalties can be imposed for violations of the AML legislation? How are these determined? Can non-exhaustive penalties be imposed for such violations (eg, exclusion from public procurement, exclusion from entitlement to public benefits or aid, disqualification from the practice of certain commercial activities, judicial winding up)?

The main penalties are provided for in:

- the SPC;

- the AMLA; and
- the Federal Act on the Swiss Financial Market Supervisory Authority (FINMASA).

SCP: Regarding natural persons, the maximum custodial sentence is:

- three years for money laundering (Article 305*bis*(1) of the SCP); and
- five years for serious cases of money laundering (Article 305*bis*(2) of the SCP). A case is serious, in particular, where the offender:
    - acts as a member of a criminal or terrorist organisation;
    - acts as a member of a group that has been formed for the purpose of the continued conduct of money-laundering activities; or
    - achieves a large turnover or substantial profit through commercial money laundering.

Legal persons will be liable to a fine not exceeding CHF 5 million (Articles 102(1) and (2) of the SCP).

AMLA: Anyone that fails to comply with the duty to report (see question 1.7) will be liable to a fine not exceeding CHF 500,000 (Article 37(1) of the AMLA).

FINMASA: If the Swiss Financial Market Supervisory Authority (FINMA) detects a serious violation of supervisory provisions, it may prohibit the person responsible from acting in a management capacity at any person or entity subject to its supervision. The prohibition from practising a profession may be imposed for up to five years (Articles 33(1) and (2) of the FINMASA).

Where the following persons seriously violate the financial market acts, the implementing provisions or in-house directives, FINMA may prohibit such persons from trading in financial instruments or acting as a client adviser either for a fixed period or permanently in the case of repeated offences (Article 33a(1) of the FINMASA):

- employees of a supervised entity responsible for trading in financial instruments; and
- employees of a supervised entity acting as client advisers.

FINMA will revoke the licence of a supervised party, or withdraw its recognition, if it:

- no longer fulfils the requirements for its activity; or
- seriously violates the supervisory provisions.

On revocation, withdrawal or cancellation, the supervised party loses its right to carry out its activities (Articles 37(1) and (2) of the FINMASA).

5.6 Can funds, property and/or proceeds of AML and/or financial crime be subject to asset freezing/confiscation/forfeiture or victim compensation laws? If so, under what circumstances and what types of funds or property may be confiscated/forfeited? Can such actions be taken if there is no criminal conviction?

The proceeds of money laundering can be:

- frozen;
- forfeited; or
- returned to the victim.

Pursuant to Article 263(1) of the SPPC, items and assets belonging to an accused or to a third party may be seized if it is expected that the items or assets will have to be returned to the persons suffering harm or forfeited.

The court will order the forfeiture of assets that have been acquired through the commission of an offence or that are intended to be used in the commission of an offence or as payment therefor, unless the assets are passed on to the person harmed for the purpose of restoring the prior lawful position (Article 70(1) of the SPC).

Forfeiture is not permitted if a third party has acquired the assets in ignorance of the grounds for forfeiture, provided that:

- the third party has paid a consideration of equal value therefor; or
- forfeiture would cause that third party to endure disproportionate hardship (Article 70(2) of the SPC).

The assets subject to forfeiture encompass all economic gains acquired either directly or indirectly as a result of a criminal offence.

Forfeiture may be ordered even in cases where no specific individual can be held criminally accountable. This can arise where:

- the perpetrator's identity remains unknown;
- the perpetrator is deceased;
- the perpetrator lacks legal capacity; or
- the perpetrator is beyond the reach of Swiss prosecution for various reasons, such as having fled the country without facing extradition proceedings.

Funds that have been laundered or are in the process of being laundered can be subject to forfeiture as long as it is possible to trace these funds back to their criminal origin, which means that the various transactions can be identified and substantiated through documentation.

If the assets subject to forfeiture are no longer available, the court may uphold a replacement claim of the state in respect of a sum of equivalent value (Article 71(1) of the SPC).

5.7 What is the statute of limitations for prosecuting AML offences in your jurisdiction?

The statute of limitations for prosecuting money laundering depends on the severity of the offence:

- For regular money-laundering cases, the limitation period is 10 years (Article 97(1)(c) of the SPC); and
- For serious cases, the limitation period is 15 years (Article 97(1)(b) of the SPC).

If the predicate offence was time-barred when the act constituting money laundering was committed, then this act cannot be prosecuted.

If the predicate offence was committed abroad, the Federal Court considers that the statute of limitations should be determined based on the laws of the foreign jurisdiction.

6. Alternatives to prosecution

6.1 What alternatives to criminal prosecution are available to enforcement agencies that find
evidence of AML violations?

The criminal authorities are obliged to initiate and conduct proceedings when they are aware or have reason to suspect that an offence such as money laundering has been committed (see question 5.4).

Consequently, enforcement proceedings cannot be regarded as a substitute or an alternative to criminal proceedings, as the criminal authorities are obliged to pursue such cases.

In practice, while enforcement proceedings and criminal proceedings are distinct processes, prosecutors may wait for the conclusion of the enforcement proceedings before completing their investigation.

6.2 What procedures are involved in concluding an investigation in this way?

See question 6.1.

6.3 What factors will determine whether such an alternative to prosecution is to be offered by an
enforcement agency to those who have been involved in AML violations?

See question 6.1.

6.4 How common are these alternatives to prosecution?

See question 6.1.

6.5 What reasons, if any, could lead to an increase in the use of such alternatives?

See question 6.1.

7. Private AML enforcement

7.1 Are private enforcement actions for AML offences available in your jurisdiction? If so, where can they be brought and what process do they follow?

The primary purpose of Article 305*bis* of the Swiss Penal Code, which addresses money laundering, is to safeguard the proper functioning of the justice system. However, if the predicate offence violated individual property rights, money laundering can also impede the ability of the victim to recover its assets. Consequently, the person harmed of the predicate offence can seek compensation from the money launderer.

The person harmed holds the option to initiate actions before both civil and criminal authorities:

- In civil proceedings, the person harmed can seek compensation from the money launderer by invoking the legal concept of tort liability.
- In criminal proceedings, the person harmed has the opportunity to bring civil claims as a private claimant. To do so, the claimant must:
    - explicitly express its intention to participate in the criminal proceedings as a civil claimant; and
    - if possible, quantify the value of the claim.

In situations where conducting a thorough assessment of the civil claim would cause unreasonable expense and inconvenience, the court may issue a decision on the principle of the claim for tort and refer it to civil proceedings for the quantification of the damages. If possible, the court will rule on minor claims itself within the criminal proceedings.

In practice, person harmed by acts of money laundering often opt for criminal proceedings, which can be quicker and much more cost effective than civil proceedings.

7.2 What types of relief may be sought and what types of relief are most commonly awarded? How is the relief awarded determined?

A person harmed by acts of money laundering can seek compensation from the money launderer in both civil and criminal proceedings (see question 7.1).

7.3 Can the decision in a private enforcement action be appealed? If so, to which reviewing authority?

In both civil and criminal proceedings, the decision on the civil claim can be appealed to either a civil or criminal court of appeal and ultimately to the Federal Court, Switzerland's supreme court.

8. AML, cyber and crypto-assets

8.1 How does the AML regime dovetail with other cyber law in your jurisdiction?

Switzerland places a strong emphasis on maintaining the integrity of its financial sector. It is committed to ensuring that cryptocurrencies are subject to the same regulatory standards as traditional financial assets, particularly in the fight against money laundering.

On 1 August 2021, Switzerland enacted the Federal Act on the Adaptation of Federal Law to Developments in Distributed Electronic Register Technology and its associated ordinance. It became one of the first countries in the world to enact legal regulations governing blockchain technology.

One of the notable changes in this regard is that financial intermediaries that help to transfer virtual currencies to a third party are now formally subject to the Federal Act on Combating Money Laundering and Terrorist Financing (AMLA), provided that they have:

- a long-term business relationship with the third party; or
- the power to dispose of virtual currencies on behalf of the contracting party.

8.2 What specific considerations, concerns and best practices should companies be aware of with regard to AML prevention in the cyber sphere?

Money-laundering risks are especially high in a decentralised blockchain-based system, in which assets can be transferred anonymously and without any regulated intermediaries.

In light of this, the Financial Market Supervisory Authority (FINMA) has issued several guidelines, notably focusing on initial coin offerings (ICOs).

For ICOs where the token is intended to function as a means of payment and can already be transferred, FINMA requires compliance with anti-money laundering regulations.

8.3 Does the AML regime extend to crypto-asset activity and if so, how?

The AMLA applies to any financial intermediary activity in connection with crypto-assets.

A Swiss financial intermediary that holds cryptocurrencies for others or helps them to be transferred is subject to the same obligations as if the currency used were a fiat currency such as the Swiss franc.

9. Trends and predictions

9.1 How would you describe the current AML enforcement landscape and prevailing trends in your jurisdiction? Are any new developments anticipated in the next 12 months, including any proposed legislative reforms?

On 30 August 2023, the Federal Council initiated the consultation process for a bill designed to fortify the anti-money laundering framework. The aim is to reinforce the integrity and competitiveness of Switzerland as a financial and business location.

Key elements of the proposed bill include:

- the establishment of a federal register in which Swiss companies and legal entities provide information about their beneficial owners;
- the extension of anti-money laundering due diligence rules to encompass specific consultancy activities, particularly those carrying an elevated risk of money laundering, such as legal advice; and
- the implementation of a set of supplementary measures aimed at strengthening the AML framework. These measures encompass strategies to prevent the violation or circumvention of embargo-related sanctions.

9.2 Has your jurisdiction's AML regime been evaluated by an international organisation, such as the Financial Action Task Force (FATF), the Council of Europe (Moneyval) or the International Monetary Fund; and if so, when?

On 7 December 2016, the FATF issued its latest evaluation of Switzerland. As per the FATF report, Switzerland has a robust regulatory framework for combating money laundering and terrorist financing.

However, the report highlighted certain shortcomings in its practical implementation. Specifically, it identified inefficiencies in international cooperation for sharing financial information, indicating that the Money Laundering Reporting Office faces limitations in this regard. Furthermore, the report noted deficiencies in customer due diligence measures and criticised the leniency of sanctions imposed by the Financial Market Supervisory Authority (FINMA).

Since the 2016 assessment of its measures to tackle money laundering and terrorist financing, Switzerland has taken a number of actions to strengthen its framework, according to the FATF.

Today, Switzerland is rated:

- 'compliant' on eight recommendations;
- 'largely compliant' on 27 recommendations; and
- 'partially compliant' on five recommendations.

9.3 Does your jurisdiction meet the recommendations of the Financial Action Task Force; and if not, what are the barriers to meeting these?

See question 9.2.

9.4 What noteworthy technology developments have you observed in your jurisdiction over the past 12 months in the growth of regtech and suptech solutions, as well areas where blockchain and digital assets or online-based communities are used as an enabler (eg, money laundering using video games or online forums)?

In 2022, FINMA carried out a survey on the use of artificial intelligence (AI) in the banking and asset management sectors. The survey revealed that around half the institutions polled make use of AI or are specifically planning to do so. The fields of application across all institutions are largely in:

- the front office area (eg, the generation of investment ideas and marketing); and
- process optimisation (eg, the categorisation of documents).

Other fields of application include:

- compliance and conduct (eg, know your customer);
- financial risk management (eg, risk analyses); and
- translations.

The National Cyber Security Centre (NCSC) regularly updates the public on current cyberthreats. Recently, the NCSC reported instances of money laundering in the realm of cryptocurrency investments. This involved individuals interested in cryptocurrency investments having remote maintenance software installed by the 'support unit' of an investment firm. Subsequently, a bank account was opened in the customer's name and substantial sums of money were deposited into the account, only to be moved elsewhere later, ostensibly for 'test purposes'. When the bank finally sought information about these financial transactions, the investment firm had already ceased operations.

On a broader note, in October 2018, the Interdepartmental Coordinating Group on Combating Money Laundering and the Financing of Terrorism released a report assessing the risks of money laundering and terrorist financing posed by crypto-assets and crowdfunding. The report concluded that the threat of money laundering and terrorist financing through crypto-assets was significant, even though the number of documented cases in Switzerland was limited at the time.

However, it is challenging to determine whether and how the situation has evolved since the publication of this report, as the available public data from administrative websites does not provide clear insights.

10. Tips and traps

10.1 What are your top tips for the smooth implementation of a robust AML compliance programme and what potential sticking points would you highlight?

The Financial Market Supervisory Authority has repeatedly identified shortcomings in the area of the money-laundering risk analysis during on-site supervisory reviews. This prompted it to conduct an in-depth review of the money-laundering risk analyses of more than 30 banks in Spring 2023. This revealed that many of the risk analyses examined did not meet the requirements (see question 4.5). An adequate definition of money-laundering risk tolerance (ie, set limits to reduce risks) was lacking in some cases. Furthermore, a lack of various structural elements that are required for an effective and robust risk analysis was observed.

In a recent case, the Geneva Public Prosecutor's Office charged a bank with money laundering. The bank had enough compliance staff, adequately trained its personnel and had clear internal directives to prevent money laundering. However, the bank failed to detect that a business relationship was being used for money laundering. It appears that the bank had only conducted a thorough risk assessment at the start of the business relationship. This limited approach prevented the bank from identifying and addressing the increasing money-laundering risks that became apparent as the relationship continued.

This case highlights the need for regular risk assessments to effectively combat such risks.

10.2 What are the key threats and trends that you have seen in your jurisdiction with respect to money-laundering techniques during the COVID-19 pandemic?

In March 2020, to provide support to companies affected by the COVID-19 pandemic, the Federal Council adopted an ordinance allowing rapid access to loans on the basis of standardised formal declarations by the applicant. The funds obtained were to be used to continue business operations.

However, some applicants have come under suspicion for potential offences, in particular fraud, by taking advantage of this simplified and rapid procedure for granting COVID -19 loans.

As of 31 December 2021, the Money Laundering Reporting Office had reported more than 1401 cases of money laundering to the prosecuting authorities in connection with COVID-19 loans.

10.3 Are your jurisdiction's relevant AML legislative and rulemaking instruments available in online; and if so, are they publicly available and in English?

The relevant acts are publicly available on the publication platform for federal law (Fedlex) and can be found via the following links:

- Swiss Penal Code
- Swiss Criminal Procedure Code
- Federal Act on Combating Money Laundering and Terrorist Financing
- Federal Act on the Swiss Financial Market Supervisory Authority
- Ordinance of the Federal Council on Combating Money Laundering and Terrorist Financing
- Anti-Money Laundering Ordinance of the Swiss Financial Market Supervisory Authority.

English translations are also available for the main legislative instruments, but only for information purposes, as English is not an official language in Switzerland.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

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