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Anti-Money Laundering

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1 The Crime of Money Laundering and Criminal Enforcement

1.1 What is the legal authority to prosecute money laundering at the national level?

In accordance with art. 305*bis* no. 1 of the Swiss Criminal Code (SCC), any person who carries out an act that is aimed at frustrating the identification of the origin, the tracing or the forfeiture of assets which he knows or must assume originate from a felony or from a qualified tax offence shall be punishable by imprisonment of up to three years or a monetary penalty.

The criminal offences under art. 186 of the Federal Act on Direct Federal Tax and art. 59 para. 1 first lemma of the Federal Act on the Harmonization of Direct Taxes of the Cantons and Municipalities shall be deemed qualified tax offences if the avoided taxes exceed CHF 300,000 per tax period. The crucial point in this instance is that, for the purpose of tax evasion, falsified, forged or substantively untrue documents are used for fraudulent purposes.

According to the Federal Supreme Court, and regardless of the clear wording of art. 305*bis* no. 1 SCC, the actions described as "frustrating the identification of the origin and the tracing of assets" shall not have any independent significance in comparison to "frustrating the forfeiture". In other words, money laundering must always relate to assets which could be forfeited.

The perpetrator of the predicate offence himself can also be punished for subsequent money laundering.

Money laundering is only punishable if it has been committed with direct or contingent intent.

1.2 What must be proven by the government to establish money laundering as a criminal offence? What money laundering predicate offences are included? Is tax evasion a predicate offence for money laundering?

Under Swiss law, the crime of money laundering pursuant to art. 305*bis* SCC protects the criminal authorities' right to forfeiture. Thus, in order to establish money laundering, the criminal authority has to prove:

(i) that a predicate offence (felony or qualified tax offence) has been committed;
(ii) that assets originating from such predicate offence could be forfeited;
(iii) that the offender intentionally committed or omitted an act (*cf.* question 1.10) with the aim of frustrating the forfeiture of such assets; and
(iv) that the offender knew or should have known that the assets originate from a predicate offence and could thus be forfeiture.

Generally speaking, money laundering applies to felonies, i.e., criminal offences that are punished with a prison sentence of more than three years, and to qualified tax offences.

Consequently, predicate offences include, *inter alia*, the most important offences against property (e.g., misappropriation [art. 138 SCC], theft [art. 139 SCC], robbery [art. 140 SCC], fraud [art. 146 SCC], criminal mismanagement [art. 158 SCC], handling stolen goods [art. 160 SCC]), bankruptcy offences (art. 163 *et seq.* SCC), certain forms of drug dealing (art. 19 para. 2 of the Federal Act on Narcotics and Psychotropic Substances), and bribery (art. 322*ter et seq.* SCC), including bribery of foreign public officials (art. 322*septies* SCC).

As for taxes, the evasion of *indirect* taxes (customs duties, withholding tax, stamp duties, VAT, etc.) is punished with a prison sentence of up to five years and thus qualifies *per se* as a felony and predicate offence to money laundering, provided the conditions of art. 14 para. 4 of the Federal Act on Administrative Criminal Law are fulfilled, that is if it:

(i) is committed commercially or in cooperation with third parties; and
(ii) causes a significant unlawful advantage or a significant damage to public authorities.

The evasion of *direct* taxes, on the other hand, does not qualify as a felony under Swiss law. However, since the beginning of 2016, money laundering has still applied to so-called "qualified tax offences" relating to direct taxes (*cf.* question 1.1 above).

Among Swiss law experts, there is a dispute as to whether the new offence of money laundering in tax matters is indeed functional, since avoidance of taxes in principle (i) triggers no forfeiture, but just a supplementary tax assessment, and (ii) does not generate specific tainted assets which could be forfeited, but merely the avoidance of a tax burden.

1.3 Is there extraterritorial jurisdiction for the crime of money laundering? Is money laundering of the proceeds of foreign crimes punishable?

If the predicate offence – in other words, the felony or the qualified tax offence – was committed abroad and is punishable there, the perpetrator shall be prosecuted and punished in Switzerland for the money laundering committed in Switzerland (art. 305*bis* no. 3 SCC). This provision serves to protect the foreign forfeiture claim. Applying the provision to foreign predicate offences can therefore be problematic if a foreign state does not know the concept of forfeiture of specific (tainted) assets, but rather absorbs tortious benefits

exclusively by means of a claim for compensation (see also question 1.9 in this regard).

1.4 Which government authorities are responsible for investigating and prosecuting money laundering criminal offences?

Depending on whether the money laundering is directed against the Federation's or the Canton's administration of justice, criminal proceedings for money laundering are conducted either by the Federal Prosecutor's Office or by the cantonal public prosecutor's offices (art. 23 para. 1 *lit.* h of the Swiss Code of Criminal Procedure [SCP]). If money laundering is, to a large extent, carried out abroad or in several cantons without being concentrated in one canton, the Federal Prosecutor's Office shall be responsible for prosecution (art. 24 para. 1 SCP). However, under certain conditions, the Federal Prosecutor's Office can transfer a criminal case that falls under its jurisdiction in accordance with art. 23 SCP to the cantonal prosecutor's offices for investigation (art. 25 SCP).

The Money Laundering Reporting Office Switzerland (MROS) similarly plays an important role in the prosecution of money laundering. It receives reports from financial intermediaries who transmit them by virtue of their reporting rights or their reporting obligation, and subsequently reviews and analyses them (see question 2.6). It notifies the relevant prosecuting authority if it has reason to suspect that money laundering has taken place or that assets originate from a felony or a qualified tax offence in accordance with art. 305*bis* no. 1*bis* SCC.

Any violations of the reporting obligation (art. 37 of the Federal Act on Combating Money Laundering and Terrorist Financing [AMLA]) are prosecuted by the Federal Department of Finance (art. 50 para. 1 of the Federal Act on the Swiss Financial Market Supervisory Authority [FINMASA]). For more details on the reporting obligation, please see question 3.11.

1.5 Is there corporate criminal liability or only liability for natural persons?

In Switzerland, both natural persons and companies can be prosecuted and convicted for money laundering. In accordance with art. 102 para. 1 SCC, any felony or misdemeanour committed in a company in the exercise of commercial activities in accordance with the objects of the company is attributed to the company if that act cannot be attributed to any specific natural person due to inadequate organisation of the company (subsidiary corporate liability).

In accordance with art. 102 para. 2 SCC, the company shall be punished independently or in addition to the criminal liability of any natural persons if the felony or misdemeanour involves certain offences, including, in particular, money laundering, and if the company has failed to take all the reasonable organisational measures in order to prevent such an offence (cumulative corporate liability).

1.6 What are the maximum penalties applicable to individuals and legal entities convicted of money laundering?

In the event of natural persons being convicted in accordance with art. 305*bis* no. 1 SCC, the maximum prison sentence is three years. In qualified cases (art. 305*bis* no. 2 in conjunction with art. 34 para. 2 SCC), in particular, if the perpetrator is acting as a member of a criminal organisation or as a member of a group that has been formed for the purpose of the continued conduct of money-laundering activities, or if he/she achieves, by means of commercial money laundering, a large turnover or a substantial profit, then the maximum prison sentence shall be five years, combined with a maximum monetary penalty of 500 daily penalty units of up to CHF 3,000 each.

If a company is convicted of money laundering, the maximum fine shall be CHF 5 million (art. 102 para. 2 in conjunction with para. 1 SCC).

1.7 What is the statute of limitations for money laundering crimes?

The limitation period for prosecution is 10 years (art. 97 para. 1 *lit.* c SCC) for the basic offence of money laundering (art. 305*bis* no. 1 SCC) and 15 years (art. 97 para. 1 *lit.* b SCC) for the qualified offence (art. 305*bis* no. 2 SCC). As money laundering is an ongoing offence, the limitation period for prosecution begins on the day on which the criminal conduct ceases (art. 98 *lit.* c SCC). The limitation period for prosecution ceases to apply if a judgment by a court of first instance has been issued before the limitation period for prosecution has expired (art. 97 para. 3 SCC).

It should be noted that the limitation period for prosecution of the predicate offence also plays a role. If the predicate offence is barred by a statute of limitations, then no forfeiture or money laundering in terms of frustrating the forfeiture will be possible. The limitation period for the prosecution of predicate offences (felonies and qualified tax offences) is usually 15 years.

1.8 Is enforcement only at national level? Are there parallel state or provincial criminal offences?

There are no money laundering provisions in Switzerland on a cantonal or municipal level. Only art. 305*bis* SCC applies. However, criminal proceedings for money laundering are also conducted by the cantonal prosecutors (see question 1.4).

1.9 Are there related forfeiture/confiscation authorities? What property is subject to confiscation? Under what circumstances can there be confiscation against funds or property if there has been no criminal conviction, i.e., non-criminal confiscation or civil forfeiture?

In accordance with art. 70 para. 1 SCC, the court orders the forfeiture of assets that have been acquired through the commission of a criminal offence, unless the assets are passed on to the person harmed for the purpose of restoring the prior lawful position.

Forfeiture shall only be precluded if a third party has acquired the assets in ignorance of the grounds for forfeiture and has (cumulatively) provided an equivalent consideration for them, or if forfeiture would otherwise cause him disproportionate hardship (art. 70 para. 2 SCC).

The objects of forfeiture are assets obtained directly or indirectly by means of a criminal offence. These must have a natural and adequate causal link to the criminal offence, but do not necessarily have to be the direct and immediate consequence of the offence. For example, income from legal transactions that have been concluded based on bribery can also be confiscated. It is undisputed that surrogates of assets acquired through a criminal offence can be confiscated as well.

Funds derived from fraud or other offences against financial interests are often commingled on a bank account with funds derived from licit activities. It has been an issue of controversy to what extent such commingled funds could be forfeited and, even more importantly, qualified as an object of money laundering. According to the "total contamination theory", the whole commingled account can be forfeited and, consequently, any withdrawal from such an account qualifies as money laundering. The "oil film theory", according to which the tainted funds, metaphorically speaking, float on top of the commingled account, has the consequence that pending an investigation the commingled account remains fully blocked by the "oil film" of tainted funds. In contrast, the "sediment theory", according to which the tainted funds sink to the bottom of the commingled account, allows that the untainted part of the account may be disposed of, provided that the tainted sediment remains untouched. In a decision of June 2021, the Federal Supreme Court ruled in favour of the "sediment theory".

If the assets which are subject to forfeiture no longer exist, e.g., because they have been consumed or disposed of, the court orders a compensation claim for the same amount (art. 71 para. 1 SCC). The compensation claim may be enforced in any assets, including assets which may have been legally acquired. Frustrating the compensation claim does not qualify as money laundering since it does not focus on "tainted" assets. Money laundering applies only to frustrating the forfeiture of "tainted" assets that are proven to be directly or indirectly derived from a felony or a qualified tax offence.

It is an issue of controversy whether the scope of the benefit to be recovered should be determined on a net or gross basis. For generally prohibited activities (e.g., drug trafficking), gross calculations apply, whereas for acts that are permitted in principle, but are only tortious in specific instances (e.g., a contract that has been obtained through corrupt means), net calculations are used, i.e., the production costs are deducted.

Law enforcement authorities may order the provisional seizure of assets if they are likely to be forfeited or serve to enforce the compensation claim (art. 263 para. 1 *lit.* d SCP, art. 71 para. 3 SCC).

As forfeiture and compensation claims involve objective measures and not penalties, these sanctions are applied regardless of the criminal liability or conviction of a particular person. This is on the condition, however, that all objective and subjective elements of the underlying offence can be proven and that there is no general defence.

1.10 Have banks or other regulated financial institutions or their directors, officers or employees been convicted of money laundering?

Yes. It is worth mentioning, for example, the conviction of bank officers for money laundering by omission (BGE 136 IV 188). The relevant case was based on the following facts: the bribes received by tax officials from the District of Rio de Janeiro were transferred to accounts of a bank headquartered in Geneva. Although the question of the admissibility of a politically exposed person (PEP) engaging in secondary employment did relate to one of the officials, internal transfers to other tax officials did take place and the accounts showed a rapid increase in capital, thus the evidence suggested that the tax officials' balances could be of criminal origin and the bank officers neglected to inform the bank's general management. As a result of this omission, they breached the duties of care incumbent on them and prevented the accounts from being reported to MROS and being blocked.

Another ruling of the Federal Supreme Court relates to the criminal liability of a bank for lack of organisational measures to prevent money laundering (BGE 142 IV 333). The decision was based on the following facts: after the transfer of EUR 5 million to an account at the bank – the transfer was based on fraud – the amount of CHF 4.6 million was withdrawn in cash. The Federal Supreme Court denied the bank's cumulative liability for money laundering since the necessary conditions, i.e., the underlying criminal liability of a natural person for money laundering, was not established. The case shows that the cumulative liability of companies for money laundering is indeed cumulative and not strict liability. By a decision of 15 December 2021 the Federal Criminal Tribunal ordered Falcon Bank to pay a fine of CHF 3.5 million for failing to set up the necessary controls to prevent money laundering in relation to unfaithful management. In addition, the financial institution was ordered to pay a compensation claim in the amount of CHF 7 million plus interest for asset management fees earned on the tainted assets. In contrast, the bank was not ordered to compensate the total of EUR 61 million and EUR 133 million criminally obtained assets moved via its accounts. The reason for this is that the bank never became the direct or beneficial owner of these funds and was thus not criminally enriched to this extent. Interestingly, the former CEO of the bank was acquitted since it could not be proven that he knew of the predicate offence regarding the criminal origin of the assets. It was thus argued that the cumulative criminal liability of the bank was not based on the involvement of the CEO, but on the fact that the foreign perpetrator of the predicate offence himself was qualified as a *de facto* organ of the bank, and had used the CEO as an unwilling instrument of crime. The decision has been appealed. The Appeals Chamber of the Federal Criminal Court has acquitted both – the former CEO and the bank – of all charges. The Appeals Chamber followed the lower court in assuming that – even if the predicate offence had been affirmed – the accused CEO also lacked (contingent) intent with regard to the predicate offence. With regard to the bank, the Appeals Chamber, in agreement with the lower court and the Swiss Financial Market Supervisory Authority (FINMA), affirmed a criminally relevant internal disorganisation of a certain scope within the meaning of the indictment. However, as there is no predicate offence within the meaning of art. 305*bis* SCC and therefore no offence within the meaning of art. 102 para. 1 and 2 SCC, the corresponding criminal liability was not applicable and the bank was acquitted.

1.11 How are criminal actions resolved or settled if not through the judicial process? Are records of the fact and terms of such settlements public?

Switzerland does not know plea agreements as they occur, e.g., in the U.S. However, criminal prosecution may be abandoned in certain circumstances, in particular if the offender has made reparations (art. 53 SCC). In this regard, reference should be made to the abandoning of corruption proceedings against a French company on the basis of art. 53 SCC, after it had made reparations to the value of CHF 1 million. At the same time, however, the Swiss subsidiary of the same concern was sentenced, by means of a summary penalty order, to a fine of CHF 2.5 million as well as a claim for compensation to the value of CHF 36.4 million.

In accordance with Federal Supreme Court case law, orders for abandoning prosecutions can be inspected if there is a legitimate interest in the information and it is not opposed by any overriding public or private interests.

1.12 Describe anti-money laundering enforcement priorities or areas of particular focus for enforcement.

With regard to prosecution by the Office of the Attorney General (OAG), it should be emphasised that it prosecutes more complex intercantonal or international cases of money laundering (see question 1.4). To give two examples:

- The Federal Criminal Court held, in a judgment of 26 June 2020 which is not yet legally binding, that a former member of the Ukrainian Parliament had been involved in organising activities in Ukraine constituting misconduct in public office. The Ukrainian state operator of nuclear power stations had purchased components from a Czech supplier at a price that was around 18% higher than it should have been. After receipt of the payment, the supplier transferred the excess to an account in Switzerland, whose beneficial owner was the former member of the Ukrainian Parliament. The 57 transfers made by the latter and another Ukrainian citizen from said account to accounts abroad involved an amount of CHF 3.7 million. The Federal Criminal Court convicted both accused of qualified money laundering and ordered the forfeiture of USD 3.37 million, as well as a compensation claim against the former member of the Ukrainian Parliament amounting to CHF 3.7 million.
- In July 2020, the OAG and the public prosecutor of the Calabrian province of Catanzaro conducted an operation against a criminal organisation with links to the 'Ndrangheta. The investigations revealed international involvement in arms and drug trafficking, money laundering and the importation of counterfeit money from Italy. In both Switzerland and Italy, the investigations resulted, *inter alia*, in the seizure of significant assets, goods and weapons (see Report of OAG of Switzerland on its activities in 2020 for the attention of the supervisory authority, ch. 3.5 *et seq.*).

2 Anti-Money Laundering Regulatory/ Administrative Requirements and Enforcement

2.1 What are the legal or administrative authorities for imposing anti-money laundering requirements on financial institutions and other businesses? Please provide the details of such anti-money laundering requirements.

The basic principles for combatting money laundering are laid down in the AMLA. The scope of application of the AMLA as well as the duties for traders are clarified in the Anti-Money Laundering Ordinance of the Federal Council (AMLO).

The obligations for prudentially supervised financial intermediaries (especially banks) are specified in the Anti-Money Laundering Ordinance of the Swiss Financial Market Supervisory Authority (AMLO-FINMA). The duties of financial intermediaries affiliated with self-regulatory organisations (SROs) are regulated in the corresponding SRO's statutes. Depending on the financial intermediary, supervision is carried out by FINMA, the supervisory organisation, the SROs, the Federal Gaming Board, or the supervisory commission of the Swiss Bankers Association for its Code of Conduct with regard to the exercise of due diligence (see questions 2.2 and 2.3). Reference is hereby made to question 3.9 for the requirements related to combatting money laundering. Since the FinSA and FinIA came into force on 1 January 2020, portfolio managers need a FINMA authorisation to carry out their activity. While FINMA alone is responsible for the authorisation of portfolio managers, their supervision (also regarding compliance with AMLA duties) is mainly carried out by a supervisory organisation. The supervisory organisation is separate and independent from FINMA, but is itself authorised and supervised by FINMA.

2.2 Are there any anti-money laundering requirements imposed by self-regulatory organisations or professional associations?

Supervision of financial intermediaries under art. 2 para. 3 AMLA is exercised through SROs. With regard to portfolio managers and trustees, the supervisory organisation carries out the AMLA supervision hand in hand with FinIA supervision of portfolio managers.

It should be mentioned that the prudentially supervised banking sector has established a Code of Conduct with regard to the exercise of due diligence with FINMA's agreement. The Code of Conduct applies to the identification of the customer and establishing the identity of the beneficial owner of the assets involved in the business relationship or the transaction. It should also be emphasised that the statutes for SROs for the Swiss Insurance Association for Combating Money Laundering (SRO SVV) govern the due diligence obligations for all insurance institutions, even if they have not been subject to the supervision of the SRO SVV.

2.3 Are self-regulatory organisations or professional associations responsible for anti-money laundering compliance and enforcement against their members?

Yes. In accordance with art. 12 *lit.* c AMLA, supervising compliance with the due diligence obligations of the financial intermediaries mentioned in art. 2 para. 3 AMLA is the responsibility of the SROs recognised by FINMA.

The supervisory organisations perform the ongoing AMLA supervision of the affiliated portfolio managers and trustees. FINMA reserves the right to issue decrees, and enters into the ongoing supervision of the supervisory organisation, if this is necessary to enforce the financial market laws pursuant to art. 1 para. 1 FINMASA.

2.4 Are there requirements only at national level?

Yes, requirements are only at national level.

2.5 Which government agencies/competent authorities are responsible for examination for compliance and enforcement of anti-money laundering requirements? Are the criteria for examination publicly available?

FINMA is responsible for monitoring prudentially supervised financial intermediaries (especially banks). Furthermore, FINMA enters into the ongoing supervision of the supervisory organisation if this is necessary to enforce the financial market laws pursuant to art. 1 para. 1 FINMASA. SROs are responsible for enforcing the requirements *vis-à-vis* their affiliated financial intermediaries. Portfolio managers receive ongoing supervision from their supervisory organisation.

It should be emphasised that banks, in addition to FINMA, are also supervised by their professional organisation's supervisory committee. Whenever FINMA receives information (from its supervisory activities, reports by other authorities or complaints from investors/clients) about irregularities or violations of the law, they start investigations in order to establish whether enforcement proceedings are necessary.

FINMA conducts a large number of enforcement proceedings every year. FINMA does not usually provide information on individual enforcement proceedings unless there is a specific supervisory interest. However, they publish an annual enforcement report that provides in-depth insight into its enforcement practice using anonymised case studies.

2.6 Is there a government Financial Intelligence Unit ("FIU") responsible for analysing information reported by financial institutions and businesses subject to anti-money laundering requirements?

MROS at the Federal Office of Police is the national central office that examines suspicious transaction reports, analyses them and, if necessary, forwards them to the relevant law enforcement authorities.

2.7 What is the applicable statute of limitations for competent authorities to bring enforcement actions?

By virtue of art. 52 FINMASA, the prosecution of any violations of this law and of the financial market laws has a limitation period for prosecutions of seven years. Violations of the reporting obligation under art. 9 AMLA constitute a so-called "continuing offence", which has an influence on the commencement of the limitation period.

2.8 What are the maximum penalties for failure to comply with the regulatory/administrative anti-money laundering requirements and what failures are subject to the penalty provisions?

SROs do not have a homogeneous fine policy and the fines vary in terms of amount. The Swiss Bankers Association's Supervisory Commission may, for example, issue penalties of up to CHF 10 million. The offences that can lead to fines or penalties are specified in the corresponding regulations. FINMA itself does not have any authority to issue fines. However, FINMA may take other measures, such as confiscating profits or issuing occupational bans.

2.9 What other types of sanction can be imposed on individuals and legal entities besides monetary fines and penalties?

Violating the due diligence obligations of the AMLA may call into question the "guarantee of proper business conduct" demanded by the financial intermediary. If FINMA detects a serious violation of supervisory provisions, it may, in accordance with art. 33 FINMASA, prohibit the person responsible from acting in a management capacity towards any person or entity subject to its supervision. The prohibition on practising a profession may be imposed for a period of up to five years.

Authorisation to exercise financial intermediary activity may be withdrawn from companies. In addition, FINMA may, by virtue of art. 35 FINMASA, confiscate any profit that a supervised person or entity, or a responsible person in a management position, has made through a serious violation of the supervisory provisions. FINMA may issue declaratory orders or specific orders under art. 31 FINMASA to restore the proper state of affairs or, in particularly serious cases, order liquidation.

2.10 Are the penalties only administrative/civil? Are violations of anti-money laundering obligations also subject to criminal sanctions?

If the reporting obligation specified in art. 9 AMLA is violated, then natural persons can be prosecuted in accordance with art. 37 AMLA (intentional violation: fines of up to CHF 500,000; negligence: fines of up to CHF 150,000).

Furthermore, a natural person can be punished for money laundering under art. 305*bis* SCC, although the grounds for this offence can also be met by omission (imprisonment of up to three years or a fine, and in severe cases, imprisonment of up to five years). In addition, there is a specific offence for financial intermediaries that fail to determine the identity of the beneficial owner of the assets with the due diligence required by the circumstances (art. 305*ter* para. 1 SCC, imprisonment of up to one year or a fine).

In addition, art. 102 para. 2 SCC is to be mentioned, which, in the context of a money laundering offence, stipulates that the company will also be punished if it has not taken all necessary and reasonable organisational measures to prevent an offence of this nature (see question 1.5).

2.11 What is the process for assessment and collection of sanctions and appeal of administrative decisions? a) Are all resolutions of penalty actions by competent authorities public? b) Have financial institutions challenged penalty assessments in judicial or administrative proceedings?

As a rule, FINMA does not comment on individual enforcement proceedings. Cases of particular regulatory interest are exceptions to this rule. Many SROs do not make decisions on penalties public. There are, in some cases, reports in which information is provided in a summarised and anonymised form on the practice of penalties. Financial intermediaries have already challenged decisions on penalties.

3 Anti-Money Laundering Requirements for Financial Institutions and Other Designated Businesses

3.1 What financial institutions and non-financial businesses and professions are subject to anti-money laundering requirements? Describe any differences in the anti-money laundering requirements that each of them are subject to.

The AMLA and the due diligence obligations that it contains apply, on the one hand, to financial intermediaries (art. 2 paras 2 and 3 AMLA) and, on the other hand, to traders (art. 2 para. 1 *lit*. b AMLA), who receive more than CHF 100,000 in cash. The term "financial intermediaries" specifically includes banks, insurance companies, fund management companies and investment companies (the latter two under certain conditions), securities dealers and casinos. In addition, persons are also considered to be financial intermediaries if they, for example, professionally lend money or provide payment services (*Dienstleistungen für den Zahlungsverkehr*).

Please refer to question 3.9 for a description of the due diligence obligations for financial intermediaries. Traders must only then comply with the AMLA obligations if they accept more than CHF 100,000 in cash; they do not need official authorisation and are not subject to ongoing supervision. In this respect, traders are not fully subject to the AMLA.

There is currently a draft law on the transparency of legal entities, which stipulates that lawyers who provide certain types of advisory services must also fulfil due diligence obligations based on the AMLA. In addition, advisors (e.g., a fiduciary or lawyer who carries out certain activities) in the non-financial intermediary sector are also to be subject to the AMLA in future. The draft law is still under discussion in parliament, and it is unclear in what form and when the new obligations will enter into force.

3.2 Describe the types of payments or money transmission activities that are subject to anti-money laundering requirements, including any exceptions.

Payment services are subject to the AMLA based on art. 2 para. 3 *lit.* b AMLA, although the law does not define in detail what payment services are. A non-exhaustive concretisation is provided in art. 4 AMLO. For example, persons who execute payment orders for third parties are subject to anti-money laundering requirements. Since 1 August 2021, financial intermediaries who help to transfer virtual currencies to a third party are also subject to the AMLA, if they maintain a permanent business relationship with the contracting party or provided that they exercise power of disposal over virtual currencies on behalf of the contracting party. Finally, payment services are provided if the financial intermediary transfers assets by, for example, accepting precious metals, virtual currencies, cash, cheques or other means of payment and paying out a corresponding amount in cash, precious metals or virtual currencies.

Also covered by the term "transfer of assets" are cashless transfers and remittances via a payment or settlement system. Anyone who issues a means of payment or operates a payment system is also subject to the scope of application of the AMLA. It should be noted that the concept of payment transaction services is interpreted broadly (*cf.* in particular the decision of the Federal Court of Justice of 12 March 2020, 2C_488/2018). Not subject to the AMLA is, for example, the collection of payments or if someone issues customer cards or merchandise vouchers that can only be redeemed with the issuer (two-party relationship). Likewise, decentralised crypto trading platforms, which only allocate the purchase and sales offers and do not carry out any payment processing, do not fall within the scope of application of the AMLA.

3.3 To what extent have anti-money laundering requirements been applied to the cryptocurrency industry? Describe the types of cryptocurrency-related businesses and activities that are subject to those requirements.

FINMA has issued various pieces of guidance in connection with cryptocurrencies.

In February 2018, FINMA published guidelines regarding initial coin offerings (ICOs). According to these guidelines, FINMA focuses on the economic function and purpose of the token issued by the ICO organiser. Relevant to this is the underlying purpose of the token and whether it is tradeable or transferable. FINMA distinguishes between payment tokens, utility tokens and asset tokens. If the ICO issues already existing payment tokens, it is qualified as a means of payment and subjected to the AMLA. Cryptocurrencies are subsumed under payment tokens. The ICO of utility tokens or asset tokens is not qualified as a means of payment under the AMLA, and is therefore not subject to the AMLA. Finally, there are also hybrid tokens, which have the characteristics of several of the three preceding tokens. Under current FINMA practice, the exchange of a cryptocurrency for fiat money or a different cryptocurrency falls under art. 2 para. 3 AMLA. The custodian wallet provider, the online exchange office and the centralised trading platform are also subject to the AMLA. According to art. 4 para. 1 *lit.* b AMLO, which has been in force since 1 August 2021, service providers are subject to the AMLA if they enable the transfer of virtual currencies to a third party, provided they maintain a permanent business relationship with the contracting party and the service is not provided exclusively to financial intermediaries. In September 2019, FINMA published a supplement to the guidelines for enquiries regarding the regulatory framework for ICOs. In this document, FINMA makes an indicative classification under supervisory law for "stable coins". Due to their frequently intended purpose as a means of payment, the AMLA mostly applies to "stable coins". Projects relating to the creation of "stable coins" may result in the application of the Banking Act or the Collective Investment Schemes Act. If a payment system of significant importance is launched, a licensing requirement as a payment system is probable pursuant to art. 81 of the Financial Market Infrastructure Act (FinMIA).

In its supervisory communication of 26 August 2019 on payment transactions on the blockchain, FINMA outlined the implementation of travel rules in Switzerland and went beyond the recommendations of the Financial Action Task Force (FATF). For Switzerland, the following rules apply.

As long as an institution supervised by FINMA does not receive and cannot send the details in the payment transaction (*cf.* art. 10 AMLO-FINMA), the applicable Swiss rules only allow payment transactions to and from external wallets if they belong to one of the institution's own clients. The customer's power of disposal over the external wallet must be verified by appropriate technical measures. A transfer to and from an external wallet of a third party is only possible if the supervised institution has previously identified the third party, established the beneficial owner and verified the third party's power of disposal over the external wallet by means of appropriate technical measures.

Insofar as the customer is offered an exchange transaction (fiat *vs.* payment tokens and *vice versa*, or between payment tokens) and an external wallet is involved in the transaction, the customer's power of disposal over the external wallet must also be verified by appropriate technical measures. If such verification does not take place, the rules of payment transactions apply, i.e., art. 10 AMLO-FINMA again.

On 20 December 2023, FINMA also published a supervisory communication in which it commented on the classification of staking services under financial market law. The supervisory communication focuses on the clarification of the interpretation of the law on the distinction between deposits protected in the event of bankruptcy and deposits exposed to insolvency risk, deposits protected in the event of bankruptcy and deposits exposed to insolvency risk, the associated authorisation requirements under banking law and the effects on the capital requirements for authorised institutions.

3.4 To what extent do anti-money laundering requirements apply to non-fungible tokens ("NFTs")?

FINMA divides tokens into payment tokens, utility tokens and asset tokens. NFTs are in principle comparable to other tokens. However, because NFTs are unique, they should not qualify as securities or as asset tokens; furthermore, because NFTs are not issued for the purpose of being used in the form of a payment instrument, qualification as a payment token also does not seem appropriate. Ultimately, each NFT must be considered on a case-by-case basis. As there are still no clear qualifications on the part of the authorities with regard to NFTs, uncertainty remains high and it is necessary to consult with the Financial Market Authority before issuing or trading in such tokens. Depending on the content embodied by the NFT, there is also a lack of asset value, which is why no subordination under the AMLA is to be assumed in these cases.

3.5 Are certain financial institutions or designated businesses required to maintain compliance programmes? What are the required elements of the programmes?

The AMLO-FINMA sets out specific requirements for certain types of financial intermediaries. For example, art. 20 para. 2 AMLO-FINMA stipulates that banks and securities firms must operate a computer-based system for monitoring transactions. Such a system will help to identify transactions with increased risks.

3.6 What are the requirements for recordkeeping or reporting large currency transactions? When must reports be filed and at what thresholds?

All documents required in connection with the fulfilment of due diligence obligations must be kept for 10 years after the business relationship in question has been terminated or the transaction has been carried out (art. 7 para. 3 AMLA). There is no obligation, however, to automatically report large currency transactions to the FIU.

3.7 Are there any requirements to report routinely transactions other than large cash transactions? If so, please describe the types of transactions, where reports should be filed and at what thresholds, and any exceptions.

There are, at present, no automatic reporting requirements to the FIU in Switzerland for any transactions.

3.8 Are there cross-border transactions reporting requirements? Who is subject to the requirements and what must be reported under what circumstances?

There is no obligation to automatically report cross-border transactions to the FIU.

3.9 Describe the customer identification and due diligence requirements for financial institutions and other businesses subject to the anti-money laundering requirements. Are there any special or enhanced due diligence requirements for certain types of customers?

(1) Identifying the contracting party: a financial intermediary must identify the contracting party on the basis of a valid document (e.g., passport or extract from the Commercial Register) when commencing a business relationship.

(2) Establishing the identity of the beneficial owner of the assets: in the case of natural persons, the financial intermediary must determine whether there are any doubts surrounding the principle that the contracting party is also the beneficial owner of the assets. In relation to legal entities, the financial intermediary must establish the identity of the controlling person of the legal entity. The controlling person is always a natural person. Since 1 January 2023, there is an additional obligation to verify the identity of the beneficial owner. The financial intermediary may apply a risk-oriented approach. However, simply obtaining a copy of an identification document from the beneficial owner is not sufficient.

(3) Repetition of the verification of the identity of the customer or the establishment of the identity of the beneficial owner in the event of doubt: in addition, the revised law (in force since 1 January 2023) also states that client data must be updated regularly. The financial intermediary can, in principle, proceed on a risk-based approach. Legal requirements that have come into force since the beginning of the business relationship must also be taken into account.

(4) Special duties of due diligence: the financial intermediary shall also be required to identify the nature and purpose of the business relationship that the contracting party wishes to establish. The scope of the information to be obtained depends on the (money laundering) risk represented by the contractual partner, or the planned business relationship or transaction (referred to as the "risk-based approach"). In addition, the contractual partner must be investigated for (but not exclusively) his/her status as a PEP, but also for any matches on sanction and terrorist lists.

(5) Documentation and retention obligations: documentation must be created concerning the transaction carried out and the clarification required in accordance with the AMLA; such documentation must be retained for at least 10 years after the business relationship has come to an end.

(6) Organisational measures: these include the sufficient training of staff and internal in-house controls. The AMLO-FINMA specifically requires the establishment of an anti-money laundering department that monitors compliance with anti-money laundering laws and carries out random checks, issues instructions, plans and monitors internal anti-money laundering training, and makes the necessary reports to MROS, if this duty has been delegated from the supreme management body to the anti-money laundering department.

(7) Obligations in the event of suspected money laundering: in the event of a reasonable suspicion of money laundering or terrorist financing, the financial intermediary must provide a report to MROS and, if necessary, take further measures (e.g., an asset freeze and information ban).

3.10 Are financial institution accounts for foreign shell banks (banks with no physical presence in the countries where they are licensed and no effective supervision) prohibited? Which types of financial institutions are subject to the prohibition?

In accordance with art. 8 *lit.* b AMLO-FINMA, the financial intermediary may not start any business relationship with

banks that have no physical presence at the place of incorporation (foreign shell banks), unless they are part of an appropriately consolidated supervised financial group.

3.11 What is the criteria for reporting suspicious activity?

A financial intermediary must immediately notify MROS if it knows, or has reasonable grounds to suspect, that the assets involved in the business relationship: are related to a criminal offence under art. 260*ter* number 1 (criminal organisation) or art. 305*bis* SCC (money laundering); are the proceeds of a felony or a qualified tax offence; are subject to the power of disposal of a criminal organisation; or serve the financing of terrorism (art. 260*quinquies* para. 1 SCC). Furthermore, the financial intermediary shall have a duty to report to MROS if it cancels negotiations for commencing a business relationship based on a reasonable suspicion of this nature. Finally, the financial intermediary shall also be required to report, in accordance with the provisions of art. 6 para. 2 *lit.* d AMLA, if it knows or has reason to believe that the data forwarded by FINMA, the Federal Gaming Board or an SRO concerning the so-called "terrorist lists" correspond to the data of the customer, a beneficial owner or the authorised signatory of a business relationship or transaction.

In addition, the financial intermediaries shall be entitled to report any observations to MROS that suggest assets may be the result of a felony or a qualified tax offence (art. 305*ter* para. 2 SCC).

MROS and FINMA have developed a practice in connection with the reporting obligation of the financial intermediary. Reasonable suspicion exists if the financial intermediary has a concrete indication or several indications that the assets involved in the business relationship originate from a crime or a qualified tax offence, are subject to the power of disposal of a criminal or terrorist organisation, or could be used to finance terrorism and this suspicion cannot be dispelled on the basis of additional clarifications in accordance with art. 6 AMLA.

3.12 What mechanisms exist or are under discussion to facilitate information sharing 1) between and among financial institutions and businesses subject to anti-money laundering controls, and/or 2) between government authorities and financial institutions and businesses subject to anti-money laundering controls (public-private information exchange) to assist with identifying and reporting suspicious activity?

A general exchange of information regarding problematic client relationships, or suspicious business activities or transactions, is precluded by Swiss bank-client confidentiality. The Data Protection Act and contractual confidentiality obligations may also prevent a general exchange. However, art. 10a AMLA provides that a financial intermediary unable to freeze assets itself may inform another financial intermediary of the report according to art. 9 AMLA, if the latter is subject to the AMLA and is able to freeze assets. An exchange of information between financial intermediaries in a report under art. 9 AMLA is also permissible, insofar as this is necessary to comply with the obligations under the AMLA, and insofar as both financial intermediaries provide joint services to a client in connection with the client's asset management on the basis of a contractually agreed cooperation or belonging to the same group of companies.

According to the revised AMLA, which came into force on 1 January 2023, the exchange of information pursuant to art. 10a para. 3 AMLA is also to be extended to the right to report pursuant to art. 305*ter* para. 2 SCC.

In addition, a new paragraph is to be added (art. 10a para. 3*bis*), according to which the reporting financial intermediary may also inform its parent company abroad of a report under the conditions set out in art. 4*quinquies* of the Banking Act, provided that the foreign parent company has undertaken to comply with the ban on information.

With regard to the public/private information exchange, it should be noted that the reporting financial intermediary may inform the supervisory authority (FINMA or the SRO) of the report, and must inform it under certain conditions. Following a report, MROS is also entitled to request further information from the reporting financial intermediary or a third financial intermediary (*cf.* art. 11a AMLA).

In contrast, a prior exchange of information for the purpose of identifying problematic business relationships is not provided for by law. In March 2023, MROS published a report on "Public-Private Partnership (PPP): Strengthening the AML/CFT Framework through Information Sharing". Based on this report, MROS and fedpol are initiating the implementation of a public-private partnership. When developing the partnership, Switzerland's specific legal situation must be taken into account, e.g., with regard to bank-client confidentiality. The aim of the private-public partnership is to recognise methods and trends as well as threats and risks in terrorist financing and money laundering, and to exchange information on statistical data, indicators or typologies.

3.13 Is adequate, current, and accurate information about the beneficial ownership and control of legal entities maintained and available to government authorities? Who is responsible for maintaining the information? Is the information available to assist financial institutions with their anti-money laundering customer due diligence responsibilities as well as to government authorities?

Pursuant to art. 697l Swiss Code of Obligation (CO), the company is obliged to keep a register of the holders of bearer shares and of the beneficial owners notified to the company. If the company does not keep the share register or the register of beneficial owners reported to it in accordance with the regulations, a shareholder or a creditor may request the court to take the necessary measures to remedy the deficiency. However, the beneficial owners register is not generally accessible to the public or government authorities. In particular, financial intermediaries can only use it in connection with establishing the identity of the beneficial owner of legal entities if the company discloses it voluntarily to the financial intermediaries.

The draft register on the transparency of legal entities in Switzerland was published in Spring 2024 and is currently being debated by the Swiss parliament. According to this preliminary draft, a federal register is to be introduced in which companies and other legal entities in Switzerland must enter details of their beneficial owners. The register is not public *per se*. However, various departments of the authorities and, for example, financial intermediaries have access to it. It is to be managed by the Federal Department of Justice and Police (FDJP) in order to utilise the existing infrastructure and expertise of the Commercial Register authorities.

3.14 Is it a requirement that accurate information about originators and beneficiaries be included in payment orders for a funds transfer? Should such information also be included in payment instructions to other financial institutions? Describe any other payment transparency requirements for funds transfers, including any differences depending on role and domestic versus cross-border transactions.

Yes. Based on art. 10 AMLO-FINMA, the payer's financial intermediary for the payment order must state the name, account number and address of the payer as well as the beneficiary's name and account number. There are certain easements for payment orders within Switzerland. There are no other payment transparency requirements in Switzerland, apart from art. 10 AMLO-FINMA.

3.15 Is ownership of legal entities in the form of bearer shares permitted?

The Federal Council introduced new regulations as of 1 November 2019, at the heart of which is the abolition of bearer shares for privately held companies limited by shares. In short, bearer shares are no longer permitted in Switzerland. The only exceptions are bearer shares of listed companies and bearer shares structured as intermediated securities.

The listing/structuring of the shares as intermediated securities must be requested from the Commercial Register by 1 May 2021. If no entry has been requested by that date, and if a company limited by shares still has bearer shares at that point, these will be converted by law into registered shares. The shares of bearer shareholders who fail to make the required notifications to the company during the transition period will become null and void.

3.16 Are there specific anti-money laundering requirements applied to non-financial institution businesses, e.g., currency reporting?

No. However, if a trader carries out a transaction of CHF 100,000 in cash, it must then comply with the limited due diligence and reporting obligations under art. 17 *et seq.* AMLO.

3.17 Are there anti-money laundering requirements applicable to certain business sectors, such as persons engaged in international trade or persons in certain geographic areas such as free trade zones?

No, there are not.

3.18 Are there government initiatives or discussions underway regarding how to modernise the current anti-money laundering regime in the interest of making it more risk-based and effective, including by taking advantage of new technology, and lessening the compliance burden on financial institutions and other businesses subject to anti-money laundering controls?

The risk-based approach plays an important role in both legislation and supervision. Efforts are also being made to make use of digital technologies. FINMA and SROs are committed to the risk-based approach. Thus, in connection with the very probable future obligation to regularly update client dossiers, the risk-based approach is also to be applied in order to determine which dossiers are to be reviewed, and at what intervals.

4 General

4.1 If not outlined above, what additional anti-money laundering measures are proposed or under consideration?

The annex to the preliminary draft of the Federal Act on Transparency of Legal Entities provides that due diligence obligations under money laundering law should also apply in future when carrying out certain advisory activities (in particular, legal advice) that include an increased risk of money laundering.

4.2 Are there any significant ways in which the anti-money laundering regime of your country fails to meet the recommendations of the Financial Action Task Force ("FATF")? What are the impediments to compliance?

See question 4.3.

4.3 Has your country's anti-money laundering regime been subject to evaluation by an outside organisation, such as the FATF, regional FATFs, Council of Europe (Moneyval) or IMF? If so, when was the last review?

On 7 December 2016, the fourth FATF Country Report for Switzerland was published. Switzerland scored well with regard to legal mechanisms and was rated as "compliant" or "largely compliant" for 31 of the 40 recommendations. With regard to the effectiveness of their legal provisions, Switzerland scored high in seven of the 11 subject areas examined. Switzerland achieved above-average results in comparison to the other countries already audited.

However, this does not change the fact that Switzerland did fail the country evaluation, like many other countries. This is especially the case because, according to the FATF, Switzerland's efforts in connection with establishing the identity of the beneficial owner and especially with verifying this information have been insufficient to date. This need for action was addressed by the revised AMLA, which came into force 1 January 2023 (see question 4.1 above). The report on Switzerland is accessible at https://www.fatf-gafi.org/media/fatf/content/images/mer-switzerland-2016.pdf

4.4 Please provide information on how to obtain relevant anti-money laundering laws, regulations, administrative decrees and guidance from the Internet. Are the materials publicly available in English?

We refer to the following links:

- Federal Department of Foreign Affairs (FDFA) – Fighting money laundering and terrorist financing: https://www.eda.admin.ch/eda/en/home/foreign-policy/financial-centre-economy/fighting-international-crime.html
- MROS: https://www.fedpol.admin.ch/fedpol/en/home/kriminalitaet/geldwaescherei.html
- SCC (*cf.* in particular art. 70 *et seq.* and art. 305*bis* SCC): https://www.admin.ch/opc/en/classified-compilation/19370083/index.html
- AMLA: https://www.admin.ch/opc/en/classified-compilation/19970427/index.html
- Licensing process for portfolio managers and trustees: https://www.finma.ch/en/authorisation/portfolio-managers-and-trustees/bewilligungsprozess

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