PANORAMIC

ANTI-MONEY LAUNDERING

Switzerland

LEXOLOGY

Anti-Money Laundering

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White & Case

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DOMESTIC LEGISLATION

Domestic law

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

Swiss money laundering regulations are based on two pillars: (1) criminal liability of individuals and (subject to certain prerequisites) undertakings for money laundering, and (2) regulatory laws providing for diligence duties of individuals and legal entities active in business areas that are particularly exposed to money laundering risks, such as financial institutions and financial intermediaries, merchants accepting significant cash payments, insurance companies, casinos and organisers of gambling events.

More specifically, on the criminal law level, article 305-bis of the Swiss Criminal Code (SCC) declares liable to a custodial sentence (not exceeding three years) or to a monetary penalty any person who carries out an act that is aimed at frustrating the identification of the origin, the tracing or the forfeiture of assets that he or she knows or must assume originate from a felony or aggravated tax misdemeanour. Pursuant to article 102(2) SCC, undertakings are penalised for money laundering in the sense of article 305-bis SCC irrespective of the criminal liability of any natural persons, provided the undertaking has failed to take all reasonable organisational measures required to prevent such an offence.

On the regulatory level, the Anti-Money Laundering Act (AMLA) mandates financial intermediaries and merchants who commercially trade in goods and accept cash payments to adhere to specific identification, clarification, documentation and reporting duties. Based on the AMLA, the Swiss Financial Market Supervisory Authority (FINMA) has issued a comprehensive ordinance (AMLO-FINMA) detailing the diligence duties of financial intermediaries that are subject to financial market regulations. The respective duties of merchants are set out in the Anti-Money Laundering Ordinance (AMLO) of the Federal Council (government). Financial intermediaries who are members of a self-regulatory organisation (SRO) must comply with the specific rules of their SRO.

The Swiss provisions on combating money laundering include a number of other decrees and regulations that define the special due diligence obligations for certain economic sectors, notably:

- the Anti-Money Laundering Ordinance of the Federal Gaming Board, applying to licensed casinos;
- the Anti-Money Laundering Ordinance of the Federal Department of Justice and Police, applying to organisers of large-scale gambling events; and
- the revised Agreement on the Swiss Banks' Code of Conduct with regard to the Exercise of Due Diligence 2020, providing a comprehensive set of rules on the identification of contracting parties and the establishment of beneficial ownership of assets held with or transacted through Swiss banks (CDB 20, soft law).

Although not a legal act in the formal sense, the FINMA Circular No. 2011/1 on Financial Intermediation under the AMLA is an important regulatory instrument as well, as the document explains the practice of the relevant supervisory authority with regard to the question of which activities qualify as financial intermediation.

Law stated - 25 March 2024

Investigatory powers

Describe any specific powers to identify proceeds of crime or to require an explanation as to the source of funds.

Financial intermediaries have indirect, rather than direct, means of exerting pressure to obtain information on the source of funds. They are obliged to carry out additional investigations in the case of business relationships or transactions involving augmented risks. The law specifically states that, depending on the circumstances, the origin of the funds involved, among other information, must be clarified (article 15(2)(b) AMLO-FINMA). Financial intermediaries are prohibited from entering into a business relationship with a client who is unable or unwilling to disclose the source of funds, or must terminate the business relationship if, in the course of the business relationship, doubts arise as to the source of the funds that cannot be clarified. In addition, they are obliged to inform the Swiss Money Laundering Reporting Office (MROS) if they suspect that the assets involved in the business relationship may be the proceeds of a crime (article 9(1) AMLA). An important element triggering such suspicion is typically the contracting party's refusal to cooperate in clarifying the source of funds or the background of a transaction. The possible consequences of non-cooperation work in practice as a strong incentive to provide the requisite information and documents.

The MROS has certain investigative powers set out in the AMLA and the Ordinance on the Money Laundering Reporting Office (MROS Ordinance). Pursuant to article 11(a) AMLA, the MROS has the right to request additional information from financial intermediaries once it has received a suspicious activity report. The MROS Ordinance also authorises the MROS to request certain information from other Swiss authorities and foreign financial intelligence units by way of administrative assistance.

Law stated - 25 March 2024

MONEY LAUNDERING

Criminal enforcement

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

Money laundering may be prosecuted at a federal or a cantonal level, depending on the characteristics of the particular case. The Federal Prosecutor’s Office is competent if the offence was predominantly committed outside Switzerland or if it was committed in several cantons without a focus on a single canton (article 24 of the Swiss Criminal Procedure Code). In minor cases, federal prosecutors can delegate investigations to cantonal prosecutors (article 25(2) of the Swiss Criminal Procedure Code).

Money laundering violations under the Swiss Criminal Code (SCC) are subject to ***ex officio*** prosecution.

The MROS, linked to the Federal Office of Police, receives and assesses mandatory and voluntary reports of suspected money laundering or terrorist financing. If warranted, it forwards cases to the appropriate public prosecutor for further investigation (article 23(4) Anti-Money Laundering Act (AMLA)).

Breaches of the reporting duty (article 37 AMLA) are prosecuted by the Federal Department of Finance in accordance with article 50(1) Financial Market Supervision Act (FINMASA). The same applies to breaches of the merchants' obligation to instruct an auditor to certify their compliance with diligence duties (article 38 AMLA). If the Swiss Financial Market Supervisory Authority (FINMA), in the course of its general prudential supervision of the financial sector, detects such breaches, it must report the matter to the Federal Department of Finance for investigation and prosecution.

Law stated - 25 March 2024

Defendants

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

Both natural and legal persons may face prosecution for money laundering. The SCC distinguishes between two types of corporate criminal liability:

- article 102(1) SCC stipulates that an undertaking may be held liable if a felony or a misdemeanor such as money laundering pursuant to article 305-bis SCC is committed in the exercise of the undertaking's business activities in accordance with its business object, and if it is impossible to attribute the offence to a specific natural person due to the undertaking's inadequate organisation;
- article 102(2) SCC provides that a company may be penalised, irrespective of the criminal liability of any natural persons for certain felonies and misdemeanours (so-called triggering offences, including money laundering in the sense of article 305-bis SCC), if committed in the exercise of its business activities in accordance with its business object, if it has failed to take all the necessary organisational measures to prevent such offence.

Either way, criminal liability of the undertaking always requires that a triggering offence was actually committed, which means that the proven conduct of the actual author (ie, of the acting natural person) must meet all objective and subjective elements of the money laundering offence as defined in article 305-bis(1) SCC.

Law stated - 25 March 2024

The offence of money laundering

What constitutes money laundering?

Pursuant to article 305-bis of the SCC:

> *[a]ny person who carries out an act that is suitable to frustrate the identification of the origin, the tracing or the forfeiture of assets that he knows or must assume originate from a felony or aggravated tax misdemeanour is liable to a custodial sentence not exceeding three years or to a monetary penalty.*

The conduct subject to criminal liability is, essentially, the prevention of confiscation of the proceeds of the so-called predicate offence. According to court practice, basically any action that creates personal, geographical, temporal and/or material distance between the predicate offence and the assets obtained through such offence is capable of frustrating the identification and/or tracing of such assets and, eventually, of their confiscation. The definition of the offence of money laundering is therefore remarkably vague.

Since financial intermediaries and merchants are subject to due diligence and reporting duties, which specifically aim to support the prosecuting authorities in their efforts to get hold of and confiscate profits originating from criminal conduct, Swiss courts advocate the view that those parties are in a position of guarantor with regard to the prevention of money laundering. Consequently, failure to comply with such diligence duties – notably the duties to clarify the background of a customer relationship or a transaction pursuant to article 6 AMLA or the reporting duty of article 9 AMLA – may constitute the offence of money laundering as well (committing an offence by omission).

The author of the predicate offence may be held liable based on article 305-bis SCC, too. Accordingly, under Swiss law, a perpetrator may be convicted for laundering the proceeds of his or her own criminal conduct.

For criminal liability to apply there must be (contingent) intent, mere negligence is not sufficient.

Finally, aiding and abetting a person to launder money is also a criminal offence (article 25 in conjunction with article 305-bis SCC).

Law stated - 25 March 2024

Qualifying assets and transactions

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

Under Swiss law, there are no restrictions as to the types of assets or transactions that can be subject to money laundering. The penal provision is intended to cover every conceivable economic transaction and all objects that have any economic value at all.

Law stated - 25 March 2024

Predicate offences

Generally, what constitute predicate offences?

Under Swiss law, only felonies may constitute predicate offences to money laundering. A felony is any offence punishable by more than three years' imprisonment (article 10(2)

SCC). Thus, predicate offences include notably fraud (article 146 SCC), handling stolen goods (article 160 SCC), robbery (article 140 SCC), certain forms of drug trafficking (article 19(2) Narcotics Act), bribery (article 322-ter SCC), participation in a criminal or terrorist organisation (article 260-ter SCC) and trafficking human beings (article 182 SCC).

In addition, article 305-bis SCC also covers aggravated tax misdemeanours as predicate offences. The offence of aggravated tax misdemeanour is defined as tax fraud relating to direct taxes (income tax, profit tax, etc), whereby the tax evaded in any tax period exceeds 300,000 Swiss francs.

The offender is also liable to prosecution if the predicate offence was committed abroad, provided the conduct in question is also liable to prosecution at the place of commission (article 305-bis(3) SCC).

Law stated - 25 March 2024

Defences

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

In Swiss law, there are no specific defences for money laundering charges. Among the general defences provided for in Swiss criminal law, a suspected offender might possibly invoke a situation of necessity (article 18 SCC) or diminished responsibility, in the sense that he or she was unable at the time of the act to properly appreciate the wrongfulness of his or her conduct (article 19 SCC). In practice, none of these defences seems to be of relevance.

Law stated - 25 March 2024

Resolutions and sanctions

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

Public prosecutors can issue a summary penalty order if the accused person has admitted the facts or if the facts have been sufficiently established in another way, and if the envisaged penalty does not exceed a custodial sentence of more than six months or a monetary penalty of 180 daily units or a fine.

The penalty for money laundering is a custodial sentence not exceeding three years respectively, in serious cases, five years, or a monetary penalty. A case is considered serious if the offender acts as a member of a criminal or terrorist organisation or a group formed for the purpose of continued money laundering, or generates significant turnover or profit through commercial money laundering (article 305-bis(2) SCC). Court practice considers 100,000 Swiss francs a large turnover, irrespective of the duration of the conduct, and 10,000 Swiss francs a substantial profit.

The FINMA can impose disqualification orders, revoke licences, confiscate profits from the breach of diligence duties and, in serious cases, publish regulatory orders (articles 33, 34, 35 and 37 FINMASA). In addition, penal authorities must confiscate profits that originate from money laundering (article 70(1) SCC).

Law stated - 25 March 2024

Forfeiture

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

Financial intermediaries must freeze assets involved in a customer relationship or transaction reported by them to the MROS for money laundering suspicion, as soon as the MROS has notified them that the reported information was transmitted to the prosecuting authorities for further investigation (article 10(1) AMLA). In the event that a relationship is associated with a party that, according to official notice to a financial intermediary by the competent regulatory body, is associated with terrorist activities, the respective assets must be frozen immediately (article 10(1-bis) AMLA). Asset freezes must remain in place until ordered otherwise by the prosecuting authorities (article 10(2) AMLA).

Criminal courts and prosecutors shall order the confiscation of assets that are the proceeds of a crime (article 70(1) SCC), unless a third party has acquired the assets in good faith, paid equal value, or if forfeiture would cause undue hardship (article 70(2) SCC).

Parties who have suffered loss because of criminal conduct are entitled to receiving compensation from confiscated assets (article 73(1) SCC).

The forfeiture of assets in money laundering cases is limited to 10 years respectively, in serious cases, to 15 years (articles 70(3), 97(1)(b) and 97(1)(c) SCC). The claims of infringed parties or third parties expire five years after the official announcement of the confiscation (article 70(4) SCC).

Law stated - 25 March 2024

Limitation periods on money laundering prosecutions

What are the limitation periods governing money laundering prosecutions?

The limitation period for money laundering is generally 10 years, and 15 years in serious cases (articles 97(1)(b)(c) SCC).

Because the application of article 305-bis SCC requires that the assets at issue are (at least potentially) subject to forfeiture as the proceeds of a crime, and since the power of judicial authorities to confiscate such assets are regularly linked to the limitation periods applying to the predicate offence, in the case of an offence committed abroad, the statute of limitations for prosecution according to the country where the predicate offence was committed must be considered, too.

Law stated - 25 March 2024

Extraterritorial reach of money laundering law

Do the money laundering laws applicable in your jurisdiction have extraterritorial reach?

The SCC follows the principle of territoriality. The nationality or residence status of a person is not relevant; anyone who commits a felony or misdemeanour in Switzerland is subject to Swiss jurisdiction. The partial commission of the offence in Switzerland is sufficient to establish Swiss criminal jurisdiction.

The SCC applies also if the predicate offence was committed abroad, provided that the respective conduct is punishable at the place where it was committed (article 305-bis(3) SCC).

Law stated - 25 March 2024

AML REQUIREMENTS FOR COVERED INSTITUTIONS AND INDIVIDUALS

Enforcement and regulation

Which government entities enforce the AML regime and regulate covered institutions and persons in your jurisdiction? Do the AML rules provide for ongoing and periodic assessments of covered institutions and persons?

The Swiss Financial Market Supervisory Authority (FINMA) oversees and enforces Anti-Money Laundering Act (AMLA) compliance of various categories of financial institutions, including banks, asset managers, trustees, insurance institutions. The competent authority for casinos is the Federal Gambling Board, and organisers of large-scale gambling events are supervised by the inter-cantonal supervisory and law enforcement agency (article 12(a) to 12(bbis) AMLA).

The FINMA indirectly oversees AMLA compliance for portfolio managers and trustees through supervisory organisations. Financial service providers not subject to prudential supervision must be affiliated to a self-regulatory organisation (SRO), which ensures that its members comply with the AMLA (article 12(c) AMLA). The SROs themselves are supervised by the FINMA (article 18 (1)(b) AMLA).

Law stated - 25 March 2024

Covered institutions and persons

Which institutions and persons must have AML measures in place?

The AMLA applies to financial intermediaries and parties, so-called merchants, that trade in goods commercially and accept cash (article 2(1) AMLA).

Financial intermediaries are (article 2(2) AMLA):

- banks;
- asset managers;
- trustees;
- fund management companies;

- investment companies with variable or fixed capital;
- limited partnerships for collective investment;
- managers of collective assets;
- insurance institutions;
- securities firms;
- central counterparties and central securities depositories;
- specified payment systems;
- and DLT trading facilities;
- casinos;
- organisers of large-scale games; and
- commercial auditors of the precious metals controls.

Furthermore, persons who professionally accept or hold assets belonging to others or help to invest or transfer such assets are subject to the AMLA (article 2(3) AMLA); this clause covers in particular parties (legal entities and individuals) who:

- engage in the lending business;
- provide payment transaction services;
- trade in banknotes and coins, money market instruments, foreign exchange, precious metals, commodities and securities and their derivatives for their own account or for the account of third parties;
- make investments as an investment adviser; or
- hold or manage securities.

Law stated - 25 March 2024

Compliance

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

Financial intermediaries are generally obliged to take the necessary measures in their area to prevent money laundering and terrorist financing. In particular, they must ensure that their staff are adequately trained and implement appropriate controls to ascertain compliance (article 8 AMLA).

Financial intermediaries supervised by FINMA must designate one or more qualified persons as an AML unit responsible for supporting and advising line managers and management in the implementation of the AMLO-FINMA (article 24(1) AMLO-FINMA). The AML unit is tasked with compliance monitoring, establishing internal directives, setting transaction monitoring parameters and risk analysis criteria, and overseeing internal training (article 24(2) and 25(1) AMLO-FINMA).

The internal directives must address the following topics:

- criteria to define high-risk business relationships and transactions;
- requirements for transaction monitoring;
- circumstances in which the internal AML specialist must be involved and the senior executive body notified;
- principles for training employees;
- policy on PEPs;
- reporting responsibility to the Swiss Money Laundering Reporting Office;
- increased risk handling;
- criteria for third-party engagement;
- internal division of responsibilities between the AML unit and other units involved in AML compliance; and
- customer records updating.

Financial intermediaries supervised by SROs are subject to similar rules issued by their respective SRO (article 25(2) AMLA).

Law stated - 25 March 2024

Breach of AML requirements

What constitutes breach of AML duties imposed by the law?

Any breach of duties under the AMLA, including identification, clarification, record keeping, reporting, education and organisational requirements, may entail regulatory action and, in specific cases, criminal liability. The most important are:

Breach of reporting duty: Any person who wilfully violates the reporting obligation under article 9 AMLA may be held liable to a fine of up to 500,000 Swiss francs; negligent breach is subject to a fine up to 150,000 Swiss francs (article 37 AMLA).

Failure to identify the beneficial owner of assets: Any person who, in the course of his or her professional activity, accepts, holds or deposits assets, or assists in the investment or transfer of assets outside Switzerland, and fails to ascertain with the necessary diligence the identity of the beneficial owner of the assets, is liable to a custodial sentence of up to one year or to a monetary penalty (article 305-ter(1) SCC).

Failure to arrange for compliance audits: A merchant who wilfully violates the obligation under article 15 AMLA to appoint an auditing company is liable to a fine of up to 100,000 Swiss francs; negligent breach is subject to a fine up to 10,000 Swiss francs (article 38 AMLA).

Law stated - 25 March 2024

Customer and business partner due diligence

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

For new business relationships, financial intermediaries must establish the customer's identity using valid official documents such as an ID card, passport or driver's licence. Corporate customers are typically identified by means of an excerpt from the company register and by verifying the identity of the individuals acting on their behalf (article 3(1)(2) AMLA).

In addition, financial intermediaries must take all due care required by the circumstances to establish the beneficial owner (article 4(1) AMLA). The respective diligence duties demand that they check respective information for plausibility. In the case of doubt, or if they know that a contracting party is not the beneficial owner, financial intermediaries are obliged to obtain a formal written declaration of the contracting party disclosing the beneficial owner (article 4(2) AMLA).

If, during the course of the business relationship, doubts arise as to the identity of the contracting party or the beneficial owner, the identification procedure must be repeated (article 5(1) AMLA).

In addition, financial intermediaries are required to ascertain the nature and purpose of a proposed business relationship (article 6(1) AMLA), and to assess related risks, so that they are in a position to detect unusual business relationships or transactions (article 6(2) AMLA). They establish criteria for high-risk business relationships and transactions and conduct extra investigations when needed (articles 13-16 AMLO-FINMA).

Financial intermediaries must prepare supporting documents on the transactions carried out and on the clarifications required under the AMLA in such a way that competent third parties can form a reliable judgement on the transactions and business relationships and on compliance with the provisions of such act (article 7(1) AMLA).

If a financial intermediary knows or has reasonable grounds to suspect that assets involved in the business relationship are the proceeds of a crime or serious tax offence, are controlled by a criminal or terrorist organisation or are being used to finance terrorism, it must immediately report to the Swiss Money Laundering Reporting Office (MROS) (article 9 AMLA).

Merchants must comply with similar due diligence and reporting duties if they accept cash payments exceeding 100,000 Swiss francs (whether made in one or more instalments), and if such payments are not transacted through a financial intermediary (article 8a(1)(4) AMLA).

Law stated - 25 March 2024

High-risk categories of customers, business partners and transactions Do the AML rules applicable in your jurisdiction require that covered institutions and persons conduct risk-based analyses? Which high-risk categories are specified? What level of due diligence is expected in relation to customers assessed to be high risk?

The Swiss anti-money laundering regime follows a risk-based approach; the level of detail of the information required to assess the purpose of a transaction or business relationship and

the frequency of checks are based on the risk categorisation of the client and the particular characteristics of the transaction (article 6 AMLA).

In particular, financial intermediaries must develop criteria that indicate business relationships or transactions involving higher risks (article 13 and 14 AMLO-FINMA). The precise criteria for the classification will generally depend on the specific business activity of the financial intermediary (eg, number of clients and volume of transactions, geographical stretch of activities, clientele active in businesses with augmented risks such as trading in arms, art, gems or jewellery, etc).

Business relationships are mandatorily categorised as high-risk when involving a foreign PEP or a person closely connected to a foreign PEP, or to a foreign bank for which a Swiss financial intermediary carries out correspondent banking transactions, or to a person domiciled in a country that has been designated by the FATF as high-risk or non-cooperative and for which the FATF has called for enhanced due diligence (article 13(3) AMLO-FINMA).

Relationships to domestic PEPs and PEPs in international organisations, in contrast, do not per se qualify as high-risk (article 13(4) AMLO-FINMA).

Transactions exceeding 100,000 Swiss francs, are always considered high-risk (article 14(3)(a) AMLO-FINMA). The same applies to payments from countries that have been designated as high-risk or non-cooperative by the Financial Action Task Force (FATF) and for which the FATF has called for enhanced due diligence (article 14(3)(b) AMLO-FINMA).

If augmented risks are detected, further investigations must be conducted immediately (article 15(1) and 17 AMLO-FINMA). Points of clarification typically include (article 15(2) AMLO-FINMA):

- whether the contracting party is the beneficial owner of the assets;
- the origin of the assets;
- the intended use of any withdrawn assets;
- the background and plausibility of any deposited assets;
- the origin of the contracting party's and beneficial owner's wealth;
- the contracting party's and beneficial owner's professional or occupational activity; and
- whether involved individuals are PEPs.

Means of clarification may be (article 16(1) AMLO-FINMA):

- written or verbal information from the contracting party, the controlling person or the beneficial;
- visits to the place of business of the contracting party, the controlling person or the beneficial owner;
- consultation of generally accessible public sources and databases; or
- enquiries with trustworthy persons.

Law stated - 25 March 2024

Record-keeping and reporting requirements

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

Financial intermediaries must keep records of the transactions carried out and the clarifications required under the AMLA in a manner that enables a qualified person to make a reliable assessment of the transactions, business relationships and their compliance with the AMLA. They must regularly verify and update records as needed. Records must be retained for at least ten years from the termination of the business relationship or the transaction date (article 7 AMLA).

Financial intermediaries are under a duty pursuant to article 9(1) AMLA to file a suspicious activity report (SAR) with the MROS if they know or reasonably suspect that assets involved in a business relationship or transaction are

- connected to money laundering or to a criminal or terrorist organisation;
- the proceeds of a felony or an aggravated tax misdemeanour;
- subject to the power of disposal of a criminal or terrorist organisation;
- the financing of terrorism; or
- related to persons named on terrorist lists.

Lawyers and notaries are exempt from the reporting duty to the extent that they are bound by professional secrecy (article 9(2) AMLA).

In addition to the duty under article 9 of the AMLA, financial intermediaries have a right to report to the MROS any observations indicating that assets originate from a felony or an aggravated tax misdemeanour (article 305-ter(2) Swiss Criminal Code (SCC)).

Merchants must file a SAR if they know or reasonably suspect that assets involved in a cash transaction are the proceeds of a felony or an aggravated tax misdemeanour, are connected to money laundering or to a criminal or terrorist organisation, serve to finance terrorism; or are subject to the power of disposal of a criminal or terrorist organisation (article 9(1bis) AMLA).

Law stated - 25 March 2024

Privacy laws

Describe any privacy laws that affect record-keeping requirements, due diligence efforts and information sharing.

While the AMLA refers in principle to the Federal Act on Data Protection (DPA) (article 33 AMLA), it itself sets out a number of important provisions on data protection.

The AMLA defines the information about customers and beneficial owners that needs to be obtained and put to record (articles 4-7 AMLA), and it specifies the conditions in which disclosure of such personal information is permissible (see, ie, articles 9 and 11a AMLA).

Article 10a AMLA eliminates the data subject's general right to information in the case of a SAR (article 25 DPA).

Article 30 AMLA permits disclosure of personal data to foreign FIUs, provided that:

- the information is used solely for analyses in the context of combating money laundering and its predicate offences, organised crime or terrorist financing;
- the recipient guarantees reciprocity and the preservation of official and professional secrecy;
- it will not pass on information received to third parties without consent from the MROS; and
- it will comply with any conditions and restrictions imposed by the MROS.

Article 34 AMLA sets out specific rules on the record keeping in relation to SARs.

Law stated - 25 March 2024

Resolutions and sanctions

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

Failure to comply with the obligation to identify and verify the beneficial owner of assets can lead to criminal liability under article 305-ter SCC.

Financial intermediaries who fail to comply with the reporting duty (article 9 AMLA) can be fined up to 500,000 Swiss francs and merchants can be fined up to 100,000 Swiss francs if they fail to appoint the required auditors (article 37 and 38 AMLA).

Article 9 AMLO-FINMA provides that any violation of the provisions of the AMLO-FINMA or of the regulations of an SRO recognised by the FINMA can call into question the required guarantee of proper business conduct of financial intermediaries. Serious infringements may lead to a ban on carrying out an activity in the financial sector for a period of up to five years and to the confiscation of any profits made (article 33 and 35 FINMASA).

Law stated - 25 March 2024

Limitation periods for AML enforcement

What are the limitation periods governing AML matters?

The limitation period to pursue breaches of AMLA obligations is seven years (article 52 FINMASA). The right to forfeiture also expires after seven years (article 35(4) FINMASA).

Law stated - 25 March 2024

Extraterritoriality

Do your jurisdiction's AML laws have extraterritorial reach?

The AMLA applies to financial intermediaries operating in Switzerland, while those based abroad are not covered. However, Swiss financial intermediaries with branches or group companies abroad must ensure that certain standards, such as identifying parties and applying a risk-based approach, are met abroad as well (article 5 AMLO-FINMA). Reporting and freezing obligations follow the laws of the country where the branch or group company operates (article 5(4) AMLO-FINMA).

As for merchants, article 2(1)(b) AMLO stipulates that it is applicable to merchants that are active in or from Switzerland.

Law stated - 25 March 2024

CIVIL CLAIMS

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

Civil claims may typically be brought based on tort. To succeed, the plaintiff must prove damage, illegality (involving a breach of a law designed to protect the individual's financial situation), causality and culpability. In addition, any private individual can file a complaint, which may lead to prosecution.

Law stated - 25 March 2024

Damages
How are damages calculated?

Damage means an unintentional reduction in net assets (ie, a reduction in assets, an increase in liabilities or a loss of profit) and is equal to the difference between the actual value of the damaged party's assets and their hypothetical value had the damaging event not occurred.

Law stated - 25 March 2024

Other remedies
What other remedies may be awarded to successful claimants?

When an offender is convicted by a criminal court, the injured parties are entitled to reasonable compensation for all expenses incurred as a result of the criminal proceedings. Compensation is usually granted for the legal costs of their representation in the criminal proceedings.

Law stated - 25 March 2024

INTERNATIONAL MONEY LAUNDERING EFFORTS

Supranational

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

Switzerland has been a member of the Financial Action Task Force (FATF) since 1990.

Law stated - 25 March 2024

Anti-money laundering assessments

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

Since the FATF's Fourth Enhanced Follow-up Report of October 2023, Switzerland is subject to the regular monitoring regime. The remaining points where Switzerland continues being considered 'partially compliant' only concern primarily the coverage of advisers by the Anti-Money Laundering Act (AMLA) (including lawyers advising on structures that may potentially be abused for money laundering).

Law stated - 25 March 2024

FIUs

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

The Money Laundering Reporting Office Switzerland (MROS) is a member of the Egmont Group. Its address is:

Federal Office of Police
Money Laundering Reporting Office Switzerland (MROS)
Guisanplatz 1A
3003 Berne
Switzerland
Tel: +41 58 463 40 40

Email: mros.info@fedpol.admin.ch

Website

Law stated - 25 March 2024

Mutual legal assistance

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

Article 30(1) AMLA authorises the MROS to cooperate with a foreign FIU if such FIU guarantees:

- that the information is used solely for the purpose of analyses in the context of combating money laundering and its predicate offences, organised crime or terrorist financing;
- reciprocity and the preservation of official and professional secrecy;
- that it will not pass on information received to third parties without receiving consent from the MROS; and
- that it complies with the conditions and restrictions imposed by the MROS.

The FINMA may provide administrative aid to foreign financial supervisory bodies if these authorities are bound by official secrecy. Information provided must be used solely for enforcing financial market laws (article 42(2) FINMASA).

On a judicial level, Switzerland provides mutual assistance in the field of combatting money laundering based on the (domestic) International Mutual Legal Assistance Act and a multitude of international treaties, including the Convention for the Suppression of the Financing of Terrorism of 1999, the Vienna Convention of 1988, the United Nations Convention against Transnational Organised Crime of 15 November 2000, United Nations Convention against Corruption of 2003, the Council of Europe Convention on Cyber Crimes of 2001 and the European Convention on Mutual Legal Assistance in Criminal Matters of 1959.

Law stated - 25 March 2024

UPDATE AND TRENDS

Enforcement and compliance

Describe any national trends in criminal money laundering schemes and enforcement efforts. Describe any national trends in AML enforcement and regulation. Describe current best practices in the compliance arena for companies and financial institutions.

On 30 August 2023, the Swiss government launched the consultation process on amendments to the AMLA, covering the following points:

- the extension of the scope of application of due diligence and record-keeping requirements to so-called designated non-financial businesses and professions, such as lawyers, notaries, legal professionals and accountants providing services in connection with the creation of legal entities or structures;
- the creation of a central federal register in which Swiss legal entities and certain foreign entities would have to register information on their ultimate beneficial owners; and
- the implementation of stricter regulations on cash transactions in the real estate and precious metal sectors.

Another topic that Switzerland is currently working on is exploring the feasibility of a strategic partnership for information sharing between the public and private sectors to combat money laundering in Switzerland (public–private partnership).

Law stated - 25 March 2024