FATF

Anti-money laundering and counter-terrorist financing measures

Switzerland

Follow-up Report & Technical Compliance Re-Rating

October 2023

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Switzerland's fourth enhanced follow-up report

Introduction

The FATF Plenary adopted Switzerland's Mutual Evaluation Report (MER) in October 2016. Based on the results of the MER, Switzerland was placed under enhanced follow-up. Switzerland's third Enhanced Follow-up Report with technical compliance re-ratings was adopted in January 2020. This fourth Enhanced Follow-up Report analyses the progress made by the country assessed to remedy some of the technical compliance shortcomings identified in its MER. Re-ratings are awarded to reflect the progress made.

Overall, it is expected that countries will have addressed most, if not all, technical compliance deficiencies by the end of the third year following the adoption of their MER. This report does not address Switzerland's progress in improving its effectiveness.

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The second section of this report summarises Switzerland's progress in improving technical compliance. The third section presents the conclusion and includes a table showing Switzerland's MER ratings and updated ratings based on this and the previous follow-up report.

Progress in improving technical compliance

This section summarises the progress made by Switzerland to improve its technical compliance by remedying some of the technical shortcomings identified in the MER (R.10 and R.40).

Progress made in remedying the technical compliance shortcomings identified in the MER

Switzerland has made progress in addressing the technical compliance deficiencies identified in the MER with respect to R.10 and R.40. As a result of this progress, Switzerland has been re-rated on these Recommendations.

Recommendation 10

	Year	Rating
MER	**2016**	PC
1st Follow-up report	**2018**	PC (not re-assessed)
2nd Follow-up report	**2019**	PC (not re-assessed)
3rd Follow-up report	**2020**	PC
4th Follow-up report	**2023**	↑ **LC**

a) **Criterion 10.1** (*Met*): As stated in the MER in 2016, the prohibition on keeping anonymous accounts stems from the obligation for financial intermediaries to verify the customer's identity when establishing a business relationship (Art. 3 para. 1 LBA[1]). In addition, the opening of new bearer savings books is prohibited, and existing savings books must be cancelled on their first physical presentation with identification of the person making the withdrawals (art. 5 CDB 20[2]). With regard to numbered accounts, CDB 20 specifies that all the provisions relating to banks' obligations to exercise due diligence apply to all accounts, savings books, securities accounts and safe-deposit boxes designated by a number or code (art. 1 para. 3) (see MER 2016, c.10.1).

b) **Criterion 10.2** (*Mostly met*): Switzerland was partly met with this criterion at the time of the MER because of shortcomings in sub-criteria 10.2b) and 10.2c). In particular, the MER pointed out that the threshold for occasional transactions for the application of due diligence measures was too high. The third follow-up report, dated 2020, stated that the OBA-FINMA had been revised, along with the regulations of the self-regulatory organisations (organismes d'autorégulation, OARs) and the Agreement on the Swiss banks' code of conduct with regard to the exercise of due diligence (CDB), in order to lower the threshold for occasional transactions for the application of due diligence measures to CHF 15 000 (EUR 13,694[3]) and thus satisfy sub-criterion 10.2b). As a result, the remaining gap concerns 10.2c) and consists in the absence of an explicit provision requiring banks to implement due diligence measures when they carry out occasional transactions in the form of wire transfers in the circumstances referred to in Recommendation 16 and its Interpretative Note. Although in practice banks do not usually carry out such transactions for occasional customers, this is not explicitly stated (see MER 2016, c.10.2). As regards sub-criteria 10.2a), 10.2d) and 10.2e), Switzerland was in compliance at the time of the MER since the principle of due diligence when business relationships are established was already laid down by the LBA in accordance with sub-criterion 10.2a), due diligence measures are also required when there is a suspicion of ML/TF under the LBA, in accordance with sub-criterion 10.2d) and, finally, whenever there is doubt about the veracity of the identification data transmitted to the financial intermediary, the

1 Loi sur le blanchiment d'argent (Money Laundering Act)
2 Convention relative à l'obligation de diligence des banques de 2020 (Agreement on the Swiss banks' code of conduct with regard to the exercise of due diligence, 2020 (CDB 20)
3 Exchange rates on the date of publication of the MER (2016)

identification of the customers in question must be renewed in accordance with 10.2e). In view of these elements, criterion 10.2 has been re-rated "Mostly met".

c) **Criterion 10.3** (*Mostly met*): The MER shows that this criterion is mostly met. The principle of customer identification and verification of identity is laid down in the LBA (Art. 3 para. 1). However, it applies with the limitation identified in c.10.2 (see above and MER 2016, c.10.3).

d) **Criterion 10.4** (*Met*): As stated in the MER, all financial intermediaries must, when their customer is a legal entity, ascertain its power of attorney and verify the identity of the persons establishing the business relationship on its behalf (art. 3 para. 1 LBA). This requirement also applies to partnerships (art. 44 para. 3 OBA-FINMA, 7 para. 2 and 15 CDB 20, 5 para. 3 R OAR-ASA, §12 para. 1 R Polyreg, Cm 15 para. 3 and 4 R ASSL, point 20 R OAR SO-FIT). In addition, trustees must confirm in writing that they are authorised to establish the business relationship in the name of the trust (art. 64 para. 3 OBA-FINMA, art. 16 para. 3 CDB 20, §24 para. 3 R Polyreg, art. 9 para. 1 and 11 para. 3 R OAR AOOS, point 20 R OAR SOFIT). With the exception of the SVIG R (§ 2.1.2.3), no measure in the AML/CFT regulations explicitly takes up the private law obligation whereby the financial intermediary must check whether a natural person is acting in the name and on behalf of another natural person, on the basis of a power of attorney or mandate. However, various provisions of the OBA-FINMA refer to this indirectly (Art. 13 para. 5 let. d and 39 let. c) (cf. MER 2016, c.10.4).

e) **Criterion 10.5** (*Met*): In 2016, there was a legal obligation for financial intermediaries to identify their customer's beneficial owner "with the due diligence required in the circumstances", but there was no general and systematic obligation for financial intermediaries to take reasonable steps to verify the identity of customers' beneficial owners (BO) and ensure their BO status. The criterion was therefore rated as "partially met" in the MER. This gap was filled by Article 4, paragraph 1 of the LBA, which introduced the obligation for financial intermediaries to identify the beneficial owner and verify its identity. The Federal Council's Message of 26 June 2019 on Article 4 of the LBA also specifies that the financial intermediary must rely on various sources for this verification, including its own knowledge of the customer's profile, public information and, if necessary and possible, information provided by an external service, and this in order to ensure that it knows who the BO is. The message from the Federal Council also specifies: "The financial intermediary is therefore required to critically verify the identity of the beneficial owner and to take – with the diligence required by the circumstances – the necessary measures to ensure its plausibility", which implies verification of the status of the beneficial owner. This fully meets the requirements of Criterion 10.5.

f) **Criterion 10.6** (*Met*): As indicated in the MER (cf. c.10.6), the financial intermediary must identify the object and purpose of the business relationship, the extent of the information to be collected being a function of the risk represented by the customer (art. 6 para. 1 LBA).

g) **Criterion 10.7** (*Met*): At the time of the MER, there were provisions relating to the obligation for financial institutions to carry out a careful review of transactions carried out throughout the business relationship to ensure that they are consistent with their profiles in accordance with sub-criterion 10.7(a). With regard to 10.7b), except for Polyreg affiliates, in 2016 there was no general and explicit obligation for financial intermediaries to ensure that the data obtained as part of due diligence remains up to date and relevant during the course of the business relationship. The criterion was therefore rated as "partially met". This shortcoming has been remedied with paragraph 1bis of Article 7 of the LBA, which stipulates that the financial intermediary must periodically check whether the required documents, i.e. the documents obtained in application of the due diligence obligations, are up to date and update them if necessary. This article also states that the frequency, scope and method of verification and updating depend on the risk represented by the customer. Also, at the level of article 7, the message from the Federal Council of June 26, 2019 stipulates that it is up to the financial intermediary to determine, on the basis of a risk-based approach, which data must be updated. day, based mainly on their relevance for the classification or monitoring of the business relationship.

h) **Criterion 10.8** (*Mostly met*): In 2016, financial intermediaries were obliged, as part of their due diligence obligations, to identify the purpose and object of the desired business relationship, which implies that they must be aware of the nature of the customer's business. In addition, where customers are legal persons or legal arrangements, the legal requirement also covered the obligation to obtain a written declaration of beneficial ownership. However, there was no systematic obligation to verify the beneficial owner status (cf. c.10.5), which limits the cases in which the financial intermediary endeavours to understand the ownership and control structure of its client. This criterion was therefore rated "partially met" in the MER. The shortcoming relating to verification of identity was remedied by Article 4 of the LBA, which introduced the obligation for financial intermediaries to verify the identity of the beneficial owner of legal persons and legal arrangements, which implies an understanding of the ownership structure. There are also a number of provisions to support this understanding of the ownership structure (particularly for domiciliary companies): Article 2, let. a, of the OBA- FINMA which defines what a domiciliary company is, Article 9*a* of the OBA-FINMA which requires the financial intermediary to clarify the reasons of the use of domiciliary companies, article 13, para. 2, let. h, of the OBA-FINMA which considers that the complexity of the structures, particularly in the case of the use of several domiciliary companies, without clearly understandable reason, constitutes an indication of a business relationship involving increased risks. However, there is no explicit provision requiring financial intermediaries to understand the ownership structure for all types of companies.

i) **Criterion 10.9** (*Mostly met*): As stated in the MER, when establishing business relationships with legal persons and arrangements, the

financial intermediary must identify and verify the identity of his client using the data listed in criterion: (a) art. 44 para. 1 let. b and 47 OBA-FINMA, art. 12 and 13 CDB 20, art. 5 R OAR-ASA, §8 para. 1 let. b and §11 R Polyreg, art. 9 para. 1 R OAR AOOS, Cm 15 para. 1 let. b and 17 para. 2 and 3 R ASSL, § 2.1.2.1 and 2.1.5 R SVIG, art. 20 para. 1 and 2 R VQF; (b) art. 3 para. 1 LBA, 44 para. 3 OBA-FINMA, 7 para. 2, 15 and 16 para. 3 CDB 20 and Form T, 5 para. 3 R OAR-ASA, §12 para. 1 R Polyreg, art. 9 para. 1 R OAR AOOS, Cm 15 para. 3 R ASSL, § 2.1.2.4 R SVIG, art. 21 para. 3 R VQF (c. 10.4); and (c) art. 44 para. 1 let. b OBA-FINMA, 7 para. 2 CDB 20, §8 para. 1 let. b R Polyreg, Cm 15 para. 1 let. b R ASSL, § 2.1.2.1 R SVIG, art. 20 para. 1 let. b R VQF. However, the address is not always explicitly required in documents equivalent to an extract from the commercial register, even though this information is generally mentioned.

j) **Criterion 10.10** (*Mostly met*): As indicated in c.10.5, at the time of the MER in 2016, there was a legal obligation for financial intermediaries to identify the beneficial owner of their customer "with the due diligence required in the circumstances", but there was no provision relating to the obligation to verify the identity of the beneficial owner. This criterion was rated as "partially met" because there was no systematic obligation to verify the beneficial ownership status of the person designated in the declaration submitted by the customer (shortcoming identified in c.10.5). Article 4 of the LBA, as well as the comment on this article in the message from the Federal Council of June 26, 2019, remedy this shortcoming by introducing an obligation for financial intermediaries to verify the identity of the beneficial owner and to ensure its plausibility. In addition, according to art. 2a, para. 3 of the LBA, "the beneficial owners of an operating legal entity are the natural persons who ultimately control the legal entity in that they directly or indirectly, alone or in concert with third parties, hold at least 25 per cent of the capital or voting rights in the legal entity or otherwise control it. If the beneficial owners cannot be identified, the most senior member of the legal entity's executive body must be identified.". However, there is no explicit provision for the case where there is doubt as to whether the person(s) with a controlling interest is (are) the beneficial owner(s) in accordance with criterion 10.10b).

k) **Criterion 10.11** (*Met*): At the time of the MER, it was noted that Swiss law required the identification of the beneficial owners of assets for legal arrangements, and more generally for "non-capital" structures for which the concept of "controlling shareholder" does not apply. However, this criterion was rated as "partially met" because the information on the beneficial owners of domiciliary companies, in particular the information collected by the banks, was insufficient. Furthermore, as mentioned in c.10.5, there was no systematic obligation to verify the beneficial owner status of the person designated in the declaration submitted by the customer, who is a legal entity. Article 4 of the revised LBA remedied the aforementioned shortcomings and introduced the obligation to verify the identity of the beneficial owner. In addition, the implementing legislation, in particular article 64 of the OBA-FINMA and articles 40 and 41 of CDB 20 in connection with

Forms S and T, require that all parties involved (trustees, settlor, protector, beneficiaries or persons occupying equivalent positions) be identified for all types of trusts and other legal arrangements with a structure or function similar to trusts.

l) **Criterion 10.12** (*Mostly met*): For life insurance contracts and other insurance-linked investment products, where such beneficiaries are identified or designated, verification of identity should take place at the time of payment of benefits. However, in 2016, this obligation to verify identity was only required if the beneficiary was a PEP. This criterion was therefore rated as "partially met". Article 11, paragraph 1 of the new OAR-ASA regulations largely remedies this shortcoming by stipulating that the insurance company must record the name of the beneficiary and collect sufficient information to be able to identify the beneficiary by name at the time of payment of the life insurance benefits, which satisfies sub-criteria (a) and (b). In addition, the insurance company must identify the beneficiary at the time of payment of the benefits. However, the said article does not expressly require verification of the identity of the beneficiary at the time of payment of benefits, which does not fully meet sub-criterion (c).

m) **Criterion 10.13** (*Mostly met*): As noted in the MER, the indicative list of criteria for identifying high-risk business relationships contains a single criterion relating to the beneficiary in specific circumstances: payment of more than CHF 25 000 (EUR 25 664[4]) to a beneficiary unrelated to the policyholder (OAR-ASA regulations, art. 13ter para. 2 let. g). The third follow-up report of 2020 indicates that this threshold has been lowered to CHF 15 000 (EUR 15 398[5]) in the new OAR-ASA regulations. However, the beneficiary is not included as a relevant risk factor to be considered for payments of less than CHF 15 000.

n) **Criterion 10.14** (*Met*): In 2016, when some data and/or elements were missing to verify the identity of the client and the beneficial owner before executing transactions or establishing the business relationship, banks and securities dealers, as well as asset managers affiliated to the OAR ASG, were nevertheless authorised to open the account. The MER noted in this respect that the verification of identities permitted within a maximum of 90 days did not comply with the recommendation in criterion 10.14a), which requires verification as soon as reasonably possible, and that adequate ML/TF risk management measures were not in place. This criterion was therefore rated "partially met" in the MER.

However, as noted in the third follow-up report of 2020, these shortcomings have been fully remedied. As far as banks and securities dealers are concerned, CDB 20, which has been applicable since 1er January 2020, has been adapted on this point. Article 45 paragraph 3 allows an account to be used, by way of exception, if certain data and/or documents enabling the identity of the customer and the beneficial owner to be verified are missing or if certain documents have not been

[4] Exchange rates in force at the date of this Follow-up Report (2023)
[5] Exchange rates in force at the date of this Follow-up Report (2023)

obtained in the required form. In accordance with criterion 10.14b), this exception is possible where it is essential not to interrupt the normal course of business. The omission concerning criterion 10.14c) is corrected by paragraph 3, which specifies that the application of such an exception nevertheless requires a risk-based analysis in order to determine whether the exception in question is appropriate, as well as ensuring that sufficient data concerning the identity of the contracting partner and that of the beneficial owner are available. Finally, paragraph 4 corrects the deficiency relating to compliance with criterion 10.14a) by requiring that the missing data and/or documents be obtained as soon as possible and at the latest within 30 days of the account being opened. Failing this, the bank must freeze the account for all incoming and outgoing assets and then decide on the next steps in the procedure in the light of a risk-based analysis. If the missing data and/or documents cannot be provided, the bank is obliged to terminate the business relationship. As of 1st January 2020, asset managers affiliated to the OAR ASG, which has since become the OAR AOOS, are subject to the rules of the OBA-FINMA (cf. c.10.2 a) and b)) and art. 9 para. 1 R OAR AOOS), which do not provide for the exception provided for in criterion 10.14, i.e. verification of the identity of the client and beneficial owner after the business relationship has been established (art. 55 para. 1 and 2 OBA-FINMA).

o) **Criterion 10.15** (*Met*): This criterion was rated "partly met" in 2016 in view of the shortcoming in point 10.14. However, as indicated in the third follow-up report (see c.10.14), since 2020 banks and securities dealers have been obliged from the date of entry into force of CDB 20 to: 1° carry out a risk-based analysis to determine whether the exception in question is appropriate (Art. 45 para. 3 CDB 20); 2° obtain the missing data and/or documents as soon as possible and no later than 30 days after the account is opened (Art. 45 para. 4 CDB 20). If they fail to do so, they must block the account for all incoming and outgoing assets and then decide on the next steps in the procedure on the basis of a risk-based analysis. If the missing data and/or documents cannot be provided, they are obliged to terminate the business relationship. The exception permitted for asset managers affiliated to the OAR ASG, which has now become the OAR AOOS, has ceased to exist as Article 55 paragraphs 1 and 2 OBA-FINMA has been applicable to them since 1st January 2020 (see Criterion 10.2 a) and b) and Art. 9 para. 1 R OAR AOOS).

p) **Criterion 10.16** (*Met*): As noted in the MER in 2016, there was no prioritisation of the application of the new measures to the categories of customers with the highest risk profiles. The criterion was therefore noted as "partly met". However, since the LBA was amended in 2023, Article 7 paragraph 1bis requires the financial intermediary to check periodically whether the required documents are up to date and to update them if necessary. In addition, the law specifies that the frequency, scope and method of verification and updating depend on the risk represented by the contracting party, which responds to the shortcoming identified and enables vigilance measures to be prioritised according to risk profiles. In addition, the Federal Council's message of

26 June 2019 concerning the amendment of the LBA states that "in the event of a change in the rules between the time when the decisive data was obtained and the time when the financial intermediary verifies that it is up to date, it is necessary to check whether this data is still up to date with regard to the new rules".

q) **Criterion 10.17** (*Met*): As noted in the MER in 2016 (cf. MER 2016, c.10.17), financial intermediaries must clarify the background and purpose of a business relationship if it involves an increased risk (Art. 6 para. 2 let. c LBA). In these circumstances, they must also carry out additional clarifications, to an extent proportionate to the circumstances.

r) **Criterion 10.18** (*Met*): At the time of the MER in 2016, issuers of means of payment that had concluded a delegation agreement with an authorised bank in Switzerland were subject to simplified due diligence measures in the circumstances defined in Article 12 para. 1 of the OBA-FINMA. These provisions did not specify whether the simplified measures were suspended in the event of a suspicion of ML/TF. The MER also indicated shortcomings with regard to the exemption from the requirement to obtain a certificate of authenticity for copies of identification documents in the context of business relationships concluded directly and remotely by issuers of means of payment (Art. 12 para. 2 OBA-FINMA). This criterion was therefore rated as "partly met". However, as noted in the third follow-up report, Article 12 para. 2bis of the revised OBA-FINMA has fully remedied this deficiency by requiring that, in order to waive the requirement for a certificate of authenticity, the issuer of the means of payment must check whether the copies of the identification documents contain evidence of the use of a false or counterfeit identity document. Evidence of the use of a false or counterfeit identity document constitutes a suspicion of money laundering or terrorist financing. In such a case, the issuer of the means of payment will not be able to take advantage of this simplified due diligence measure. In other words, simplified due diligence measures are not acceptable in cases of suspected ML/TF.

It should also be noted that OAR PolyReg explicitly refers to Art. 12 OBA-FINMA in § 39bis para. 2 of its Regulations.

s) **Criterion 10.19** (*Met*): In 2016, there was no obligation for banks but a simple option to consider terminating the business relationship if they had not obtained the missing documents within 90 days. The criterion was therefore rated "partly met" in the MER. As noted in the Third Follow-up Report, Article 45 para. 4 CDB 20 remedied this shortcoming by requiring the bank to terminate the business relationship in such cases. In addition, articles 9ss LBA (duty to report) take precedence over this provision.

t) **Criterion 10.20** (*Mostly met*): As noted in the MER (cf. MER 2016, c.10.20), if there is a suspicion of ML/TF, the financial intermediary may use its right to report (Art. 305ter para. 2 CP). If there is already a well-founded suspicion of ML/TF, the financial intermediary must submit a report (art. 9 LBA). In both cases, the report will not result in the automatic freezing of assets (subject to a STR based on art. 9 para. 1 let.

c LBA), thus avoiding the risk to alert the customer. Once a STR has been filed and during the analysis carried out by MROS, the financial intermediary must execute the customer's orders, which also greatly reduces the risk of the customer being informed that a STR has been filed against him or her. However, these provisions do not say whether or not due diligence must be maintained in addition to the execution of transactions.

u) **Weighting and conclusion:** The Swiss authorities have taken steps to address the shortcomings identified in the MER and in the previous follow-up report. One of the major developments is the revision of the LBA, which has made it possible to remedy the shortcomings relating to the obligation to verify the identity of the beneficial owner, resulting in the upgrading of criteria 10.5, 10.8, 10.10 and 10.11, as well as the provisions relating to due diligence measures applicable to existing customers, and the updating of due diligence documents and data. The remaining shortcomings can be summarised as follows:

- The absence of an explicit text requiring banks to apply due diligence measures when carrying out occasional transactions in the form of wire transfers in the circumstances covered by Recommendation 16 and its Interpretative Note (even if in practice banks do not usually carry out such transactions for occasional customers, this is not explicitly stated);
- The absence of an explicit statement requiring financial intermediaries to understand the ownership and control structure ;
- The absence of the address as an explicit requirement in documents equivalent to the extract from the commercial register;
- The absence of an explicit provision in cases where there are doubts about the identity of the beneficial owner when the customer is a legal person;
- The absence of an express provision on the obligation to verify the identity of the beneficiary when it come to life insurance and other investment related insurance policies;
- Limitations on taking into account the beneficiary of a life insurance policy as a risk factor ;
- The absence of any explicit mention of the obligation to maintain due diligence over and above the execution of transactions.

As these shortcomings were considered minor, Recommendation 10 was re-rated "Largely compliant".

Recommendation 40

	Year	Rating
MER	**2016**	PC
1st Follow-up report	**2018**	PC (not re-assessed)
2nd Follow-up report	**2019**	PC (not re-assessed)
3rd Follow-up report	**2020**	PC (not re-assessed)
4th Follow-up report	**2023**	↑ **LC**

a) **Criterion 40.1** (*Mostly met*): In 2016, the MER notes that, in principle, competent authorities can promptly provide broad international cooperation in relation to ML, related underlying offences and FT, both spontaneously and upon request. However, the legal power of MROS to request and obtain information from a financial intermediary on behalf of a foreign counterpart is limited in the absence of a STR (see c.40.8). In addition, the procedures governing FINMA's ability to request and obtain information may extend response times when cooperation involves the transmission of information relating to clients of financial intermediaries. The criterion was therefore rated "partially met" in the MER.

With regard to the first loophole, paragraph 2bis (introduced in July 2021) of Article 11a of the LBA stipulates that when the analysis of information from a foreign counterpart shows that financial intermediaries have taken part in a transaction or business relationship linked to the said information, the financial intermediaries concerned must provide all the relevant information to MROS at the latter's request, provided that they have this information at their disposal. A link with a STR sent to MROS by a Swiss financial intermediary is therefore no longer necessary to trigger MROS' power. Furthermore, the notion of "taking part" is understood in a broad sense.

With regard to the second shortcoming relating to FINMA, it should be noted that the client procedure has become less important in practice, as demonstrated by the information published on the FINMA website and the statistics presented by the Swiss authorities. Instead of notifying the client in advance, the authorities now notify the client at a later date - i.e. the client is informed after FINMA has sent the information to its foreign counterparts - which makes it possible to remedy any possible extension of deadlines. In 2021, out of 316 mutual assistance requests received, 114 were subject to subsequent client notification, i.e. more than a third. However, this procedure remains in force and has not been repealed, amended or annulled by means of an official provision. The criterion is therefore re-rated as "Mostly met".

b) **Criterion 40.2** (*Mostly met*): In 2016, the MER notes that (a) the competent authorities have a legal basis for cooperation. It should be noted that the legal basis for cooperation by the CFMJ has been strengthened. Whereas in 2016 it was based on an ordinance, since 1st January 2019 it has been based on the Gambling Act; (b) nothing prevents the competent authorities from using the most effective means to cooperate; (c) the competent authorities use clear and secure

channels, circuits or mechanisms to facilitate and enable the transmission and execution of requests. No information is available concerning the CFMJ, which has not experienced any mutual assistance cases to date; (d) the competent authorities have clear procedures for establishing priorities (with the exception, however, of the CFMJ) and for the timely execution of requests. For FINMA, the definition of priorities is provided for in the internal manual on international administrative assistance. FINMA must provide administrative assistance "with due diligence" (art. 42 para. 4 LFINMA), but when it involves the transmission of information relating to clients of financial intermediaries, the applicable procedure, implemented in a limited number of cases following the introduction of art. 42a para. 4 LFINMA, may extend the response time (cf. c.40.1). There is no specific provision for the CFMJ; (e) the competent authorities have clear procedures for protecting the information received.

As the "client procedure" remains in force for FINMA, the rating remains unchanged.

c) **Criterion 40.3** (*Met*): In 2016, the MER notes that Switzerland has a large number of police and customs cooperation agreements that are subject to a ratification procedure. MROS does not need an agreement to cooperate with foreign counterparts meeting a number of conditions (Art. 30 LBA). MROS also has the power to conclude memoranda of understanding, in particular if the law of a third country so requires to enable cooperation (Art. 30 para. 6 LBA). FINMA and the CFMJ may cooperate directly with their foreign counterparts without the need for bilateral agreements (cf. c.40.2 and 40.12). FINMA nevertheless concludes such agreements in order to guarantee the exchange of information.

d) **Criterion 40.4** (*Mostly met*): In 2016, the MER notes that the police and the AFD do not have a standardised process for giving feedback to the foreign authority that provided the information, but that such a feedback may take place depending on the situation, particularly if the information provided is incomplete. MROS, in the context of information transmitted within the meaning of Art. 30 LBA, provides feedback at the request of foreign FIUs, or spontaneously depending on the importance of the cases and the information received, as well as on the resources available. FINMA provides feedback to its counterparts, either on request or spontaneously, although it has no legislative or regulatory obligation to do so. Nor is there any obligation for the CFMJ, which has not developed any practice in this area, having never received from nor sent a request to a counterpart.

e) **Criterion 40.5** (*Met*): In 2016, the MER reported that MROS, the police, the AFD and FINMA did not appear to attach unreasonable or unduly restrictive conditions to the exchange of information or mutual assistance in AML/CFT matters. Nevertheless, the CFMJ did impose strict conditions on cooperation with foreign counterparts (cf. c.40.6) and also prohibited information from being passed on to third parties. This criterion was therefore rated as 'mostly met'. Article 103 of the Federal Gaming Act has completely remedied this situation by giving the

CFMJ the power to request from the competent foreign authorities the information it needs to perform its legal duties, including sensitive data. Under para. 2 of said article, the CFMJ may transmit information, including sensitive data, to the competent foreign gambling authorities if certain conditions are met:

- The foreign authority will only use this information as part of an administrative procedure relating to gambling;
- The authority is bound by official secrecy;
- It does not pass on this information to third parties or does so only with the consent of the CFMJ ;
- This information is necessary for the enforcement of gambling legislation and does not contain any manufacturing or business secrets.

These conditions are not unreasonable or unduly restrictive. This criterion is therefore deemed to have been met.

f) **Criterion 40.6** (*Met*): As stated in the MER in 2016, MROS, the police and the AFD have put in place controls and safeguards to ensure that information is only used for the purposes and by the authorities for which it was requested or provided by MROS, the police or the AFD, unless prior authorisation has been granted by the requested competent authority. Outgoing communications are preceded by a predefined text to this effect. FINMA may pass on non-public information to its foreign counterparts provided, in particular, that such information is used exclusively for the enforcement of financial market laws or is passed on to other authorities, courts or bodies for this purpose (Art. 42 para. 2 LFINMA). Information forwarded to FINMA by its foreign counterparts is forwarded to the departments that initiated the request for mutual assistance, in accordance with the principle of speciality. If the information needs to be passed on to other authorities, FINMA systematically notifies the authority concerned and formally requests its consent. The CFMJ follows a similar approach to FINMA (cf. REM 2016, c.40.6 as well as c. 40.5 above with regard to the CFMJ).

g) **Criterion 40.7** (*Met*): In 2016, the MER states that MROS, the Police and the AFD apply the same confidentiality measures to the information exchanged as to information of internal origin, which ensure an appropriate degree of confidentiality (note: art. 320 and 352 CP; art. 22 LPers; art. 24 ss OBCBA). Where applicable, the Police also apply the relevant international obligations. MROS, FINMA and the CFMJ also provide for measures to ensure the confidentiality of information transmitted to foreign authorities as noted in the MER (cf. MER 2016, c.40.7).

h) **Criterion 40.8** (*Met*): The MER had noted that the police and the AFD have the same investigative powers when making a request on behalf of a foreign counterpart as in domestic proceedings and may exchange evidence obtained in this way with foreign authorities, that the transmission by FINMA of non-public information to foreign counterparts is done while respecting the principles of confidentiality

and speciality, but that MROS did not have the power to formulate requests to a financial intermediary on behalf of a foreign counterpart in the absence of a link with a STR sent by a Swiss financial intermediary. This criterion was therefore rated "Mostly met". This last shortcoming linked to MROS has been fully corrected as mentioned in c.40.1: it should also be noted that this configuration is the same as when MROS makes these requests internally. This criterion has therefore been re-rated "met".

i) **Criterion 40.9** (*Met*): As stated in the MER, MROS has an appropriate legal basis to cooperate with foreign FIUs autonomously and effectively (Art. 30 LBA, cf. MER 2016, c.40.9).

j) **Criterion 40.10** (*Met*): As indicated in the MER, which refers to c. 40.4 on this point, MROS, in the context of information transmitted under art. 30 LBA, provides feedback at the request of foreign FIUs or spontaneously depending on the importance of the cases and the information received, as well as on the resources available.

k) **Criterion 40.11** (*Met*): In 2016, the MER noted that in order to obtain information requested by a foreign counterpart, MROS could only send requests to financial intermediaries who had filed a STR on the same case or who had a link with a STR of another Swiss financial intermediary (cf. c.40.1), which earned this criterion the rating "partly met". As indicated in c.40.1, the new article 11a of the LBA has completely remedied this shortcoming.

l) **Criterion 40.12** (*Met*): As indicated in the MER (cf. c.40.12), LFINMA lays down the principles of international cooperation (Art. 42) and administrative assistance (Art. 42a) that FINMA may grant to foreign counterparts, which apply without distinction to all areas of supervision, including AML/CFT.

m) **Criterion 40.13** (*Met*): As stated in the MER (cf. c.40.13), FINMA may pass on information to which it has access, held by the financial intermediaries under its supervision, or which it requests from the third party holding the information (Art. 42a para. 1 LFINMA). If this information concerns clients of financial intermediaries, the applicable procedure may extend the response times as assessed and taken into account under criterion 40.1 (cf. c.40.1).

n) **Criterion 40.14** (*Mostly met*): In 2016, the MER stated that when FINMA transmits information concerning client files, the "client procedure", which consists of informing the person concerned before the information is transmitted to the foreign authority, applies (cf. c.40.1). In practice, particularly since 2021, FINMA has increasingly been transmitting information by only informing the client at a later stage, i.e. once the information has been transmitted to the foreign counterparts. However, this procedure is still in force under LFINMA and has not been repealed by any legal or regulatory text. The rating has therefore not been changed.

o) **Criterion 40.15** (*Partly met*): As stated in the MER since 2016 (cf. MER 2016, c.40.15), FINMA may seek information on behalf of its foreign counterparts. Foreign authorities may also be authorised by FINMA to

conduct direct audits of institutions located in Switzerland under the conditions set out in Art. 43 para. 2 and 3 LFINMA. If the foreign authorities wish to have access to information relating directly or indirectly to asset management, securities trading, investment on behalf of clients or investors in collective investment schemes, FINMA will collect this information and forward it to the foreign authority (Art. 43 para. 3bis LFINMA). For the supervision of foreign groups with establishments in Switzerland, FINMA may authorise the foreign authority responsible for consolidated supervision to consult a sample of individual client files during the inspection in Switzerland, the selection being made at random in accordance with predetermined criteria (art. 43 para. 3ter LFINMA). The Federal Council's message accompanying LFINMA states that the criteria for selecting the files are determined by the foreign authority and the files are selected at random on the basis of the list of anonymised client files corresponding to the criteria, drawn up by the financial institution or audit firm. This approach is a limitation on the measures implemented by FINMA to facilitate access to the files of foreign authorities within the framework of cooperation.

p) **Criterion 40.16** (*Met*): As stated in the MER 2016 (cf. c.40.16), FINMA only passes on information received from a foreign counterpart if it is expressly authorised to do so by that counterpart, and requires its counterparts not to pass on information it has provided to them without FINMA's authorisation. All the MoUs signed by FINMA with its foreign counterparts contain such clauses.

q) **Criterion 40.17** (*Met*): As stated in the 2016 MER (cf. c.40.17), the police are able to exchange objects, documents or values seized as evidence, as well as files and decisions, with their foreign counterparts, in accordance with Article 74 EIMP for cases of mutual assistance in criminal matters handled by the police (cf. c.40.8) and in accordance with international agreements for other forms of cooperation.

r) **Criterion 40.18** (*Met*): The MER refers to c.40.8 regarding police powers to respond to requests for cooperation. Furthermore, c.40.18 notes that any restrictions on use imposed by the requested prosecuting authority are governed by the relevant agreements (cf. MER 2016, c.40.18).

s) **Criterion 40.19** (*Met*): As stated in the MER (cf. c.40.19), the agreements concluded demonstrate that the prosecuting authorities are able to set up joint investigation teams in order to conduct investigations in a cooperative manner.

t) **Criterion 40.20** (*Met*): As stated in the MER (cf. c.40.20), MROS may authorise the transmission of information to non-peer authorities subject to certain conditions regarding confidentiality and the use of information (Art. 30 para. 4 LBA). MROS may also provide information to foreign criminal prosecution authorities on the basis of art. 32 para. 1 LBA, which refers to art. 13 para. 2 LOC, in particular when the information is necessary to prevent or clarify an offence in MROS's area of responsibility. MROS can make requests to foreign authorities through fedpol's international police cooperation. FINMA may forward

information to its foreign counterparts for onward transmission to other Swiss authorities under the conditions set out in c. 40.6. FINMA may also exchange information with non-counterpart authorities if the information is necessary for the enforcement of financial market laws, the information is used exclusively for the enforcement of these laws and the non-counterpart authority is bound by official or professional secrecy (Art. 42 LFINMA). Furthermore, if the AFD has indications of a suspicion of ML/TF, particularly in connection with the cross-border transportation of cash, which it cannot pass on directly to a foreign authority for lack of competence in the matter, it informs the competent Swiss police authority, which must then decide, within the framework of its own competence, whether or not to pass on the information in question to a foreign authority.

u) **Weighting and conclusion:** Switzerland has taken a number of steps to improve its technical compliance in terms of international cooperation, including :

- The introduction in the LBA of the possibility for MROS to request and obtain information from a financial intermediary in response to a request from a foreign counterpart, even if there is no link with a STR sent to MROS by a Swiss financial intermediary;
- The reformulation of the conditions under which the CFMJ cooperates with its international counterparts.

The remaining gaps can be summarised as follows:

- FINMA's "client procedure", which consists of informing the person concerned before the information is transmitted to the foreign authority, has become less important in practice, thus reducing potential delays in transmission. However, it remains in force;
- Having never received from nor sent a request to a counterpart, the CFMJ has not developed any practice when it comes to providing feedback to its foreign counterparts.
- With regard to the supervision of foreign groups with establishments in Switzerland, the measures implemented by FINMA to facilitate access to the files of foreign authorities within the framework of cooperation still have some limitations (the criteria for selecting the files are determined by the foreign authority and the files are selected at random on the basis of the list of anonymised client files corresponding to the criteria, drawn up by the financial institution or audit firm).

As these shortcomings are considered to be minor, Recommendation 40 has been re-rated as "Largely Compliant".

Conclusion

Overall, Switzerland has made progress in addressing most of the technical compliance shortcomings identified in its MER, and R.10 and R.40 have been upgraded from PC to LC.

The table below shows the MER ratings for Switzerland and reflects the progress made as well as any re-rating based on this Follow-up Report and the previous Follow-up Report:

Table 1. Technical compliance ratings, 2023

R.1	R.2	R.3	R.4	R.5
LC	LC	LC	LC	LC
R.6	**R.7**	**R.8**	**R.9**	**R.10**
LC	C	***LC (FUR 2020)*** PC	C	***LC (FUR 2023)*** PC
R.11	**R.12**	**R.13**	**R.14**	**R.15**
C	LC	LC	C	LC
R.16	**R.17**	**R.18**	**R.19**	**R.20**
LC(FUR 2020) PC	LC	LC	***C (FUR 2020)*** PC	LC
R.21	**R.22**	**R.23**	**R.24**	**R.25**
LC	PC	PC	LC	LC
R.26	**R.27**	**R.28**	**R.29**	**R.30**
LC	LC	LC	C	C
R.31	**R.32**	**R.33**	**R.34**	**R.35**
LC	LC	***C(FUR 2020)*** PC	LC	PC
R.36	**R.37**	**R.38**	**R.39**	**R.40**
LC	LC	LC	LC	***LC(FUR 2023)*** PC

Note: There are four possible levels of technical compliance: compliant (C), largely compliant (LC), partially compliant (PC) and non-compliant (NC).

Switzerland has three Recommendations rated PC. Switzerland will move to regular monitoring and will inform the FATF of the progress made in improving the implementation of its AML/CFT measures as part of its 5th round mutual evaluation.

Appendix to the Follow-up Report

Summary of technical compliance - Shortcomings at the origin of the ratings

Recommendations	Rating	Factor(s) underlying the rating[6]
1. Assessing risks and appliying a risk-based approach	LC	• The assessment of TF risks is limited by the lack of available data. • There is no indication of the impact of the level of risk on the resources allocated to deal with these risks. • Derogations and simplified measures apply to activities where the risks are not considered to be low/weaker. • The factors to be taken into account by casinos when establishing their risk assessments are not specified.
2. National cooperation and coordination	LC	• Switzerland does not currently have a national AML/CFT policy that takes account of all the risks identified in the National Risk Assessment Report.
3. Money laundering offence	LC	• In some cases, possession of the proceeds of crime does not constitute money laundering.
4. Confiscation and provisional measures	LC	• Instruments used or intended to be used in the commission of an offence may only be confiscated if they are likely to compromise personal safety, morality or public order.
5. Terrorist financing offence	LC	• For TF offences that do not involve the "Al Qaeda" and "Islamic State" groups and related organisations, there may be minor shortcomings due to the requirement of a link (at least indirect) between the TF and a criminal or terrorist act/activity.
6. Targeted financial sanctions related to terrorism and terrorist financing	LC	• For a freezing measure taken on the basis of a designation made by another country on the basis of UNSCR 1373 to be maintained beyond five days, the Public Prosecutor must impose a sequestration order in accordance with the provisions of the Code of Criminal Procedure. • Swiss legislation does not contain any provisions protecting the rights of bona fide third parties in the context of TF designations. • There is no precise definition of the conditions for applying penalties, particularly as regards the degree of control. • There is no prohibition on making funds and other property, economic resources or financial and other related services available to persons designated in response to a request for designation made by another country on the basis of UNSCR 1373. • As the freezing obligation applies only to financial intermediaries, its scope is limited to assets entrusted to such a financial intermediary. • In the case of a freeze measure based on a designation made by another country on the basis of UNSCR 1373, only the third country may cancel the name.

[6] The gaps listed are those identified in the MER, unless they are reported as having been identified in a subsequent Follow-up Report.

7. Targeted financial sanctions linked to proliferation	C	• Switzerland complies with R.7.
8. Non-profit organisations	PC (MER) LC (Follow-up report 2020)	• There are still a few uncertainties regarding NPO control measures, and some measures to correct the shortcomings cited in the MER regarding sanctions are still being adopted.
9. Financial institutions secrecy laws	C	• Switzerland complies with R.9.
10. Customer due diligence	PC (MER) PC (FUR 2020) LC (FUR 2023)	• There is no explicit text requiring banks to apply due diligence measures when carrying out occasional transactions in the form of wire transfers. • There is no explicit requirement for financial intermediaries to understand the ownership and control structure. • The address is not explicitly required in documents equivalent to an extract from the commercial register. • There is no explicit provision for cases where there are doubts about the identity of the beneficial owner when the customer is a legal person. • The beneficiary of a life insurance policy does not have to be systematically considered as a risk factor. • The absence of an express provision on the obligation to verify the identity of the beneficiary at the time of payment of benefits when it comes to f life insurance and other investment related insurance policies. • There is no explicit mention of the obligation to maintain due diligence in addition to carrying out transactions.
11. Record keeping	C	• Switzerland complies with R.11.
12. Politically exposed persons (PEPs)	LC	• Detecting the beneficial owners of foreign PEPs among existing clients is problematic under the transitional provisions of the 2014 LBA. • There is no provision for verifying the PEP status of the beneficial owner of insurance contract customers.
13. Correspondent banking	LC	• There are no measures governing transit accounts.
14. Money or value transfer services	C	• Switzerland complies with R.14.
15. New technologies	LC	• There is no obligation for the country to identify and assess the risks associated with new technologies. • There is no requirement for all non-banking intermediaries to assess their risks before using new technologies.
16. Wire transfers	PC (MER) LC (FUR 2020)	• There are limitations on the powers of the criminal authorities to compel the immediate production of information. • There is no obligation in the regulations of a number of OARs to define a risk-based procedure to be followed in cases where beneficiaries' financial institutions receive incomplete transfer orders.
17. Reliance on third parties	LC	• The derogation granted to issuers of means of payment does not ensure that they immediately receive the initial information from the delegating bank. • The level of risk relating to the country in which third parties may be established is restricted to aspects relating to the applicable AML/CFT controls and supervision.
18. Internal controls and foreign branches and subsidiaries	LC	• Some OAR regulations do not require members' staff to meet integrity criteria. • There are no independent audit arrangements for testing

		the AML/CFT systems of DFIs or affiliates of certain OARs. • The provisions organising the Group's AML/CFT programme do not include all the requirements of c.18.1.
19. Higher-risk countries	PC (MER) C (FUR 2020)	• Switzerland complies with R.19.
20. Reporting of suspicious transaction (STR)	LC	• The coexistence of a right and an obligation to disclose can create legal uncertainty for financial intermediaries as to whether their disclosure is mandatory.
21. Tipping-off and confidentiality	LC	• There are some limited exceptions to the confidentiality of DOS.
22. Designated Non-Financial Businesses and Professions (DNFBP): Customer due diligence	PC	• The scope of application of the LBA does not cover all the activities referred to in R. 22 as regards estate agents, dealers in precious metals and stones and lawyers/notaries/accountants/trustees and providers of services to companies and trusts. • The shortcomings noted with regard to R. 10, 12, 15 and 17 also apply to the DNFBP.
23. Designated non-financial businesses and professions : Other measures	PC	• There is a gap in the scope of application of R. 23 similar to that noted for R. 22. • The shortcomings noted with regard to R. 18, 19, 20 and 21 also apply to the DNFBP.
24. Transparency and beneficial ownership of legal persons	LC	• The ML/TF risks of legal entities created in the country have not been assessed. • The mechanisms for registration in the commercial register, as well as changes to these registrations, make it impossible to ensure that all information is accurate and up-to-date. • There are no administrative or criminal penalties for failure to comply with the obligation to notify. • The application of the "client procedure" may have an impact on the speed of the international cooperation expected in terms of information on beneficial owners.
25. Transparency and beneficial ownership of legal arrangements	LC	• The requirements relating to the obligation to keep trust data up to date are inadequate. • The application of the "customer procedure" may have an impact on the speed of the international cooperation expected. • The shortcomings noted with regard to R. 31 and 35 also apply.
26. Regulation and supervision of financial institutions	LC	• Insurance undertakings and OAR affiliates are not required to obtain approval for changes in the conditions under which their initial authorisation was granted, including changes in management, directors and holders of qualifying holdings. • Sector-specific regulations allow consolidated supervision at the level of financial groups, including AML/CFT, but do not require it. • For some OARs, the criteria for reviewing members' risk profiles are unsatisfactory.
27. Powers of the supervisors	LC	• FINMA does not have the power to impose financial penalties.
28. Regulation and supervision of designated non-financial businesses and professions	LC	• Some OARs make limited reference to risk when determining the scope of AML/CFT controls. • The shortcomings noted with regard to FINMA's lack of powers to impose financial penalties (R.27) and R.35 also apply.

29. Financial Intelligence Units (FIUs)	C	• Switzerland complies with R.29.
30. Responsibilities of law enforcement and investigative authorities	C	• Switzerland complies with R.30.
31. Powers of law enforcement and investigative authorities	LC	• In the absence of a concrete indication that a person holds or controls an account with an institution, Switzerland does not have mechanisms to determine in a timely manner the availability of current accounts of the person in question.
32. Cash courriers	LC	• The fine applicable in the event of a false declaration or refusal to declare does not appear to be a deterrent or proportionate. • As the law stood at the time of the visit, the sharing of information between the AFD and MROS did not fully meet the requirements of the criterion.
33. Statistics	PC (MER) C (FUR 2020)	• Switzerland complies with R.33.
34. Guidance and feedback	LC	• The feedback available to those covered by the LBA legislation is insufficient, particularly in the non-financial sector.
35. Sanctions	PC	• The range of penalties available does not allow taxable persons who have failed to fulfil their obligations to be penalised in a graduated manner. • The penalties applicable are not proportionate.
36. International instruments	LC	• Minor shortcomings remain in the implementation of certain key articles of the relevant conventions.
37. Mutual legal assistance	LC	• The minor shortcomings observed in the context of R. 3 (concerning the possession of proceeds of crime) and R. 5 may limit the scope of mutual assistance where dual criminality is required. • Depending on the nature of the request, the conditions governing the maintenance of confidentiality may seem unduly restrictive.
38. Mutual legal assistance: freezing and confiscation	LC	• Compliance with R. 38 is limited by the minor deficiency identified under R. 4. • The dual criminality requirement, in conjunction with the minor shortcomings observed in the context of R. 3 and 5, may limit the scope of mutual assistance in the event of a request for freezing or confiscation concerning certain ML/TF offences.
39. Extradition	LC	• Some minor shortcomings relating to ML/TF offences may affect the scope of the extradition scheme. • The possibility of presenting an alibi in response to an extradition request derogates from the general principle that substantive issues are to be decided in the requesting State.
40. Other forms of international cooperation	PC (MER) LC (FUR 2023)	• Despite its diminishing importance in practice, the "client procedure" may delay the international cooperation granted by FINMA. • Having never received from nor sent a request to a counterpart, the CFMJ has not developed any practice when it comes to providing feedback to its foreign counterparts. • There are limits to the measures implemented by FINMA to facilitate access to the files of foreign authorities within the framework of cooperation.

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October 2023

Anti-money laundering and counter-terrorist financing measures in Switzerland

Follow-up Report & Technical Compliance Re-Rating

As a result of Switzerland's progress in strengthening its measures to fight money laundering and terrorist financing since the assessment of the country's framework, the FATF has re-rated the country on Recommendations 10 and 40.

Follow-up report