

## Executive Summary

1. This report provides a summary of the Anti-Money Laundering and Countering the Financing of Terrorism (AML/CFT) measures in place in Switzerland as at the date of the on-site visit (25 February – 11 March 2016). It analyses the level of compliance with the FATF 40 Recommendations and the level of effectiveness of Switzerland's AML/CFT system, and provides recommendations on how the system could be improved.

### A. *Key Findings*

- Swiss authorities generally have a good understanding of the risks of ML/TF, which was furthered by the first National Risk Assessment (NRA) published in June 2015. In 2013, Switzerland set up an AML/CFT co-ordination and cooperation body to bring AML/CFT strategy and policies in line with changes in identified risks.
- The Swiss financial system is exposed to a high risk of ML associated with the laundering of assets derived from offences that are mostly committed abroad. Banking, in particular private banking, is the sector most exposed to these risks. A number of important aspects specific to Switzerland, such as the use of cash or legal persons in general, including domiciliary companies, have not yet been analysed in detail with regard to the ML/TF risks to be included in the NRA. The risk of TF is more limited, but outreach is required to raise the awareness of non-profit organisations (NPOs).
- The Swiss AML/CFT framework has been developed using a risk-based approach and reflects the high risk level associated with the banking sector. In general, Swiss authorities take identified risk into account in their objectives and activities.
- In general, financial institutions and designated non-financial businesses and professions (DNFBPs) understand the ML/TF risks they face and their associated obligations. Overall, they apply measures commensurate with their risks, although classification of customers into inappropriate risk categories can undermine this approach. The implementation of due diligence measures with existing customers is not always satisfactory, particularly for longstanding customers of banks and asset managers classified as low risk at the beginning of the relationship, and where the source of funds was not always identified in line with current requirements.

- The number of suspicious transaction reports (STR) has been steadily increasing for several years following awareness-raising campaigns for reporting entities led by the Swiss authorities. However, the number remains insufficient, and most of them are produced in response to external information sources, usually when there is a grounded suspicion of ML/TF. FINMA needs to increase supervision and sanctions regarding compliance with the reporting requirement.
- The approach to AML/CFT supervision in Switzerland generally encourages a continuous monitoring of financial institutions and DNFBPs. The authority of the Swiss Financial Market Supervisory Authority (FINMA) is recognised by self-regulatory bodies (OARs) and the institutions/professionals it supervises directly. While this means that the remedial measures imposed by FINMA are generally complied with, its sanction policy for serious violations of AML/CFT obligations remains inadequate, as does that of the OARs. Furthermore, OARs are inconsistent in the way in which they take risk into account in their supervision activities. Work should continue in order to align the supervision practices of FINMA and OARs, particularly for the highest risk sectors such as fiduciaries. The general quality of AML/CFT audits still needs to be improved, and should include more detailed controls by FINMA.
- The Swiss authorities demonstrate a clear commitment to prosecute ML. Large-scale complex investigations are carried out, particularly using the high-quality intelligence provided by MROS on both a federal and cantonal level. Convictions have been obtained for all types of ML, especially in cases involving predicate offences committed abroad, which reflects the international exposure of Switzerland as a major financial centre. Assets have also been confiscated in cases where no conviction could be obtained. Investigations, prosecutions and confiscations are generally consistent with the risks identified. However, progress still needs to be made in imposing sanctions that are proportionate and sufficiently dissuasive.
- The mutual legal assistance provided by Switzerland is generally satisfactory and has involved the freezing and restitution of large sums linked with international corruption, but shortcomings associated with maintaining the confidentiality of requests have been observed. MROS and FINMA work jointly with their foreign counterparts at a level that corresponds to the international nature of the Swiss financial centre. However, there are some limits to this co-operation, which affect information sharing by MROS.

## **B. Risks and General Situation**

2. Switzerland is a major international financial centre. In 2014, total assets managed stood at CHF 6 656 billion<sup>1</sup> [*USD 6 742 billion / EUR 6 079 billion*<sup>2</sup>], half of which belonged to foreign

<sup>1</sup> Swiss Bankers Association (2016), *The Financial Centre: Engine of the Swiss Economy*, [www.swissbanking.org/en/financial-centre/20130715-fp\\_motor\\_der\\_schweizer\\_wirtschaft\\_en.pdf](http://www.swissbanking.org/en/financial-centre/20130715-fp_motor_der_schweizer_wirtschaft_en.pdf)

<sup>2</sup> Exchange rate as of 11 March 2016 (end of on-site visit): 1 CHF = 1.01296 USD = 0.9134 EUR.

customers<sup>3</sup>. This corresponds to around 4.1% of global assets under management. The banking sector has a strong international dimension, due to both where institutions offering their services out of Switzerland come from, and the high proportion of customers domiciled abroad. Switzerland is also the global leader for cross-border private banking, with around a quarter of all global assets under cross-border management (CHF 2 377 billion)<sup>4</sup>.

3. Switzerland has committed to make protecting the integrity of the financial sector a key development aspect of its financial centre. Over the last few years, it has undertaken major initiatives to limit banking secrecy and proactively combat tax evasion. The long-term effects of these measures will encourage greater AML/CTF effectiveness.

4. Switzerland carried out a national ML/TF risk assessment published in June 2015 (NRA). It found that Switzerland is affected by financial crime and is attractive for laundering assets derived from offences that are mostly committed abroad. According to the report, the quality of AML/CTF measures implemented reduces vulnerability. The main threats in terms of predicate offences are fraud and breach of trust, corruption and participation in a criminal organisation. The highest risk identified was for private banking and universal banks operating internationally, independent asset managers, lawyers and notaries, fiduciaries and foreign exchange brokers. With regards to TF, the risk assessment concluded that there was a limited risk in Switzerland, and identified banks, money and value transfer services and credit services as the most exposed sectors.

### **C. Overall Level of Effectiveness and Technical Compliance**

5. Switzerland has made a number of steps forward since the mutual evaluation in 2005. Legislative reforms made additional offences predicates for ML (such as the aggravated tax offence associated with direct taxes), given MROS the power to request additional information from reporting entities other than the entity that submits a suspicious transaction report (STR), and disassociated STRs from the freezing of funds. They have also introduced cross-border cash inspections, extended the field of TF offences relating to the groups “Al-Qaida” and “Islamic State” and related organisations, improved the transparency of legal persons, replaced the former canton and federal criminal procedure codes with a single criminal procedure code and allowed the immediate application of UN sanctions.

6. In terms of technical compliance, shortcomings were observed in the scope of application of the anti-money laundering law (LBA), the failure to update information on longstanding customers, and checking beneficial owners. Limits to co-operation between financial supervisory authorities for the supervision of groups were also noted.

7. In terms of effectiveness, some shortcomings remain, in particular with regard to the STRs submitted, the imposition of dissuasive sanctions, and international co-operation. However, clear progress has been made concerning FINMA controls and raising the awareness of institutions

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<sup>3</sup> SwissBanking (2015), *Wealth management in a period of change*, [http://shop.sba.ch/1100006\\_e.pdf](http://shop.sba.ch/1100006_e.pdf)

<sup>4</sup> The Federal Council (2016), *Report on international financial and tax matters 2016*, [www.sif.admin.ch/sif/en/home/dokumentation/publikationen/bericht-ueber-internationale-finanz--und-steuerfragen.html](http://www.sif.admin.ch/sif/en/home/dokumentation/publikationen/bericht-ueber-internationale-finanz--und-steuerfragen.html)

subject to the LBA and their role in the prevention of ML/TF, with some reservations regarding the high-risk fiduciaries sector.

### *C.1 National AML/CFT Policies and Co-ordination (Chapter 2 – IO 1; R 1, R 2, R 33)*

8. Competent authorities in Switzerland generally all have a high level of understanding of ML/TF risks. The June 2015 NRA, to which the private sector contributed, has made an important contribution to this understanding. Overall, the NRA produced high-quality results, although some of the sources, which focused mainly on STRs, do not fully take into account emerging or developing risks. Nevertheless, the assessment is based on a realistic overview of risks, and examined all sectors covered by AML/CFT legislation and other sectors that present risks (e.g. real estate or free ports). Some important information that would provide Switzerland with a full picture of the nature and type of ML/TF risks to which it is exposed has yet to be taken into account. This includes risks associated with the use of cash, the fiscal framework or legal persons or arrangements.

9. A risk-based approach has been in place in Switzerland since the late 1990s and has led to the implementation and strengthening of AML/CFT measures, which particularly reflect the high level of risk associated with the banking sector. In general, the Swiss authorities take identified risks into account in their objectives and activities. With the 2015 NRA, Switzerland took this approach further. The conclusions drawn from it primarily cover legal and institutional aspects, which are deemed satisfactory for mitigating the risks affecting sectors already subject to AML/CFT legislation. Other aspects relating to, for example, priority sectors requiring awareness-raising (such as NPOs) or increased supervision should also be considered.

10. Switzerland has established a national AML/CFT co-operation and co-ordination framework led by the Interdepartmental Co-ordinating Group on Combating Money Laundering and the Financing of Terrorism (GCBF). All competent authorities take part in this group, which is responsible for the ongoing identification of risks to which the country is exposed.

### *C.2 Financial Intelligence, ML Investigations, Prosecutions and Confiscation (Chapter 3 – IOs 6-8; R 3, R 4, R 29-32)*

11. Swiss authorities, particularly at a federal level, demonstrate a clear commitment to prosecute ML.

12. The Swiss financial intelligence unit (FIU), MROS, uses all its powers to analyse STRs, using a large number of databases, co-operation with foreign counterparts and additional intelligence from financial intermediaries, including parties that did not submit the STR. MROS generally co-operates well with other national authorities. In particular, the analysis performed by MROS provides a useful and timely contribution to ongoing investigations, and has detected new cases of ML and TF. However, feedback from law enforcement authorities to MROS and the authorities responsible for cash controls is incomplete. Furthermore, the authorities responsible for cross-border cash controls and supervisory authorities (FINMA and OARs) seem to make a limited contribution to collecting information and financial intelligence.

13. Large-scale complex investigations have been carried out on both a federal and cantonal level, including cases involving predicate offences committed abroad. The Office of the Attorney General of

Switzerland (*Ministère Public de la Confédération* - MPC) and some other cantonal prosecution authorities have specialised bodies to facilitate the use of financial intelligence in complex cases. A high number of ML convictions have been obtained in recent years. Authorities described some cases in which relatively heavy sentences were handed down, but the data supplied does not provide an overview of the level of sentences and the extent to which they are dissuasive.

14. Confiscation is a priority for the Swiss authorities, including in cases where no conviction for ML can be obtained. This policy involves the seizure of large sums, which have also been subject to international asset recovery procedures. Seizures and confiscation are generally consistent with the risks identified, and some are major successes in the global fight against corruption. However, the confiscation related to cross-border cash flows was not shown to be used as a dissuasive sanction where false information is communicated at the border.

### *C.3 Terrorist and Proliferation Financing (Chapter 4 – IOs.9-11; R 5-8)*

15. The Counterterrorism Strategy for Switzerland of September 2015 recognises the importance of countering TF. Following recent events in neighbouring countries, federal resources for countering terrorism and TF have been increased (including within MROS). These resources complement existing federal and cantonal co-ordination mechanisms, which allow effective and sustained exchange of information between competent authorities regarding counter-terrorism, and in this context, terrorist financing. The MPC takes the necessary measures to assess the financial aspects in terrorism investigations. To date, one conviction for terrorist financing has been handed down. Furthermore, other types of support have been successfully prosecuted, and a number of proceedings for participation in and/or support of terrorism are underway.

16. Large sums have been frozen in application of sanctions based on United Nations Security Council Resolutions 1267 and 1373, and sanctions on Iran. In order to speed up the implementation of new designations, since March 2016, Swiss law has enacted the automatic adoption of the United Nations Security Council sanction lists pertaining to countering the financing of terrorism and proliferation.

17. With regard to countering TF, the fiscal and supervisory authorities responsible for foundations monitor the activity of some NPOs and the use of their funds, taking into account TF risks. However, the authorities have not undertaken awareness-raising within the NPO sector. Self-regulation initiatives for NPOs are in place, but they only partly fill the gaps regarding the understanding and management of TF risks in the sector.

18. With regard to combating financing the proliferation of weapons of mass destruction, the State Secretariat for Economic Affairs (SECO) provides support to financial intermediaries and other sectors (industry, transport services, etc.) to raise their awareness about the threat of proliferation, and facilitate the implementation of international sanctions. However, the checks performed or ordered by supervisory authorities responsible for monitoring financial intermediaries regarding the implementation of financial sanctions associated with proliferation are limited and formal.

*C.4 Preventive Measures (Chapter 5 – IO 4 ; R 9-23)*

19. The banking sector has a central place in the Swiss AML/CFT system due to the economic importance of this sector within the country. Overall, banking institutions understand their ML/TF risks. There is inconsistency with regard to the capacity of non-banking institutions subject to AML/CFT legislation, including smaller fiduciaries, to identify their risks.

20. In general, financial institutions and DNFBPs comply with their record keeping and due diligence obligations. They apply stronger measures in situations presenting higher risks, particularly those involving a politically exposed person. However, the criteria used for classifying customers into risk categories are sometimes incomplete and do not always provide a satisfactory risk profile, which can impact the suitability of the measures applied to control and mitigate these risks. Furthermore, some non-banking institutions subject to AML/CFT legislation apply risk criteria which are not always appropriate for the specific nature of their various customer categories and activities.

21. Overall, banking institutions do not sufficiently review and update available information on existing customers (“legacy assets”). This may lead to the failure to identify customers that have become high-risk or unusual or suspicious transactions, thereby weakening the implementation of the risk-based approach. Furthermore, the numbers of STRs are continually increasing but remain too low. Financial institutions and DNFBPs tend to submit reports primarily when there is a grounded suspicion of ML/TF, most often when this is backed up by external sources and do not yet fully implement the broader understanding of reporting actively promoted by the Swiss authorities.

*C.5 Supervision (Chapter 6 – IO 3; R 26-28, R 34-35)*

22. Supervisory authorities have adopted the principle of a risk-based approach. Implementation of this approach by FINMA is satisfactory. Its application by some OARs is inconsistent, particularly because the intensity of their controls are not adequately differentiated according to risks, e.g. with regard to fiduciaries involved in creating offshore schemes.

23. The scope of FINMA’s supervisory powers ensures close continuous supervision of financial intermediaries and means that measures can be increased as required. The authority of FINMA is recognised by the financial intermediaries it supervises directly and by the OARs. There is still progress to be made for FINMA and the OARs in developing a common approach to risks and the supervision of organisations in the same sector, in particular for high-risk activities such as fiduciaries. Furthermore, the quality of reports from auditors performing AML/CFT controls still needs to be improved so that material weaknesses in the application of AML/CFT measures by financial intermediaries are fully identified, in particular for suspicious transaction reporting violations. Measures to improve the qualitative approach of auditor supervision of affiliates of OARs must also be taken.

24. The possibility of sanctions affecting the ability to carry out activities as a financial intermediary is feared by the profession. However, the effective application of sanctions on bank executives and staff involved in major cases involving serious violations of supervision law committed by these institutions has not been demonstrated. Furthermore, the sanctions imposed by

FINMA seem too low to allow it to punish all violations of AML/CFT obligations effectively and proportionately.

### *C.6 Transparency of Legal Persons and Arrangements (Chapter 7 – IO 5; R 24-25)*

25. Switzerland's ratification of the Hague Trust Convention in 2007 allowed foreign trusts to be recognised under civil law. There are no other similar types of legal arrangement in Switzerland. Legal persons in Switzerland are subject to general obligations for transparency which is a basic safeguard from their being used for ML/TF purposes. Recent measures have increased this transparency, particularly with regard to bearer shares. Those who purchase these shares must now declare themselves to the company or a financial intermediary. Companies must also keep a register of their shareholders/partners and their beneficial owners. This also applies to companies with bearer shares. However, the sanctions for violations of this requirement do not seem to be adequately dissuasive.

26. Switzerland has not performed a detailed analysis of mechanisms through which the use of national domiciliary companies and legal persons established in Switzerland in general can be misused for ML/TF purposes, so assessors were unable to ensure that the measures taken to ensure the transparency of legal persons are adequate and appropriate. The risks associated with the creation of companies in offshore centres or non-cooperative countries, and the role of financial intermediaries involved in the process to create them also need to be assessed for legal persons established in Switzerland.

27. Swiss competent authorities state that they obtain reliable information on the beneficial owners of Swiss legal persons, inasmuch as such information is available. Information on the beneficial owners of trusts can be accessed from trustees in Switzerland, and via international co-operation.

### *C.7 International Co-operation (Chapter 8 – IO 2; R 36-40)*

28. As regards mutual legal assistance in criminal matters, Switzerland has a comprehensive legislative, contractual (via the numerous treaties of which it is a signatory) and administrative framework, and is highly active with incoming and outgoing requests. According to comments from other delegations, Switzerland generally responds to requests for mutual assistance in a sufficient and timely manner. Law enforcement authorities also send a relatively high number of unsolicited submissions which have, so far, been well received. Informing the bank account holder concerned that a mutual legal assistance procedure is in place compromises the potential confidentiality of the foreign investigation and in the event of an appeal, the timeliness of the assistance provided. This problem is only partially mitigated by the fact that it is possible to temporarily prohibit account holders from being notified or conditionally hand over evidence ("dynamic mutual assistance").

29. MROS sends many information requests to its foreign counterparts and uses the information obtained to reinforce its analysis. It also responds to requests in a timely manner. In this context, it may request information from a financial intermediary on behalf of a foreign FIU but only if the financial intermediary has previously submitted an STR or has a link with an STR received by MROS.

This condition limits the effectiveness of MROS co-operation. Ad hoc mechanisms involving law enforcement authorities or FINMA can mitigate this limitation in some cases but remain unusual due to the procedures required. The same limitation applies to requests regarding beneficial owners.

30. FINMA receives a large and growing number of information requests from abroad. In most cases it responds to them diligently, although the procedures that apply for queries concerning customers of financial intermediaries can delay the release of information. FINMA also issues requests to its foreign counterparts on subjects associated with AML/CFT. With regard to the joint supervision of foreign financial groups with branches in Switzerland, the assessors note the recent modification of Swiss law, which is intended to increase the scope of information that can be accessed by the authority in the country of origin, and encourage the Swiss authorities to apply the new legislative provision in such a way as to facilitate effective group supervision.

#### **D. Priority Actions**

31. On the basis of these general conclusions, the priority actions recommended for Switzerland are as follows:

- Supervisors should strengthen their controls of compliance with reporting requirements, with sanctions for institutions in violation.
- Supervisors should align their approaches to risks and control procedures for high-risk institutions supervised by FINMA or OARs, such as fiduciaries.
- Supervisors should ensure they issue proportionate and effective sanctions for serious violations of supervision law by financial intermediaries through binding measures other than findings decisions or corrective measures.
- The recent initiative to collect statistics should be continued in order to measure the results of the work of law enforcement and investigation authorities and adjust prosecution measures if necessary.
- Switzerland should reinforce its analysis of ML/TF risks associated with the use of cash and legal persons. On the basis of this analysis, authorities should produce and implement suitable actions for managing and controlling risks.
- In order to strengthen international cooperation in AML/CFT, the Swiss authorities should take the measures required to ensure the confidentiality of mutual assistance requests and remove the limits on the scope of information that MROS can exchange.
- The Swiss authorities should ensure that sanctions for ML and TF offences are sufficiently dissuasive.



## Compliance and Effectiveness Ratings

### Effectiveness & Technical Compliance Ratings

#### Effectiveness Ratings (High, Substantial, Moderate, Low)

<b>IO.1</b> - Risk, policy and coordination	<b>IO.2</b> - International cooperation	<b>IO.3</b> - Supervision	<b>IO.4</b> - Preventive measures	<b>IO.5</b> - Legal persons and arrangements	<b>IO.6</b> - Financial intelligence
<b>Substantial</b>	<b>Moderate</b>	<b>Moderate</b>	<b>Moderate</b>	<b>Moderate</b>	<b>Substantial</b>
<b>IO.7</b> - ML investigation & prosecution	<b>IO.8</b> - Confiscation	<b>IO.9</b> - TF investigation & prosecution	<b>IO.10</b> - TF preventive measures & financial sanctions	<b>IO.11</b> - PF financial sanctions	
<b>Substantial</b>	<b>Substantial</b>	<b>Substantial</b>	<b>Substantial</b>	<b>Substantial</b>	

#### Technical Compliance Ratings (C - compliant, LC – largely compliant, PC – partially compliant, NC – non compliant)

<b>R.1</b> - assessing risk & applying risk-based approach	<b>R.2</b> - national cooperation and coordination	<b>R.3</b> - money laundering offence	<b>R.4</b> - confiscation & provisional measures	<b>R.5</b> - terrorist financing offence	<b>R.6</b> - targeted financial sanctions – terrorism & terrorist financing
<b>LC</b>	<b>LC</b>	<b>LC</b>	<b>LC</b>	<b>LC</b>	<b>LC</b>
<b>R.7</b> - targeted financial sanctions - proliferation	<b>R.8</b> - non-profit organisations	<b>R.9</b> – financial institution secrecy laws	<b>R.10</b> – Customer due diligence	<b>R.11</b> – Record keeping	<b>R.12</b> – Politically exposed persons
<b>C</b>	<b>PC</b>	<b>C</b>	<b>PC</b>	<b>C</b>	<b>LC</b>
<b>R.13</b> – Correspondent banking	<b>R.14</b> – Money or value transfer services	<b>R.15</b> – New technologies	<b>R.16</b> – Wire transfers	<b>R.17</b> – Reliance on third parties	<b>R.18</b> – Internal controls and foreign branches and subsidiaries
<b>LC</b>	<b>C</b>	<b>LC</b>	<b>PC</b>	<b>LC</b>	<b>LC</b>
<b>R.19</b> – Higher-risk countries	<b>R.20</b> – Reporting of suspicious transactions	<b>R.21</b> – Tipping-off and confidentiality	<b>R.22</b> - DNFBPs: Customer due diligence	<b>R.23</b> – DNFBPs: Other measures	<b>R.24</b> – Transparency & BO of legal persons
<b>PC</b>	<b>LC</b>	<b>LC</b>	<b>PC</b>	<b>PC</b>	<b>LC</b>
<b>R.25</b> - Transparency & BO of legal arrangements	<b>R.26</b> – Regulation and supervision of financial institutions	<b>R.27</b> – Powers of supervision	<b>R.28</b> – Regulation and supervision of DNFBPs	<b>R.29</b> – Financial intelligence units	<b>R.30</b> – Responsibilities of law enforcement and investigative authorities
<b>LC</b>	<b>LC</b>	<b>LC</b>	<b>LC</b>	<b>C</b>	<b>C</b>
<b>R.31</b> – Powers of law enforcement and investigative authorities	<b>R.32</b> – Cash couriers	<b>R.33</b> – Statistics	<b>R.34</b> – Guidance and feedback	<b>R.35</b> – Sanctions	<b>R.36</b> – International instruments
<b>LC</b>	<b>LC</b>	<b>PC</b>	<b>LC</b>	<b>PC</b>	<b>LC</b>
<b>R.37</b> – Mutual legal assistance	<b>R.38</b> – Mutual legal assistance: freezing and confiscation	<b>R.39</b> – Extradition	<b>R.40</b> – Other forms of international cooperation		
<b>LC</b>	<b>LC</b>	<b>LC</b>	<b>PC</b>		

