Switzerland and the Fight Against Money Laundering

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The Swiss financial centre has many assets, but its sound reputation is surely the most important. It is therefore in Switzerland's best interests to prevent the financial proceeds of criminal activities from coming into the country and to safeguard its good name. A comprehensive defence system, which is updated in line with the latest developments, has been put in place to combat attempts to launder money. This is a declaration from the Swiss financial centre that every attempt at money laundering is considered a risk to its reputation.

The independent Financial Action Task Force on Money Laundering (FATF) reports that Switzerland has developed extremely effective measures to combat criminal activities. Several elements of the Swiss system have also been adopted by other countries and institutions; for example, the Basel Committee's 1988 Code of Conduct on the Prevention of Money Laundering, the FATF's Forty Recommendations and the EU directive on combating money laundering.

The answers to the questions on the following pages show that Switzerland lives up to its reputation as one of the world's leading financial centres and also as a world leader in the fight against money laundering.

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Swiss Bankers Association
What is Money Laundering?

Money earned through criminal activities is said to be “dirty”. For this reason, criminals have an interest in “cleansing” such money of its disreputable past. Money laundering is the term applied to the act of concealing the origins of such money and releasing it unnoticed into legitimate business activities. The purpose is to prevent this money being tracked down and confiscated by the state.

Money laundering is most commonly associated with drug trafficking. However, any number of criminal activities may give rise to money laundering, e.g. embezzlement, corruption, kidnapping, blackmail, extortion and trafficking in people, to name just a few. The banks take measures to prevent themselves from being used by money launderers. The Swiss Federal Banking Commission has drawn up a list of criteria that serve to indicate when money laundering might be taking place. If there is a high incidence of these activities, the banks are obliged to take special measures.

Particular risks regarding money laundering are contained in transactions:

- whose construction points to an illegal purpose, whose economic purpose is not recognisable or which may even make no economic sense;
- where assets are withdrawn again shortly after being deposited with the financial intermediary (transitory accounts) so long as there is no plausible reason for such an immediate withdrawal on the basis of the customer’s activities;
- which are outside the normal business activity or usual circle of customers of a certain financial intermediary;
- which lead to a burst of activity in an account which had previously been largely inactive, without any apparent reason for the sudden activity;
- which are incompatible with the knowledge and experience of the financial intermediary concerning the customer and the purpose of the business relationship.

In its guidelines of 26 March 1998, the Federal Banking Commission says that, in principle, every customer is suspect “if he communicates false or misleading information to the financial intermediary or refuses, without any plausible reason, to communicate to him information and documents which are necessary for the business relationship and normal for the business activity in question”.
Switzerland has various regulations aimed at combating money laundering. Two provisions of the Swiss penal code define money laundering, and the negligent acceptance of assets in a way that facilitates money laundering, as punishable offences. Since 1 April 1998, Switzerland has also had a Money Laundering Law directed not only at banks but at all persons active in the financial sector (“financial intermediaries”). These persons are obliged to identify all clients and to establish the beneficial owners of the assets. Furthermore, they have to report any justified suspicion of money laundering to the authorities and freeze the suspicious assets.

In addition, the money laundering guidelines of the Federal Banking Commission lay down organisational measures that have to be taken by the banks and specify how they have to react to unusual transactions or suspected money laundering. Finally, for more than 20 years now, banks in Switzerland have observed a “Code of Conduct with regard to the Exercise of Due Diligence” (CDB), which contains detailed provisions on identifying clients and establishing the identity of beneficial owners. The CDB was a key point of reference when the Money Laundering Law was being drawn up.
How Effective is Swiss Anti-Money Laundering Legislation When Compared Internationally?

The Swiss banks’ Due Diligence Agreement and the Federal Banking Commission’s (FBC) Guidelines for preventing and combating money laundering have influenced international anti-money laundering efforts and the regulations introduced by other countries. Switzerland, with its system of partial self-regulation, regularly updates its directives to keep abreast of the latest developments with the result that it now has a modern set of rules which are well established in business practice.

The European Union directive, for example, presently covers only credit and financial institutions and insurance companies, and is limited to funds originating from drug trafficking. Although national laws are generally more strict than the applicable EU regulations, they often do not go as far as Swiss regulations. In France, for example, lawyers are not subject to money laundering regulations.

A more detailed EU directive is currently being drafted and envisages creating framework conditions for the fight against money laundering which are comparable with existing Swiss legal precedents. However, it has not yet been decided whether lawyers and notaries will be subject to the new guidelines.

The Swiss legal code is also more advanced than US regulations. In the US, securities houses have only recently been obliged to observe a know-your-customer policy, and US regulations governing the treatment of "politically exposed persons" were derived from existing Swiss rules. The recent trend towards replacing the automatic duty to report cash transactions with a duty to report suspicious activities is also heavily influenced by experience gained in Switzerland. The Swiss anti-money laundering system is still one of the best in the world, particularly...
with regard to establishing the identity of the beneficial owner for domiciliary companies (companies, institutes, foundations, trusts/fiduciary companies, etc., which have neither trading nor manufacturing operations or any other commercial activities in the country of domicile, e.g. Liechtenstein foundations, common law trusts, Panama, BVI and other offshore companies). The Swiss banks insisted that such offshore structures cannot open bank accounts or safekeeping accounts if they do not provide the bank with reliable information as to who is the beneficial owner of the assets to be deposited. A domiciliary company cannot itself be the beneficial owner. In other financial markets, such as the USA and the UK, the identity of the beneficial owner is requested in the case of obvious deputisations, but not for domiciliary companies.
In Switzerland the combating of financial crimes is regulated by the Federal Law on Combating Money Laundering in the Financial Sector, the Swiss banks’ Code of Conduct with Regard to the Exercise of Due Diligence (the ”Due Diligence Agreement“), the Swiss Federal Banking Commission’s Guidelines on the combating and prevention of money laundering, and the Swiss Criminal Code.

The following features stand out: the duty to identify; the duty to organise; the duty to report and the blocking of accounts.

Money Laundering Legislation
The Federal Law on Combating Money Laundering in the Financial Sector (Money Laundering Law, in force since 1 April 1998) applies to all financial intermediaries who on a professional basis accept assets belonging to third parties, i.e. banks, fund managers, securities traders, insurance companies, lawyers, independent asset managers, fiduciaries, investment advisors, bureaux de change. This law makes provision for due diligence duties and is based on the agreement on the Swiss banks’ Code of Conduct with Regard to the Exercise of Due Diligence and the Swiss Federal Banking Commission’s guidelines on the combating and prevention of money laundering.

The Agreement on the Swiss Banks’ Code of Conduct with Regard to the Exercise of Due Diligence (Due Diligence Agreement) has been in force since 1977 and is revised every five years. The current edition dates from 1 July 1998. The Agreement contains standards regard-
**Legislation**

At the international level the Swiss judicial authorities co-operate within the framework of judicial assistance in criminal matters. Switzerland provides legal assistance to foreign authorities based on the Federal Law on International Judicial Assistance in Criminal Matters of 1983. During such proceedings assets may be blocked and, if appropriate, surrendered to the foreign authorities.

Key requirements for the granting of judicial assistance in criminal matters are the principle of dual incrimination, the speciality principle and the principle of proportionality. Swiss courts apply enforcement measures such as setting aside banking secrecy only if the prosecuted action is punishable under the laws of both the requesting state and of Switzerland. Pursuant to the speciality principle the use of information gained during the legal assistance procedure is restricted to the procedure for which legal assistance is granted. The principle of proportionality calls for restraint in the case of minor offences or if the interests of third parties who are not a party to the procedure are affected by it.

**Self-regulation**

In October 2000 the two big Swiss banks and nine other international banks, in cooperation with Transparency International and Mark Pieth, a Swiss professor of law, launched a set of global due diligence standards known as the Wolfsberg Anti Money Laundering Principles. In material respects these principles are based on the Swiss regulatory framework. Unlike the Swiss regulations, the Wolfsberg Principles do not provide for any sanctions or fines. Every financial institution is free to decide whether it wants to join this self-regulatory framework. The signatory banks undertake to apply the rules worldwide, thereby bridging a gap in the international defence mechanism.