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R&C risk & compliance

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REPRINTED FROM:  
RISK & COMPLIANCE MAGAZINE  
JAN-MAR 2021 ISSUE



[www.riskandcompliancemagazine.com](http://www.riskandcompliancemagazine.com)

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Published by Financier Worldwide Ltd  
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ONE-ON-ONE INTERVIEW

# MANAGING EVOLVING MONEY LAUNDERING RISK IN SWITZERLAND



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**Andrea Huber** is a partner and member of Pestalozzi's financial services group specialising in banking and regulatory matters, including the Financial Services Act (FinSA) and Financial Institutions Act (FinIA), asset management and investment funds, FinTech, capital market transactions, compliance and white-collar crime. She regularly represents clients in proceedings before the Swiss Financial Market Supervisory Authority (FINMA), the SIX Swiss Exchange and the CDB Supervisory Board.



**R&C: To what extent is financial crime growing in frequency and complexity? How would you summarise recent trends in Switzerland?**

**Huber:** Financial crime, also known as economic crime, refers to illegal acts committed by an individual or a group of individuals to obtain a financial or professional advantage. The principal motive in such crimes is pure economic gain. Compared to 2018, the damage caused by such financial crime in Switzerland doubled in 2019. Although there were fewer documented court cases, the average amount involved per case was significantly higher than in the year before. In 2019, the number of cases involving fraud in excess of CHF 10m rose from four cases in 2018 to nine cases. With respect to recent trends in Switzerland, the Federal Council suggested an amendment to the Swiss Code of Obligations to give whistleblowers legal protection from a civil law perspective. Specifically, pursuant to the proposed legislation, whistleblowers reporting misconduct at their workplace to the authorities would get legal protection if there is reasonable grounds for suspicion. Dismissal by the employer in response to lawful reporting under the new whistleblower clause will explicitly be unlawful. It should be noted, however, that the legislative process is still ongoing.

**R&C: Could you outline some of the key legal and regulatory developments in Switzerland affecting anti-money laundering (AML)? Do companies need to accept that they now operate under heightened scrutiny, and react accordingly?**

**Huber:** The Swiss Anti-Money Laundering Act (AMLA) and the FINMA Anti-Money Laundering Ordinance (AMLO-FINMA) are currently being revised. The Federal Dispatch to Parliament for the AMLA was published on 26 June 2019. The revised AMLA is expected to enter into force as of 1 January 2022 at the earliest and the revised AMLO-FINMA in the first quarter of 2021. Once the amended legislation is effective, companies will need to amend their internal AML regulations. The proposed draft amendments to the AMLA take into account the most important recommendations from the FATF Mutual Report in Switzerland from 2016. Specifically, the main new features of the AMLA include the explicit duty of financial intermediaries to check the details of the beneficial owners and the duty to perform a regular risk-based review of whether the client documentation is up to date. Further advisory services including foundation, acquisition, disposal, administration and funding of domiciliary companies with registered offices in Switzerland or abroad and trusts shall be subject to the AMLA requirements as well, and due diligence, auditing and reporting

obligations for advisers shall be introduced. Initially, the scope of the revised AMLA should have included 'advisers' also, including, but not limited to, lawyers and trustees. This was a highly disputed issue within parliament.

**R&C: How would you describe AML monitoring and enforcement activity in Switzerland? What problems may arise for multinational companies as a result of the extraterritorial reach of certain laws, and greater collaboration between national agencies?**

**Huber:** Financial intermediaries must comply with stringent anti-money laundering due diligence and reporting requirements. Tasked with ensuring compliance, both the Swiss Financial Market Supervisory Authority (FINMA) and the self-regulatory organisations seek to prevent money laundering. The money-laundering risk in Switzerland remains high as the Swiss financial centre is a leading global cross-border management hub for private clients. Due to shrinking margins, financial institutions (FIs) may take the commercial decision to establish relationships with new clients from relatively high-risk emerging countries associated with a significant threat of corruption. In 2020, FINMA found several cases where banks domiciled in Switzerland had seriously breached AML legislation in their handling of certain client relationships.

FINMA therefore concluded corresponding enforcement proceedings and imposed a variety of measures. Also, FINMA conducted inspections at several Swiss banks to ascertain whether AML rules had been upheld in connection with alleged cases of corruption linked to Petr6leos de Venezuela and FIFA. During its investigations, FINMA discovered systematic failings to comply with due diligence requirements under AMLA, as well as violations of AML reporting requirements. Almost all of the 70 business relationships selected on a risk basis, and the vast majority of more than 150 sample transactions selected on the same basis, showed irregularities. All in all, the bank in question not only had defective know your customer (KYC) processes, but also a poor compliance and risk culture in which legal obligations to combat money laundering were not afforded the required degree of importance.

**R&C: What steps should companies operating in Switzerland take to ensure adequate processes, programmes and policies are in place to support AML?**

**Huber:** First of all, companies operating in Switzerland should identify any potential weaknesses within their AML framework to ensure that their efforts to prevent AML are as effective and robust as possible. Secondly, current efforts should regularly be assessed. In particular, a number of questions should be answered. For example, do staff

members receive regular and effective training? Are findings dealt with in a timely and efficient manner? Is the risk assessment thorough? How effective and robust is the AML framework? Are the due diligence practices appropriate and up to date? Most importantly, a financial intermediary's compliance framework must be adapted in line with risk appetite. The institutions must establish the provenance of large blocks of assets and whether the clients concerned are really the beneficial owners. Also, they must report any dubious relationships and transactions to the Money Laundering Reporting Office.

**R&C: In what ways can companies utilise technology to help manage risks arising from AML?**

**Huber:** Nowadays, technology is absolutely essential for a thorough and robust AML framework. Customers need to be on-boarded efficiently while complying with the AML rules and taking into account risk assessments. Documentation must be stored in a reliable and accessible manner, transactions screened and monitored, data shared with regulators promptly and accurately, and internal guidelines not only issued, but also kept up to date and understood. Good and reliable technology will certainly help to tackle these issues.

**R&C: What overall advice would you give to organisations in terms of marrying technology with protocols, to enhance the efficiency of their AML capabilities and allow them to detect unusual behaviour and identify red flags?**

**“Companies operating in Switzerland should identify any potential weaknesses within their AML framework to ensure that their efforts to prevent AML are as effective and robust as possible.”**

*Andrea Huber,  
Pestalozzi Attorneys at Law*

**Huber:** Various AML compliance tools are available that can assist companies in building up a robust compliance programme. To benefit from the latest technology, it is, however, not sufficient to simply purchase the 'best' tool. Instead, it is of even more importance that the respective tool is correctly embedded within the relevant day-to-day activities of the FI. Also, when using compliance tools, the question may arise as to whether the FI engages in some form of outsourcing which needs to be approved by the regulator.

**R&C: Going forward, do you expect the risks posed by money laundering in Switzerland to increase over time? Do companies need to continually improve their systems in order to deal with current and emerging threats?**

**Huber:** Parallel to the development of blockchain technology and digital assets, the risks of criminal abuse have also increased. Although these new technologies promise efficiency improvements in the financial industry, they also accentuate the threats posed by money laundering and the financing of

terrorism due to the greater potential anonymity they involve, as well as the speed and cross-border nature of these transactions. However, even though the number of cryptocurrencies has soared in recent years and their use is becoming more and more substantial, the trends currently shaping money laundering and terrorist financing risks can be better identified thanks to the experience gained by the regulators responsible for preventing and suppressing white-collar crime. The risk assessment is based on both the threats that cryptocurrencies pose to the integrity of the financial system and the vulnerabilities that characterise this system. **RC**