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ANTI-MONEY LAUNDERING

Financier Worldwide canvasses the opinions of leading professionals around the world on the latest trends in anti-money laundering

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Q. To what extent is financial crime growing in frequency and complexity? How would you summarise recent trends in Switzerland?

A. On 12 October 2022, the Swiss Federal Council instructed the Federal Department of Finance (FDF) to draft a bill aimed at increasing transparency around the beneficial owners of legal entities by end of June 2023 at the latest. This bill should strengthen prevention and prosecution of financial crime and, in turn, the integrity and reputation of Switzerland as a main financial hub. In particular, the bill will introduce a central register to identify beneficial owners and new obligations when it comes to financial crime risks. Without disclosure of beneficial owners, those who ultimately own or control a legal entity, it is difficult for authorities to identify illegal activities including tax evasion and money laundering. Moreover, the FDF will incorporate measures to strengthen the current mechanisms for combatting money laundering into the bill. Specifically, it should be assessed, in consultation with relevant stakeholders, whether further adjustments should be made to the anti-money laundering (AML) regime.

Q. Could you outline some of the key legal and regulatory developments in Switzerland affecting anti-money laundering (AML)? To what extent are companies operating under heightened scrutiny, and reacting accordingly?

A. During its meeting on 31 August 2022, the Swiss Federal Council brought the revised Anti-Money Laundering Act (AMLA) and the amended Anti-Money Laundering Ordinance (AMLO) into force, with effect from 1 January 2023. Switzerland is thereby strengthening its arsenal to combat money laundering and terrorist financing, taking account of the most important recommendations from the Financial Action Task Force's (FATF's) mutual evaluation report on Switzerland. Following the AMLA revision, financial intermediaries must now 'verify' the identity of beneficial owners instead of merely 'ascertaining', as was previously the case. Further, a new obligation has been introduced for financial intermediaries to periodically check client information irrespective of events. Finally, financial intermediaries now have the right to terminate a reported business relationship if the Money Laundering Reporting Office Switzerland (MROS) does not notify them within 40 working days after a report has been made that the reported information will be forwarded to a prosecution authority. The partially revised FINMA Anti-Money Laundering Ordinance (AMLO-FINMA), taking into account the latest revisions to the AMLA and AMLO, entered into force on 1 January 2023.

Technology plays a key role in a thorough and robust AML framework. Clients need to be onboarded efficiently and in compliance with the AML rules and regulations, taking into account a risk-based approach.

Q. 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?

A. Switzerland's financial centre is a leading global cross-border hub for wealth management, which means it is particularly exposed to money laundering risks. In the past year, money laundering risk remained high as many new wealth management clients in Switzerland come from emerging markets, where there is a significant threat of corruption. Various

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global corruption and money laundering cases show that the AML risks for financial institutions remain high. These risks are often increased by the use of complex structures. Therefore, a bank's compliance framework must keep pace with its risk appetite. Also, risks in the crypto space are becoming increasingly apparent, in particular regarding cryptocurrencies. Pursuant to FINMA's 2021 annual report, the Swiss financial regulator once again made combatting money laundering and terrorist financing a priority area. In the course of its supervisory work, FINMA identified weaknesses in transaction monitoring. To ensure the effective reduction of money laundering risks, financial intermediaries must rigorously identify any such risks associated with their business activities. Financial intermediaries are required to record, in the context of their AML risk analysis, whether each of the individual criteria listed in the AMLO-FINMA are relevant to their business activity. During its on-site supervisory reviews, FINMA determined that, in general, this requirement had either not been observed or had not been complied with adequately. Although risk analyses had been performed, they failed to go into sufficient detail.

Q. What steps should companies take to ensure adequate processes, programmes and policies are in place to support AML?

A. First, companies must ensure they meet the provisions of the new AML framework in Switzerland as of 1 January 2023. Implementation of effective internal controls through the establishment of internal directives and procedures in line with current laws and regulations is the first pillar of an effective AML programme. Second, the designated persons responsible for AML must have the requisite knowledge and experience in AML. Third, financial intermediaries need to regularly train their employees. Finally, risk-based procedures are needed, taking into consideration the financial intermediary's business model.

Q. In what ways can companies utilise technology to help manage risks arising from AML?

A. Technology plays a key role in a thorough and robust AML framework.

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Clients need to be onboarded efficiently and in compliance with the AML rules and regulations, taking into account a risk-based approach. FINMA recently observed the positive trend that banks are increasingly using transaction monitoring as a source of information in their efforts to report well-founded suspicions to the MROS. In the course of its supervisory work, however, FINMA identified weaknesses in transaction monitoring. In some cases, high-risk transactions were not adequately investigated. Weaknesses were also identified in risk assessments regarding business relationships with domiciliary companies.

Q. What advice would you offer to organisations on integrating technology into their processes to enhance the efficiency of their AML capabilities and allow them to detect unusual behaviour and identify red flags?

A. Various AML compliance tools are available to assist companies in building up a robust AML framework. To benefit from the latest technology, it is vital that AML tools are correctly embedded within the relevant day-to-day activities of the financial intermediary. Also, when using compliance tools, it is always important to establish whether the financial intermediary engages in some form of outsourcing subject to approval by the regulator.

Q. Do you expect the risks posed by money laundering to increase in the months and years ahead? Do companies need to continually improve their systems in order to deal with current and emerging threats?

A. While new technologies facilitate improved efficiency in the financial services industry, the danger of money laundering and terrorist financing are also heightened due to the potential for greater anonymity, along with the speed and cross-border nature of these transactions. Using cryptocurrencies, large amounts can be transferred from one electronic account to another in seconds, without the senders or recipients of the transactions being identifiable. In particular, cryptocurrencies are often used to make payments in connection with cyber attacks or illegal trading on the dark web. Also, money

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laundering risks can be significant for FinTech companies. ❑

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