Kontrollstelle GwG
Autorité de contrôle LBA
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Eidgenössische Finanzverwaltung EFV
Administration fédérale des finances AFF
Amministrazione federale delle finanze AFF
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Annual Report 2003

Summary

Legal basis

As was already the case in 2002, the Money Laundering Control Authority (MLCA), as the supervisory authority of financial intermediaries in the non-banking sector, continued its work in 2003 to set out in detail the provisions of the Money Laundering Act (MLA) with regard to this sector. An important step in this process is the new MLCA Ordinance concerning the Obligations of Directly Subordinated Financial Intermediaries, which entered into force on 1 January 2004 bringing with it several changes for the financial intermediaries concerned in relation to the due diligence obligations with which they are required to comply.

Another important topic for the MLCA is the supervision tax, the purpose of which is to enable the billing of costs which cannot be allocated individually alongside the relevant fees. This supervision tax, which is divided between the self-regulating organisations (SROs) and the directly subordinated financial intermediaries, was introduced as part of the 2003 Relief Programme through an amendment to the law. In connection with this amendment bill, the MLCA drew up a number of papers and commented on diverse statements.

Through a series of decisions of principle, the MLCA continued to address questions on the application of the MLA and conducted an extensive examination of all aspects of Art. 2, para. 3 MLA. Last year the MLCA made rulings relating to areas such as company savings schemes, financial transactions within a group, investment companies, the credit business, services relating to payment transactions, trading in banknotes, coins and precious metals, as well as the custody of assets. In addition, the territorial applicability of the MLA was defined in detail and conditions determined as to when state action is subject to the Act. Furthermore, the MLCA reviewed its practice concerning the application of the MLA to dealers in raw materials. It partially modified some of its earlier decisions in this regard.

In 2003, the MLCA also dealt with unresolved questions on the interpretation of the MLA by establishing, for example, the interpretation of the notion of securities in accordance with the MLA, defining one-off transactions and clarifying the procedure for when a financial intermediary leaves an SRO or foregoes MLCA authorisation and by clarifying various questions relating to the calculation of diverse assets.

Christoffelgasse 5, CH-3003 Bern
Tel: ++41 31 323 39 94
Fax: ++41 31 323 52 61

www.gwg.admin.ch
info@gwg.admin.ch

Self-regulating Organisations (SROs)

In 2003 there was intensive cooperation between the MLCA and the SROs. Based on the deficiencies revealed in the 2002 audit, checks were conducted to ensure these had been remedied. The results of examinations into the measures taken were good. The main focus of the examination in 2003 was placed on the auditing activities of the SROs, covering factors such as the quality of the auditing concepts, the implementation of the audits and the external auditors. In part the insufficient further treatment of the deficiencies revealed gave rise to complaints as well as to measures being undertaken. In addition, the MLCA asserted that in contrast to statutory audits, examinations in accordance with the MLA should not to be restricted to the basics and that the audit report should provide information on all deficiencies. Corresponding evaluations, linked to the introduction of supervisory measures or the initiation of sanction proceedings are not the task of the auditors, but rather that of the SROs.
The entry into force on 15 September 2002 of the MLCA Ordinance concerning Financial Intermediation as a Commercial Undertaking, the enactment of the new Money Laundering Ordinance of the Swiss Federal Banking Commission (SFBC), the start of work to revise the Money Laundering Ordinance of the MLCA and the development of model regulations relating to money and asset transfers, as well as organisational changes in the SROs, gave rise to a large number of revisions of statutes and regulations in 2003. Consequently, not all of the wishes expressed by the SROs regarding the timeframe for implementation could be taken into account.
What should be highlighted is the closer cooperation with the SROs in the sectors concerning questions relating to the application of the MLA. In addition to participating in several meetings of the SRO forum, the MLCA was able to further build on the exchange of experience with the SROs through the coordination conference which dealt with self-regulation, its suitability and prospects for the future.

Directly subordinated financial intermediaries

In 2003 the processing of authorisation applications submitted to the MLCA continued in an efficient manner and the backlog from earlier years was completely cleared.
Procedures for dealing with minor and special cases were also clarified in detail last year. Minor cases are considered to be those in which a financial intermediary exercises activities subject to the MLA albeit not with the intensity usually associated with a commercial undertaking (i.e. not on a professional basis). For this reason the MLCA dropped a number of proceedings in 2003, as the business situation of the financial intermediaries concerned had changed and they did not fulfil, or no longer fulfilled, the criteria relating to professional activity and hence dispensed with the authorisation. In addition during 2003 several special cases were dealt with for which solutions were found, where doubts existed relating to the business activities conducted by the respective financial intermediaries or where individuals were involved in criminal proceedings or had been convicted of financial offences.

Whereas in previous years it had mainly been a case for the MLCA of dealing with the deluge of dossiers and processing the numerous applications submitted for authorisation, 2003 marked the first time that the supervision of MLCA authorised and directly subordinated financial intermediaries became a significant factor.
The corresponding supervisory activities can be subdivided into four different areas. On the one hand, there is ongoing coaching which also includes providing advice to financial intermediaries on questions relating to their business activities or compliance with due diligence obligations. On the other, it also involves processing notifications of diverse changes concerning the authorised financial intermediaries under supervision. The audit reports which are analysed by the MLCA represent a further important control instrument. Finally, taking action against financial intermediaries is also an important instrument in this area of supervision.

Market supervision

Based on its experiences gathered in 2002, the MLCA last year continued to further develop and implement its practices relating to the adoption and processing of cases related to market supervision, which resulted in an increase in the number of market supervision-related proceedings opened in 2003 compared to the previous year.
Despite the fact that in numerous cases, financial intermediaries operating illegally could be induced to join an SRO or submit an application for authorisation from the MLCA, there were a number of cases where the market supervision proceedings initiated by the MLCA ended with no measures being imposed as clarifications revealed that the nature of the financial intermediary's actual business activities meant that it was not subject to the MLA.
Some of the proceedings embarked upon in the year under review resulted in liquidation or commercial register removal proceedings, i.e. the most stringent measures provided for by the MLA. Official liquidation was ordered against five financial intermediaries and the removal from the commercial register of two others. In one of these cases, the financial intermediary did not fulfil the legally stipulated obligation to cooperate in clarifying the facts. In another case, it turned out that a financial intermediary, contrary to several personal statements, carried out an activity subject to the MLA, and did not exhibit sufficient respect for the obligations of due diligence and those responsible provided no guarantees that obligations set out under the law would be fulfilled. In both cases, official liquidation was ordered. In another case, an application for authorisation could not be granted and the MLCA had to ensure that the financial intermediary concerned did not continue operating illegally. As it was not possible to obtain assurances of a voluntary cessation of activities, removal from the commercial register remained the only other possible option.
In 2003 the Swiss Federal Supreme Court ruled for the first time on an officially ordered liquidation within the scope of market supervisory proceedings and rejected the appeal [to the higher administrative court] filed against it1. The Swiss Federal Supreme Court commented on the rejection of the application for authorisation, the authorisation prerequisites, the duties of the MLCA within the scope of market supervision, the liquidation of financial

[1] Swiss Federal Supreme Court Decision 129 II 438

intermediaries acting illegally and to a large extent approved of the practice of the MLCA in relation to these matters.
Various orders issued by the MLCA within the scope of market supervisory proceedings to pay costs were also endorsed. The Federal Department of Finance, as the appeals body, noted in diverse decisions on appeals against orders to pay costs that indications which prompt the MLCA to become active are sufficient and trigger the obligation to pay costs.

Audits

In addition to the audits conducted in the SROs and the directly subordinated financial intermediaries, or in the framework of market supervision proceedings, another important task was the examination and evaluation of auditing concepts, working papers, audit procedures, evaluation of audit reports as well as tasks associated with the accreditation of MLA audit agencies.
Several delays were encountered in the submission of audit reports by directly subordinated financial intermediaries. This is due to the fact that numerous financial intermediaries were required to submit to an MLA audit for the first time in 2003 and several accredited MLA audit agencies were conducting their first MLA audits for the MLCA. The financial intermediaries concerned were sent reminders and had to catch up on the audit within the period of a month. The missing audit reports were subsequently submitted within the stipulated period.
During an audit carried out by the MLCA on a financial intermediary in 2003, it was noted that one of the MLA accredited audit agencies had, in 2002, discovered a number of deficiencies but not listed them in the audit report. The MLA audit agency in question was warned and was threatened with the withdrawal of its accreditation, due to the fact that the principle of materiality is not applicable in audit reports drawn up by the MLA auditors and deficiencies detected must always be indicated.
A risk categorisation system was drawn up in the first half of 2003. The reason for this was the fact that different financial intermediaries supervised by the MLCA represent different levels of money laundering risks. This risk categorisation enables each financial intermediary supervised by the MLCA to be assigned a risk category on the basis of diverse criteria which in turn influences the frequency with which the MLCA itself conducts an audit of the financial intermediary concerned.

International aspects

In 2003 the revision of the 40 FATF Recommendations decided upon in 2001 could be concluded. As one of the supervisory authorities of the MLA, the MLCA was actively involved in the work of the Swiss delegation. As a result of the revision of the 40 Recommendations, an international standard has been established due to the minimum requirements stipulated therein, which reflects the high standards of the Swiss provisions. Changes to the law in Switzerland may consequently be kept to a minimum.

In addition in 2003, Swiss support of international measures to combat the financing of terrorism were continued. In September 2003 Switzerland ratified the United Nations International Convention for the Suppression of the Financing of Terrorism and the United Nations International Convention for the Suppression of Terrorist Bombings. The implementation of these conventions necessitated several changes to the law.
Also within the scope of support for international efforts to combat the financing of terrorism, the MLCA additionally forwarded a number of lists of names to the SROs and to its directly subordinated financial intermediaries and issued instructions indicating what specific measures were to be taken. These measures concern obligations to freeze assets and reporting obligations as well as obligations of enhanced due diligence.

Other activities of the MLCA

In 2003, as in previous years, the MLCA worked together with various other authorities. Within the scope of the law, the MLCA has benefited from an active and efficient exchange of information with the Swiss Federal Banking Commission and the Money Laundering Reporting Office Switzerland (MROS). Efforts are being made to increase cooperation with the cantonal criminal prosecution authorities and these are being supported by means of a corresponding project.
Last year the MLCA also continued work in the Coordination Committee of the federal authorities assigned to implement the MLA. Once again there was a media event, in which information was provided on recent developments in the money laundering sector. In the run up to this event, the federal MLA authorities updated the brochure on "Combating Money Laundering in Switzerland", which amongst other things, describes the system of prevention and how it is implemented in addition to information about current activities.
The MLCA not only provides information about its activities, practices and the system of combating money laundering on its website, but in 2003 was also able to do so through seminars, symposiums and conferences. Last year it also arranged a seminar itself on the subject of its new Money Laundering Ordinance, which entered into force on 1 January 2004, This seminar was held in the three national languages in the different language regions.
During the National Council Control Committee’s visit to the MLCA in June 2003, the MLCA had the opportunity to comment on various aspects of its activities, as well as on the situation within the organisation. The National Council Control Committee ended its inspection by stating that the MLCA had become a fully functioning implementation body, even though there was room for improvement in certain areas.