



# 2007 Annual Report

## Summary

### Legal basis

With the Collective Investment Act (CISA) which came into force on 1 January 2007, the scope of application of the Anti-Money Laundering Act (AMLA) was correspondingly amended in accordance with Art. 2 para. 2 of the AMLA and was extended to cover the legal forms newly subject to the CISA. Now in principle only collective forms of investment still come under the scope of application of Art. 2 para. 3 of the AMLA which are not subject to the CISA. The AML Control Authority has confirmed the subordination of investment companies in the form of joint-stock companies in accordance with Art. 2 para. 3 of the CISA which are listed on the Swiss stock exchange or which exclusively have qualified investors and registered shares, and in fixing the further course of action takes account of the intention of the Swiss Association of Investment Companies, to form an SRO in the first half of 2008.

The AML Control Authority revised its practice on the transportation of assets by taking into account the determination of the appeal issued at the end of 2006. In doing so it noted that the physical transportation of assets as such and the custody of assets are not subject to the Act if no additional services are provided which, viewed in themselves, must be described as financial intermediation. However, coverage by the AMLA is considered to exist if holding securities in custody is the main service.

The conditions for the involvement of auxiliary personnel within the scope of carrying out financial intermediary activities were specified by the AML Control Authority in November 2007, which in particular determined the auxiliary personnel acting for only one licensed or affiliated financial intermediary as constituting the imperative criterion (i.e. exclusivity clause). Furthermore it is necessary that the auxiliary personnel which is in itself independent is relatively well integrated in the organisation of the financial intermediary.

Furthermore, in 2007 the AML Control Authority also looked into whether pillar 3a pension schemes and the AHV stabilisation fund come under the scope of application of the AMLA. It noted that the AHV and the recognised pillar 3a pension schemes have to be subsumed under the term occupational pension plans for the scope of the AMLA. Because the additional condition of Art. 2 para. 4b of the AMLA is also met, i.e. that institutions for occupational pension plans are tax-exempt, these institutions are consequently not subject to the AML Control Authority. The exception here and therefore subject to the AMLA are, in accordance with the practice of the Federal Office of Private Insurance (FOPI), those insurance undertakings which are subject to being monitored by the FOPI and which offer pillar 3a insurance products.

The AML Control Authority levied the 2007 supervision fee provisionally in 2007 due to the appeal procedure against the 2006 supervision fee which was still pending at the end of the year. The definitive charge will be made as soon as the appeal procedure mentioned has been legally terminated.

### **Self-regulatory organisations (SROs)**

Due to an appeal filed by an SRO against a decision made by the AML Control Authority, whereby the latter had refused to approve a regulatory provision, the Swiss Federal Supreme Court, after examining the issues to do with the obligation to notify and the right to refuse to testify, held in its judgement of 5 April 2007 that the obligation to notify is also applicable even if, in a specific case, the financial intermediary was entitled to the right to refuse to testify.

Due to yet another appeal filed by an SRO against a decision made by the AML Control Authority whereby the latter detected deficiencies in the independence of the auditing body of a member of the SRO, the Swiss Federal Supreme Court examined the principle of independence and noted that along with actual independence, independence out of a third party's point of view (i.e. independence in appearance) is also pivotal.

In 2007 the AML Control Authority sent out invitations for the sixth time for the annual coordination conference, which all eleven recognised SROs attended. In this conference the SROs were given the opportunity to discuss four current topics with each other and with representatives of the AML Control Authority in workshops.

### **Directly subordinated financial intermediaries**

From the AML audit reports submitted to the AML Control Authority in 2007 it can be concluded that the AML Control Authority's directly subordinated financial intermediaries in principle complied satisfactorily with the obligations in accordance with the AMLA and the AMLO AMLCA. The provision and application of criteria for detecting high-risk business relationships and transactions, however, still pose individual challenges for the directly subordinated financial intermediaries. Alongside the familiar difficulties in implementing the risk criteria and in carrying out additional clarifications, the AML Control Authority in addition discovered in places insufficient documentation in identifying contracting parties and changes to internal organisation without the obligatory notification being sent to the AML Control Authority.

The AML Control Authority undertook measures in the case of violations of due diligence obligations in 2007 as well. For example, a financial intermediary's authorisation was withdrawn due to repeated infringement of the AMLA and the AMLO AMLCA. In two other cases the AML Control Authority looked at withdrawal of authorisation because the one and only administrator was involved in criminal proceedings to do with their professional activities. In these cases the AML Control Authority merely had to render the authorisation invalid because in one case bankruptcy proceedings were instituted against the financial intermediary and in another the financial intermediary opted unilaterally to cease its activity and to discontinue with authorisation.

In 2007 the AML Control Authority rejected applications in four cases for authorisation to act as a financial intermediary. Two financial intermediaries blatantly did not fulfil the authorisation requirements. In two other cases the AML Control Authority was unable to gain an adequate impression of the financial intermediaries because they had failed to submit data and documentation essential for examining the authorisation requirements. Therefore the AML Control Authority was not in a position to assess compliance with due diligence obligations applicable to the financial intermediaries.

## **Market supervision**

In 2007, as in previous years, the AMLCA carried out nationwide and wide-ranging market supervision and initiated overall 317 new proceedings to clarify coverage by the AMLA. More focussed operations were carried out in Unterwallis (fiduciaries / asset managers) and in Geneva (bureaux de change and money transfer agencies).

The trend relating to fewer financial intermediaries openly operating illegally in the financial centre is emerging. This may be seen as a success for the market presence of the AML Control Authority's and the other supervisory authorities' activities which come across as not just repressive but also preventive. In addition the more vigilant and more sensitised stance of the more reputable clients on the financial markets concerning combating money laundering is having an impact.

## **Audits**

In 2007, the freshly drawn up concept of SRO audits founded on a risk-based approach was put into practice. Overall the results of this new approach were positive.

The new supervisory audit authority took up its activities with the entry into force on 1 September 2007 of the Auditors Supervision Act. In future the Auditors Supervision Act requires that people who provide auditing services have obtained accreditation as an auditor, an auditing expert and auditing company or a state-monitored audit company. Special legal authorisation can be recorded in the register of the Auditors Supervision Act. Auditors who carry out AMLA audits for an SRO and who wish to register their AMLA authorisation must, however, apply to do this via the AML Control Authority.

In 2007 the AML Control Authority revised the criteria for guaranteeing the audit cycle of several years, so as to above all take into account those financial intermediaries who did not possess an AML relationship but who wanted to retain the authorisation. Furthermore, the criterion of having practised for at least four years was dropped, so that the criteria could be reduced to just two.

In the 2007/1 circular the AML Control Authority specified the regulations about procedures concerning deadline extension applications in the submission of audit reports by accredited auditors. Due to this measure, a considerable reduction in the number of reports submitted late was able to be confirmed.

## **Coordination with other authorities**

Also in 2007, the special supervisory authorities, the AML Control Authority and the Money Laundering Reporting Office Switzerland, together with the Office of the Attorney General of Switzerland and the Service for Analysis and Prevention of the Federal Office of Police met for coordination meetings and exchanged information on the status of various Anti-Money Laundering projects and their work in certain committees.

After the referendum deadline for the new Financial Market Supervision Act expired on 11 October 2007 without a referendum being requested, the preparatory work for implementing FINMA was stepped up.

Within the scope of its revision of the Money Laundering Ordinance, the Swiss Federal Banking Commission mandated a mixed working group to deal with the recommendations in the Financial Action Task Force on Money Laundering (FATF) evaluation report on Switzerland's system to combat money laundering and terrorist financing. Additionally to its work in the working group, the AML Control Authority, within the framework of the consultation of offices,

commented on the draft of the new text and welcomed the modifications and approved them without exception.

### **International aspects**

As the supervisory authority set out in the AMLA, the AML Control Authority is part of the Swiss Delegation represented in the FATF and regularly takes part in the work of this committee. In 2007 the FATF extended its work to cover financing in connection with the trade in weapons of mass destruction.

As in previous years, Switzerland has supported international efforts in combating terrorism. In contrast to the previous year, in 2007 the Control Authority was able to see a drop in the number of lists with the names of people and organisations apparently involved in terrorist activities.

In 2007 Switzerland was subjected to a country report in the area of combating corruption by GRECO whose report will be passed in the plenary session at the start of 2008.