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Administration fédérale des finances AFF
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Annual Report 2004

Summary

Legal basis

As in recent years, the Money Laundering Control Authority (MLCA), as the supervisory authority of financial intermediaries in the non-banking sector, continued its work in 2004 to set out in detail the provisions of the Money Laundering Act (MLA) with regard to this sector. Further important steps were the preparatory work for the supervision tax and the revision of the Ordinance on the Register of the Money Laundering Control Authority.

The supervision tax which was introduced as part of the Relief Programme 2003 through an amendment to the law, was an important topic for the MLCA in 2004. According to new Art. 22 MLA, the supervision tax is determined according to the gross earnings and the number of members with respect to the self-regulating organisations (SROs) and according to gross earnings and the company or business size with respect to the directly subordinated financial intermediaries (DSFIs). In order to make levying the supervision tax possible, precise and transparent cost-performance accounting had to be set up. The system drawn up ensures that the costs will be able to be assigned to the organisational units responsible, in accordance with the tasks effectively performed by them in the MLCA.

The new electronic database system which the MLCA has been using since 2003, necessitated the reorganisation of data storage and collection by the MLCA. Accordingly in spring 2004, the MLCA began revising the Ordinance on the Register of the Money Laundering Control Authority taking into account not only federal legislation but also the practical needs of the MLCA.

Through a series of decisions of principle the MLCA continued in 2004 as well to address questions on the applicability of the MLA. However, this largely involved setting out in more detail and clarifying existing principles, in particular concerning the subordination to the MLA of organs of domiciliary companies, the transport of valuables, value transfers and payment transaction services in specific sectors, and of the credit business. In addition, the MLCA has systematised and published its long-term practice concerning the trustee and the protector of a trust.

In 2004, the MLCA also dealt with unresolved questions on the interpretation of the MLA, by establishing, amongst other things, in what cases the identity of the contracting party and the beneficial owner in investment companies has to be established and what is to be observed with respect to the duty of documentation when transferring a mandate.

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In the last three years, the MLCA has published its interpretation of the scope of applicability of the Money Laundering Act in the non-banking sector in over twenty publications. At the end of 2004, the MLCA published a consolidated text on this practice. This text is clearly structured and complements and replaces all previous publications from the MLCA on the applicability of the MLA.

Self-regulating Organisations (SROs)

An important project in 2004 involved evaluating self-regulation. The analysis drawn up by the MLCA shows the qualities of the recognised SROs and the problem areas of some of them in implementing the MLA and compares the main points of the SROs' supervisory activities with the ones of the MLCA. In a further section, measures in the preventive system of combating money laundering in selected areas of the non-banking sector in Germany, France and the UK are outlined and a comparison is drawn with the system in Switzerland. The study concludes that implementation of the Money Laundering Act through self-regulation has been successful and the supervisory means anchored in the law are basically sufficient.

In 2004, the MLCA issued directives defining minimum standards for an audit concept that provides for individual, risk-oriented control intervals. The control intervals vary from between one to a maximum of three years, according to the risk classification of the financial intermediary concerned. The risk level is determined on the basis of transparent and appropriate criteria which must be laid down in the audit concept. Before risk classification of a member can be carried out by the SRO, the financial intermediary must have been audited at least twice.

The remedying of shortcomings detected over the last two years in the course of audits carried out in the SROs has been checked. In addition the implementation of measures ordered and changes to regulations and statutes authorised by the MLCA in individual SROs were examined. The revisions carried out led to complaints concerning the follow-up and deadline monitoring with respect to the elimination of deficiencies which were detected when audits were carried out in the affiliated financial intermediaries. It was also revealed in individual cases that too little emphasis was placed on the substantive examination of the financial intermediaries.

In the summer of 2004, the MLCA heard with regret that the Swiss Institute of Certified Accountants and Tax Consultants would cease its SRO activities on 31 December 2004. The preparations for discontinuation were seen through by the MLCA. The MLCA, together with the SROs, ensured that the legally prescribed task of seamlessly monitoring the 400 or so affiliated financial intermediaries was implemented until the discontinuation of activities by the Swiss Institute of Certified Accountants and Tax Consultants and until their being granted membership in another SRO or authorisation by the MLCA, respectively.

Directly subordinated financial intermediaries (DSFIs)

On 1 January 2004, the new Money Laundering Ordinance entered into force. In the year under review, the MLCA devoted itself to explaining the ordinance to its addressees. The MLCA carried out various lectures and presentations so as to ensure that the ordinance is disseminated and implemented, and answered questions and written enquiries. In addition, in January 2004, the internal instruments, documents and procedures of the MLCA were revised and adapted. Amongst other things, the procedure to examine an application for authorisation from a financial intermediary was simplified.
When the audit reports were analysed, the MLCA noticed certain recurring deficiencies and from this was able to act accordingly. In order to restore compliance with the law, the MLCA therefore took diverse measures in 2004, including a simple written request on eliminating detected deficiencies, instructions on changing internal organisation as well as imposing extraordinary revisions.
In 2004, the MLCA rejected the application of an individual who wanted to have authorisation granted to his business because the only authorised signatory and at the same time officer responsible was the defendant in a criminal investigation concerning insufficient diligence in financial transactions in accordance with Art. 305ter of the Swiss Criminal Code. The nature of the offence and the facts of the case prevented the applicant from fulfilling the authorisation requirements relating to good reputation as well as guaranteeing to comply with the due diligence obligations in accordance with Art. 14, para. 2, let. c of the Money Laundering Act.

Market supervision

Due to the fact that the implementation phase of the Money Laundering Act (MLA) which entered into force on 1 April 1998 can be regarded as terminated, the MLCA consciously increased active market supervision in the year under review. It was noted that this increase in market supervision by the MLCA in the financial centre led to an increased tendency on the part of companies and businesses active as financial intermediaries to voluntarily and punctually seeking to join an SRO or applying for authorisation from the MLCA.
Only a few of the market supervision related proceedings in the year under review had to be concluded by issuing administrative coercive measures. The most drastic supervisory measures of liquidation or commercial register removal were not ordered in any of the proceedings opened in 2004.
The fact that the MLCA submitted more denunciations in 2004 to the Federal Department of Finance (FDF) in accordance with Art. 36 of the Money Laundering Act has had an impact as well. In these proceedings, in comparison to the previous year, the FDF has imposed much higher fines.
In the year under review, the FDF rejected a complaint filed by a company against a decision of the MLCA relating to costs. In determining the complaint the appeal authority noted that the MLCA's instigating of proceedings based on an entry in the commercial register in itself constitutes a liability to pay costs in accordance with Art. 22 MLA.

Audits

The 2005 audits will provide the first opportunity to examine compliance with the requirements of the new Money Laundering Ordinance. This required modifications in the working papers which the MLCA on this occasion additionally simplified.
The experience gained in the last few years has swayed the MLCA to critically challenge the uniform annual audit cycle. It was decided to allow for a multi-year audit cycle for directly subordinated financial intermediaries, based on money laundering and auditing risk factors. The MLCA has drawn up criteria which must be fulfilled on a cumulative basis so that a directly subordinated financial intermediary can benefit from a multi-year audit cycle.
In view of the rising number of accreditations and the resulting increased difficulty of supervising the quality of services provided, the MLCA has supplemented the accreditation criteria. Now, the accredited MLA auditing company must, within the period of a year from the date of accreditation, have at least one directly subordinated financial intermediary mandate, failing which accreditation will be withdrawn.

International aspects

The FATF Recommendations are increasingly becoming accepted worldwide as the standard minimum requirement that a country has to fulfil in order to be deemed to have an adequate anti-money laundering system. The FATF Recommendations are even used as a basis within the scope of examinations of financial systems by international institutions. In order to be able to compare the results of these examinations at a global level, the FATF, together with the World Bank, the International Monetary Fund and other organisations, have adopted a methodology to examine compliance with the FATF Recommendations by a country under scrutiny. This should enable experts to understand the different systems and mechanisms and to assess them with a view to compliance with the FATF Recommendations. As one of the supervisory authorities of the Money Laundering Act, in 2004 the MLCA again actively participated in the work of the Swiss FATF Delegation.
In 2004, Switzerland also supported international efforts in combating terrorist financing and transmitted a number of name lists to the SROs and the directly subordianted financial intermediaries together with instructions as to when which measures had to be taken.

Other activities of the MLCA

In 2004, the MLCA again cooperated 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), as well as with the criminal prosecution authorities.
The MLCA also contributed to various legislative projects of other federal authorities. The MLCA took an active part in the work involved in implementing the FATF's 40 Revised Recommendations, it commented on the first part of the report by the Zimmerli Expert Commission concerning the Federal Financial Market Supervisory Authority (FINMA), and ma-

de the request that the MLCA be integrated from the beginning into the new FINMA together with the Swiss Federal Banking Commission (SFBC) and the Federal Office of Private Insurance (FOPI), it commented on the revision of Art. 708 of the Code of Obligations concerning residency requirements of the organs of a company, took part in the consultation procedure on the complete revision of the Investment Fund Act and made specific proposals on the revision of the Ordinance on the Money Laundering Reporting Office (MROS).

The MLCA provides information on its activities, its body of practice as well as the system of combating money laundering on the one hand on its website and on the other through seminars, meetings and conferences. Within this scope in 2004 for example, two basic training seminars on combating money laundering for directly subordinated financial intermediaries were held and three training events for accredited auditors.

The search engine, which had been available on the MLCA website since March 2003 and made it possible to find out if a company had been granted authorisation by the MLCA or was affiliated to an SRO simply by entering the name of the company, was withdrawn in June 2004. The Federal Data Protection Commission (FDPC) upheld the complaints from various financial intermediaries which had submitted a banning application to the MLCA. The Commission stated that the MLCA lacked a sufficient legal basis to provide an Internet retrieval system. In spite of the fact that the MLCA no longer makes information available via a search engine on the Internet, it nonetheless remains convinced of the necessity of a publication of this nature and intends to initiate a corresponding change in legislation.