



Annual Report 2005

Summary

Legal basis

On 26 October 2005 the Federal Council adopted the Ordinance on the supervision tax and fees of the Money Laundering Control Authority (MLCA) which outlines in detail the annually payable supervision tax. The purpose of the supervision tax is to cover the overall costs of the MLCA not otherwise covered by the procedural fees including general costs. For the majority of the members of the SROs who already pay annual membership fees, the supervision tax will not have any significant financial consequences. In addition, the supervision tax will end the competitive advantage the MLCA has today which arises due to the fact that no annual fee is payable in the case of direct subordination to the MLCA. This means that financial intermediaries in the non-banking sector will subsequently pay annual membership fees of a comparable amount regardless of the supervisory authority. In 2004, the MLCA began its revision of the Ordinance on the Register of the Money Laundering Control Authority. The new Data Processing Ordinance came into force on 1 November 2005. The revision was limited mainly to structural and formal aspects. Due to repeated criticism from political and business actors, the MLCA last year subjected its practice of subordinating credit transactions in accordance with Art. 2, par. 3a of the Money Laundering Act (MLA), to critical reflection. In doing so, particular attention was paid to the problem of financing small and medium-sized enterprises. This work has turned out to be time-consuming and had not been completed as of the end of the year.

Self-regulating Organisations

In 2005 various SROs introduced risk-orientated audit concepts. Based on the provisions of the MLA, the SROs must check that affiliated financial intermediaries are complying with their obligations in accordance with the law and regulations. What is not regulated is the type and frequency of these audits. Regular audits of the financial intermediaries are appropriate to reveal infringements of due diligence obligations by financial intermediaries within a reasonable time span and to arrange corresponding measures. On the other hand, an annual audit of financial intermediaries with low-risk, long-term customer relations is disproportionate. In order to take account of this and experience gathered to date, the MLCA has decided that under certain circumstances, it is possible to deviate away from the principle of annual audits and authorise a risk-orientated audit cycle of several years.

Furthermore, within the scope of revisions to the regulations of an SRO, the MLCA had to decide whether or not an SRO could be relieved of the obligation to notify in accordance with Art. 9 MLA, if the financial intermediary, in subsequent criminal proceedings, could rely on the right to refuse to testify due to a family relationship being involved. The MLCA confirmed the obligation to notify in this case as well. However, an appeal has been lodged against this judgement and is thus not yet legally effective.

The Swiss Institute of Certified Accountants and Tax Consultants (SIAC) definitively ceased its SRO activities on 31 December 2004. In this regard, the MLCA set great value upon the fact that all 400 or so members of the SRO SIAC were comprehensively monitored and smoothly became affiliated to another SRO or were directly subordinated to the MLCA, even after the discontinuation of the SRO activities of the Swiss Institute of Certified Accountants and Tax Consultants. This goal was able to be achieved in 2005 thanks to the active support of various SROs.

The audits conducted in 2005 in the majority of the SROs gave a positive image. In individual SROs, additional information and training is needed with regard to implementation of the obligation on the part of the financial intermediaries to establish risk criteria for client relationships as required in the audit regulations and concepts. In addition the MLCA will work towards continuing to improve the insight provided by the audit reports in cooperation with the SROs concerned.

Directly subordinated financial intermediaries (DSFIs)

The number of authorisation applications remained stable in comparison to previous years. The MLCA placed particular emphasis, in its supervisory activities, on the correct implementation of provisions on business relationships and transactions involving greater risks. The implementation of the new Money Laundering Ordinance (MLO MLCA), which has been in force since 1 January 2004, can, in general terms, be regarded as a success. The practical implementation and fulfilment of the provisions of the MLO MLCA by the financial intermediaries have, to a large extent, worked well. Only the implementation of the provisions which oblige DSFs to establish so-called risk categories posed difficulties for several financial intermediaries in terms of practical implementation.

In 2005 in a few isolated cases, the MLCA detected serious infringements of the MLA committed by DSFIs. The majority of the deficiencies which were revealed in the implementation and fulfilment of the MLA were insignificant material deficiencies or deficiencies of a formal nature. Many of the deficiencies revealed last year concerned the correct and complete implementation of the risk categories.

In this connection, the MLCA also had to reject several applications for authorisation to practise as a financial intermediary. The rejections issued by the MLCA ensued because the applicants could not prove that they were in a position to ensure fulfilment of the obligations under the MLA through their internal regulations and operational structure. In yet another case, an application for authorisation was rejected because of the fact that the applicant did not submit the required data and documents to the MLCA to assess the application, in spite of several requests to do so.

Furthermore the MLCA had to withdraw authorisation to practise as financial intermediaries by decree from three financial intermediaries. The infringements of the due diligence

obligations, together with the established organisational and personal deficiencies on the part of the financial intermediaries concerned were so serious that continued fulfilment of the authorisation requirements could no longer be assumed.

Market supervision

In 2005 the MLCA increasingly concentrated its market supervision activities on processing reports from external sources. Its own research activities compared to the previous year with regard to cases which led immediately to proceedings being initiated, reduced sharply.

An analysis of the external report sources in geographical terms in 2005 revealed that certain "black holes" exist on the map of the Swiss financial market, which provide little or no information to the MLCA on the activities of financial intermediaries. Against this backdrop and within the scope of the project "Zoom", the MLCA began carrying out intensive preparatory research work with the aim of launching focussed and concerted market supervisory proceedings in 2006.

During 2003 - 2004 the MLCA organised numerous information events together with cantonal judicial authorities, which may overall be regarded as positive. Against this backdrop and in the second part of 2005, the MLCA launched the project "Meeting" which will be continued in 2006. Within the scope of this project, the MLCA organised meetings with other federal authorities with which there is contact in the course of market supervision.

In the course of ceasing the SRO activities of the Swiss Institute of Certified Accountants and Tax Consultants (SIAC), it finally had to be ensured that all former members of the SRO SIAC which were to continue to work as financial intermediaries, were once again affiliated to an SRO or were in possession of authorisation from the MLCA or the SBC within the period of grace as per 28 February 2005.

Audits

At the start of 2005, the MLCA took the decision to introduce a risk-oriented audit cycle for DSFIs. The extended audit cycle can be claimed by financial intermediaries which fulfil certain basic conditions and which, due to the type of services they provide and the client structure they have, constitute a reduced risk in terms of money laundering and audits.

At the end of 2004, new accreditation criteria were introduced in order to guarantee monitoring of the quality of the work submitted by the audit firms and the exchange of information between the auditors and the MLCA. Now audit firms can only keep their accreditation or extend it if they have at least one mandate with a DSFI.

The working papers revised during 2004, in which the shared experiences of the last few years were collected and which serve the purpose of documenting the observations of the audits, meet market needs. In examining the MLCA audit reports submitted by the auditors and the statement of the financial intermediaries, the MLCA was able to see an improvement in accuracy.

Coordination with other authorities

Also in 2005, the supervisory authorities established by special law, the MLCA and the Money Laundering Reporting Office Switzerland (MROS), together with the Office of the

Attorney General of Switzerland and the Service for Analysis and Prevention of the Federal Office of Police met on a regular basis in coordination meetings and exchanged valuable information.

In 2005 the working group within the administration mandated by the Federal Council, drew up a revised draft for a new Financial Market Supervision Act. Alongside the Swiss Federal Banking Commission (SFBC) and the Federal Office of Private Insurance, the MLCA was also represented in this working group. In addition to the draft for the new law, recommendations have also been made concerning several material innovations in the MLA, i.e. regarding audit-matters for DSFIs and exchanging information with the SROs.

Within the scope of the revisions to the Insurance Supervision Act which came into force on 1 January 2006, partial revisions were also made to Art. 2 par. 2c of the MLA and the insurance intermediaries were included in the category of financial intermediaries supervised by supervisory authorities established by special law. With regard to the ongoing legislative procedure on integrated financial market supervision and the creation of a central authority which would merge the SFBC, FOPI and the MLCA under one roof, the Federal Council has suspended entry into force of the revised version of Art. 2, par. 2c of the MLA. This means that insurance intermediaries will continue to require MLCA authorisation or affiliation to an SRO, as has been the case up to now, for financial intermediary services which are provided on a professional basis. They are not subject to the MLA for purely intermediary activities.

Furthermore on 1 January 2006, the Federal Council put into effect the removal decided by parliament of the subordination according to Art. 2, par. 3d of the MLA of distributors of shares in investment funds. Distributors of shares in Swiss and foreign investment funds, as well as representatives of foreign investment funds, who offer or market shares in investment funds and are not subject to special supervision are thus no longer subject to the MLA from 1 January 2006, as long as the subordination was exclusively for distributing and marketing activities.

International aspects

In 2005 Switzerland was examined in the third FATF mutual evaluation. This evaluation differed in its depth from the earlier evaluations. The mutual evaluation gave not only experts, but also the Swiss authorities, the opportunity to obtain an overall view of the system to combat money laundering and terrorist financing and to examine it in relation to fulfilling international standards. This examination came to the conclusion that Switzerland has an extensive and effective strategy which, to a large extent, satisfies the revised GAFI standards.

As in previous years, Switzerland has provided support for international efforts in combating terrorism and terrorist financing. The supervisory authorities forwarded a number of lists of names of persons and organisations apparently involved in terrorist activities to the financial intermediaries.