

APPENDIX 2

THE SUPERVISORY SYSTEM IN SWITZERLAND FOR COMBATING MONEY LAUNDERING AND TERRORIST FINANCING

I. Legal principles

The **Federal Act on Combating Money Laundering and Terrorist Financing in the Financial Sector of 10 October 1997** (hereinafter: "AMLA") forms the basis of supervisory law and thus represents the preventive side of the fight against money laundering (305bis of the Swiss Penal Code, StGB) and terrorist financing (Article 260quinquies paragraph 1 StGB) in Switzerland. It contains in particular:

- **Uniform duties of due diligence in financial transactions for the entire financial sector in Switzerland** and instruction to the relevant regulatory bodies to further execute these duties of due diligence;
- Duties of financial intermediaries on suspicion of **money laundering, terrorist financing, funds of criminal origin or criminal organisations**;
- Regulations concerning the **competent jurisdiction and supervision of the fulfilment of the duties laid down by the AMLA** and the basis for the creation of the **Money Laundering Reporting Office Switzerland, MROS**).

II. Financial intermediaries subject to special statutory supervision

Financial intermediaries who are already subject to special statutory supervision (Article 2 paragraph 2 AMLA) are also subject to supervision by the **Swiss Financial Market Supervisory Authority (hereinafter: "FINMA")**.

Financial intermediaries subject to special statutory supervision (Article 2 paragraph 2 AMLA) are:

- Banks pursuant to the Banking Act of 8 November 1934;
- Fund managers which manage share accounts and directly offer or sell shares in collective investment schemes;
- Investment companies with variable capital, limited partnerships for collective investments, investment companies with fixed capital and asset managers within the meaning of the Federal Act on Collective Investment Schemes of 23 June 2006, insofar as they offer or sell shares in collective investment schemes;
- Insurance companies pursuant to the Insurance Supervision Act of 17 December 2004 which directly provide life insurance or offer or sell shares in collective investment schemes;
- Securities dealers pursuant to the Stock Exchange Act of 24 March 1995;
- Casinos pursuant to the Gaming Act of 18 December 1998.

III. Other financial intermediaries

In contrast to financial intermediaries subject to special statutory supervision (Article 2 paragraph 2 AMLA), other financial intermediaries (Article 2 Paragraph 3 AMLA; so-called "other financial sector" or "parabanking sector") can choose whether they wish to be directly subject to FINMA by submitting a license application, or whether they wish to join the VQF in its capacity as a self-regulatory organisation officially accredited by FINMA (hereinafter "VQF SRO"). **Duty of licensing and duty of affiliation in accordance with the AMLA are equivalent.** In the first case, FINMA authorises the financial intermediation activities of financial intermediaries under its direct supervision and monitors compliance with duties pursuant to the AMLA and FINMA's own rules on enforcement. In the second case, **membership of the VQF SRO replaces the duty of licensing by FINMA**: financial intermediaries which are members of the VQF SRO are supervised solely by the VQF SRO in respect of the fulfilment of duties under the Anti-Money Laundering Act and the VQF SRO rules on enforcement. Lawyers and notaries are excluded from this **freedom of choice** provided for under the AMLA (supervision by either FINMA or the VQF SRO): they are required to join an SRO (e.g. VQF SRO) if they pursue an activity as a financial intermediary. This mandatory membership is due to the difference in definition between

professional secrecy as it relates to lawyers and notaries under Article 321 of the Penal Code (breach of professional secrecy) and official secrecy, to which the employees of FINMA are subject.

Financial intermediaries active in the other financial sector (see Article 2 paragraph 3 AMLA) are:

"Persons who on a professional basis accept or hold custody of external assets, or help to invest or transfer external assets; in particular persons who:

- a. undertake credit transactions (including consumer or mortgage loans, factoring, trade finance and lease finance);*
- b. provide services for payment transactions, in particular perform electronic transfers for third parties or issue or administer payment instruments such as credit cards and travellers' cheques;*
- c. trade in bank notes and coins, money market instruments, foreign exchange, precious metals, commodities or securities (paper or other rights) and their derivatives for own or third party account;*
- d. ...*
- e. manage assets;*
- f. make investments as investment advisers;*
- g. hold in custody or manage securities."*

IV. Duties of the VQF as an officially accredited self-regulatory organisation (SRO) pursuant to the AMLA

In accordance with Article 24 et seq. AMLA, the statutory role of the officially accredited VQF SRO is, among others, to **adopt regulations** that specify how the obligations arising from the AMLA are to be fulfilled and to control and supervise in order to ensure that the financial intermediaries affiliated to the VQF SRO comply with their obligations. The VQF SRO is also obliged to **enforce its regulations** and if necessary order **enforcement measures and / or sanctions** in the event of violation of the regulations (**for the purpose of restoring an orderly state of affairs and preventing future violations**).

V. Supervision of the VQF SRO by FINMA

The officially accredited VQF SRO, for its part, is subject to supervision by FINMA. FINMA, therefore, is obliged to either **accredit** the VQF SRO or to withdraw its accreditation, to **approve the regulations** adopted by the VQF SRO and to ensure that the VQF SRO **enforces its own regulations**. FINMA can perform on-the-spot **audits** on the VQF SRO or delegate those audits to its appointed auditor (in practice the VQF SRO is directly audited by FINMA annually).

This supervisory system is described as so-called (legal and official) "**controlled self-regulation**". In the context of its examination of third party countries, the Financial Action Task Force on Money Laundering (FATF) rated the **Swiss self-regulatory system in the field of combating money laundering as adequate and comparable to the system of state regulation** (see report on the mutual evaluation of Switzerland by the FATF).