

Real estate under pressure

The road to hell is paved with good intentions, particularly in Switzerland! As often, the temptation is great to want to do more than what is necessary. In this case, it is the real-estate sector which this year is the target of several parliamentary interventions, which have clearly been lodged in haste.

Following the "record" prices reached by certain properties, particularly in Geneva, a number of members of the federal parliament have deemed it judicious to propose that all the activities of real-estate professionals should be entirely subject to the Swiss Anti-Money Laundering Act (MLA).

While this objective may, at first sight, appear praiseworthy, it should nevertheless be observed that these proposals are excessive, since they do not result from an accurate analysis of the activities of the professionals concerned.

These proposals are disproportionate because their aim is to render all property-related activities subject to the MLA, that is, in particular property management, brokerage, development and even advisory business. But a risk-based approach – which has been recommended by the FATF itself since 2008 in the property sector – requires one to concentrate on the transactions that involve a potential risk of laundering money of illegal origin. This may, in particular, be the case when payment of the property price is exchanged between foreign banks, which do not benefit from regulation and supervision equivalent to those in Switzerland.

These parliamentary proposals are also unsuitable to achieving the desired goal, since the whole of the present MLA system is based on fulfilment of the due-diligence obligations imposed on a third party - the financial intermediary. It needs to be stressed that such an intermediary does not necessarily exist in the context of a real-estate transaction, as the purchaser can pay the price of the property directly to the seller. Assuming that he does so, nobody is able to conduct a specific check on the origin of the funds that are used, and even less to freeze them.

Having said this, it has to be admitted that investment in real estate in Switzerland using funds of illegal origin cannot be totally ruled out. The real-estate bodies concerned clearly share this concern since the president of USPI Switzerland - the umbrella association of real-estate professionals in French-speaking Switzerland - has lodged a motion in the lower house of parliament to overcome this risk.

The proposed solution is to require that it should be made compulsory for the financial consideration of any transaction concerning a piece of real estate to be provided by debiting a bank account held with a banking institution located in Switzerland.

This proactive approach should be welcomed, as it has the merit of proposing an inexpensive solution that is particularly simple to implement and is directly geared to risk.

As things stand, however, the Federal Council has proposed to reject all of the motions. The federal houses of parliament will therefore have the last word.



Andreas Fabjan
Chairman of the
ARIF Management
Committee

New concept for our Newsletter

We are trying out a new concept for the ARIF Newsletter in this September issue. The aim is to make for more pleasant reading and an increased flow of information via better linguistic coverage.

The Newsletter will in future be available in four separate versions to cover our four working languages. ARIF hopes that members throughout Switzerland will be satisfied and that our profile will be raised among all the professionals of the Swiss financial industry.

With a view to knowing your better and gauging your interest in this project, **we invite you to fill in the short questionnaire [online](#)** or below and return it to us by email (info@arif.ch) or by fax on 022 310 07 39.

To know you better :

1. I am a(n)... financial intermediary
 ARIF member
 member of another self-regulating body
 under direct FINMA supervision
 bank employee
 auditor
 journalist
 other:
2. I am informed of the Newsletter's publication ...
 directly by email
 by viewing ARIF's website
 by hard copy
3. I read the ARIF Newsletter ...
 always
 often
 rarely

To gauge your satisfaction with the Newsletter :

4. I find the information conveyed...
 very interesting
 useful for my work
 a supplement to other sources
 of no great importance
5. I would like the Newsletter to be published:
 in all four languages (F+D+I+E)
 in French and English (that is enough)
 in French with the odd translation
 only in French

Training schedule 2012-2013

2012					
E	13 September 2012	B	9 am - 5 pm	Geneva	Basic training - MLA
E	19 September 2012	C	2 pm - 5 pm	Geneva	«Corruption and organised crime»
F	4 octobre 2012	CoD	13h30 - 17h30	Genève	Formation de base - CODE DE DEONTOLOGIE
F	21 novembre 2012	C	14h. - 17h.	Genève	«Activités transfrontalières : risques et réglementation»
F	22 novembre 2012	C	18h. - 21h.	Genève	«Change-transfert de fonds : nouveautés et cas pratiques»
F	13 décembre 2012	B	9h. - 17h.	Genève	Formation de base - LBA
2013					
E	23 January 2013	C	2 pm - 5 pm	Geneva	«Trusts : a new ARIF Directive» NEW !
E	7 February 2013	B	9 am - 5 pm	Geneva	Basic training - MLA
D	6. März 2013	B	9 Uhr - 17 Uhr	Zürich	Grundausbildung - GwG
D	7. März 2013	C	9 Uhr - 12 Uhr	Zürich	Weiterausbildung (Thema zu definieren) ◆
E	21 March 2013	CoD	1:30 - 5:30pm	Geneva	Basic training - CODE OF DEONTOLOGY
F	18 avril 2013	C	14h. - 17h.	Genève	«Evolution de la jurisprudence en matière LBA»
F	23 mai 2013	B	9h. - 17h.	Genève	Formation de base - LBA
F	19 juin 2013	C	14h. - 17h.	Lausanne	«Réviseurs LBA»

F in French
D in German
E in English
I in Italian

B MLA basic training
C MLA advanced training
CoD CoD basic training
◆ Theme to be defined

MLA - Art. 8 Organisational measures

Financial intermediaries must take the measures that are required to prevent money laundering and terrorist financing in their field of business. They must in particular ensure that their staff receive adequate training and that checks are carried out.

Save the date !

19.09.2012 - Corruption and organised crime (seminar in English)

Nicolas Giannakopoulos

Founder of the Organized Crime Observatory
 Investigator and consultant on criminal risks
 Renowned analyst in international researches



Maxime Chretien

Associate Partner Deloitte SA
 Head of Forensic Western Switzerland
 Leading expert in anticorruption and fraud



21.11.2012 - Activités transfrontalières : risques et réglementation

Jean-Luc Epars

Avocat, Associé, KPMG Legal Financial Services
 Spécialiste en droit bancaire et placements collectifs
 Conseiller en matière réglementaire et compliance



Alessandro Bizzozero

Associé de BRP Bizzozero & Partners S.A.
 Chargé de cours à l'Université de Genève
 20 ans d'expérience du domaine réglementaire

Legal developments

Cross-border financial services business : FAQs about the Position Paper on Legal Risks (FINMA - 19.06.2012)

On 22 October 2010, FINMA published a position paper on Legal and reputational risks in cross-border financial services. Interpreting and implementing these expectations often gives rise to questions from audit companies and supervised institutions, for instance, regarding the extent of the analysis required, the effects on remuneration systems, the structure of the sanction regime and dealing with external asset managers.

In order to reduce uncertainties and to uniformly address frequently asked questions, the FINMA has published in June 2012 on its website a FAQs called "Legal and reputational risks in cross-border financial services".

Renewal of the mandate of the Financial Action Task Force until 2020 (FATF - 20.04.2012)

To carry on with effective action against money laundering and terrorist financing, including both preventive and law enforcement measures for securing a more transparent and stable international financial system, the mandate of the Financial Action Task Force has been renewed until 2020 by the ministers and representatives of the FATF members.

Further to the adoption of revised standards in February 2012, the FATF intends to meet desired objectives in protecting the integrity of the financial system against the threats, such as the financing of proliferation of weapons of mass destruction, the lack of transparency of some legal persons and arrangements, and corruption. Not forgetting the qualification of tax crime as a predicate offence for money laundering.

FINMA opens consultation on new audit circulars (FINMA - 07.08.2012)

With a view to further improving this collaboration and the quality of audit firms' audits, FINMA has decided to make changes to its audit regulations based on its new supervisory approach and the lessons learned from the financial crisis.

The aims are to ensure that audit firms consistently present themselves as the extended arm of FINMA, and to enhance the effectiveness of audits and, with it, that of financial market supervision.

The changes will be implemented with the «Auditing» and «Audit firms and lead auditors» circulars. While the «Auditing» circular deals with the regulatory audit, the «Audit firms and lead auditors» circular sets out the licensing and other requirements placed on audit firms and (lead) auditors. Both are intended to enter into force on 1 January 2013.

Furthermore, FINMA proposes to transfer the supervision of audit firms to the Federal Audit Oversight Authority (FAOA). If the legislature approves the transfer of this task, the FAOA will in future assess audit firms' compliance with the two circulars.

Prevention, quite simply.



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ARIF, recognized by FINMA is:

- > the only multidisciplinary self-regulatory body in Romandie
- > professionals who regulate professionals
- > a Code of deontology for a faultless reputation
- > a high level of expertise
- > about 500 members

Become a member on www.arif.ch

Federal Council wants better regulation of OTC derivatives trading and financial market infrastructure (FDF - 29.08.2012)

The financial crisis highlighted that the lack of transparency on the markets for derivatives traded over the counter (so-called OTC derivatives markets) can threaten the stability of the entire financial system due to their strong international integration and the heavy trading volume and default risks. Since then, international efforts have been afoot, in particular undertaken by the G20 and the Financial Stability Board (FSB), to improve transparency and stability in the OTC derivatives market.

The existing Swiss regulation of financial market infrastructure is no longer appropriate given the developments on the financial markets. Furthermore, it also no longer satisfies the new standards developed by international bodies for important financial market infrastructure institutions such as trading platforms, central settlement offices, securities depositories or trade repositories.

International standards in the areas of OTC derivatives trading and financial market infrastructure are currently being implemented in national legislation in several countries. The EU and the United States in particular are relatively far advanced here.

To safeguard the competitiveness of the Swiss financial centre and to strengthen financial stability, it is necessary for Switzerland to implement the G20 obligations and the FSB recommendations on OTC derivatives trading as fully as possible and at the same time as other financial centres. In addition, regulation in the area of financial market infrastructure has to be adapted to international standards. In order to ensure the competitiveness of Swiss market players and market access in the EU, regulation equivalent to that of the EU is to be sought in both areas.

The Federal Department of Finance has been instructed to prepare a draft consultation paper by spring 2013.

GM notice 2012

The 14th Annual General Meeting of ARIF will be held on Thursday, 8th of November 2012, from 5:30 pm, at the Swissôtel Métropole Geneva. The Meeting will be followed by a presentation of **Mr Olivier Jornot, Chief Prosecutor for the Canton of Geneva**, about a topic related to the white-collar crime.

New certification conditions for auditors

In the ongoing process to improve ARIF's Directives and Regulations and to satisfy a special request FINMA made to us, ARIF has formalised the conditions for certifying auditors authorised to work for its members, in a specific section of Directive 12 on auditing. The conditions set out replace the text of the "Certification Agreement" that have been used up to now to govern auditors' adherence to the conditions laid down by ARIF. This Agreement thus loses its purpose and is revoked with effect from the entry into force of Directive 12 as amended, i.e. on 30 June 2012.

New Directive on trusts

A number of observations and comments prompted ARIF's Executive Committee to issue a new Directive that deals more specifically and appropriately with the fulfilment of anti-money laundering due diligence by financial intermediaries who become trustees or board members of a foundation or Anstalt, or who enter into a business relationship with such entities.

Given the growing number of professionals operating in the trust sector in Switzerland, ARIF has pioneered this segment by offering solutions to facilitate the work of the roughly 10% of its members involved.

MLA audits every three years

In recognition of the good level of anti-money laundering compliance among its members, ARIF has decided, with FINMA's approval, effective immediately, to allow those of the members whose anti-money laundering compliance is presently audited every two years to be audited every three years instead. This also concerns members who in the future will ask to change from annual anti-money laundering audits to an audit every three years; the conditions for such a shift are unchanged.

Proper business conduct requirement

Financial market legislation requires senior executive officers of supervised entities to provide assurance of proper business conduct. The purpose of this requirement is to maintain public confidence in banks and institutions and safeguard the reputation of the financial sector. Assurance of proper business conduct covers matters of personal character and professional qualifications required for the proper management of a supervised entity. The principal criterion used in assessing a person's suitability is their past and present business activity as well as their professional plans.



Soon available on the ARIF website

Case law :

ATF 108 Ib 196, in consideration of 2b/aa of 25.06.1982

The serious breach of a banker's contractual obligations, even if such violations are not of a criminal nature, is sufficient for the banker not to fulfil the assurance of irreproachable conduct.

ATF 129 Ib 438, in consideration of 3.3.2 of 29.07.2003

In the case at hand, it is accepted that the various convictions for serious assault, common assault, violations of the Act on old-age and survivors' insurance, violation of the provisions on the possession of weapons, [...] appearing in X's police record undermined his assurance of irreproachable conduct, even though these offences have no direct link to the Money Laundering Act.

According to the writings of jurists and the practices of the Federal Banking Commission, persons who provide the assurance of irreproachable conduct must not only be professionally competent (i.e. have technical skills), but must also behave appropriately in business (i.e. be morally upright). Appropriate behaviour is understood above all to mean respect for law and order, that is, the laws and ordinances, the directives and practices of the regulatory authority, and the customs of the profession and in-house guidelines.



IMPRESSUM

Newsletter: 2 issues a year, distributed by electronic mail, hard copy if required.

Publisher: Association Romande des Intermédiaires Financiers (ARIF).

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