

COUNTRY GUIDE: SWITZERLAND

Part 1 – AML regime overview

	Aspect	Overview
1.	What is the applicable AML legislation?	<p>1. Swiss Criminal Code (SCC)</p> <ul style="list-style-type: none"> • Art. 305bis prohibits all forms of money laundering and Art. 260quinquies prohibits terrorist financing. • As of January 2016, tax fraud is considered a qualified tax offense and as such, a predicate offence to Money Laundering (<i>délit fiscal qualifié</i>) if the following requirements are met: <ul style="list-style-type: none"> ▪ a person uses falsified or altered documents for the purpose of misleading the tax authorities and committing tax evasion; and ▪ the amount of taxes evaded exceeds CHF 300,000 in the relevant tax period. <p>2. The Federal Act on Combatting Money Laundering and Terrorist Financing (AMLA)</p> <p>3. The Anti Money Laundering Ordinance (AMLO)</p> <p>The AMLA and AMLO:</p> <ul style="list-style-type: none"> • Apply to financial intermediaries (see definition below) and since January 2016 to dealers accepting cash payments in excess of CHF 100,000 per transaction or series of related transactions. • Detail the due diligence requirements, transaction reporting and identification procedures, record-keeping and reporting requirements which financial intermediaries and dealers accepting cash payments in excess of CHF 100,000 per transaction or series of related transactions, must follow.
2.	Which institutions / persons must carry out AML measures?	Everyone has a general obligation not to engage in or facilitate Money Laundering

		<p>Financial intermediaries and dealers accepting cash payments in excess of CHF 100,000 for a single transaction or series of related transactions are obliged to carry out AML measures as referenced in the AMLA and AMLO (see above)</p> <p>“Financial intermediaries” are defined in Article 2, paragraph 3 AMLA. In the context of Art Businesses, the following are most applicable:</p> <p><i>“Those who in a professional capacity accept, take on deposit or assist others to place or transfer assets belonging to third parties, in particular those who:</i></p> <ul style="list-style-type: none"> a) <i>Conduct credit operations (including consumer credit....financing of commercial transactions);</i> b) <i>Conduct business for themselves or third parties...in precious metals...”</i> <p>“Dealers” are defined in Article 2, paragraph 1 AMLA as <i>“natural persons and legal entities that deal in goods commercially and in doing so accept cash”</i>.</p>
3.	<p>What due diligence requirements apply?</p>	<p>Client identification including identifying Beneficial Owners and persons controlling legal entities.</p> <p>If the contracting party is not the owner of the assets or is a domiciliary company (i.e. asset holding company only) a written declaration from the contracting party identifying the Beneficial Owner is also required.</p> <p>If the contracting party is an operating legal entity (excluding companies listed on a publicly traded stock exchange), the controlling owners of that operating legal entity (i.e. shareholders owning 25 % or more of the share capital or voting rights and individuals having management or effective control) need to be identified in a written declaration signed by an authorised signatory of the operating legal entity.</p>
4.	<p>What record keeping requirements apply?</p>	<p>Client identification documentation must be original or if copies must be certified / notarised as being true copies of the original</p> <p>Records should be kept in a secure and easily accessible place in Switzerland for 10 years from the date of the transaction or the date the business relationship is terminated</p>
5.	<p>What reporting requirements apply?</p>	<p>Financial Intermediaries and dealers accepting cash payments exceeding CHF 100,000 in a single or series of related transactions have a duty to file a suspicious activity report (SAR) to MROS immediately if they know or have reasonable grounds to suspect that assets involved in a business relationship are the proceeds of a felony, tax fraud or are connected with Money Laundering (including terrorist financing).</p>

6.	Where can I report suspicions of money laundering?	<p>The Money Laundering Report Office Switzerland (MROS)</p> <p>Bundesamt für Polizei Meldestelle für Geldwäscherei (MROS) Nussbaumstrasse 29 3003 Berne Tel : +41 58 463 40 40 Fax : +41 58 463 39 38 www.fedpol.admin.ch/fedpol/en/home/kriminalitaet/geldwaescherei.html</p>
7.	Which aspects of the AML regime are particularly relevant for Art Businesses?	<p>Art Businesses accepting cash payments exceeding CHF 100,000 in a single transaction or series of related transactions must obtain original or certified copy documentation verifying the identity of the person making the payment and carry out other client identification as provided for in the AMLA and AMLO.</p> <p>Transactions involving PEPs (including persons closely connected with them) are potentially high risk. PEPs can be both foreign and domestic and include individuals entrusted with a prominent function in international organisations and international sports federations.</p> <p>Art Businesses who carry out financial intermediary activities (e.g. make loans or pay advances to clients) are subject to regulation and must meet the higher compliance standards set out in the AMLA and AMLO.</p> <p>For transactions involving cultural objects, see also the legal and due diligence obligations which apply to Art Businesses under the Cultural Property Transfer Act (CPTA). Additional restrictions apply to cultural objects from Syria and Iraq and other countries which may be subject to international embargoes from time to time.</p>
8.	Where can I find more information and assistance on AML?	<p>https://www.fedpol.admin.ch/fedpol/en/home/kriminalitaet/geldwaescherei.html</p> <p>https://www.finma.ch/FinmaArchiv/gwg/e/themen/bekaempfung/index.php</p>

Requirement	Art dealers and Auction houses when acting as financial intermediaries	Insurance companies when acting as financial intermediaries	Art dealers or auction houses when not acting as financial intermediaries	Art fairs	Free ports	Buyers other than dealers (e.g. museums, private collectors, etc.) ^Δ	Logistics and insurance companies when not acting as financial intermediaries
Establish client's identity Guideline 4			If receiving cash (single or multiple related payments) above CHF 100,000. * In all other cases *				
Establish identity of the beneficial owner Guideline 4			If receiving cash (single or multiple related payments) above CHF 100,000. * In all other cases *				
Establish the origin of funds used in a transaction Guideline 6			If receiving cash (single or multiple related payments) above CHF 100,000. * In all other cases *				
Establish the provenance of the artwork Guideline 5							
Keep records			If receiving a cash payment above CHF 100,000. *				

Guideline 7			In all other cases *				
Train staff							
Guideline 8							
Decline transactions / Report grounded suspicions							
Guideline 9							

* However, legal obligations may arise for any kind of art dealer and art transaction under the Cultural Property Transfer Act (Article 16 (2) CPTA)

Δ However, due diligence requirements may arise under Article 16 (1) CPTA

Colour codes

Red – legal requirement

Green – ethical requirement

Articles mentioned in the table refer to the Guidelines