



## Welcome to the White paper series on regulatory audits: Part 2

### ***Regulatory audits in Switzerland: “Regulatory audits in Switzerland: How is Anti- Money- Laundering (AML) audited?”***

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*This overview covers the ins and outs of FINMA’S expectations on AML audits. The document entails dynamic links to useful resources.*

In this second part of our White paper’s series on regulatory audits, we are focusing on the Anti-Money Laundering audit that also raises a lot of questions in the Swiss Compliance officers’ community.

Anti-money laundering is a specific area within the regulatory audit, be it in banks or asset managers and independent asset managers.

### **Framework in place**

The legal basis for combating money laundering resides in the Anti-Money Laundering Act (AMLA) of 10 October 1997) [AMLA](#); as well as the related ordinance dated 11 November 2015 ([AMLO](#)) and AMLO FINMA of 3 June 2015 [AMLOFINMA](#). *Note that both ordinances are in German, French and Italian but not in English.*

As stated in the first paper of this series dedicated to regulatory audits, the AML audit is clearly outlined in the regulatory framework in place and safeguarded by FINMA in Switzerland. Because the documents may be a bit hidden to find on the FINMA internet page, here is the link to everything pertaining to anything related to AML audit: [AMLA Audit points](#). We will come to these documents later on.

In Spring 2023, FINMA reviewed risk analyses from over 30 banks and found that “a large number of the risk analyses examined did not meet the basic requirements for such an analysis.” As a result, FINMA published on 24 August 2023 the “Guidance 05/2023: Money laundering risk analysis pursuant to art. 25 para. 2 AMLO-FINMA Status ([FINMA Guidance on AML](#)).



## Highlights from the FINMA guidance

The document is an especially useful read as it outlines exactly the level of detail expected by FINMA for a money laundering risk analysis regarding various aspects, including:

- **Definition of money laundering risk tolerance:** institutions are encouraged to define the deliberate exclusion of certain countries, clients, segments and so on as well as KPIs enabling to monitor compliance with the risk tolerance.
  
- **Scope of the money laundering risk categories to be considered and comprehensibility of the relevance of criteria for business relationships involving increased risk:** FINMA recommends considering **all** risks pertaining to the institution's business model and range of service (be pragmatic!) as well as developing the criteria for risk classification.
  
- **Monitoring compliance with business strategy and risk policy:** Not only should institutions consider ML risk while determining their business strategy, they also should closely monitor compliance with the risk tolerance and update their analysis accordingly. Institutions operating at global level are also strongly encouraged to periodically perform a risk analysis review at consolidated level.

The appendix to the guidance provides an illustration of how "**good**" would look like according to FINMA.

### **Audit points** ([AML Audit points](#))

As mentioned above, FINMA issues some guidance on how to audit AML, namely for banks, asset managers and for persons under Article 1b of the Banking Act 2023 (not available in English). The article 1b outlines the provisions of this law apply by analogy to persons who are mainly active in the financial sector and who:

- a. professionally accept deposits from the public up to 100 million francs or cryptoassets designated by the Federal Council, or call on the public to obtain them, and
- b. do not invest or remunerate these deposits or assets.



Without delving too much into audit methodology, the usual way to audit is on a **sample-basis**: *“The random sample size is determined by the agreement between EXPERTsuisse and FINMA. The random sample should be selected on a risk-oriented basis so as to increase the probability of any serious AMLA violations being detected.”* (Excerpt from AMLA audit points for banks 2023).

- ⇒ Unlike other areas in regulatory audits that may be audited with various focus (**“audit-depth”** vs **“critical review”**, which constitutes a “lighter” version without (too many) testings), AML is audited with audit-depth.

## Requirements

While these requirements make sense for larger financial intermediaries, Sergio Uldry, a Swiss expert in the field, notes that in the context of independent asset managers, *“the sampling is well above banking audit standards (Swiss Audit Reco. 70). The new AML control points (PEP and complex structures), also have the same that is, high level of expectations as for banks in terms of behavioral monitoring (critical link to be systematically made between KYC and KYT for example)”*.

- ⇒ **It is important to note however, that expectations are similar for all financial intermediaries: from larger financial institutions to smaller, independent asset and wealth managers.**

## AML Risk matrix

As a result of this expectations alignment, an annual analysis of AML risks (art. 25 and 75 Money Laundering Ordinance-FINMA, AMLO-FINMA) is expected from independent asset and wealth managers. This matrix must be established according to the same criteria as for banks /larger financial institutions. As such, they must comply with the obligation to highlight why and how the relevant criteria are or are retained.

The auditors will review this matrix during the audit and may formulate some recommendations on it (and obviously must highlight the absence of where applicable).

## Documentation requirements

Regarding documentation requirements and similarly to the audit sampling, Sergio Uldry outlines some pitfalls linked to “sometimes **excessive formalism**”, such as:



- for keeping duplicate documentation between **External Asset Managers (“EAMs”)** and custodian banks, particularly in terms of **Know Your Customers (“KYC”)**;
- Or the systematic subscription to cross-border manuals or similar AML database, without giving any prior thought to the matter, as well as
- the willingness to have automated screening software for name screening / sanctions or transaction monitoring without mastering or re-examining the specifications critically.

AML auditors are now reviewing these points from a materiality angle. On the other hand, certain financial intermediaries like EAMs will benefit from a simplification in terms of KYT (“Know Your Transactions”), which does not necessarily need to be automated, respectively, for the smaller, i.e. less than 20 business relationships, in terms of relational risk scoring, which is not required (cf. title 5 of the FINMA-Ord.).

What is certain, according to this expert, is that the (audit) expectations require each financial intermediary to carry out its own due diligence, according to its own approach to risk or internal prudence, without routinely relying on controls carried out by others. And this is even more true for Suspicious Activity Reports!

## **Suspicious Activity Reports (SARs)**

All Compliance officers should at some point come across the question about whether filing a **Suspicious Activity Report (SAR)** or **Suspicious Transaction Report (STR)**. While SARs are not - strictly speaking - part of the audit focus, it is worth mentioning that auditors can reviewed the ones filed. Further, if during the course of the audit, they come across a suspicious activity/transaction, they must highlight the duty to file such a report.

The strict compliance with the obligation to communicate to **Money Laundering Reporting Office Switzerland (MROS)** in the presence of justified suspicion applies to all financial intermediaries and the level of expectation is the same for all players, from larger institutions to independent asset/wealth managers.

For memoria, the legal basis for reporting can be found in:

- Art. 9 – Duty to report reasonable suspicion (Anti-Money Laundering Act, AMLA)
- Art. 305ter para. 2 SCC – right to report a mere suspicion (Swiss Criminal Code)



## Conclusion

The AML part is a key area of any regulatory audit. As such, auditees, regardless of their size, are expected to be compliant with all requirements in place and outlined by FINMA.

## Recommendations for a successful preparation

1. Establishing an AML risk matrix fitting the size and activity of the institution (don't forget to justify the risk criteria and why some criteria might have been omitted)
2. Ensuring a proper documentation for Customers files
3. Ensuring that the parameters of the automated screening software in place, if any, are mastered, as well as checked regularly (at least annually) in order to maintain a sound level of monitoring.

## About the author



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## More to come!

*Part 3: Regulatory audits in Switzerland: «How is Governance audited?»*

*Part 4: Regulatory audits in Switzerland: «How is Investment compliance audited?»*