Financial Action Task Force

Groupe d'action financière

THIRD MUTUAL EVALUATION REPORT ON ANTI-MONEY LAUNDERING AND COMBATING THE FINANCING OF TERRORISM

SUMMARY

SWITZERLAND

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SUMMARY

1. GENERAL INFORMATION

1. As Switzerland is an international financial services centre of the first order, the main source of criminal proceeds is from economic crime. In the area of terrorist financing, Swiss investigations do not reveal any trends (old or new) as far as methods or techniques used, and it seems too early at this stage to assess the impact of new CFT measures.

2. A major portion of the active financial sector in Switzerland consists of banks, securities brokers, stock exchanges and investment funds. In the non-banking sector, the Money Laundering Law (*Loi sur le blanchiment d'argent, LBA*) applies not to specific professions or industries but to specific activities that may be used for money laundering purposes. The LBA, which entered into force in 1998, provides the non-banking sector with, in addition to a very broad general clause, a non-exhaustive list of the activities of financial intermediaries that are subject to the Law. In particular, the LBA applies to asset managers, credit institutions, and specifically those that engage in financial leasing, dealers in raw materials (in the case of stock-market trading for third parties), persons dealing in banknotes, currency and negotiable precious metals, bureaux de change, persons who transfer money and value, investment fund distributors and representatives, official and de facto executive organs of Swiss or foreign domiciliary companies, and lawyers and notaries who perform financial intermediation outside their traditional professional activity. Many trustee companies in Switzerland are full financial intermediaries, subject to all the due diligence obligations flowing from the LBA. Insurance companies are subject to the obligations imposed by the LBA. This is also the case for casinos. With a view towards implementing the revised FATF Recommendations, especially the provisions concerning non financial businesses and professions, the Swiss government has proposed revisions to Swiss AML/CFT legislation; these revisions were submitted for consultation in early 2005.

3. The LBA is an outline law based on the principle of self-regulation which had its origins in banking practice (known as "directed self-regulation"). The Swiss legislature has chosen to delegate the responsibility for determining specific implementation rules for the law and for ensuring compliance with it either to administrative supervisory authorities or to self-regulatory organisations (SROs). One should make the following distinction:

Financial intermediaries pursuant to LBA Article 2 (2):
This category involves financial intermediaries that are subject to official supervision under special laws. Even in this context, self-regulatory mechanisms play an important role (the SROs stipulate the implementation rules for the LBA). Whether or not these intermediaries are affiliated with an SRO, the LBA invests supervisory responsibility in the authorities instituted by special laws.

- **The Federal Banking Commission (CFB)** is the oversight body for banks, securities dealers, and fund managers. The intermediaries under its control may also join an SRO that can set minimum standards. Nevertheless, the power to specify the rules for implementing the LBA and to enforce those rules is essentially reserved to the oversight authority; when it comes to specifying rules for observing CDD duties, however, the CFB included in its Money Laundering Directive of 2002 (OBA-CFB) the duty to identify customers and beneficial owners as defined in the Due Diligence Convention of 2003 (CDB 03) negotiated between the banks and the Swiss Bankers' Association. This came about for historical reasons, given that the due diligence obligations have been in force in Switzerland since 1977.
- **The Federal Office of Private Insurance (OFAP)** adopted in 1999 a directive specifying rules for implementing the LBA (OBA-OFAP) and supervises insurance institutions that provide direct life insurance or offer or distribute shares in investment funds. The SRO (OA-ASA) is subject to the oversight of the OFAP and has adopted a commentary that supplements the provisions of the OA-ASA regulation for implementation of the LBA by member

insurance companies. In relation to its supervisory powers, the OFAP relies to a large extent on the OA-ASA.

- **The Swiss Federal Gaming Board** (*Commission fédérale des maisons de jeu, CFMJ*) has established its own directive specifying rules for implementing the LBA, and it exercises direct supervision over all casinos. The Swiss Casino Federation (FSC) has established an SRO (OAR-FSC), the regulations of which are considered by the CFMJ as setting a minimum standard. On the other hand, the OAR-FSC has no supervisory responsibilities, which remain the preserve of the CFMJ alone.

Financial intermediaries engaged on a professional basis in the activities listed in LBA Article 2 (3)

These financial intermediaries are not subject to a supervisory authority instituted by a special law. To obtain authorisation to conduct their professional activities, they have the choice of:

- Affiliating themselves with an SRO recognised and supervised by the AdC under the LBA (currently 11), which means that these intermediaries are subject to the AML rules adopted by the SRO and are supervised and subject to sanction by that SRO. In cases where they are expelled from an SRO, these intermediaries are under the sanctioning authority of the AdC.
- Obtaining authorisation from the Anti-Money Laundering Control Authority (AdC) created by the LBA, a choice which means that they are subject to provisions of the AML directive issued by the AdC (OBA-AdC of 10 October 2003), and to its direct supervision. The AdC also has the power: (1) to grant or withdraw its recognition of SROs pursuant to the LBA, (2) to approve the SRO regulations, including rules that their members must observe in implementing LBA obligations, (3) to supervise SROs and (4) to ensure that the SROs enforce their regulations

4. Swiss law authorises only a limited number of legal forms for companies including a joint stock corporation (*société anonyme*), a limited liability Company or *société à responsabilité limitée* and a limited partnership (*société en commandite*). The sector of non-profit organisations is made of two types of organisations: foundations and associations. Swiss statute law does not recognise the concept of trust. Furthermore, in Switzerland the fiduciary relationship (*fiduciaire*) is a bilateral relationship that is closer to a power of attorney (*mandat*) and should not be confused with the express trust and legal arrangements that are covered by Recommendation 34.

2. LEGAL SYSTEM AND RELATED INSTITUTIONAL MEASURES

5. The criminalisation of money laundering of Article 305bis of the Penal Code (CP), that came into force in 1990, provides that anyone who commits an act intended to obstruct the identification of the origin, discovery or confiscation of property that he knew or should have presumed were derived from a crime, shall be liable to imprisonment or a fine. The notion of property (*valeurs patrimoniales*) in Swiss law is a broad one, also encompassing the objects that replace them. It is not necessary that a person be convicted of the predicate offence in order to be able to prove that goods are the proceeds of a crime. As regards the subjective aspect of the offence of money laundering, this must be intentional, but if there is contingent intent (*dol eventual*), this will suffice. The provisions of the Penal Code set out the liability of legal persons (where a legal person is found liable for money laundering, the law provides for a fine of up to 5 million CHF (or approximately 3,230,000 EUR). In cases of money laundering, Article 305bis CP lays down penalties of imprisonment or fines. In serious cases, the penalty shall be a sentence of penal servitude (*réclusion*)[1] for a maximum of five years or imprisonment. The prison sentence shall be accompanied by a fine of a maximum of 1 million CHF (or about 650 000 EUR). In particular, a case is serious where the offender:

[1] The distinction between the terms *réclusion* (penal servitude) and *emprisonnement* (imprisonment) is not entirely clear in English, as both may be translated by the term *imprisonment*. The distinction between the two terms is traditionally based on the type of offence (*réclusion* applies to *crimes*, and *emprisonnement* to *délits*); however, in some cases, the distinction is simply between longer and shorter term prison sentences.

a. Is acting as a member of a criminal organisation.

b. Is acting as a member of a gang set up to engage systematically in money laundering.

c. Makes a substantial turnover or gains as a professional money launderer.

6. In Switzerland, the nature of the offence of money laundering is atypical (the offence is one of obstructing justice) and does not formally include all of the types of conduct referred to in the Vienna Convention (elements of conversion or transfer in that Convention). On the other hand, case-law appears to show that the courts in Switzerland interpret Article 305bis in such a way as to cover the elements of conversion and transfer. Lastly, the element of possession that is found in the Vienna Convention is supposedly – according to the interpretation of the Penal Code made by Swiss authorities – covered by the notion of obstruction. Based on the list of designated categories of offences as defined in the 40 FATF Recommendations, the following offences are not yet covered under Swiss law: illegal trafficking in migrants, counterfeiting and pirating of products, smuggling, and insider trading and market manipulation. These offences will be covered when the new AML/CFT regulation is adopted (planned for 2007).

7. It emerges from the statistics available in Switzerland that, since money laundering became a criminal offence on 1 August 1990, more than 1,000 court decisions related to money laundering have been handed down. The yearly average since 1998, the date that the LBA entered into force, stands at around one hundred convictions. When viewed in the Swiss context, the meaning of these results should be qualified. Out of all the suspicious transaction reports transmitted by MROS to the criminal prosecution authorities since 1 April 1998, 5% resulted in convictions at the cantonal level. Furthermore, taken at the cantonal level, the number of convictions for money laundering does not seem to be consistently proportional to the amount of financial activity taking place, and the number of convictions for money laundering varies widely from one canton to another. It is true that a majority of the magistrates met during the on-site visit identified the principal difficulty in prosecuting money laundering in Switzerland as being the need to have access to information on the underlying predicate offence, when this was more often than not in the possession of foreign authorities. It should be noted however that the penalties laid down for money laundering are proportionate when compared with those for other offences such as theft and receiving stolen goods.

8. The Penal Code sets out a criminal law provision dealing specifically with terrorist financing. This provision, in force since 1 October 2003, provides that "whoever collects or provides funds with a view to financing a violent crime that is intended to intimidate the public or to coerce a State or an international organisation into carrying out or failing to carrying out an act shall be liable to a term of penal servitude of up to five years or to a term of imprisonment". It should be noted that Swiss law criminalising the financing of terrorism is largely complete. CP Article 260ter penalises providing support to a criminal organisation, its financing thus constituting a typical kind of support. It appears nevertheless that the applicable provisions are not totally compliant with the FATF standards on this matter. The definition of terrorist financing as provided in the Swiss Penal Code appears actually to be more restrictive than the FATF requires in the framework of Special Recommendation II. Indeed, the Swiss Penal Code only covers the financing of "an act of criminal violence (…)" and not of an individual, independently of any particular act. However, Swiss authorities are of the opinion that this latter case is covered by CP Article 305 (obstruction of justice).

9. Switzerland has a sophisticated and comprehensive confiscation regime.

10. The sanctions, including financial sanctions, against Al-Qaida and the Taliban under S/RES/1267(1999) and its successor resolutions have been implemented in Switzerland by the decree of 2 October 2000 instituting measures against persons and entities linked to Osama bin Laden, Al-Qaida or the Taliban. This decree was based on the federal Law of 22 March 2002 on the application of international sanctions, which constitutes the framework legislation for the implementation of international sanctions. In order to freeze the funds of terrorist or other assets of person targeted by

S/RES/1373(2001), Switzerland uses the LBA, which, where there is a founded suspicion of money laundering or links to a crime or a criminal organisation, obligates banks and financial intermediaries to immediately freeze the assets concerned, without informing the persons in question. Switzerland is in compliance with Special Recommendation III with regard to S/RES/1267(1999). With regard to the implementation of S/RES/1373(2001), Switzerland has no specific procedure whereby it can designate relevant persons. There is no law in place to examine steps taken by other countries pursuant to their freezing processes and give effect to them. Switzerland does, on the other hand, have a procedure that allows sanctions to be imposed – the Federal Council may, based on a case-by-case examination, decide to impose sanctions against an individual or a country. The Swiss approach whereby it uses its anti-money laundering regime and acts on the basis of the LBA and the obligation to freeze funds in cases of well-founded suspicions of money laundering is insufficient.

11. MROS (the Money Laundering Reporting Office Switzerland) is the Swiss financial intelligence unit (FIU). It was set up under the LBA law of 10 October 1997. MROS receives and analyses the reports received from financial intermediaries, SROs, the AdC, supervisory authorities set up under special laws, and persons designated under Article 305ter of the Penal Code. Within its legal framework as conceived by the Swiss legislature, MROS gives the clear impression of efficiency and professionalism and appears to have adequate resources to fulfil its functions. While it has five days in which to process a suspicious transaction report, it seems that an average of two and a half days is enough for a report to be dealt with. MROS has direct and sufficient access to a variety of databases in order to analyse the reports it receives. It should be noted however that MROS does not have any investigative powers of its own (its added value consists of fleshing out disclosures by consulting the databases and its foreign counterparts in transnational cases, and identifying reports that have links with other reports). MROS does not in fact have the power to obtain further information from reporting entities. This situation should be remedied to improve the relevance of the reports sent to the law enforcement authorities. This would also enable MROS to increase the quality of the assistance that it provides to its foreign counterparts.

12. At federal level, the MPC [*Ministère public* (Public Prosecutor) *de la Confédération*] is the criminal prosecution authority in Switzerland for crimes in which the acts were committed for the most part abroad or in several cantons where there is no clearly predominant connection with any one of them. The cantons have their own criminal prosecution authorities that are responsible for prosecutions in cases that do not meet the conditions for jurisdiction of the Confederation. They also have their own police services. The Federal Police Office (Fedpol) conducts its own investigations into major crime under the direction of the General Prosecutor of the Confederation. At the federal level, there are special offices of the Federal Police that are responsible for handling money-laundering cases. While the MPC functions as the investigation and prosecution authority, it is the offices of the federal examining magistrates (*juges d'instruction*) that, with their various regional bases, conduct the examination. The Federal Criminal Court in Bellinzona serves as the court of first instance and oversees the federal investigation and examination authorities. On the positive side, Switzerland is in full compliance with FATF Recommendations 27, 28 and 30. The criminal prosecution authorities have the necessary powers to exercise their prerogatives. In general, magistrates have instituted harmonised working methods between the cantons. It is important that the criminal prosecution authorities continue to have adequate means at their disposal, and the same also applies to the police service. In addition, the attribution of new powers to the federal criminal court in Bellinzona and to the MPC means a de facto redistribution of the powers to prosecute the offence of money laundering between the federal and the cantonal levels. In this context, a concerted effort among the competent authorities concerned is essential.

13. The implementation of SR IX in Switzerland is based on the existing mechanisms, which apply to all other types of merchandise entering or leaving the country. While the customs authorities have the power to retain cash or bearer instruments where there is suspicion or a false declaration, it appears that the rest of the measure is only marginally compliant with the language of this standard. It is important that Switzerland implement necessary measures to bring it into full compliance with SR IX.

3. PREVENTIVE MEASURES – FINANCIAL INSTITUTIONS

14. The CFB introduced a risk-based approach to the application of due diligence obligations by financial intermediaries. This system is not intended to relax the basic obligations of due diligence, but to strengthen them in the face of increased risks. Each financial intermediary subject to CFB supervision is required to develop its own concept for implementing this risk-based approach, taking into account the risks specific to its activity. Financial intermediaries must divide their customers into at least two categories, namely those that present a normal risk of money laundering and those that present a high risk. The same system applies to non-banking financial intermediaries subject to the supervision of the AdC as well as to a majority of intermediaries affiliated to an SRO. In the banking sector, the implementation of the risk-based approach has been a specific subject for examination. The same applies in the non-banking sector as part of the regular annual audits.

15. In the banking sector, the current provisions do not allow the opening of anonymous accounts or savings books. The opening of bearer savings books has not been allowed since 1 July 2003. Prior to that date, customers desiring to open such accounts had been systematically identified since 1977. Identification of the holder of these savings books is required should they carry out a transaction with the savings book at a financial institution (deposit, withdrawal, etc.). In this case, Swiss authorities indicated that the conversion of the bearer savings book to an account in the name of the customer is the current practice. However, no measure is at present envisaged to require the systematic identification of holders of bearer savings books. Concerning the private insurance sector, the recording of policies under fictitious names or aliases should be prohibited. Swiss authorities should take measures to evaluate the amounts deposited in bearer savings books still in circulation and take appropriate steps to end the circulation of these instruments within a reasonable time.

16. Concerning situations in which the customer must be identified, applicable provisions are generally satisfactory. However, in the banking sector, Swiss authorities should review the provision of the CDB 03 which dispenses with identifying the customer where there are indications of money laundering but the bank then refuses the transaction or establishment of a business relationship in order to specify the obligations applicable to this type of situation.

17. In the non-banking and insurance sectors, intermediaries that refuse to carry out a transaction or establish a business relationship where the customer or the beneficial owners cannot be identified should be required to report to MROS where there are indications of attempted money laundering (this is foreseen in the context of the new draft LBA).

18. The Swiss authorities should introduce an explicit obligation for all financial intermediaries to identify persons acting as agents on behalf of a customer which is a legal person or a legal arrangement, as well as an explicit obligation to take note of the terms governing the power-of-attorney to act on behalf of the customer.

19. With regard to the verification of the identity of beneficial owners, Swiss authorities have adopted a risk-based approach. When there is a doubt that the client is not acting on his own behalf or that the business relationship is of higher risk, financial intermediaries are obligated to obtain a written and signed statement from the customer that identifies the natural persons on whose behalf the customer is acting. This requirement is mandatory when the customer is a "domiciliary company". The Swiss regime otherwise only requires financial intermediaries to take reasonable steps to verify the information obtained from the customer concerning the beneficial owner(s) by using relevant information or data obtained from a reliable source when the business relationship involves higher risk.

20. When the customer is a legal person or legal arrangement, the requirement to take all reasonable steps to understand the ownership and control structure only exists in the following two cases: (1) the customer is a so-called "domiciliary" company; (2) higher risk business relations or transactions with a customer which is a legal person require additional clarifications;. In these circumstances, the current

provisions require financial intermediaries to determine by whom legal persons are controlled but without clearly requiring financial intermediaries to pursue these duties of clarification to the point of identifying the natural persons who ultimately own or control the customer. Furthermore, the fact that limited companies under Swiss law can issue bearer shares and that there is no provision at present to ensure transparency of their shareholders, other than for companies listed on the Stock Exchange, means that becomes more difficult for financial intermediaries to verify the persons who control or own the legal person. Swiss authorities should take the necessary steps to remedy these shortcomings.

21. Irrespective of the duty of additional clarification in the case of higher risk and the due diligence that could come about from the categorisation of customers according to risk, Swiss authorities should consider introducing an explicit obligation that would apply generally to financial intermediaries to identify the purpose and planned nature of the business relationship sought by the customer.

22. With regard to the duty of ongoing due diligence, monitoring systems that financial institutions are obligated to have as well as the requirement to conduct additional clarification in the case of unusual or suspicious transactions are effective operational tools. The systems of classification of risks applicable to Swiss banking and non-banking financial intermediaries, based on the specific characteristics of the activities and customers of each, fully conform to the requirements and are a strong point of the system of prevention of money laundering and financing of terrorism in Switzerland. Provisions identifying situations of reduced risk in respect of which due diligence measures may be relaxed are, in the main, justified. In the insurance sector, the fact that a natural person is publicly well-known should not allow him to be considered to be a reduced risk.

23. With regard to the measures relating to customers resident in countries which comply with the FATF Recommendations, the suppression of simplified due diligence measures in the case of suspicions of money laundering or financing of terrorism and the instructions by competent authorities concerning risks, the rules in Switzerland are satisfactory.

24. Concerning the requirements applicable to existing customers, Swiss authorities should require insurance companies to identify and to verify the identity of customers and beneficial owners for contracts concluded before 1998, according to the degree of risk represented by the customers and, where applicable, state the appropriate points in time when these due diligence measures should be applied.

25. In the banking sector and that of non-banking financial institutions, intermediaries are required to identify their customers that are politically exposed persons (PEPs). One of the SROs selected for analysis (in the area of asset management) has however not yet adopted any specific provisions concerning PEPs. Swiss authorities indicated that this SRO adopted a new regulation setting out specific duties of due diligence regarding PEPs as of 29 July 2005. In the insurance sector, provisions indicating specific vigilance measures related to PEPs should be adopted.

26. The whole of AML/CFT provisions, including the risk-based approach and the enhanced due diligence requirements, applies equally to correspondent banking relationships. On the other hand however, Switzerland has not developed specific requirements to cover this type of business relationship. Switzerland should include in the applicable provisions new rules setting out requirements for financial intermediaries.

27. In relation to Recommendation 8, Swiss authorities require financial intermediaries to apply specific identification requirements and enhanced ongoing due diligence to non face to face relationships (these relationships are categorized as higher risk). On the other hand however, existing provisions do not contain requirements for financial institutions to develop specific policies and measures taking into account the risks of abuse of new technologies for the purpose of money laundering or financing of terrorism. In this regard, general provisions on risk-based monitoring of business relationships and transactions in the framework of a risk-based approach do not seem to be sufficient to meet the requirements under Recommendation 8.

28. With regard to the use of third party introducers, Switzerland is largely compliant with Recommendation 9. The system in place is rather strict in that it requires financial intermediaries automatically obtain from the third party introducer a copy of the documents used to verify the identity of the customer. The scope of the conditions for equivalent status of identification carried out by other entities in the same business group could be made more explicit. In addition, the financial intermediary who uses a third party introducer should be obligated to ensure that the latter has effectively taken the measures necessary to comply with the customer due diligence measures. Finally, in the sectors that fall under the responsibility of the CFB and the OFAP, the provisions should make it clear explicitly that the use of a third party introducer has no effect on the continued responsibility of the financial intermediary to fulfil its identification obligations.

29. Swiss legislation permits the waiving of professional secrecy or the obligation of bank discretion applicable to financial institutions when AML/CFT matters are concerned. Nevertheless, provisions of Swiss law impose in certain areas (exchange of information between competent authorities on the international level, supervision by a foreign regulator) restrictive conditions on the transmission of nominative information.

30. Switzerland is in compliance with Recommendation 10. In relation to Special Recommendation VII, it is important that Switzerland amend the current provisions that provide for an exception for legitimate reasons to the obligation to identify the ordering customers for cross-border transfers. This is very much desirable since, in practice, these exceptions are of marginal use. The regime applicable to wire transfers to Liechtenstein – currently regarded as domestic transfers – should be re-examined. The obligations incumbent on financial intermediaries concerning domestic transfers should be strengthened and, in particular, an obligation to communicate elements of identification of the ordering customer to the receiving financial institution on the request of the latter should be considered. Moreover, no specific provisions require financial institutions to keep all necessary information on the ordering customer with the corresponding transfer. However, this should be regarded as implicit. Finally, obligations incumbent on financial intermediaries relating to process of wire transfers that are not accompanied by required information on the ordering customer could be more detailed.

31. The existing requirements on monitoring unusual or suspicious transactions are complete and detailed, and therefore Switzerland is in compliance with FATF Recommendation 21. However, the OBA-OFAP provisions could be aligned with those of other regulations of supervisory organisations in order to provide explicitly for enhanced monitoring of business relations and transactions relating to "higher risk" countries taking into account their insufficient application of the FATF Recommendations. The AdC should also ensure that SROs include this requirement explicitly in their regulations.

32. In relation to compliance of the Swiss reporting system with Recommendation 13, several remarks may be made. The LBA in its current form does not explicitly cover terrorist financing even if the act is covered de facto by the fact that the offence is a crime and thus included in the measure in which the reporting requirement extends to property of criminal origin, including the financing of terrorism. For the banking sector however, the OBA-CFB contains explicit provisions in this regard, and the planned amendment of the LBA should correct this shortcoming for all sectors. In addition, several offences set out in the FATF Recommendations are not yet predicate offences for money laundering in Switzerland (see above). Finally, the obligation to report should be extended, for all financial intermediaries, to situations in which negotiations are broken off before the opening of the business relationship as such. This extension is planned in the connection with the amendment of the LBA.

33. In addition, the system for reporting suspicious transactions has problems of effectiveness. The number of reports of suspicions filed with MROS seems low given the scale of the Swiss financial market and the activity that is carried out there. This problem of effectiveness seems to be the result of a series of characteristics of the current reporting system, which converge in a way that results in a

restrictive approach to the reporting obligation, which could even prove to be dissuasive. There appears to be a need to review the overall balance of the Swiss suspicious transaction reporting regime. In this regard, it would seem important that Swiss authorities in particular consider de-linking the reporting of suspicious transactions from the freezing of assets.

34. Protection of the financial intermediary with respect to civil and criminal liability for breach of confidentiality rules set out in LBA Article 11 combined with CP Article 305ter could be strengthened. It is important to ensure that the financial intermediary is protected in all cases when reporting "in good faith". The legal prohibition on tipping the customer off as to the fact that a suspicious transaction report has been made should be introduced.

35. In the 1990s, Switzerland considered the feasibility and utility of implementing a system whereby financial institutions report all transactions in currency above a fixed threshold. Therefore the Recommendation 19 is observed.

36. MROS provides general and specific feedback in conformity with Recommendation 25.

37. With regard to Recommendation 15, OFAP should clarify the obligations incumbent on insurance companies with regard to the organisation of their anti-money laundering and internal control systems. In all sectors, rules concerning the recruitment of staff by financial intermediaries should be developed.

38. With respect to Recommendation 22, the Swiss system is incomplete. Indeed, although intermediaries subject to supervision by the CFB are required to ensure that their foreign branches and subsidiaries comply with the fundamental principles set out in the OBA-CFB, nothing of the kind is contemplated for intermediaries in the non-banking sector. Thus, the provisions applied to banks should be extended to other financial intermediaries where relevant.

39. The provisions of the current banking act ensure that a shell bank cannot be established in Switzerland, and the CFB has introduced the express prohibition on maintaining business relations with shell banks. There is on the other hand no provision requiring banks to ensure that banks which form part of their foreign clientele do not authorise shell banks to use their accounts. The introduction of such a requirement in Swiss banking regulation should be considered.

40. Although it is very complex, due to the large number of relevant players related, on the one hand, to the coexistence of several administrative supervisory authorities and, on the other, the existence of self-regulatory organisations acting, in some cases, as subsidiary to the supervisory authorities or, in others, as the principal authority, the system for ensuring that financial institutions comply with their AML/CFT obligations is in a position to ensure full and effective supervision of the subject persons and firms. It should be noted that, for several years now, this supervisory system has applied to non financial activities in the strict sense (casinos, certain activities of notaries, lawyers, and real estate agents, etc.), and this involves very regular examinations (in general, annually) of supervised persons and entities. However, as far as the insurance sector is concerned, the interlinking roles of OFAP and OA-ASA do not ensure effective supervision of insurance companies affiliated to the OA-ASA. Thus OFAP should exercise in practice the supervisory task assigned to it by AML legislation, including supervision of OA-ASA members.

41. The provisions covering measures to prevent criminals or their accomplices from taking control of financial institutions appear inadequate in the current versions of the Insurance Companies Act. The draft law currently in course of adoption on supervision of these companies remedies these shortcomings.

42. The various supervisory authorities seem on the whole to be adequately resourced to accomplish their regulatory duties (even if the situation of SROs is difficult to assess). This is not, however, the case in the insurance sector. Apart from reviewing the annual reports filed by the companies affiliated

to the OA-ASA, OFAP did not carry out or order any AML examinations in 2003 and 2004 for lack of sufficient staff. This situation should be remedied. In general, it is important that all supervisory bodies have the means to perform their duties and that such resources should be guaranteed. On the positive side, real efforts have been made to carry out auditors' training.

43. The various supervisory authorities generally have appropriate powers of investigation and access to documents; in fact they most often delegate these tasks to external auditors accredited by them. The powers of the OA-ASA should however be strengthened so that the organisation can totally reform its "audit approach". Meanwhile, OFAP should exercise its supervisory powers effectively over all companies under its authority.

44. The Swiss system, which relies mainly on external auditors for on-site examinations and whose costs are mainly borne by those subject to supervision themselves to a large extent ensures that the means are matched to the supervision requirements. However, in the insurance sector, it would be useful to require LBA examinations on a periodic basis, possibly adjusted to the underlying risk. It would also be desirable to develop and formalise rules to ensure the independence of management and control organs of SROs. Finally, harmonisation efforts with respect to examinations by SROs of their members should be pursued.

45. As far as the sanctions regime is concerned, the current system has weaknesses that impede its consistency and effectiveness, including the equality of treatment among the various financial intermediaries, irrespective of the form of supervision: (1) the range of sanctions at supervisory authorities' disposal (and in the absence of financial sanctions) do not always allow sanctioning of moderately serious breaches in an appropriate manner; (2) effectiveness of sanctions in the insurance sector should be improved by strengthening supervisory rules; and (3) efforts to harmonise sanctions across SROs should be made. As well, criminal sanction provisions could be made more consistent.

46. The various supervisory authorities have made a real effort to provide financial intermediaries with guidelines which explain their obligation with regard to AML/CFT. It was not possible to evaluate all the work done by the SROs but the AdC is satisfied with it.

47. Overall, SR VI is properly implemented. Indeed, the financial intermediaries involved in this sector of activity are behind about half of the reports of suspicions.

4. PREVENTIVE MEASURES – DESIGNATED NON-FINANCIAL BUSINESSES AND PROFESSIONS[2]

48. It should be underscored on the positive side that Switzerland has applied the LBA to certain persons exercising a wide range of non-financial professions for a long time – this was the case even before the FATF Recommendations required such measures. Nevertheless, there would seem to be problems with applying the LBA to certain activities of the following categories of professionals: real estate agents, precious stone dealers, lawyers, notaries and other legal professionals, and trust and company service providers. Swiss authorities should take appropriate steps to apply CDD obligations to real estate agents, regardless of whether they are acting on behalf of the buyer or the seller of a property and regardless of whether the transactions involve payments in cash. The precious stones business should be subject to LBA provisions under the conditions of Recommendation 12. The situation of lawyers, notaries and other legal professionals should also be re-examined. In particular, the preparation of transactions should be sufficient, in the cases cited in FATF Recommendation 12, to trigger CDD obligations without limiting the requirement to preparation or execution of the financial

[2] To the extent that these professions – with the exception of casinos – are categorised as financial intermediaries pursuant to LBA Article 2 (3), the provisions of the LBA apply to these professions under the circumstances described above (regarding Recommendations 5, 6 and 8 to 10, 11, 13, 14 and 17).

aspects of these transactions. Moreover, the planned expansion of the LBA will not always provide total coverage of the areas intended by Recommendation 12. This planned expansion of the scope of the law is still in the prior phase of consultation with the parties concerned. This procedure is likely to have a noticeable affect on both the content of the draft and the length of time for its approval. The Swiss authorities should consider this point very carefully.

49. The provisions applicable to casinos are generally satisfactory with respect to the essential criteria established in the Evaluation Methodology for Recommendation 5. Swiss authorities should make good on their intention to reduce the identification threshold for customers conducting cash transactions to bring them down to 4,000 CHF (or about 2,500 EUR).

50. The application of Recommendations 6 and 8 to 10 to casinos has some shortcomings. On the other hand, the provisions are in compliance with Recommendations 9 and 10. With regard to Recommendation 11, the OCFMJ-LBA provisions for dealing with higher-risk transactions or business relationships would seem to be inadequate. It is worth noting that the provisions of the new directive of the CFMJ will ensure compliance with the FATF Recommendations.

51. For casinos, the sanctions provisions are compliant with the FATF Recommendations. In particular, the range of sanctions available to the CFMJ is broad and dissuasive, and allows for a proportionate application to the severity of the offence. The oversight system appears especially strict. On the other hand, for business dealings that will be covered in the future, the planned modifications to the LBA make no provision for oversight, but merely for a system of criminal sanctions for violations of the proposed CDD and reporting obligations.

52. It may be said that the financial intermediaries listed as non-financial professionals by the FATF seem to be hesitant in meeting their reporting obligations, especially considering their number. It should be taken into account in this regard that the majority of these businesses are of a small size. Nevertheless, this finding reflects a problem of effectiveness of the reporting obligations in Switzerland. In order to ensure that financial intermediaries observe adequately their obligation to report, it is important that efforts to raise awareness be pursued and even expanded among these professions, especially in light of the risk that some of them (such as fiduciaries) pose.

53. With respect to casinos and the implementation of Recommendation 15, the current regime appears to be complete, requiring in particular that casinos have internal directives, training, and a control system in place. In relation to Recommendation 21, it is important that Swiss authorities take further steps to bring Switzerland into compliance with the FATF standards.

5. LEGAL PERSONS AND ARRANGEMENTS & NON-PROFIT ORGANISATIONS

54. For most forms of corporate entities under Swiss law, the Official Trade Register provides a reliable and publicly available source of information on persons who exercise direct control as members. With regard to corporations that have issued registered shares, transparency regarding their shareholders is guaranteed by means of a register of shareholders, which may be accessed by criminal prosecution authorities, as well as by the CFB in the case of an investigation, but not by other competent authorities. Additionally, according to current Swiss legislation, there are no other appropriate measures that provide for the transparency of shareholdings – direct or indirect – of corporations that have issued bearer shares, other than in the situation that the corporation is listed on the Stock Exchange. This difficulty also exists in regard to having knowledge of indirect ownership of a corporation having another legal form in which one or several shareholders are themselves (non-listed) corporations that have issued bearer shares. Besides the legislative measures currently being considered, Swiss authorities should contemplate additional measures that would further reinforce the transparency of the shareholdings of corporations that have issued bearer shares.

55. It appears to be the case that legal arrangements as foreseen by Recommendation 34 do not exist under Swiss law (express trust, *fiducie, Treuhand, fideicomiso*). This Recommendation is therefore not applicable.

56. Swiss authorities should examine ways of strengthening the supervision of associations in order to ensure that they may not be misused for terrorist financing purposes, by adopting for example a risk-based approach.

6. NATIONAL AND INTERNATIONAL CO-OPERATION

57. At national level, co-operation and co-ordination mechanisms are in place and they seem on the whole to be functioning well. The AdC and the CFB stressed in particular their good co-operation. Some authorities indicated a few problems in the past in implementing the principles of co-operation.

58. Switzerland should ratify the Palermo Convention.

59. The Swiss system of mutual legal assistance is generally satisfactory in its principles, and it is put to effect broadly. Swiss law permits assistance to be granted if the facts underlying the request constitute a violation of ordinary law, even if they also contain a fiscal component. In such cases, Switzerland exercises its "specific-use reservation" (not a problem in itself); the requesting State may thus use the information provided for purposes of criminal prosecution but not for tax investigation. Efforts now underway to grant legal assistance for serious smuggling cases are a step in the right direction.

60. Switzerland is generally in compliance with Recommendation 37. It is important that Switzerland ensure that the application of the principle of dual criminality does not undermine the effectiveness of the assistance it provides. The country is also in compliance with Recommendation 38. Efforts already underway to implement co-ordinating mechanisms with other countries for seizure and confiscation should be pursued.

61. The Swiss extradition system is generally in compliance with Recommendation 39.

62. The transmittal of information or documents by the Swiss supervisory authorities to their international counterparts is subject to a series of restrictive conditions: the principles of *spécialité* (the foreign authority may use the information exclusively for supervisory purposes), confidentiality (the foreign authority must be bound by professional secrecy or secrecy of office), and the "arm's length" principle (the foreign authority may not pass on information received to other authorities without the consent of the Swiss authority). Moreover, if requests for information concern individual customers, the authority handling the request must, unless the customer concerned waives this measure, take a formal decision to allow the transmittal, and the customer may appeal that decision before the Federal Tribunal.

63. It would be advisable for the Swiss authorities to relax the strict conditions governing the communication of personal information to foreign authorities in the context of mutual international administrative assistance. The proposed reforms to LBVM Article 38 currently under discussion would seem a good first step in this direction. This initiative should be extended to all similar regulations governing other fields of supervision. Besides these amendments, which will merely accelerate an appeal against a transmittal decision to bring it within the six-month limit, the Swiss authorities should reconsider the appropriateness of allowing such recourse, which would appear to be a peculiar feature of Swiss law that might lead to significant delays in the transmittal of information (9 to 18 months).

64. As far as statistics are concerned, Switzerland maintains a large amount of data. More efforts should still be made in the following areas: (1) for confiscation, the number of cases and the amounts of property confiscated as related to the underlying offence; (2) for cross border transportation of

currency and bearer negotiable instruments; (3) for extradition, whether the requests relate to ML, TF or predicate offences and whether they have been granted or refused; and (4) for mutual legal assistance, whether they concern freezing, seizure or confiscation and whether they have been granted or refused.

Ratings of Compliance with FATF Recommendations

The rating of compliance vis-à-vis the FATF Recommendations should be made according to the four levels of compliance mentioned in the 2004 Methodology (Compliant (C), Largely Compliant (LC), Partially Compliant (PC), Non-Compliant (NC)), or could, in exceptional cases, be marked as not applicable (na). These ratings are based only on the essential criteria, and defined as follows:

Compliant	The Recommendation is fully observed with respect to all essential criteria.
Largely compliant	There are only minor shortcomings, with a large majority of the essential criteria being fully met.
Partially compliant	The country has taken some substantive action and complies with some of the essential criteria.
Non-compliant	There are major shortcomings, with a large majority of the essential criteria not being met.
Not applicable	A requirement or part of a requirement does not apply, due to the structural, legal or institutional features of a country e.g. a particular type of financial institution does not exist in that country.

Forty Recommendations	Rating	Summary of factors underlying rating
Legal systems		
1. ML offence	**LC**	▪ On the basis of the list of designated categories of offence as set forth in the 40 FATF Recommendations, the following offences are not yet covered by Swiss law: illicit trafficking in migrants, counterfeiting and piracy of products, smuggling, insider trading and market manipulation.
2. ML offence – mental element and corporate liability	C	Recommendation 2 is fully observed. [Remark: At the time of the on-site visit, the legislation on the liability of legal persons was too recent to enable its effectiveness to be assessed]
3. Confiscation and provisional measures	C	Recommendation 3 is fully observed.
Preventive measures		
4. Secrecy laws consistent with the Recommendations	**LC**	▪ Provisions of Swiss law impose in certain areas (exchange of information between competent authorities on the international level, supervision by a foreign regulator) restrictive conditions on the transmission of nominative information. ▪ Professional secrecy may constitute an obstacle to the smooth implementation of SR VII with regard to domestic wire transfers.
5. Customer due diligence	**PC**	*Accounts under fictitious names and numbered accounts* ▪ Additional measures should be envisaged to identify systematically the holders of bearer savings books and the elimination of these instruments. ▪ Concerning the private insurance sector, the fact that additional clarification is required when a customer requests recording of the policy under a fictitious name is obviously insufficient. *Situations in which the customer must be identified* ▪ A bank need not identify the customer when there are indications of attempts at money laundering, if it declines the transaction or refuses to establish a business relationship. *Identification of legal persons and legal arrangements* ▪ In the non-banking financial institution sector subject to supervision by the AdC or an SRO, identification of legal persons or legal arrangements does not explicitly include identification of persons acting on behalf of the legal person

		or legal arrangement. For banks, this measure is also not systematically applied. ▪ In the insurance sector, the OBA-OFAP only requires identification of the representatives of legal persons when they do not have their headquarters in Switzerland. ▪ In addition, no specific provision explicitly requires financial intermediaries to take note of the terms governing the power-of-attorney to act on the customer's behalf, although that does seem to happen in practice. *Identification of the beneficial owners* ▪ The beneficial owners of non-profit organizations should be identified more systematically. ▪ The fact that companies limited under Swiss law can issue bearer shares and that no measure is currently in force to ensure the transparency of their shareholders, other than the case of companies listed on the Stock Exchange, has the inevitable consequence that financial intermediaries are unable to verify the identity the persons who ultimately own or control the customer. *Information concerning the purpose and envisaged nature of the business relationship* ▪ There is no general obligation on financial intermediaries to identify the purpose and envisaged nature of the business relationship desired by the customer. *Reduced or simplified due diligence measures in the case of low risk* ▪ The low risk attached by Swiss regulations to the opening of accounts for the release of capital in the context of the formation or capital increase of a public or private limited company does not appear to be proven. ▪ In the insurance sector, the fact that a natural person is publicly well known should not be able to be considered as an indicator of low risk. *Insufficient compliance with due diligence in respect of new customers* ▪ In the non-banking financial institution and insurance sectors, establishments which decline a transaction or to establish a business relationship due to the impossibility of identifying the customer or beneficial owners are not required to report their suspicions to MROS. *Insufficient compliance with due diligence in respect of existing business relationships* ▪ There are no specific provisions applicable to insurance companies where they are unable to update the identification of a customer or beneficial owner *Existing customers* ▪ In the insurance sector, the non-retroactive effect of all the due diligence requirements concerning policies issued before 1 April 1999 is not consistent with the requirements concerning due diligence in respect of existing customers.
6. Politically exposed persons	LC	▪ Absence of adequate measures in the insurance sector, both concerning the identification of customers and beneficial owners which are PEPs with regard to enhanced due diligence required for relationships with such customers. ▪ The provision in the insurance sector that considers natural persons who are publicly well known as low risk is contrary to the obligation of enhanced due

		diligence required for PEPs. ▪ One SRO has not adopted any provisions in respect to PEPs.[3]
7. Correspondent banking	NC	▪ No specific due diligence provisions apply to correspondent banking relations.
8. New technologies & non face-to-face business	PC	▪ Existing measures do not include the obligation for financial intermediaries to define specific measures and policies taking account of the particular risks of abuse of new technologies for the purpose of money laundering or financing of terrorism, but only alternative methods of verification of the customer's identity. ▪ Due diligence requirements apply only to opening of non face-to-face business relationships however not to transactions that do not involve the physical presence of the parties.
9. Third parties and introducers	LC	▪ The scope of the provisions permitting equivalent identification carried out by other corporations in the group could be made more explicit, particularly in the case where the group company that performs the identification is based abroad. ▪ No provisions require a financial intermediary who relies on a third party introducer to ensure that the latter has taken measures to comply with the customer due diligence measures set out in Recommendations 5. ▪ As regards the sectors that fall under the responsibility of the CFB and the OFAP, these authorities should clarify the applicable provisions by inserting express provisions that keep intact the responsibility of the financial intermediary for fulfilling its identification obligations.
10. Record keeping	C	Recommendation 10 is fully observed.
11. Unusual transactions	C	Recommendation 11 is fully observed.
12. DNFBP – R.5, 6, 8-11, 17	PC	*Applicability of the LBA* ▪ Application of the LBA to real estate agents, dealers in precious stones, lawyers, notaries and other legal professions and providers of trust and company services does not conform to the conditions stipulated in Recommendation 12. *Application of Recommendation 5 to designated non-financial businesses other than casinos*: to the extent that designated non-financial businesses and professions are in part classified as financial intermediaries in Switzerland, the problems identified on this point under Recommendation 5 (section 3.2 of the report) also pertain here. They relate to the following subjects: 1. Situations where the customer must be identified 2. Identification of legal persons and legal arrangements 3. Identification of beneficial owners 4. Information on the purpose and the intended nature of the business relationship 5. Reduced or simplified CDD measures for lower risks 6. Unsatisfactory compliance with CDD obligations for new customers *Application of Recommendation 5 to casinos* ▪ The threshold above which a customer conducting a cash transaction must

[3] Swiss authorities indicated subsequently that this SRO approved a new regulation setting out enhanced due diligence procedures in regard to PEPs on 29 July 2005.

be identified is much higher than the FATF limit.

- Current CFMJ regulations do not contain adequate provisions for ongoing due diligence, particularly with regard to monitoring transactions.

Application of Recommendations 6 and 8 to 10 to designated non-financial businesses other than casinos: the problems identified under Recommendations 6, 8 and 9 (sections 3.2 and 3.3 of the report) apply here:

- Recommendation 8: (1) existing measures do not include the obligation of financial intermediaries to have policies or measures to prevent the misuse of non face-to-face relationships in money laundering or terrorist financing schemes, but only alternative means of verifying customer identity; (2) due diligence requirements apply only to the opening of non face-to-face business relationships however not to other non face-to-face transactions.
- Recommendation 9: (1) the scope of the provisions permitting equivalent identification carried out by other corporations in the group could be made more explicit, particularly in the case where the group company that performs the identification is based abroad; (2) no provisions require a financial intermediary who relies on a third party introducer to ensure that the latter has taken measures to comply with the customer due diligence measures set out in Recommendation 5.

Application of Recommendations 6 and 8 to 10 to casinos

- Recommendation 6: the OCFMJ-LBA does not require casinos to conduct enhanced monitoring of business relationships with PEPs.
- Recommendation 8: the OCFMJ-LBA contains no special provisions requiring appropriate methods for managing the special risks associated with non face-to-face business relationships (when the gaming house offers this possibility to its customers, the CFMJ regulates the procedure to be followed through the internal directives of the gaming house).

Application of Recommendation 11 to DNFBP

- The OCFMJ-LBA provisions fixing the rules for dealing with higher-risk transactions or business relationships would seem to be very inadequate, in that they are limited to requiring supplementary clarification only if there are unusual circumstances (without further precision) or if indications that the funds are the proceeds of crime are detected.

Application of Recommendation 17 to DNFBP other than casinos

- Generally, all types of violation of the provisions of the LBA are not equally liable to sanction in a manner proportionate to their seriousness.
- The CFB, the AdC and the OFAP are unable to invoke monetary sanctions, something which hinders proportionality in regard to intermediaries and businesses that are directly and exclusively subject to AdC and to OFAP supervision.
- There are inequalities of treatment according to whether intermediaries are subject to direct supervision of the AdC or are members of an SRO, as well as possibly from one SRO to another.
- The proportionality of the range of sanctions is also affected by the fact that the Penal Code criminalizes certain shortcomings in the observance of the obligations of financial intermediaries and not others.
- The sanctions regime in the insurance sector (see below comments related to Recommendations 29 and 30) appears to be totally ineffective.
- Penal administrative sanctions relating in particular to the absence of suspicious transaction reporting have almost never been imposed up to now (question related to effectiveness).

13. Suspicious transaction reporting	PC	▪ The LBA does not explicitly contain the obligation to report suspicious transactions in cases of funds related to terrorism (even if the OBA-CFB has introduced such an obligation for banks). ▪ The obligation to report suspicious transactions applies to funds which are the proceeds of certain, but not all, predicate offences as defined in Recommendation 1. ▪ For financial intermediaries other than those subject to supervision by the CFB the obligation to report does not cover situations where negotiations are broken off before the opening of the business relationship as such (cases of attempts are not covered). ▪ The system of reporting of suspicious transactions raises very serious problems of effectiveness (especially: low number of reports, associating the freezing of funds with the report, coexistence of an obligation and a right to report, sanctions for breach of obligation to report not always sufficiently dissuasive).
14. Protection & no tipping-off	PC	▪ Protection of the financial intermediary from civil and criminal liability for breach of rules of confidentiality under LBA Article 11, combined with Penal Code Article 305ter, is not sufficiently assured. ▪ The legal prohibition on tipping off the customer as to the fact that a suspicious transaction report has been filed with MROS is only provided for five days while the funds are frozen; however, this period may be extended by judicial authorities. ▪ The automatic blocking of funds when a suspicious transaction report is filed can lead in practice to tipping off the customer.
15. Internal controls, compliance & audit	LC	▪ The OBA-OFAP does not impose any specific internal control requirement in the insurance sector. ▪ There is no general rule concerning the recruitment of staff by financial intermediaries.
16. DNFBP – R.13-15, 17 & 21	PC	*Applicability of the LBA* ▪ Applicability of the LBA to real estate agents, dealers in precious stones, lawyers, notaries and other legal professions and providers of trust and business services is not in compliance with the conditions stipulated in Recommendation 16. *Application of Recommendation 13 to DNFBP* ▪ The obligation to file a suspicious transaction report applies to funds that are the proceeds of certain, but not all, predicate offences as defined in Recommendation 1. ▪ The obligation to report does not cover situations where negotiations are broken off before the opening of the business relationship as such (attempted transactions are not covered). ▪ The STR system poses very serious problems of effectiveness (in particular, the low number of reports filed, the limiting notion of "reasonable suspicion" (*soupçon fondé*), the coexistence of a reporting obligation and a reporting right; sanctions that are not always sufficiently dissuasive to enforce the reporting obligation). *Application of Recommendation 14 to DNFBP* ▪ Protection of the financial intermediary from civil and criminal liability for breach of rules of confidentiality under LBA Article 11, combined with Penal Code Article 305ter, is not sufficiently assured. ▪ The legal prohibition on tipping off the customer as to the fact that a suspicious transaction report has been filed with MROS is only provided for

		five days while the funds are frozen; however, this period may be extended by judicial authorities. ▪ The automatic blocking of funds when a suspicious transaction report is filed can lead in practice to tipping off the customer. *Application fragmentation 15 to DNFBP* ▪ There is no general rule for screening when hiring employees for non-financial professions. *Application of Recommendation 17 to DNFBP other than casinos.* ▪ See the rating and the summary of factors underlying the rating for Recommendation 12 *Application of Recommendation 21 to DNFBP* ▪ For designated non-financial businesses other than casinos, the AdC has set no deadline for SROs to include in their regulations a requirement to classify customers by risk. ▪ There are no provisions applicable to casinos.
17. Sanctions	**PC**	▪ Generally, all types of violation of the provisions of the LBA are not equally liable to sanction in a manner proportionate to their seriousness. ▪ The CFB, the AdC and the OFAP are unable to invoke monetary sanctions, something which hinders proportionality in regard to intermediaries and businesses that are directly and exclusively subject to AdC and to OFAP supervision. ▪ There are inequalities of treatment according to whether intermediaries are subject to direct supervision of the AdC or are members of an SRO, as well as possibly from one SRO to another. ▪ The proportionality of the range of sanctions is also affected by the fact that the Penal Code criminalizes certain shortcomings in the observance of the obligations of financial intermediaries and not others. ▪ The sanctions regime in the insurance sector (see below comments related to Recommendations 29 and 30) appears to be totally ineffective. ▪ Penal administrative sanctions relating in particular to the absence of suspicious transaction reporting have almost never been imposed up to now (question related to effectiveness).
18. Shell banks	**LC**	▪ The Swiss system does not include a provision requiring banks to satisfy themselves that financial institutions among their foreign clientele do not allow shell banks to use their accounts.
19. Other forms of reporting	C	Recommendation 19 is fully observed.
20. Other NFBP & secure transaction techniques	**LC**	▪ Steps being taken to promote modern and secure techniques of money management do not appear adequate in certain respects.
21. Special attention for higher risk countries	**LC**	▪ Certain SROs do not explicitly call for paying increased attention to business relationships and transactions related to NCCTs. ▪ In the insurance sector, the OBA-OFAP does not contain precise provisions relating to Recommendation 21.
22. Foreign branches & subsidiaries	**PC**	▪ The absence of regulation complying with Recommendation 22 appears to be a problem in the insurance sector and in the financial intermediary sector (however in the latter case, this is to a lesser degree since the entities in this sector rarely have branches or subsidiaries abroad). ▪ In the banking sector, the increased attention required in respect to branches and subsidiaries located in countries that do not or insufficiently apply the

		FATF Recommendations could be usefully made more explicit.
23. Regulation, supervision and monitoring	LC	▪ The relationship between the roles of OFAP and the OA-ASA as conceived in practice fails to ensure effective supervision of insurance companies affiliated to the OA-ASA. ▪ The provisions containing the measures to be taken to prevent criminals or their accomplices taking control of financial institutions seem inadequate in the present version of the Insurance Companies Act.
24. DNFBP - regulation, supervision and monitoring	LC	▪ Applicability of the LBA to real estate agents, dealers in precious stones, lawyers, notaries and other legal professionals and providers of trust and company services does not conform to the conditions stipulated in Recommendation 24. ▪ Rules for guaranteeing the independence of audit bodies and for supervising SROs are not sufficiently elaborated and formalised. ▪ With respect to supervision by the SROs, further progress is needed to standardise the quality of supervision. *Application of Recommendation 17 to DNFBP other than casinos.* ▪ See the rating and the summary of factors underlying the rating for Rec. 12.
25. Guidelines & Feedback	C	Recommendation 25 is fully observed.
Institutional and other measures		
26. The FIU	LC	▪ MROS has no power to ask disclosing entities for further information it needs in order to properly perform its functions.
27. Law Enforcement Authorities	C	Recommendation 27 is fully observed.
28. Powers of competent authorities	C	Recommendation 28 is fully observed.
29. Supervisors	PC	*Analysis of the control system in place (factors related to effectiveness)* ▪ The system of oversight of private insurance institutions is weak and non-existent in practice. ▪ The rules to be followed in order to ensure independence of management and control bodies of SROs are not sufficiently developed and formalised. ▪ Examinations by SROs: further progress is still need to ensure greater homogeneity of the quality of examinations. *Powers available to the various supervisory authorities* ▪ In the absence of financial sanctions, the sanctioning powers of administrative supervisory authorities (CFBV, OFAP, AdC) are not sufficiently varied.
30. Resources, integrity and training	LC	▪ OFAP did not carry out or order any AML examinations in 2003 and 2004, for lack of resources.
31. National co-operation	LC	▪ The effectiveness of some of the existing co-operation mechanisms could be improved.
32. Statistics	LC	▪ Switzerland collects statistics on the number of cases and the amount of assets seized or confiscated without distinguishing the categories of cases by type of offence. ▪ There are no statistics available on declarations made regarding cross-border physical transportation of funds or negotiable instruments. ▪ Available statistics do not indicate whether requests for mutual legal assistance concern freezing, seizing or confiscation of assets or whether they were accepted or refused.

		▪ Available statistics do not indicate whether requests for extradition concern freezing, seizing or confiscation of assets or whether they were accepted or refused.
33. Legal persons – beneficial owners	NC	▪ For corporations that have issued registered shares, the shareholders' registry may only be accessed by criminal prosecution authorities in the framework of an ongoing criminal investigation; other competent authorities — in particular, financial regulatory agencies and financial intermediaries — do not have access to these registries. ▪ There is no appropriate measure to ensure transparency as to the shareholders of corporations that have issued bearer shares (unless the corporation is listed on a stock exchange) or to the indirect shareholders behind other forms of corporations having one or more shareholders that are corporations of this type. ▪ There seems to remain a problem of transparency with regard to family foundations whose management is by persons that are not professionals.
34. Legal arrangements – beneficial owners	NA	▪ Swiss authorities confirmed that legal arrangements as foreseen by Recommendation 34 do not exist under Swiss law (*express trust, fiducie, Treuhand, fideicomiso*).
International Co-operation		
35. Conventions	LC	Switzerland has not ratified the Palermo Convention.
36. Mutual legal assistance (MLA)	C	Recommendation 36 is fully observed.
37. Dual criminality	LC	▪ As Switzerland has not categorized certain money laundering predicate offences as crimes, a request for extradition for a money laundering offence based on one of these offences would be refused.
38. MLA on confiscation and freezing	C	Recommendation 38 is fully observed.
39. Extradition	LC	▪ As Switzerland has not categorized certain money laundering predicate offences as crimes, a request for extradition for a money laundering offence based on one of these offences would be refused.
40. Other forms of co-operation	LC	▪ The transmittal of information or documents by the Swiss supervisory authorities (CFB, OFAP, AdC) to their international counterparts is subject to a series of restrictive conditions. Particularly, if requests for information concern individual clients, administrative procedure law is applicable, meaning that the authority handling the request must, unless the customer concerned waives this measure, make a formal decision to allow the transmittal, which may be appealed by the customer before the Federal Tribunal; nevertheless, these constraints appear not to have caused real problems up to now in AML/CFT effectiveness in so far as relevant situations have reportedly not yet occurred.
Nine Special Recommendations		
SR.I Implement UN instruments	PC	▪ Switzerland has not fully implemented S/RES/1373(2001).
SR.II Criminalise terrorist financing	LC	▪ The Swiss Penal Code only covers the financing of an act of criminal violence and not of an individual independently of a particular act. ▪ Certain rare offences defined by the Conventions mentioned in Article 2 (1a) of the Terrorist Financing Convention do not appear to be covered by the terrorist financing offence.
SR.III Freeze and confiscate terrorist assets	PC	▪ Switzerland has no specific procedure allowing it to designate persons under S/RES/1373(2001).

SR.IV	Suspicious transaction reporting	PC	▪ The LBA does not explicitly contain the obligation to report suspicious transactions in cases of funds linked to terrorism (even if the OBA-CFB has introduced such an obligation for banks). ▪ The obligation to report does not cover, for financial intermediaries other than those under the oversight of the CFB, situations in which negotiations are broken off before the opening of a business relationship as such (attempts are not covered). ▪ The system of reporting suspicious transactions raises very serious problems of effectiveness (see comment relating to Rec. 13).
SR.V	International co-operation	LC	See comments on Recommendations 37, 39 and 40.
SR VI	AML requirements for money/value transfer services	C	Special Recommendation VI is fully observed.
SR VII	Wire transfer rules	PC	▪ One permitted exception, admittedly of marginal use, concerns the identification of ordering customers for cross-border transfers. ▪ For domestic transfers (including those to Liechtenstein), there is no specific provision beyond the general obligation on financial intermediaries to keep a complete audit trail of transactions. ▪ Transfers to Liechtenstein, a country with which there is a customs and monetary union, are regarded as domestic transfers, for which there is no specific obligation other than to transmit, if applicable, information relating to the ordering customer to the criminal prosecution authorities. ▪ No specific provision requires intermediary financial institutions to keep all necessary information on the ordering customer with the corresponding transfer, even if this obligation may be regarded as implicit. ▪ The obligations incumbent on banks and other financial institutions relating to the identification and processing of transfers which are not accompanied by full information on the ordering customer are not satisfactory.
SR.VIII	Non-profit organisations	LC	▪ Measures implemented for overseeing associations and transparency of this area are insufficient in respect to the requirements of SR VIII.
SR IX	Cash couriers	NC	▪ The implementation of SR IX in Switzerland is based on mechanisms that are incomplete and inadequate.