CENTRE DE DROIT
BANCAIRE ET FINANCIER

Federal Assembly

Adoption of the AMLA revision

Par Katia Villard le 22 March 2021

Last Friday, the Federal Assembly adopted the revision of the Anti-Money Laundering Act (AMLA), which was initiated following the 4th mutual evaluation report on Switzerland by the FATF. The debates were lively, but in the end, the mountain gave birth to a mouse. The most significant amendments were rejected, in particular the subjection to the AMLA of 'advisors', i.e. those who carry out professional activities related to the creation and management of domiciliary companies, and the lowering of the cash payment threshold for the due diligence obligations of dealers in precious metals and precious stones from CHF 100,000 to CHF 15,000.

For the most part, the changes relevant to the financial sector merely confirm existing practices, such as the verification of beneficial ownership (Art. 4 nLBA) and the updating of client data (Art. 7 para. 1bis nLBA). Similarly, the current case law on the concept of 'reasonable suspicion' triggering the financial intermediary's obligation to report suspected money laundering to MROS is now enshrined in law (Art. 9 para. 1quater nLBA). Furthermore, and in our view this is not a change that will contribute to the effective fight against money laundering, the revision has removed any time limit for the processing of communications by the MROS (Art. 23 para. 5 nLBA). This change will further increase the already significant number of reports pending with the MROS for weeks, thereby increasing the risk that suspicious assets will disappear in the meantime and the uncomfortable situation of the financial intermediary making the report. The 'countermeasure' chosen by the legislator to mitigate this latter disadvantage is to allow the financial intermediary to terminate the business relationship after forty days from the date of the report if it has not received any information from the MROS on the outcome of the report (Art. 9*b* nLBA ; see currently Art. 30 ff. OBA-FINMA). We find this solution only partially satisfactory, as the financial intermediary must make a decision without knowing the outcome of the MROS's analysis of the suspicious nature of the case.

It remains to be seen how the FATF will assess this revision, but in our opinion, it should not be long before further amendments to the AMLA are proposed and the issue of advisors comes back on the table.