CENTRE DE DROIT
BANCAIRE ET FINANCIER

1MDB case

Confirmation of a ban on practicing

Par Lionel Jeanneret le 26 September 2025

In its ruling 2C_368/2023 of August 6, 2025, handed down by five judges but not intended for publication, the Federal Supreme Court upheld the ban on practicing imposed on the former member of the management of Banca della Svizzera Italiana SA ("BSI**"**) more than two years after confirming that imposed on the former *Head of Legal & Compliance* (decision 2C_747/2021, commented on *in* : Braidi, cdbf.ch/1286).

The appellant, former CEO of BSI Singapore Ltd. and member of the management of BSI, challenged the four-year ban (accompanied by procedural costs of CHF 30,000) imposed by FINMA on July 12, 2019, on the basis of Art. 33 FINMASA. The proceedings concern financial flows of more than CHF 12 billion linked to the Malaysian sovereign wealth fund 1MDB and Jho Low.

The FAC dismissed the appeal in 2023, confirming the existence of serious breaches of the AMLA (Art. 6 and 9 aAMLA) and the organization (Art. 3 para. 2 let. a and 3*f* para. 2 LB). The Federal Supreme Court dismissed the appeal and upheld the decision in its entirety, while providing some clarification on (i) FINMA's jurisdiction, (ii) the equality and proportionality of the sanction, and (iii) certain procedural aspects.

In substance, judgment 2C_368/2023 is consistent with judgment 2C_747/2021, but provides some new clarifications and developments.

First, the Federal Supreme Court clarifies the territorial scope of the AMLA by combining the criterion of a sufficient link with Switzerland and the principle of consolidated supervision. It points out that FINMA has jurisdiction not only because of the location of the compliance/KYC functions in Switzerland (see judgment 2C_747/2021, c. 9.3), but also by virtue of group supervision within the meaning of Art. 1 para. 1 let. d FINMA, which makes it possible to deal with situations where transactions are formally "*booked*" abroad but supervised from Switzerland (judgment 2C_368/2023, c. 6.2 s.). This approach confirms that FINMA's jurisdiction extends to all entities within the group as long as key functions are performed from Switzerland, regardless of where the transactions are "booked."

Secondly, the Federal Supreme Court explicitly addresses the issue of equal treatment by examining a complaint based on a communication from FINMA concerning another "top manager" of the BSI group (c. 9 ff.). FINMA had announced that it had decided not to impose a ban on practicing on the basis of this top manager's credible renunciation of any managerial

position in the financial sector (c. 9.3). The Federal Supreme Court explained that FINMA was not required to provide all the reasons for this different treatment and added that the (joint) responsibility of other persons in the violations of supervisory law did not, in principle, play a role in determining the sanction. It confirms the role of general prevention in the proportionality of the sanction and confirms that a ban on practicing remains possible even if the person concerned declares that they will renounce any future position. The reasoning on the appropriateness and necessity of the sanction is expanded, with the Federal Supreme Court relying on doctrine and specifying that the sanction also aims to protect market confidence and functionality (c. 9.3).

Thirdly, the Federal Supreme Court provides clarification on the reasoning behind decisions and the right to be heard. It acknowledges that the absence of specific references in the FAC's judgment to the proceedings before FINMA is regrettable, but considers that this does not constitute a violation of the right to be heard. The appellant sent the Federal Supreme Court a copy of the FAC's judgment with handwritten annotations indicating the supposed references to the proceedings in question. In doing so, the appellant's argument backfires, as the Federal Supreme Court considers, on this basis, that he was able to exercise his rights of defense effectively (c. 4.7).

Finally, judgment 2C_368/2023 addresses the issue of the speed of the proceedings. The Federal Supreme Court conducted a concrete examination of the complaint based on Art. 29 para. 1 of the Constitution, referring to the six-year time limit in cartel law, and concluded that the duration of the proceedings before the Federal Administrative Court (*in casu* 3 years and 8 months) remained acceptable given the complexity of the case.

Based on publicly available information, this ruling appears to put an end to the saga of enforcement proceedings based on supervisory law against the former bodies of BSI.

In practice, this case law shows that, for international financial groups, the fact that the headquarters and the group compliance function are located in Switzerland almost automatically triggers the application of the AMLA and, by extension, the jurisdiction of FINMA, even for booking centers located abroad.

In terms of governance, the quality of risk reports and the accuracy of information provided to FINMA (Art. 29 FINMA Act) are the personal responsibility of the signatory executives (c. 8.1). In terms of defense, it is not sufficient to contest the chain of authorization in general terms, to invoke external audits or the initial inaction of the authority ; it is necessary to demonstrate, with supporting evidence, the absence of one of the elements of accountability (c. 8.1 ff.).

Finally, with regard to the sanction, the renunciation of future activity must be credible and must not vary during the proceedings (c. 9.3). It does not neutralize general prevention. The duration of the ban on practicing may reach the upper end of the maximum range of five years when the seriousness of the facts and the lack of awareness persist. Given the length of the proceedings, it is clear in hindsight that the appellant could have requested that the prohibition on practicing be applied immediately. In fact, the sanction is only now taking effect, more than six years after it was decided.

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