Money laundering and criminal liability in Switzerland: analysis of 10 enlightening court decisions

Money laundering (305bis CC), Supervision Deficiency in Financial Operations (Art. 305ter CC), Beneficial Owner Identity Establishment (Art. 4 AMLA), Breach of Duty to report (37 AMLA)

How were the financial institution, its organs and the individuals held liable?

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Money Laundering (Art. 305bis Swiss Criminal Code (CC))

- Criminal Federal Court Decision SK.2020.62 of 27 June 2022 (MPC (i.e. Federal Prosecution Office) c/ C. A., Bank B., D. and E.): Bulgarian criminal organisation, acceptation and withdrawal of significant cash amounts and numerous wires; amount substracted from Justice of over CHF 19 million; bank and relationship manager found guilty of aggravated money laundering;
- Criminal Federal Court Decision SK.2022.22 of 23 April 2021 (MPC c/ A., B., C., and D): aggravated money laundering, transfers of very significant assets (nominal), KYC explanations confusing and shell companies without clear background, should trigger suspicions, and thus the offense is committed through dolus eventualis;
- Criminal Federal Court Decision SK.2019.5 of 10 May 2019 (MPC and B. c/ Bank A. in liquidation): following leading case PostFinance, the CFC founds that the issuance of a criminal decree does not suffice to found the bank guilty, provided such decree be under opposition and not yet found the bank definitely guilty;

Supervision Deficiency in Financial Operations (Art. 305ter CC)

- Supreme Court Decision; distinction between lack of beneficial owner identification and forged documents offense by omission; designation by the person accused of a phoney beneficial owner; completion of offense of forged documents (titles);

Beneficial Owner Identity Establishment (Art. 4 AMLA)

- Criminal Federal Court Decision SK.2019.73 of 10 December 2021 and Court of Appeals Decision CA.2022.22 of 8 January 2023 (A. c/ MPC): Use of Identification Forms (as per Art. 4 AMLA) breaching such provision constitutes criminal offense of forged documents (titles) as per Art. 251 nr. 1 para. 2 CC;

Money Laundering by Omission (9 AMLA)

Breach of Duty to report (37 AMLA)

- Supreme Court Decision 6B_1176/2022 of 5 December 2023 (A and B. c. Federal Department of Finance/ MPC): possible admission of guilt by negligence by a former bank CEO (and MLRO) who became the Bank Chairman; imputation of warrantor duty based on supervision duty of the Board of Directors as per Swiss Code of Obligations;
- Court of Appeals of Federal Criminal Court Decision CA.2023.31 of 1st December 2024 (A c. FDF): acquittal of Chairman as lacking evidence of his knowledge of the grounded suspicions;
- Federal Criminal Court Decision SK.2022.22 of 15 November 2023 (MPC and FDF c. A): economic background regarding significant banking transactions not clear for the bank; asset transfer from corporate to individual accounts; late reporting; individual liability found within the framework of the late report of a collegiate body;
- Supreme Court Decision 6B_786/2020 of 11 January 2021 (A. c/ MPC and FDF); intensive account movements, Compliance did not consider any suspicion; when suspicions not dissipated by sufficient clarifications, duty to report to MROS exists; guilt of Head of Compliance;
- Supreme Court Decision 6B_1332/2018 of 28 November 2029 (FDF c/ A.): members of collegiate body liable for report as per Art. 9 AMLA are individually liable; inferior bodies may be liable and organizational deficiencies may be reproached;

ZURICH, WEDNESDAY 25 NOVEMBER 2026, 9.00-12.00, ZURICH SHERATON HOTEL / ONLINE

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