

The criminal offence of money laundering

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Article 305bis of the Swiss Criminal Code has been in force since 1 August 1990. It punishes anyone who carries out an act that is capable of frustrating the identification of the origin, the tracing or the forfeiture of assets which he knows or must assume originate from a felony or an aggravated tax misdemeanour. The basic penalty is imprisonment of up to three years or a fine. Serious cases carry imprisonment of up to five years, in particular when the offender acts as a member of a criminal organisation or a gang or earns a large turnover or substantial profit through money laundering for gain.¹

The offence has several characteristic features. It applies to assets that originate from a felony, meaning an offence punishable by more than three years' imprisonment, and since 2016 also to assets from an aggravated tax misdemeanour. It covers acts committed in Switzerland even if the predicate offence was committed abroad, provided the predicate offence is also punishable in the place where it was committed. Intent is required, although it includes the case where the offender must assume that the assets are of criminal origin, a form of conditional intent. Finally, the offence can be committed by the person who committed the predicate offence, which makes self-laundering punishable.

Article 305ter of the Criminal Code adds a second offence: the lack of due diligence in financial transactions. It is committed by a person who, in a professional capacity, accepts, holds on deposit or helps to invest or transfer assets belonging to a third party without establishing the identity of the beneficial owner with the diligence that the circumstances require. The penalty is imprisonment of up to one year or a fine. The same article grants financial intermediaries a right to report suspicions of criminal origin to the authorities, even when they are not obliged to do so.²

Under Article 102 of the Criminal Code, companies, including banks, can be prosecuted for money laundering if the offence was committed within

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the company and the company failed to take all reasonable organisational measures to prevent it. This corporate liability is independent of the punishment of individuals. The fine can reach five million francs, in addition to the forfeiture of the proceeds. In 2022, the Federal Criminal Court convicted a major Swiss bank under this provision for failing to prevent money laundering by a Bulgarian criminal organisation, the first conviction of a major bank on this basis. The case was subsequently the subject of appeal proceedings.³

1 Notes

1. Art. 305bis Swiss Criminal Code (SR 311.0) on money laundering, in force since 1 August 1990; aggravated tax misdemeanour as predicate offence since 1 January 2016 (Art. 305bis para. 1bis). To be verified. ↩
2. Art. 305ter Swiss Criminal Code on insufficient diligence in financial transactions and the right to report (para. 2). To be verified. ↩
3. Art. 102 para. 2 Swiss Criminal Code on the liability of undertakings for money laundering and other listed offences, irrespective of the liability of natural persons (fine up to CHF 5 million); judgment of the Federal Criminal Court of 27 June 2022 concerning Credit Suisse (Bulgarian cocaine network) and subsequent appeal proceedings. To be verified. ↩

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