

The real estate business is just a money laundering system!

...or so you might think, if you believe what poorly-informed politicians say.

To find out how complex this topic is, keep reading this pamphlet.

The situation

For several months now, the question being debated in various councils and political camps is whether the real estate industry – or at least, real estate brokers – should be placed under the Anti-Money Laundering Act (AMLA). Beyond this often mentioned demand, what remains unclear is which other market participants would have to fall under this act. Because the players in the real estate market are highly diverse: private individuals, institutional sellers, real estate brokers, consultants, executors, lawyers, notaries, legal advisors and public officials, project developers, builders, architects, banks and insurance companies all deal with properties or are involved in real estate transactions as intermediaries buyers or sellers. We would like to provide a survey of the salient issues, and enumerate both the advantages and the disadvantages of an additional regulation.



What are the goals of the Anti-Money Laundering Act (AMLA)?

This law is intended to prevent monies connected to a criminal offence from flowing into the general economy. In principle, financial intermediaries – like banks and insurance companies – are required to meticulously review the financial origin of the funds. Monies that fall under the Anti-Money Laundering Act are currently defined under the Anti-Money Laundering Ordinance (Section 7 et seq., AMLO) as follows:

- assets that are connected to an offence or are the proceeds of a felony;
- assets from individuals or businesses that serve the financing of terrorism or are subject to the power of disposal of a criminal organisation

The current confusing situation

Ambiguity is clouding foreign, non-criminal assets in Switzerland for which no taxes are paid in the country of origin (black money). These assets do not fall under the Anti-Money Laundering Act in force today. There are no current studies, no facts and no evidence that such funds are entering the Swiss real estate market in a systematic manner or on a large scale. Moreover, the purchase of real estate with such funds, in most cases, would primarily involve a change in investment purpose, but not an influx of problematic assets.

In the future, will foreign countries deem such assets to be criminal? At the moment, the domestic debate about tightening the country's Anti-Money Laundering Act – and, among some groups, the desire to subject parts or even

the entire real estate industry to the Act – is not targeting assets that go untaxed in the countries of origin.

Recently, certain voices in the national government are also demanding an overhaul of today's Anti-Money Laundering Act. They claim that current laws are no longer expedient, and organized crime has continued to evolve. They further allege that the provisions of today's Act do not sufficiently hinder criminals from laundering money.

Three good reasons why the real estate business should fall under the Money Laundering Act

REASON No. 1

Basically, larger sums of cash are constantly flowing into Switzerland for various reasons (security, taxes, etc.). These are initially deposited at banks and insurance companies. If these institutions fail to uphold their duty to examine the origin of the funds, then assets of criminal origin could potentially flow into the real estate market as well. The real estate market offers no other protective filter that would prevent money of a criminal origin from trickling into the circulation of financial intermediaries.

REASON No. 2

Financial centers are already regulated quite well. So, investors with assets of a criminal origin avoid these financial centers. Instead, they try to invest their money in alternate markets. Nothing is certain about these alleged cash flows; proponents of the Anti-Money Laundering Act consider the following markets – in addition to the real estate market – to be at risk: commodities, diamonds and gemstones trade; the arts market; the hotel and restaurant businesses. No evidence exists to support the assertion that the structured laundering of money is occurring in

these markets in Switzerland. A handful of isolated cases should not be construed as a market structure. Still, the law's proponents haggle about each bit of minutiae, and they would prefer to subject any party who comes into contact with large assets to the Anti-Money Laundering Act. This would cast not only the real estate market into the limelight, but jewelers, art gallery owners and commodity traders as well. Therefore, the question should be asked: where to draw the line and what funds should be made available to the intermediary in order to run the checks on the origin of client assets?

REASON No. 3

If the Anti-Money Laundering Act were to impose a verification duty on the real estate industry, this could also lead to some benefits. A new barrier would arise from the market participants' new duty, one that would impede unqualified actors from entering the market. Because today, any newcomer can operate in the real estate market and attend to his or her business – even if they possess no relevant prior education or knowledge. Qualified and serious real estate professionals would only too gladly welcome an additional market barrier, so that in the future, not just anyone can call themselves a “real estate professional” or “real estate broker” unless they have the requisite education and training. In countries like the USA and the UK, only certified and trained professionals have access to a commensurately regulated market. This creates a foundation of trust, and helps ensure that real estate transactions continue to be conducted by professionals only. These individuals would be trained in all aspects of the Anti-Money Laundering Act, and would undertake to enforce its obligations. The opportunistic, non-professional broker and the private seller would no longer be able to act as market participants without the appropriate credentials.



10 good reasons why the real estate business should NOT fall under the AMLA

REASON No. 1

Nearly 100% of the assets used in Swiss real estate sales enter the market through Swiss banks or insurance companies – even if the buyer does not need a mortgage. Through the AMLA, the legislature has already introduced a system that works like a protective ring, safeguarding financial market participants. This ring protects all parties involved from coming into contact with assets of unknown origin.

REASON No. 2

With cash transactions, the elements of money laundering would have to be reviewed. A complete ban on cash payments for real estate could put a simple and unbureaucratic halt to the admittedly unknown, and likely insignificant, number of cash payments in real estate sales. The cash used for the purchase would have to pass through a financial institute controlled by the AMLA.

REASON No. 3

Surveys of all real estate market participants (banks, lawyers, notaries, brokers) confirm that as of today, few to virtually no sales are transacted in cash. In addition, if there is a well-founded suspicion that the AMLA has been violated, then any actor can file a report with law enforcement officials today.

REASON No. 4

By purchasing a property, no money has yet been laundered. Only upon the sale of the property would such funds return to circulation. With a ban on cash transactions, the money flows back into the regulated financial market. This market reports any suspect cases, and once the assets enter the market, it would in turn authenticate the origins of these funds.

REASON No. 5

If money laundering is suspected, then the state can immediately arrange for a sales restriction to be placed on the subject property's title in the land register.

This instrument can block the valuable assets much more effectively than if an arrest were placed on a bank account: money has feet, it can be transferred from one bank to the next within minutes. Immoveable property – real estate, that is – is precisely that: immobile.

REASON No. 6

Oponents argue that money laundering has led to overinflated real estate prices, which cause market distortions. Nothing substantiates this argument. A handful of sensational transactions (see “Incidentally...” below) potentially tied to money laundering are cited over and over again to support this argument. These few transactions do not reflect the market, and they have no general driving effect on prices. In point of fact, it is tax, economic, and political factors that bear the responsibility for today's high real estate prices.

REASON No. 7

7. Real estate brokers have to ask themselves just how, exactly, are they supposed to check their customers under the AMLA? Because under normal circumstances, the brokers are not privy to a buyer's financial circumstances, and only rarely play an active role in real estate financing. Unlike the banking business, real estate sales involve one-time transactions between two mutually independent actors who do not know each other. Although private notaries in a few cantons occasionally intervene and manage the flow of cash, brokers have neither rights of inspection nor powers of disposition over cash flows. What remains completely obscure is the issue of how brokers could authenticate the funds used in a transaction according to the AMLA. In contrast to banks, who attend to and have known their customers for years, real estate involves a brief customer relationship which typically ends after the sale.

10 good reasons why the real estate business should NOT fall under the AMLA

REASON No. 8

Since real estate brokers in Switzerland handle only an estimated 30-50% of total real estate transactions, subjecting them to the AMLA would not be effective. In addition to brokers, properties are also sold by project developers, consultants, architects, general contractors, private individuals, etc. Subjecting only brokers to the AMLA would induce them to engage in other roles in the transaction. The proper approach would be to place the entire real estate industry – including all of its actors and its legal transactions – under the law, i.e., all real estate transactions, including inheritances and donations.

REASON No. 9

With an understandable degree of incredulity, real estate professionals are asking themselves why they, of all people, should have to be placed under this act. They point to other industries in which, to settle an invoice, cash transactions are the order of the day. One must also suspect the buyers who engage in the arts

market, at the jewelers, by the furniture store or at the auto dealership, for such buyers could also be washing criminal assets or transferring assets into non-regulated markets.

REASON No. 10

The cost-benefit ratio for an AMLA duty imposed on the real estate market appears, at the moment, to be unclear, and should be scrutinized with a critical eye. Who pays for these additional clarifications? How much extra costs will be generated for how few suspect cases? Is the Swiss real estate market truly a lure for dirty money? What is the available evidence for this theory? Are the currently known suspect cases only the tip of the iceberg, or are they the only cases that exist? The legislature should give full consideration (and rely on facts while doing so) if one is truly attempting to solve a problem here, or just creating an administrative hurdle for an otherwise well-functioning market.

Outlook for the future

In contrast to the financial market, the fact that there is no supervisory authority for the real estate market (yet) is problematic. Since real estate is traded much more slowly, and because the sales restriction in the land register is a highly effective tool, such an institution is still not absolutely necessary – even in the future. The discussion about incorporating the real estate industry into the AMLA (along with other business sectors not yet subject to it) can only proceed with a consistent and effective enforcement of

the controls and checks of the institutions currently subject to the AMLA.

If the AMLA is to be applied to the real estate market, then one must hope that the Swiss Real Estate Association SVIT will have a leading role in the review of real estate transactions. We must also assure that any provisions are applied to all market participants equally, so that no group of professionals is placed at a disadvantage.

Incidentally...

There apparently exists one often quoted case of a dubious property sale on Lake Geneva. One son-in-law of the president of Kazakhstan is said to have acquired a property at an exaggerated price. Still, what remains unknown is whether the sale was conducted as an all-cash transaction. It is probably safe to assume that the total price – several dozen million francs – was not delivered in steamer trunks. Similarly, the matter of money laundering (in the purchase of real estate) is not yet proven or present. Attempts to clarify these issues are currently underway, in order to determine if the funds used are subject to the AMLA, and if, in fact, this is a case of money laundering. A sales restriction has been attached to the property's title until the courts can legally establish the circumstances of the case.

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