

# PANORAMIC **SANCTIONS**

Switzerland



LEXOLOGY

# Sanctions

Contributing Editors

**Alexandra Melia and Elliot Letts**

Step toe LLP

**Generated on: April 9, 2024**

The information contained in this report is indicative only. Law Business Research is not responsible for any actions (or lack thereof) taken as a result of relying on or in any way using information contained in this report and in no event shall be liable for any damages resulting from reliance on or use of this information. Copyright 2006 - 2024 Law Business Research

# Contents

## Sanctions

### GENERAL FRAMEWORK

- Legislation
- Autonomous versus international regimes
- Types of sanction imposed
- Countries subject to sanctions
- Non-country specific regimes
- Counter-terrorism sanctions
- Anti-boycott laws
- Scope of application
- Competent sanctions authorities
- Business compliance
- Guidance

### ECONOMIC AND FINANCIAL SANCTIONS

- Asset freezes
- General carve-outs and exemptions
- List of targeted individuals and entities
- Other restrictions
- Licensing – scope
- Licensing – application process
- Approaching the authorities
- Reporting requirements

### TRADE SANCTIONS

- General restrictions
- General exemptions
- Targeted restrictions
- Licensing – scope
- Licensing – application process
- Approaching the authorities

### ENFORCEMENT AND PENALTIES

- Reporting violations
- Investigations
- Penalties
- Recent enforcement actions

### UPDATE AND TRENDS

- Emerging trends and hot topics

# Contributors

## Switzerland

Schellenberg Wittmer

**Schellenberg  
Wittmer**

George Ayoub

[george.ayoub@swlegal.ch](mailto:george.ayoub@swlegal.ch)

Julie Raneda

[julie.raneda@swlegal.sg](mailto:julie.raneda@swlegal.sg)

Suyeonne Cho

[e.k.suyeonne.cho@swlegal.ch](mailto:e.k.suyeonne.cho@swlegal.ch)

## GENERAL FRAMEWORK

### Legislation

#### What domestic legislation enables economic, financial and trade sanctions to be implemented in your jurisdiction?

Historically in Switzerland, the local implementation of international sanctions was exclusively and directly made in the form of specific ordinances enacted by the Federal Council (the Swiss government) and based directly on article 184(3) of the Swiss Federal Constitution (Cst). These autonomous measures were enacted unilaterally to safeguard Switzerland's interests.

Since 1 January 2003, the Federal Act of 22 March 2002 on the Implementation of International Sanctions (the Embargo Act (EmbA)) has been the main legal basis for the implementation of sanctions measures in Switzerland. Sanctions in accordance with the EmbA aimed at implementing international sanctions imposed by the UN Security Council Resolutions, the Organisation for Security and Cooperation in Europe or Switzerland's most significant trading partners. The EmbA provides the general legal framework for implementing trade sanctions in Switzerland (such as the purpose of the sanctions, jurisdiction, the obligation to provide information, monitoring, data protection, mutual legal assistance and administrative assistance, legal protection, and criminal provisions). Specific enforcement or coercive measures against a state, individuals or legal entities are regulated in separate ordinances of the Federal Council based on this act and its annexes.

Since 4 March 2016, the Federal Council automatically implements changes to UN sanctions lists in Switzerland (instead of implementing each amendment through an internal administrative procedure) ([see Ordinance on the Automatic Transfer of UN Security Council Sanctions Lists](#)).

The authority in charge of the implementation of the coercive measures depends on the nature of the measures. Sanctions in accordance with the EmbA are regulated by the State Secretariat for Economic Affairs (SECO), while measures enacted unilaterally on the basis of article 184(3) Cst are implemented by the Federal Department for Foreign Affairs (FDFA).

Whether based on article 184(3) Cst or the EmbA, the names of the individuals, groups of companies or entities targeted by sanction measures are listed in Annexes to the specific ordinances and are updated regularly.

Finally, the Federal Act of 18 December 2015 on the Freezing and the Restitution of Illicit Assets held by Foreign Politically Exposed Persons (Foreign Illicit Assets Act (FIAA)) enables Switzerland to freeze, confiscate and retribute assets of politically exposed persons (PEPs) and their close associates, in particular in the event of the collapse of a political regime, if there is reason to suspect that these assets were acquired through acts of corruption, criminal mismanagement or other offences.

**Law stated - 31 May 2023**

### Autonomous versus international regimes

## Does the domestic legislation empower your government to implement an autonomous sanctions regime or are only those sanctions adopted by international institutions and organisations imposed?

Pursuant to article 1(1) EmbA, the Swiss Confederation may enact coercive measures to comply with international law, and in particular to safeguard human rights. These measures aim at implementing mandatory resolutions adopted by the UN Security Council or sanctions issued by the OSCE or by Switzerland's main trading partners.

In addition, the Federal Council has the power to enact unilateral or autonomous and urgent sanctions to safeguard Switzerland's interests based on article 184(3) Cst. These measures have a limited duration.

Thus, domestic legislation allows both the implementation of sanctions adopted by international institutions and organisations and the implementation of autonomous sanctions.

**Law stated - 19 February 2024**

## Types of sanction imposed

### What types of sanction are imposed in your jurisdiction?

Only targeted sanctions are applied in Switzerland, which means that sanctions are intended to be directed at specific individuals, companies or organisations, or restrict trade of specific key commodities instead of targeting an entire state and its population. These are referred to as 'smart sanctions'.

Pursuant to article 1(3) EmbA, sanctions may include:

- direct or indirect restrictions imposed on transactions involving goods and services, payment and capital transfers, and the movement of persons, as well as scientific, technological and cultural exchanges; and
- prohibitions, licensing and reporting obligations as well as other restrictions of rights.

In practice, the main types of sanctions imposed in Switzerland are the following:

- financial sanctions concern monetary and financial activities and consist essentially in the freezing of funds and other financial assets, the ban on transactions and investment restrictions;
- trade restrictions (commonly referred to as embargoes) relate to certain categories of particular goods (eg, arms, diamonds, oil, lumber) or services (including financial or technical assistance);
- travel restrictions for nationals of targeted states;
- diplomatic constraints targeting state officials (eg, cancelling of visas, exclusion from the activities of international agencies);
- cultural and sports restrictions; or
- air traffic restrictions.

Some of the aforementioned transactions may be permitted subject to prior authorisation or reporting. For instance, the import, export and transit of war materiel require a licence from the Confederation (article 17, paragraph 1 of the Federal Act of 13 December 1996 on [War Material](#); War Material Act). Regarding financial sanctions, the authority designated in the applicable ordinance (ie, the SECO or the FDFA) may exceptionally authorise exemptions, such as payments from frozen accounts.

Law stated - 19 February 2024

## Countries subject to sanctions

### Which countries are currently the subject of sanctions or embargoes in your jurisdiction?

At the time of writing this chapter, the countries that are the subject of sanctions enacted by Switzerland are the following ([see SECO website](#)):

- Iraq;
- Myanmar;
- Zimbabwe;
- Sudan;
- Congo;
- Belarus;
- North Korea;
- Lebanon;
- Iran;
- Somalia;
- Guinea;
- Libya;
- Syria;
- Guinea-Bissau;
- Central African Republic;
- Russia;
- Yemen;
- Burundi;
- South Sudan;
- Mali;
- Venezuela;
- Nicaragua;
- Haiti; and
- Moldova.

Law stated - 19 February 2024

### **Non-country specific regimes**

What other sanctions regimes are currently in force in your jurisdiction which are not country specific?

Sanction regimes currently in place and are not country-specific are related to international trade in diamonds and counterterrorism.

Law stated - 19 February 2024

### **Counter-terrorism sanctions**

What sanctions and prohibitions are imposed in your jurisdiction in relation to terrorist activities?

International efforts to combat the financing of terrorist activities mainly rest with the UN Security Council. UN member states must adopt procedures for freezing the assets of individuals and organisations listed as terrorists.

Switzerland implements the measures enacted by UN Security Council Resolutions via the existing regime and procedures relating to anti-money laundering legislation or in ordinances based on the EmbA.

To date, the Federal Council has enacted two ordinances based on the EmbA related to specific counter-terrorism sanctions:

- [Measures against persons and entities associated with Osama bin Laden, the 'Al-Qaida' group or the Taliban](#); and
- [Measures against certain persons in connection with the attack on Rafik Hariri](#).

Law stated - 19 February 2024

### **Anti-boycott laws**

Are any blocking or anti-boycott laws in place in your jurisdiction?

There are no blocking or anti-boycott laws in place in Switzerland.

Law stated - 19 February 2024

### **Scope of application**

Who must comply with sanctions imposed in your jurisdiction? Do sanctions have extra-territorial effect?



Article 184(3) Cst and the EmbA do not contain any indication as to the personal or territorial scope of sanctions. According to Swiss scholars, Swiss sanctions apply to individuals and legal entities that are located in Switzerland or conduct business from Switzerland, or whose acts have an effect in Switzerland, thus strictly applying the principle of territoriality.

By the treaty of 29 March 1923, the territory of the Principality of Liechtenstein has united with the Swiss customs territory. As a result of this customs union, Swiss sanctions apply to Liechtenstein. Other than this exception, sanctions imposed in Switzerland have no extra-territorial effect.

**Law stated - 19 February 2024**

### **Competent sanctions authorities**

#### **Which government authorities in your jurisdiction are responsible for implementing and administering sanctions?**

The Federal Council enacts the sanctions by way of specific ordinances.

The implementation and supervision of measures decided by the Federal Council lies with the SECO (if based on the EmbA) or the FDFA (if based on article 184(3) Cst).

These authorities may be assisted by various agencies such as Federal or Cantonal police forces, the Federal Customs Administration or the Federal Office for Migration.

**Law stated - 19 February 2024**

### **Business compliance**

#### **Are businesses in your jurisdiction required to put in place any systems or controls in order to ensure compliance with sanctions?**

There is no specific legislation that requires that businesses in Switzerland put in place monitoring systems or specific controls to ensure compliance with sanctions. However, in practice, companies established in Switzerland are subject to the Swiss sanctions regime and must ensure that they comply with obligations incumbent upon them by virtue of the specific ordinances imposing sanctions measures.

More specifically, each business transaction in Switzerland must comply with the sanctions regime and must be assessed depending on (1) the business partners, (2) the products exported, (3) the origin and destination of the goods and, to a certain extent, (4) their final use (in particular, for businesses commercialising goods that can be considered as dual-use goods (ie, goods that may be used for both civilian and military purposes)) (article 3(b) of the Federal Act of 13 December 1996 on the [Control of Dual-Use Goods and of Specific Military Goods and Strategic Goods](#); Goods Control Act).

Indirect elements may also trigger the application of the Swiss sanctions regime and must thus also be checked against the relevant transaction. For instance, this may be the case of entities that do not appear on the sanctions list but are owned or controlled (directly or indirectly) by listed individuals or entities, or when the account on which relevant payments

are made is opened with a bank which is itself listed. In such cases, the situation may be unclear and it is worth engaging with the SECO to check how the situation should be assessed (the answer may depend on the specific details of the transaction, such as the amounts to be paid and the purpose of said transaction).

To remain compliant, companies carrying out business with a foreign entity or individual must perform a complete analysis of the situation for each contemplated transaction by verifying that:

- the country of destination is not subject to trade sanctions measures;
- the goods commercialised are not listed;
- the parties involved in the transaction as well as the end customer are not listed; and
- the end use of the goods is not prohibited or subject to authorisation.

The situation must be monitored on an ongoing basis. This is also the case for transactions contemplated with a business partner with whom business was done in the past as the sanctions regime may evolve. The situation must be assessed for each new transaction (not only in the event of a new business partner or a new country).

**Law stated - 19 February 2024**

## Guidance

### Has your government issued any guidance on compliance with the sanctions framework in your jurisdiction?

The SECO has issued the following guidance on compliance with trade sanctions:

- [Best Practices Internal Control Programme for Export Controls \(ICP\)](#);
- [Strategic trade control outreach and industry compliance](#);
- [Export controls - Dealing with intangible technology transfer](#);
- [Export Control in a nutshell](#);
- [Merkblatt zu Ausfuhren von Dual-Use-Werkzeugmaschinen in die Russische F&ouml;deration](#) ('Information sheet on exports of dual-use machinery to the Russian Federation', available in German only);
- [Auslegungshilfe für Sanktionsmassnahmen](#) ('Interpretation guide for sanction measures', available in German, French, and Italian only); and
- [FAQs on Swiss sanctions](#) (available in German, French, and Italian only).

**Law stated - 19 February 2024**

## ECONOMIC AND FINANCIAL SANCTIONS

### Asset freezes

## In what circumstances may a person become subject to asset freeze provisions in your jurisdiction? What dealings do asset freeze provisions generally restrict in your jurisdiction?

A person or entity may become subject to asset freeze provisions in Switzerland when it is considered a formal or de facto agent of a state subject to sanctions in Switzerland. The Federal Council has the authority to enact such coercive measures pursuant to article 2(1) of the Embargo Act (EmbA) and 184(3) Swiss Federal Constitution. All individuals subject to sanctions are listed in Annexes to each specific ordinance enacted by the Federal Council. In addition, a compiled list of all sanctioned individuals, entities and organisations ([Sanctions/Embargos \(admin.ch\)](#)), together with a user's guide that allows to perform more specific searches ([Searching for subjects of sanctions \(admin.ch\)](#)), can be found on the State Secretariat for Economic Affairs (SECO) website.

Furthermore, in accordance with the Foreign Illicit Assets Act (FIAA), a person may become subject to asset freeze provisions in Switzerland if he or she is a politically exposed person (PEP) or a close associate of a PEP to prevent the withdrawal of any illicitly acquired assets that have entered the Swiss financial centre, for the purposes of mutual legal assistance or confiscation (articles 3 and 4 of the Foreign Illicit Assets Act (FIAA)).

Financial sanctions in Switzerland are usually three-fold and include (1) the freezing of assets and economic resources; (2) the prohibition of making available funds to targeted persons and (3) the obligation to report frozen assets.

**Law stated - 19 February 2024**

## General carve-outs and exemptions

### Are there any general carve-outs or exemptions to the asset freeze provisions in your jurisdiction?

The Federal Council may stipulate exceptions to the asset freeze provisions to support humanitarian activities or to safeguard Swiss interests (article 2(1) EmbA).

The authority designated in the applicable ordinance, ie, the SECO or the Federal Department for Foreign Affairs (FDFA), may exceptionally authorise payments from frozen accounts, transfers of frozen capital and the release of frozen economic resources to safeguard Swiss interests or prevent cases of hardship.

**Law stated - 19 February 2024**

## List of targeted individuals and entities

### Do the competent sanctions authorities in your jurisdiction maintain a list of individuals and entities blocked under asset freeze restrictions?

The Federal Council maintains lists of the individuals under asset freeze measures. These lists are issued as annexes to the specific ordinances.

In addition, an overall list of sanctioned individuals, entities and organisations is available on the SECO's website ([Sanctions/Embargos \(admin.ch\)](#)) together with a user's guide ([Searching for subjects of sanctions \(admin.ch\)](#)).

Law stated - 19 February 2024

### Other restrictions

#### What other restrictions apply under the economic and financial sanctions regime in your jurisdiction?

In some instances, specific dealings are restricted, such as:

- the ban on financial transactions related to North Korea's nuclear and missile programmes (eg, North Korea);
- authorisation requirement for the acquisition of a participation or the creation of a joint venture in the nuclear field (eg, Iran);
- a prohibition on securities and money market instruments (eg, Russia);
- a prohibition on granting loans (eg, Russia);
- a prohibition on accepting deposits of more than 100,000 Swiss francs from Russian nationals or legal entities or individuals in Russia (eg, Russia);
- a mandatory declaration of existing deposits exceeding 100,000 Swiss francs (eg, Russia);
- a prohibition on transactions with the Central Bank of Russia (eg, Russia);
- a prohibition on the provision of public financing or financial assistance for trade with or investment in Russia (eg, Russia); and
- a prohibition on the provision of specialised international messaging systems for financial transactions, in particular SWIFT (eg, Russia).

Law stated - 19 February 2024

### Licensing – scope

#### Are the competent sanctions authorities in your jurisdiction empowered to issue a licence to permit activities which would otherwise violate economic and financial sanctions? If so, what is the extent of their licensing powers and in what circumstances will they issue a licence?

The authority designated in the applicable specific ordinance (ie, the SECO or the FDFA) may exceptionally grant a licence to permit activities that would otherwise breach economic and financial sanctions.

In accordance with the specific ordinances enacted by the Federal Council, the SECO may exceptionally authorise payments from frozen accounts, transfers of frozen capital and the release of frozen economic resources to:

- prevent cases of hardship;

- honour existing contracts;
- honour claims under an existing judicial, administrative or arbitral measure or decision; or
- to promote regional peace and stability.

**Law stated - 19 February 2024**

### **Licensing – application process**

#### **What is the application process for an exemption licence? What is the typical timeline for a licence to be granted?**

In accordance with the specific ordinances enacted by the Federal Council, the authority designated in the applicable specific ordinance (ie, the SECO or the FDFA) shall issue a licence after consulting the competent offices of the FDFA and the Federal Department of Finance and, where applicable, after notifying the competent committee of the UN Security Council and in accordance with the decisions of said committee.

The timeline for a licence to be granted by the SECO varies and depends on the complexity of the matter. In simple cases, a licence may be granted within one week. However, in complex cases, it could take up to more than a year for the licence to be granted since the SECO will carry out some research and liaise with the competent committee of the UN Security Council.

**Law stated - 19 February 2024**

### **Approaching the authorities**

#### **To what extent is it possible to engage with the competent sanctions authorities to discuss licence applications or queries on economic and financial sanctions compliance?**

It is possible to reach out to the SECO on a no-name basis and request advice regarding a specific situation or transaction. For instance, it is possible to enquire about the conditions to be fulfilled to be granted a licence and the documents to be filed in support of the licence application.

It is also possible to request confirmation by the SECO that a contemplated transaction is compliant with the relevant ordinance. Such confirmation is generally granted in the form of an informal ruling. In complex and high-profile matters, it is also possible to request a meeting with the SECO officials.

Those requests are handled by the SECO in a swift manner (generally between one and 10 days), depending on the complexity of the matter.

**Law stated - 19 February 2024**

### **Reporting requirements**

## What reporting requirements apply to businesses who hold assets frozen under sanctions?

Anyone who is directly or indirectly affected by coercive measures in accordance with the EmbA must provide the supervisory authorities appointed by the Federal Council with the information and documentation that is required for a comprehensive assessment or supervision to be carried out (article 3 EmbA). Similar obligations exist in the specific ordinances enacted based on article 184(3) of the Cst.

Furthermore, in accordance with article 7(1) FIAA, persons or institutions who hold or manage in Switzerland assets of persons affected by an asset freeze must immediately report these assets to the Money Laundering Reporting Office Switzerland (MROS), Switzerland's central money laundering office.

Finally, persons or institutions in Switzerland who have knowledge of assets of persons affected by an asset freeze by virtue of the functions they perform, must report those assets immediately to the MROS.

**Law stated - 19 February 2024**

## TRADE SANCTIONS

### General restrictions

#### What restrictions apply in relation to the trade of goods, technology and services?

In Switzerland, trade in war material and military equipment has long been subject to a strict state control. If the international sanctions relate only to war material and military equipment, Switzerland does not enact specific ordinances since the export of these goods can be prohibited pursuant to the War Material Act (WMA) and the Goods Control Act (GCA).

The following are deemed to be war material in accordance with article 5(1) and (2) WMA:

- weapons, weapons systems, munitions and military explosives; and
- equipment that has been specifically conceived or modified for use in combat or for the conduct of combat and that is not as a general rule used for civilian purposes; individual components and assembly packages, which may also be partially processed, provided it is discernible that these components cannot be used in the same form for civilian purposes.

Dual-use goods are defined as goods that may be used both for civilian and military purposes (article 3(b) GCA).

Trade restrictions will, typically, include the prohibition of the sale or purchase, supply, export and transit of certain listed goods, technologies or software. The targeted goods may, for instance, be luxury goods, dual-use goods, goods intended for military purposes or for internal repression as well as certain goods used in the oil, gas, petrochemical or nuclear industry.

**Law stated - 19 February 2024**

## General exemptions

### Do any exemptions apply to the general trade restrictions?

The import, export and transit of war material require a licence from the Swiss Confederation (article 17(1) WMA). However, according to article 17(4) WMA, no licence is required by those who:

- import war material intended for use by the Swiss Confederation;
- bring firearms, their components or accessories, or their munitions or munitions components into Swiss territory under the legislation on weapons; and
- import explosives, pyrotechnic devices or propellant powder.

With regard to the dual-use goods, specific military goods and related technology, no general exemption is provided in the GCA.

**Law stated - 19 February 2024**

## Targeted restrictions

### Have the authorities in your jurisdiction imposed any trade sanctions against dealing with any particular individuals or entities?

Swiss authorities have not imposed any trade sanctions against dealing with any particular individual or entity outside of the individuals and entities listed in the Annexes to the relevant ordinances.

**Law stated - 19 February 2024**

## Licensing – scope

### In what circumstances may the competent sanctions authorities in your jurisdiction issue a licence to trade in goods, technology and products that are subject to restrictions?

A licence is granted by the SECO if the trade does not contravene public international law and is not contrary to the principles of Swiss foreign policy and its international obligations. In considering whether a licence should be issued, the SECO considers peacekeeping, international security and regional stability, as well as the human rights' situation in the recipient country.

With regard to war material, the WMA provides for a dual licence system. The manufacture of, trade in or brokering of war material for recipients abroad requires a licence, which ensures that the planned activity is not contrary to Switzerland's national interests. Conversely, a specific licence is required for the import, export or transit of war material, brokering and trade in war material for recipients abroad.

**Law stated - 19 February 2024**

## **Licensing – application process**

### **What is the application process for a licence? What is the typical timeline for a licence to be granted?**

Licences are granted by the SECO. Since 1 October 2014 all applications (requests or preliminary enquiries) relating to dual-use goods, war material as well as special military goods are recorded, processed and administered on [Elic](#), an electronic licensing system managed by the SECO.

The timeline for a licence to be granted by the SECO varies for each case and depends on the complexity of the matter. In simple cases, a licence may be granted within two or three days. However, in complex cases, it could take several months for the licence to be granted since the SECO will carry out some research and consult other departments of the Federal Administration (eg, the FDFA or the Federal Department of Finance) before granting the licence.

**Law stated - 19 February 2024**

## **Approaching the authorities**

### **To what extent is it possible to engage with the competent sanctions authorities to discuss licence applications or queries on trade sanctions compliance?**

The licencing process is conducted through [Elic](#). This platform provides a helpdesk that can be reached either by telephone or email and with which it is possible to engage in discussions on licence applications or queries.

**Law stated - 19 February 2024**

## **ENFORCEMENT AND PENALTIES**

## **Reporting violations**

### **Is there a requirement to report violations to the authorities? If reporting is not obligatory, is it encouraged in any event?**

In accordance with the specific ordinances enacted by the Federal Council, persons or institutions who hold or manage assets or have knowledge of economic resources in Switzerland subject to an asset freeze must report these to the State Secretariat for Economic Affairs (SECO) without delay.

The report must include the name of the beneficiary, the purpose and the value of the assets and economic resources that may be subject to an asset freeze order.

The FIAA also provides that persons or institutions who hold or manage in Switzerland assets of persons affected by an asset freeze within the meaning of article 3 must immediately report these assets to Money Laundering Reporting Office Switzerland (MROS) (article 7 (1) Foreign Illicit Assets Act (FIAA). Furthermore, persons or institutions in Switzerland who have knowledge of assets of persons targeted by an asset freeze by virtue



of the functions they perform must report those assets immediately to MROS (article 7 (2) FIAA).

**Law stated - 19 February 2024**

## Investigations

**Which authorities are responsible for investigating sanctions violations?  
What is the extent of their investigatory powers?**

The SECO investigates, prosecutes and tries, in accordance with the Federal Act of 22 March 1974 on Administrative Criminal Law, violations of sanctions stemming from the Embargo Act (EmbA) or the specific ordinances enacted by the Federal Council. The SECO may also order the freezing or forfeiture of assets.

Upon request of the SECO, the Office of the Attorney General of Switzerland may initiate an investigation provided that this is justified by the seriousness of the offence (article 14(2) EmbA).

**Law stated - 19 February 2024**

## Penalties

**What are the potential penalties for violation of sanctions?**

The consequences of non-compliance with compulsory sanctions measures are contained either explicitly in the specific ordinances based on article 184(3) Cst or by referral to the EmbA in the ordinances based on this act. Non-compliance with compulsory measures can have regulatory and/or criminal consequences.

Sanctions often include financial sanctions such as the freezing of assets and financial resources and an obligation to inform the authorities of the frozen assets and resources. Financial intermediaries thus have an obligation not only to stay informed of sanctions in force and apply the required coercive measures, but also to comply with the obligation to inform the relevant authorities.

The Swiss Financial Market Supervisory Authority (FINMA) can, therefore, intervene in cases of violation of obligations arising from sanctions especially when deficiencies in the bank's organisation arise or when the bank's reputation within the meaning of article 3(2)(c) of the Swiss Banking Act of 8 November 1934 is at stake. FINMA can impose the measures it deems most appropriate to enforce compliance with the law, having regard to the principle of proportionality. The measures available range from a reprimand to specific orders to restore compliance with the law or even to the revocation of licences.

Non-compliance can also lead to criminal prosecution by Swiss authorities. A wide range of criminal penalties is possible depending on the type and gravity of the violation. Articles 9 to 13 EmbA provide for criminal penalties for breach of the provisions of the ordinances and draws a distinction between violations of the provisions of the ordinances as such and the non-compliance with the obligation to report. In the former case, offenders can be sentenced to fines of up to 1 million Swiss francs or prison terms of up to five years (article 9 EmbA), or both. In the latter, the sentence is a fine of up to 100,000 francs (article 10 EmbA).

Attempts, aiding and abetting are also subject to prosecution. Property and assets may also be forfeited. If a violation under the EmbA also qualifies as an offence under other acts, such as the War Material Act, the Nuclear Energy Act, etc, then the criminal provisions of the act that provide for the most severe penalty apply.

The ordinances based on article 184(3) Cst, which impose the freezing of funds and other financial assets provide that whoever wilfully or negligently disposes of funds or of financial assets or transfers them abroad can be sentenced to a fine of up to 10 times the value of these funds or financial assets. An Individual who wilfully or negligently breaches the duty to report assets under their supervision or management, or has knowledge thereof, can be sentenced to a fine of up to 20,000 francs.

Finally, both the ordinances based on article 184(3) Cst and the EmbA provide for corporate liability by reference to article 6 of the Federal Act of 22 March 1974 on Administrative Criminal Law.

**Law stated - 19 February 2024**

### **Recent enforcement actions**

#### **Have there been any significant recent enforcement cases? What lessons can be learned from these cases?**

On 4 September 2023, the SECO rendered a decision upholding the seizure of 13 consignments on suspicion of violation of article 14b paragraph 1 (Annex 18) of Ordinance on Measures connected with the Situation in Ukraine of 4 March 2022 (the Ordinance) and article 6 paragraph 1 (Annex 4) of the Ordinance on Measures against Belarus of 16 March 2022, which prohibit the sale, supply, export, transport and transit of certain luxury goods and machines to Russia or Belarus. The authorities had seized the consignments upon the defendant's declaration. The SECO held that the objective elements of both provisions were fulfilled, as the goods had been either effectively delivered to a recipient in Moscow or the transport for delivery and export to Russia or Belarus could be considered to have been completed. The subjective elements of the offence were also established as the defendant was found to have breached her duty of care to check whether the country of destination was affected by sanctions and whether the contents of the consignment were sanctioned, and thus acted negligently within the meaning of article 12 paragraph 3 Swiss Civil Code. Considering the number of violations, the rather modest amount involved amounting to 15,619.18 Swiss francs, the principle of proportionality, and the willingness to cooperate, the defendant was ordered to pay a fine of 7,810 Swiss francs and the costs of the proceedings in the amount of 1,310 Swiss francs.

In an earlier decision dated 22 June 2023, the SECO examined the case of a consignment containing food colourings being delivered to Russia. The Federal Office for Customs and Border Security had notified the consignment to the SECO for a suspected violation of article 11a paragraph 1 (Annex 23) of the Ordinance in conjunction with article 9 EmbA. The SECO stated that the accused had fulfilled both the objective and the subjective elements of the offence (negligence) of article 11a paragraph 1 of the Ordinance. The legal entity was ordered to pay a fine of 4,500 Swiss francs and the costs of the proceedings of 1,260 Swiss francs.

A set of investigations is also underway to address suspected violations of the Ordinance by several commodity trading companies that are said to have circumvented the sanctions by means of subsidiaries abroad.

Law stated - 19 February 2024

## UPDATE AND TRENDS

### Emerging trends and hot topics

Are there any emerging trends or hot topics in sanctions law and policy in your jurisdiction?

Following the Russian intervention in Ukraine in February 2022, the Federal Council has adopted the EU's successive sanctions packages. Through the latest amendment of the Ordinance on 1 February 2024, the Federal Department of Economic Affairs, Education and Research (EAER) brought Switzerland in line with the EU's 12th sanctions package by introducing the following measures:

- a phased ban on the purchase and import of Russian diamonds;
- a ban on certain goods that generate significant revenue for the Russian state (eg, pig iron and Liquefied Petroleum Gas) and goods that could strengthen Russia's military and technology capabilities or enhance Russia's industrial sector (eg, certain chemicals, lithium batteries and certain motors for unmanned aerial vehicles);
- a ban on Russian nationals and individuals living in Russia from controlling companies in Switzerland that provide cryptoasset services;
- additional measures to support the enforcement of the oil price cap for Russian crude oil and petroleum products and to counteract attempts to circumvent the cap; and
- a ban on providing software to manage enterprises and software for industrial design and manufacture to Russian companies.

Law stated - 19 February 2024