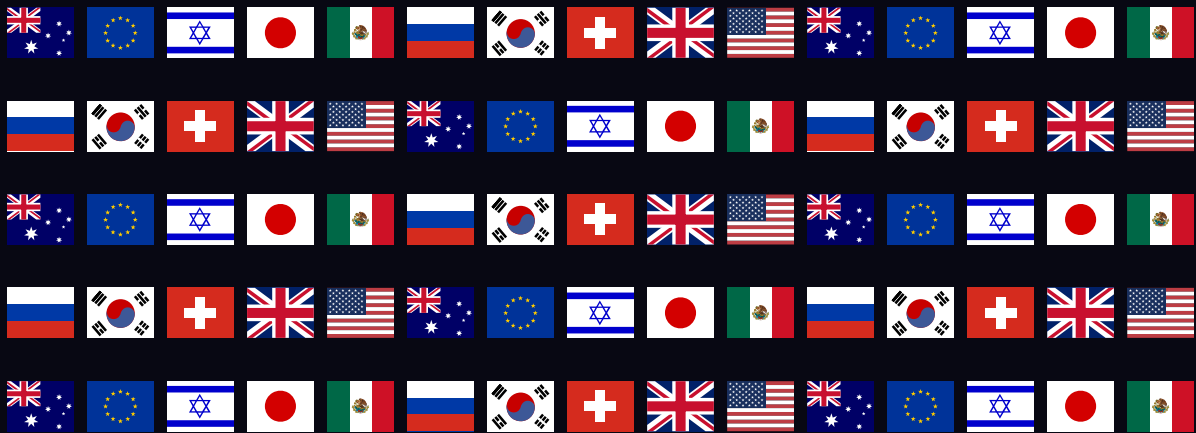


SANCTIONS

Switzerland



Sanctions

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Quick reference guide enabling side-by-side comparison of local insights into economic, financial and trade sanctions including national and international regimes; types of sanction imposed; targeted countries, entities and individuals; scope of application and competent authorities; business compliance and reporting requirements; asset freezes; exemptions; reporting of violations; investigations, penalties and recent enforcement actions; and other emerging trends.

Generated 13 April 2022

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Table of contents

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

Exemption licensing – scope

Exemption licensing – application process

Approaching the authorities

Reporting requirements

TRADE SANCTIONS

General restrictions

General exemptions

Targeted restrictions

Exemption licensing – scope

Exemption licensing – application process

Approaching the authorities

ENFORCEMENT AND PENALTIES

Reporting violations

Investigations

Penalties

Recent enforcement actions

UPDATE AND TRENDS

Emerging trends and hot topics

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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)) is 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 by Switzerland's most significant trading partners. The EmbA provides the general legal framework to implement 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, 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 on a regular basis.

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 - 17 March 2022

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 in order 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 - 17 March 2022

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, in the ban on transactions and in 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 are permitted but 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 payments from frozen accounts.

Law stated - 17 March 2022

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;
- measures in connection with the situation in Ukraine;
- Yemen;
- Burundi;
- South Sudan;
- Mali ;
- Venezuela; and
- Nicaragua.

Law stated - 17 March 2022

Non-country specific regimes

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

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

Law stated - 17 March 2022

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 are required to adopt procedures for freezing the assets of individuals and organisations listed as terrorist.

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 Embargo Act.

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.

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 - 17 March 2022

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, thus strictly applying the principle of territoriality.

By 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 - 17 March 2022

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 police forces, the Federal Customs Administration or the Federal Office for Migration.

Law stated - 17 March 2022

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, when entities that do not appear on the sanctions list but are owned or controlled (directly or indirectly) by listed individuals or entities, or if the bank account on which payment is made is opened in a bank that is itself listed as a targeted entity. 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
- that 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 - 17 March 2022

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; and
- Merkblatt zu Ausfuhren von Dual-Use-Werkzeugmaschinen in die Russische Föderation (PDF, 226 kB, 24.02.2021) ('Information sheet on exports of dual-use machinery to the Russian Federation', available in German only).

Law stated - 17 March 2022

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) the Embargo Act (EmbA) and 184(3) Swiss Federal Constitution (EmbA and 184(3) Cst). 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 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 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 - 17 March 2022

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 in order 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 - 17 March 2022

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 - 17 March 2022

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);

- prohibition on securities and money market instruments (eg, Ukraine);
- prohibition on granting loans (eg, Ukraine);
- prohibition on accepting deposits of more than 100,000 Swiss francs from Russian nationals or legal entities or individuals in Russia (eg, Ukraine);
- mandatory declaration of existing deposits exceeding 100,000 Swiss francs (eg, Ukraine);
- prohibition on transactions with the Central Bank of Russia (eg, Ukraine);
- prohibition on the provision of public financing or financial assistance for trade with or investment in Russia (eg, Ukraine); and
- prohibition on the provision of specialized international messaging systems for financial transactions, in particular SWIFT (eg, Ukraine).

Law stated - 17 March 2022

Exemption 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 - 17 March 2022

Exemption 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 Federal Department of Foreign Affairs 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 - 17 March 2022

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 in order 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 - 17 March 2022

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 on the basis of 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 - 17 March 2022

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 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 materials 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 such 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 - 17 March 2022

General exemptions

Do any exemptions apply to the general trade restrictions?

The import, export and transit of war materiel 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 materiel 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 - 17 March 2022

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 ordinances listed above.

Law stated - 17 March 2022

Exemption 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 State Secretariat for Economic Affairs (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 takes into account 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 - 17 March 2022

Exemption 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 materials 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 - 17 March 2022

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 - 17 March 2022

ENFORCEMENT AND PENALTIES

Reporting violations

Is there a requirement to report violations to the authorities (either to self-report or to report others)? 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).

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 - 17 March 2022

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 Materials Act, the Nuclear Energy Act, etc, then the criminal provisions of the act that provides 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 his or her 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 - 17 March 2022

Recent enforcement actions

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

There are two important cases that relate to the listing or delisting procedure.

Mr Al-Dulimi

In the European Court of Human Rights (ECHR) Grand Chamber judgment in the case of Al-Dulimi and Montana Management Inc v Switzerland (application No. 5809/08), the ECHR held, by a majority, that there had been a violation of article 6 § 1 (right to a fair hearing) of the European Convention on Human Rights.

The case concerned the freezing of the assets in Switzerland of Mr Al-Dulimi and the company Montana Management Inc pursuant to UN Security Council Resolution 1483 (2003), which provided for sanctions against members of the former Iraqi regime.

The ECHR found that none of the provisions of Resolution 1483 (2003) expressly prohibited the Swiss courts from ensuring that the measures taken at a national level in order to implement the Security Council's decisions complied with human rights. Adding individuals and entities to the lists of persons subject to the UN sanctions may trigger serious violations of the European Convention on Human Rights for those individuals and entities concerned.

In the ECHR's view, before implementing those measures, the Swiss authorities had a duty to ensure that the listings were not arbitrary. The Swiss Supreme Court had merely verified that the applicants' names actually appeared on the Sanctions Committee's lists and that the assets concerned belonged to them. The applicants should have been given at least a genuine opportunity to challenge their inclusion in the lists by submitting appropriate evidence to a court. Consequently, the ECHR held that the very essence of their right of access to a court had been violated.

Lastly, noting that the UN sanctions system had received very serious, reiterated and consistent criticisms, in particular in relation to the procedure for the listing of individuals and legal entities and the manner in which delisting requests were handled, the Court found that access to the delisting procedure could not replace appropriate judicial scrutiny at the level of the respondent state or even partially compensate for a lack thereof.

Rami Makhoul

The case of Rami Makhoul, cousin of Bashar al-Assad, relates to the implementation of the European Union sanctions against Syria by the Swiss authorities.

On 9 May 2011, the Council of the European Union adopted the Decision 2011/273/CFSP concerning restrictive measures in relation to the situation in Syria.

On 18 May 2011 and 8 June 2012, the Federal Council adopted ordinances imposing measures against Syria (ie, the freezing of assets and ban on entry into and transit through Switzerland of individuals listed in the annexes). Rami Makhoul was listed in those annexes as cousin of Bashar al-Assad.

On 21 January 2013, Rami Makhoul requested the release of his frozen assets in Switzerland, which was considered by the Swiss authorities as a request to be removed from the list to the annex to the Federal Council's ordinance dated

8 June 2012.

By decision dated 10 October 2017, the Swiss Supreme Court relied on the ECHR Grand Chamber's judgment in the case of *Al-Dulimi and Montana Management Inc v Switzerland* and found that, in accordance with article 6, paragraph 1 ECHR, the national courts are entitled to ensure that the inclusion in international sanctions lists is not arbitrary.

The Swiss Supreme Court reached the conclusion that the previous court (the Federal Administrative Court) was right to consider that the listing of Rami Makhlouf was not arbitrary. More specifically, the Federal Administrative Court had established, based on the 'high degree of likelihood', that Rami Makhlouf had close proximity to the Syrian government since he was mentioned in numerous media sources. His appeal was therefore dismissed.

The lesson to be learned from this decision is that the national courts' discretion in analysing whether a listing is arbitrary is limited to the high degree of likelihood.

Law stated - 17 March 2022

UPDATE AND TRENDS

Emerging trends and hot topics

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

Several provisions of the EmbA should be revised to take into account amendments to the Swiss Criminal Code of 21 December 1937 (SCC), which was revised in 2007 and 2018. As it stands, in case of violation of a sanction, it is necessary to combine the provisions of the EmbA with the provisions of the SCC to determine the penalties incurred. A revision of the EmbA, therefore, appears necessary to that extent.

To remedy this situation, the Federal Council published, on 25 April 2018, a draft of a new Federal law aimed at harmonising penalties throughout the Swiss legal order and adapting federal criminal provisions to the amended penalty provisions provided in the SCC.











Following the Russian intervention in Ukraine in February 2022, the Federal Council decided to adopt, on 28 February 2022, the packages of sanctions imposed by the European Union (EU) on 23 and 25 February 2022 with respect to this intervention. These mainly concerned trade and financial sanctions.

As consequence of criticism in Switzerland regarding the efficiency of the measures, the Federal Council approved, on 4 March 2022 the full revision of the Ordinance on measures in connection with the situation in Ukraine, thus adopting the EU sanctions in force at that time.

On 16 March 2022, the Federal Council approved the total revision of the Ordinance on measures against Belarus, further to the EU's extension of its sanctions against Belarus from 2 and 9 March 2022 in view of the country's involvement in Russia's intervention in Ukraine. The newly adopted measures concern goods and financial services, in particular.

Law stated - 17 March 2022

Jurisdictions

	Australia	Clyde & Co LLP
	European Union	Blomstein
	Israel	Yigal Arnon & Co
	Japan	Mori Hamada & Matsumoto
	Mexico	Galicia Abogados SC
	Russia	Dechert LLP
	South Korea	Bae, Kim & Lee LLC
	Switzerland	Schellenberg Wittmer
	United Kingdom	Simmons & Simmons
	USA	Seward & Kissel LLP