



Building knowledge

TRUSTEES IN SWITZERLAND WANT AML AUDITORS WITH A DEEPER UNDERSTANDING OF TRUSTS, ACCORDING TO A RECENT STUDY. ANDREW McCALLUM ADDRESSES THESE CONCERNS

The latest STEP Switzerland and Swiss Association of Trust Companies (SATC) membership survey¹ highlighted that trustees would welcome more trust-related knowledge of self-regulatory organisation (SRO) auditors, as this would increase the quality and efficiency of the anti-money laundering audits. So what is the current regulatory environment in Switzerland?

Trust companies, along with other financial intermediaries, are subject to the federal anti-money laundering regulations. Trust companies have the choice of having their anti-money laundering compliance audited directly by the Swiss Financial Market Supervisory Authority (FINMA) or by an approved SRO. Regardless of who does the anti-money laundering audit, the scope of that audit testing is restricted to assessing compliance with anti-money laundering regulations. That is to say, the anti-money laundering auditors'

responsibility does not extend to statutory financial audits. Nor, given that the Swiss trust industry is not regulated, does the SRO auditors' remit extend to other aspects of trustee compliance and regulation that practitioners in other jurisdictions will be familiar with, such as code of conduct, etc. In short, the involvement of SROs and their auditors today is limited in scope and, as such, a misunderstanding of the SROs' role could have contributed to the survey responses.

The SROs who conduct the anti-money laundering audits are not new entities; many are institutions that have existed for a long time. However, they are multidisciplinary organisations that are not specific to the trust industry, i.e. none of the SROs are run directly by the trust industry. Furthermore, given that the Hague Convention only recently came into force in Switzerland, trusts are still a relatively new concept for some SROs and their auditors to consider.

Do not forget that the SROs are faced with a common-law trust, when Switzerland is a civil-law jurisdiction.

The effect of the above is that in some cases the SRO and their auditors' knowledge and exposure to trusts is still in its infancy

'TRUSTS ARE STILL A RELATIVELY NEW CONCEPT FOR SOME SELF-REGULATORY ORGANISATIONS AND THEIR AUDITORS TO CONSIDER'

as the trust industry continues its growth in Switzerland. Therefore, it is not difficult to understand why some trustees highlighted the need for increased trust knowledge of their SRO auditors.

Concerning the survey response that the auditors themselves have insufficient knowledge of trusts, this can in part



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be explained by the structure of SROs' audit function. Some SRO auditors are registered auditors in Switzerland, i.e. where the SRO concerned sources its auditors from the professional auditor sector. While some of those auditors may not, in their daily practice, have extensive exposure to the operational aspects of trusts, they are at least familiar with dealing with many different types of entities and industries and so can exhibit the flexibility needed to address the auditing of structures like trusts. In some cases, however, the SRO auditors have limited knowledge of trusts and of the English language prevailing in the trust documentation.

'STEP OR SATC COULD TAKE THE LEAD IN EDUCATING SROs TO INCREASE KNOWLEDGE SURROUNDING TRUSTS'

Some of the lack of knowledge also comes from the nature of the audit industry in Switzerland in general. It is only within the past couple of years that all financial auditors in Switzerland have had to be registered on a federal public register², with inclusion on that register being strictly controlled by the Swiss authorities. Before this change, only financial auditors in certain licensed and regulated industries, such as banking, were subject to similar

STEP ACTIVITY

'STEP's Professional Development Committee is considering proposals to provide professional development for those who work with trustees, such as bankers, regulators, tax officials and compliance officers. STEP has already produced the STEP Certificate for Financial Services, which has proved popular in the UK and leads to affiliation of STEP, but which requires substantial study, something in the order of four months. However, the Committee has approved a more general, shorter course, an introduction to trusts, which will meet the needs of these important trustee stakeholders and would be relevant to all jurisdictions, including Switzerland. In addition, STEP is already working on an anti-money laundering course relevant to all STEP members.'

Rosemary Marr TEP, Professional Development Committee Chair



controls. This change was an attempt to regulate the audit market to allow only properly qualified auditors to conduct statutory financial audits (qualified being defined against both exam and experience criteria).

Furthermore, the Swiss *Code of Obligations* was amended relatively recently, when certain entities were brought into scope for statutory financial audit for the first time. For example, Swiss charitable foundations are now included (trusts are not). The audit requirements were formalised into threshold-based rules whereby small and micro entities can elect to not have any statutory financial audit ('opt out') if they fall below the legal thresholds of balance-sheet size and turnover, and there are fewer than ten employees.

While Switzerland has grown as a trust jurisdiction in size and importance, there is no specific SRO for the trust industry and the current SRO audit mandate is restricted to anti-money laundering compliance. Additionally, many SRO auditors' exposure to trusts and trust companies has been limited to date because of how niche the trust business is. Given this, it is not surprising that the SROs and their auditors can be criticised as having insufficient knowledge in relation to the trust industry.

POTENTIAL SOLUTIONS

The ideal solution is to use SRO personnel and auditors who have operational experience of running, and auditing, trust companies and trusts. This can be driven by various methods. First and foremost, there is an education point that should be addressed. I believe STEP or SATC could take the lead in educating SROs and their auditors to increase the knowledge surrounding trusts. This is not an attempt to verse auditors in trust law, but rather to ensure that they have the necessary tools to be able to do their anti-money laundering compliance audits more efficiently.

Certainly some efforts have been made by the profession to address the issue, and STEP already has a strong, functioning educational system that could be expanded into providing education on trusts and trust companies to SROs and auditors alike on an ongoing basis.

A second solution could be that only Swiss registered auditors should perform the anti-money laundering audits, similar to what exists today for the statutory financial audits. However, care should be taken to

not simply replace some of the current SRO auditors with registered auditors who, while qualified and correctly shown on the Swiss auditor register, have no real operational knowledge of trusts, nor adequate anti-money laundering experience. The difficulty here could be to find a sufficiently large pool of Swiss registered auditors who fulfil the necessary criteria. Put another way, it is not worth replacing one problem with another.

Perhaps more fundamental is the question of the Swiss trust industry setting up its own SRO. This would take the SRO function out of the present SRO structures and into something more appropriate, i.e. into something more aligned with the trust industry rather than remaining within a multidisciplinary organisation as is currently the case. The SRO watchdog would then be better placed to talk the same language as its members. Should the Swiss trust industry have an appetite to become self-regulated for anti-money laundering purposes, this would be a logical starting point.

IN CONCLUSION

There are various reasons why many of the respondents to the joint STEP and SATC members' survey made their conclusions in relation to SROs and their auditors. Many of the solutions can be addressed by educating the current incumbents, although who should bear the cost of that education must also be considered. If the complaints cannot be addressed in the current structure, perhaps an alternative should be considered whereby only registered auditors can fulfil the role. Sitting above all this is whether this should be viewed as a precursor to a wider set of self-regulation principles for the Swiss trust industry in general. In the meantime, however, the Swiss trust industry has an obligation to assist the current SROs in finding adequate solutions.

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1 Online at www.step.org/reports
2 www.revisionsaufsichtsbehoerde.ch