

Banking - Switzerland

Privacy protection and banking secrecy

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On July 1 2015 a revision of the Federal Act on Banks and Saving Banks entered into force, which increases criminal liability for the violation of banking secrecy. While the theft, sale or transfer of bank data was already prohibited under Article 47 of the act, third parties benefiting from stolen data were in principle not penalised by the act, although incitement and attempts at incitement were punishable.

Under the amended act, intentional disclosure of data covered by banking secrecy or exploitation of such information for a third party's benefit, will be subject to a penalty of up to three years' imprisonment or a monetary fine. The explanatory report to the amendment states that foreign tax authorities cannot be penalised under this provision as they are generally not punishable. However, employees of a foreign authority could be caught by this provision in certain cases.

The amended law also introduces a qualified crime – anyone who benefits financially from the use of the information or who receives a financial advantage for a third party when violating banking secrecy is subject to a penalty of up to five years' imprisonment.

These amendments have been prompted by a series of cases where bank employees sold client data to third parties, including foreign tax authorities. In certain instances, such behaviour was caught by provisions on:

- the breach of manufacturing or trade secrecy (Article 162 of the Criminal Code);
- unauthorised access of data (Article 143 of the Criminal Code); or
- industrial espionage (Article 273 of the Criminal Code).

However, the Swiss authorities considered these tools to be insufficient.

In order to reinforce public trust in the Swiss financial marketplace, similar amendments have been passed in the Act on Collective Investment Schemes and the Act on Stock Exchanges. However, the sharpening of Swiss financial law on bank client data could lose its significance as early as 2018 with the implementation of the standard for automatic exchange of information in tax matters, in line with Switzerland indications to the Global Forum.

The popular initiative 'Yes to the protection of privacy' attempts to enshrine bank secrecy in the federal Constitution. However, it is not supported by the Swiss Bankers Association, which considers that the protection of privacy has already been sufficiently regulated and the proposed constitutional text will render future necessary adaptations to the fiscal laws extremely difficult.

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