



Swiss banking secrecy for the customer's protection

Since bank customers have a right to privacy concerning their personal financial affairs, banks have a duty to keep confidential all facts that involve their customers. This right of the customer and corresponding obligation on the part of the bank is called bank customer secrecy. However, secrecy is not, and has never been, absolute because it does not protect criminals. In fact, banks provide information to domestic and foreign legal authorities in accordance with procedures stipulated by law. Nevertheless, adherence to this basic principle and the feature of the statutory regulated disclosure obligations are of great importance to Swiss banks. Swiss banks consider it to be of paramount importance for their financial centre to be free of criminal activity. Bank customer secrecy is a benefit offered by the Swiss financial centre, but is by no means the only one. Switzerland's attractiveness as a financial centre is enhanced by factors such as above-average performance, high-quality service, cost transparency, and good value.

Legal basis

Article 47 of the Federal Law Relating to Banks and Savings Banks, enacted on November 8, 1934, prohibits anyone who functions as an officer, employee, mandatory, liquidator or commissioner of a bank, as a representative of the Federal Banking Commission, or as an officer or employee of a recognized auditing company, from disclosing any information that a bank customer entrusts to them in this capacity. Although the law speaks of bank secrecy, the term "bank customer secrecy" is really more accurate since it concerns a right of bank customers.

Purpose of legal regulation

- » To protect the bank customer's privacy with respect to financial affairs. Protecting customers – not banks (for this reason, as indicated previously, "bank customer secrecy" is a more accurate definition than "bank secrecy").
- » To protect a customer's civil rights under Swiss law, similar to the protection afforded by a doctor or a lawyer.
- » No protection for criminals.
- » Consequences of violating bank customer secrecy (all violations, whether intentional or resulting from negligence, are punishable).
- » Imprisonment for up to six months or a fine of up to CHF50,000 (CHF30,000 in the case of negligence).

When bank customer secrecy is lifted

- » Bank customer secrecy is not and has never been absolute. Exceptions are legally regulated.
- » Information must be disclosed by the banks in the following situations:
 - in criminal investigations (suspicions of money laundering, membership in a criminal organization, theft, fraud, blackmail, etc.);
 - when providing international legal assistance (criminal investigations conducted abroad);
 - in bankruptcy proceedings; or
 - in civil proceedings (inheritance and divorce, for example).

When bank customer secrecy is not lifted

- » In cases of tax evasion (the Swiss tax system is based on the principle of self-declaration);
- » As an impediment to tax evasion (withholding tax at source is the highest rate in Europe – 35%).

Numbered accounts are not anonymous!

Contrary to popular opinion and misconception, there is no such thing as an anonymous account in Switzerland. Bank customers must identify themselves when opening a numbered account, and even these accounts are subject to disclosure when criminal investigations are involved.

Conclusions

- » The underlying principle of bank customer secrecy remains inviolate. It is and will remain a part of the service provided to customers.
- » Bank customer secrecy adapts to changing circumstances, such as in the case of legal proceedings.
- » Bank customer secrecy offers no protection for criminals because of the increasing number of instances in which disclosure is obligatory, in the efforts to fight organized crime.
- » Swiss banks have every interest in ensuring that their financial centre remains clean.

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