

De-risking and the burden on clients

*Dr Alexander Ressos, TEP
Attorney-at-Law (Switzerland), Solicitor (Hong Kong),
Solicitor (England & Wales)*

The demanding Swiss regime has a side that is rarely discussed in legislation but felt daily by clients: the decision of banks to avoid risks by avoiding clients. This phenomenon, known as de-risking, describes the termination or refusal of business relationships with entire categories of clients whose risks a bank considers too costly to manage. Such categories have included clients from certain countries, politically exposed persons, money transmitters, charities active in conflict regions and businesses in the field of crypto-assets and digital assets. The Financial Action Task Force has warned that de-risking can push transactions into less transparent channels and exclude legitimate clients from the financial system.¹

For a private client, the burden of compliance appears in many forms. The opening of an account may take weeks and require documents on the origin of wealth going back many years, such as sale contracts, inheritance documents, tax returns and audited accounts. Existing relationships are reviewed periodically. When information is missing, the bank may freeze transactions until it is provided. A bank may also decide to terminate a relationship without giving reasons, which often surprises clients with long and unblemished relationships.

The termination of a relationship after a report to MROS is subject to particular rules. Since the revision of 2023, a financial intermediary may terminate a relationship if MROS has not informed it within a certain period that the report has been forwarded to a prosecution authority. In that case, the withdrawal of significant assets must take a form that allows the authorities to follow the trail, such as a transfer to an identified account. The client is not informed of the report and therefore often does not understand why the relationship has ended.²

For lawyers who assist clients in these situations, the work combines compliance and advocacy. It consists in preparing the documentation that

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a bank needs before it is requested and in explaining unusual structures or transactions in a way that a compliance department can follow. Where a relationship has been terminated, the task is to secure the orderly transfer of the assets. The best protection for a client is a well-documented history of the origin of his wealth. Basel, with its old family fortunes and its international industrial wealth, has many clients for whom this documentation is available, provided someone takes the trouble to assemble it.

1 Notes

1. On de-risking and the statements of the FATF on de-risking (2014) and on the unintended consequences of the FATF standards (2021), see the FATF publications. To be verified. ↩
2. On the termination of business relationships after a report to MROS (Art. 9b AMLA, in force since 1 January 2023, termination after 40 working days without notification by MROS; withdrawal of significant assets only in a form allowing the trail to be followed), see SR 955.0. Period and details to be verified. ↩

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