

The practitioner's view

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The Swiss anti-money laundering regime is today one of the most demanding in the world. Its application requires financial intermediaries to invest heavily in compliance staff, systems and training, at a cost that has contributed to the consolidation of the industry. For clients, the regime means that the opening of an account requires extensive documentation of their identity, their wealth and its origin, and that unusual transactions are questioned.

The regime also creates legal risks for the persons who apply it. Compliance officers who fail to report a suspicion can be prosecuted under Article 305ter or even Article 305bis of the Criminal Code, while those who report too readily expose their clients to investigations and their institutions to claims. The boundary between diligent clarification and intrusive suspicion, between a justified report and a defensive one, is a matter of judgement that the law cannot fully define. The author, who has acted both as an external compliance officer and as defence counsel in money laundering proceedings, knows both sides of this boundary.

The history of the Swiss financial centre, from the discretion of the *Daig* to the due diligence of the twenty-first century, is a history of the gradual shift of the burden of proof. Formerly, the authorities had to prove that assets were of criminal origin before a bank had to act. Today, the bank must satisfy itself that the assets are of legitimate origin before it accepts them. This shift has changed the culture of Swiss banking and made the financial centre more resistant to abuse, at the cost of a bureaucracy that its founders could not have imagined.

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