

Bank client secrecy in current law

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Article 47 of the Banking Act still exists, in revised form. The Wikipedia article on bank client secrecy states that it now provides for a custodial sentence of up to three years for an intentional breach of secrecy, and a fine of up to CHF 250,000 for a breach committed through negligence.¹ The circle of persons bound by secrecy and the offences covered have been widened over successive revisions, notably in order to punish the exploitation and disclosure of unlawfully obtained banking data.²

Bank client secrecy is nevertheless not absolute. It yields to the duties to testify or to provide information laid down in federal and cantonal legislation, in particular in criminal and civil proceedings. It also yields to the reporting duties under the Anti-Money Laundering Act, to international mutual assistance in judicial and administrative matters, and to the automatic exchange of information in tax matters. Part E will trace the way in which these exceptions have multiplied since the end of the twentieth century, to the point of profoundly transforming the reach of secrecy vis-à-vis foreign authorities.

Bank client secrecy nonetheless retains an important function. It protects the private sphere of clients against third parties, competitors and the public. It prohibits bank employees from disclosing information without a legal basis. It contributes to the trust that clients place in their banks. In a world where personal data has become a coveted resource, this protection remains entirely relevant.

Worked example. A bank employee who passes a client's account statements to a third party without a legal basis now faces a custodial sentence of up to three years. In 1934, the same breach exposed the employee to six months' imprisonment or a fine of CHF 20,000. The sixfold increase in the maximum custodial sentence illustrates the growing importance attached to the protection of banking data, even as the reach of secrecy vis-à-vis foreign tax authorities has narrowed.

1 Notes

1. Article “Secret bancaire”, Wikipédia (fr), cited above. ↩
2. Art. 47 para. 1 of the Banking Act (BankA; SR 952.0), version of 1 January 2009 (lexfind.ch): “Any person who intentionally: a. in their capacity as a governing body member, employee, agent or liquidator of a bank, or as a governing body member or employee of an audit firm, discloses a secret entrusted to them or of which they have become aware by reason of their office or employment; b. incites another to breach professional secrecy, shall be liable to a custodial sentence of up to three years or to a monetary penalty”; para. 2: fine of up to CHF 250,000 in the case of negligence; Wikipedia (fr), “Secret bancaire en Suisse”: the law of 1934 provided for “imprisonment of up to six months or a fine of 50,000 Swiss francs” and Art. 47 “was not the subject of any particular debate” in Parliament; for the later extension of the provision to the disclosure and exploitation of unlawfully obtained data, see the current wording of Art. 47 para. 1 let. c and para. 1bis BankA. ↩

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