

Professional secrecy under Swiss law

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The professional secrecy of the lawyer rests on two provisions. Art. 321 SCC punishes lawyers, defence counsel, notaries and their auxiliaries who disclose secrets confided to them in their professional capacity. Art. 13 of the Federal Act on the Freedom of Movement for Lawyers (BGFA, *Legge federale sulla libera circolazione degli avvocati*, LLCA) makes secrecy a professional duty without limit in time.¹ The Criminal Procedure Code prohibits the seizure of documents from communications between the accused and his lawyer (Art. 264 para. 1 lit. a and c CrimPC), and the lawyer may refuse to testify about matters covered by secrecy (Art. 171 CrimPC).² In tax administrative assistance the Tax Administrative Assistance Act allows lawyers who are entitled under the BGFA to represent clients before Swiss courts to refuse to hand over documents and information protected by legal professional secrecy.³

The decisive limit is that secrecy covers only the typical activity of the lawyer: legal advice, drafting and representation. The Federal Supreme Court has consistently held that a lawyer who manages assets, acts as a director of a company for business purposes or carries out financial transactions engages in an atypical commercial activity that falls outside the protection of Art. 321 SCC.⁴ FINMA's practice on financial intermediation by lawyers draws the same distinction, and the revised AMLA codifies it. Secrecy does not apply where the lawyer acts as a financial intermediary.⁵

1 Lugano: the lawyer-notary and the fiduciary director

The distinction matters especially in Ticino. Under cantonal law the notary in Ticino is a member of the legal profession who also holds a notarial licence, so that most notaries in Lugano are at the same time *avvocati e notai*.⁶ The same professional may advise a client on a corporate restructuring, notarize the articles of association and the capital increase of

the new company, sit on its board and hold its bank signature. Each role has a different legal status. As adviser he is subject to the AMLA duties of Art. 2 para. 3bis and protected by secrecy for his advice. As notary he acts as a public officer under cantonal law, and the federal rules on notaries' due diligence apply only after the cantons have adapted their notarial laws.⁷ As director and signatory of the company's account he is a financial intermediary or a member of the governing body of a client and cannot invoke professional secrecy towards the bank or the authorities.

The practitioner's conclusion is organizational. Lugano firms that combine legal advice with fiduciary and board services must separate the files and the engagement letters of the protected and the unprotected activities. Where a lawyer accepts a board seat in a client company, he should do so in a capacity that is documented as commercial and covered by the firm's AMLA compliance. Otherwise he risks discovering in a criminal investigation that the documents he believed protected can be seized.

Essentials. Since 1 October 2026 advisers who professionally form, domicile or manage non-operative companies or assist in real estate transactions must identify their clients and the beneficial owners and join a self-regulatory organization (Art. 2 para. 3bis and 3ter AMLA). Lawyers and notaries report suspicions only when they execute financial transactions themselves and only for information not covered by secrecy (Art. 9 para. 2 AMLA). Professional secrecy under Art. 321 SCC and Art. 13 BGFA protects legal advice and representation. It does not extend to the atypical activities of asset management, fiduciary directorships and financial intermediation.

2 Notes

1. Swiss Criminal Code (SCC), SR 311.0, Art. 321 para. 1, <https://www.droit-bilingue.ch/de-fr/3/31/311.0-321-389.html>; Federal Act on the Freedom of Movement for Lawyers of 23 June 2000 (Lawyers Act, BGFA), SR 935.61, Art. 13 para. 1 (secrecy "zeitlich unbegrenzt und gegenüber jedermann"), <https://www.droit-bilingue.ch/de-fr/9/93/935.61-13-17.html>. ↩
2. Swiss Criminal Procedure Code of 5 October 2007 (CrimPC), SR 312.0, Art. 171 para. 1, <https://www.droit-bilingue.ch/de-fr/3/31/312.0-171-175.html>, and Art. 264 para. 1 lit. a and c, <https://www.droit-bilingue.ch/de-fr/3/31/312.0-264-268.html>. ↩
3. Federal Act on International Administrative Assistance in Tax Matters of 28 September 2012 (Tax Administrative Assistance Act,

TAAA), SR 651.1, Art. 8 para. 6, <https://www.droit-bilingue.ch/de-fr/6/65/651.1-8-13.html>. ↩

4. Federal Supreme Court, BGE 135 III 597 and BGE 132 II 103, on the distinction between the typical activity of the lawyer, protected by secrecy, and atypical commercial activities such as asset management or board membership. ↩
5. Landtwing Leupi (above), referring to FINMA Circular 2011/1, margin nos. 114 ff.: professional secrecy does not apply in the context of financial intermediation. ↩
6. Legge sul notariato of the Canton of Ticino (LN), which makes the lawyer's licence a condition for the notarial licence. ↩
7. finews.ch, 12 June 2026 (above), noting that the implementation for cantonal public notaries is delayed pending the amendment of cantonal law. ↩

For general information only. This article does not constitute legal or tax advice, does not replace advice on an individual case and creates no lawyer-client relationship. It reflects the legal position as of September 2026.

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