

Chiasso (1977) and the birth of Swiss anti-money-laundering law — overview and summary

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On 14 April 1977 the Schweizerische Kreditanstalt, one of the three Swiss big banks and headquartered in Zurich, issued a short press communiqué that set off the most consequential banking scandal in post-war Switzerland. Its branch in Chiasso, a border town at the southern tip of Ticino, had for years been channelling the savings of Italian clients into a Liechtenstein company called Texon, which the branch managers ran as a bank of their own outside the books of the head office on Paradeplatz. Within weeks the damage was measured in the billions of francs. The chairman of the executive board resigned, the branch managers were in custody and the Swiss National Bank had arranged a standby credit to reassure the markets. The affair ended the post-war assumption that the reputation of a Swiss big bank was a self-sustaining asset.

What makes Chiasso important for this book is its legal aftermath. Within less than three months of the disclosure, the Swiss National Bank and the Swiss Bankers Association had signed an agreement on the due diligence to be applied by banks when accepting funds. It obliged banks to identify their customers and the beneficial owners of the assets entrusted to them. It also barred them from actively assisting capital flight and tax evasion, and it created a private arbitral body to punish breaches. That agreement, revised many times and still in force today in its 2020 version, was the first Swiss rule of what the world later called know-your-customer. From it a straight line leads, through the Kopp affair of 1988 and the new criminal offences of 1990, to the Anti-Money Laundering Act of 1997 and to the institutions that now dominate everyday work in Zurich banks: compliance departments, self-regulatory organisations and the Money Laundering Reporting Office Switzerland.

This chapter follows that line from 1977 to the beginning of the twenty-first century. It begins with the Chiasso affair itself, its mechanics and its

consequences for the Kreditanstalt and for the National Bank. It then examines the due diligence convention of 1977 and its peculiar legal nature, the political and criminal scandals of the 1980s that forced the legislature to act, the criminal provisions of 1990 and 1994, and the Anti-Money Laundering Act of 1997. A further section is devoted to the great cases of potentate funds, from Marcos to Abacha, Montesinos and Duvalier, in which Zurich prosecutors and Zurich banks played leading roles and through which Switzerland built a practice of asset return that few financial centres can match. The chapter closes with Switzerland's place in the Financial Action Task Force and with the legacy of this period for Zurich. The present law of money laundering, with its revisions after 2009 and its latest reforms, is treated in Part I of this book. The end of banking secrecy for foreign clients is the subject of Part G.

1 Conclusion

The Chiasso affair began as a story of a branch manager who built a bank of his own in the shadow of the Kreditanstalt. It ended as the founding event of Swiss anti-money-laundering law. The scandal cost the bank well over a billion francs and its chairman of the executive board his post. It brought the National Bank to arrange a standby credit of three billion francs and taught the banking industry that reputation could not be taken for granted. Its most durable consequence was the due diligence agreement of 1 July 1977. With that agreement Switzerland introduced customer identification and beneficial ownership declarations years before these became international standards. The Federal Supreme Court confirmed in 1983 that the instrument was a contract under private law, which gave self-regulation a legal form that later legislation could build on.

The next stage was driven by crime and politics. The Lebanon Connection revealed that drug money was reaching Swiss banks through money changers and trading companies. The Kopp affair showed that the problem reached into the federal government. Parliament answered with Articles 305bis and 305ter of the Criminal Code, which entered into force on 1 August 1990, and with the second package of 1994 that added the offence of participation in a criminal organisation and the right to report. The Anti-Money Laundering Act of 10 October 1997 extended due diligence and a duty to report to the whole financial sector. It created the self-regulatory organisations, the Control Authority and the Money Laundering Reporting Office. Switzerland had taken part in the FATF from its foundation in 1989, and its legislation followed the international standard closely while preserving a distinctive element of self-regulation.

Alongside these rules, Switzerland built a practice of returning the assets of deposed rulers. The freeze of the Marcos accounts in 1986, the Federal Supreme Court's decision in BGE 123 II 595 and the return of 683 million francs to the Philippines in 1998 set the pattern. The Abacha case exposed the failings of Zurich and Geneva banks but also produced the largest asset return of its time. The Montesinos case showed the reporting system and the Zurich prosecutors working together from the first suspicious transaction report to the transfer of funds. The Duvalier case forced Parliament to create a statutory basis for confiscation where mutual legal assistance failed. Zurich stood at the centre of most of these developments, through its banks, its prosecutors and its courts. The compliance industry that now employs so many people in the city is the long-term consequence of a scandal that began at a border branch in Ticino.

2 In five sentences

1. The Chiasso affair of 1977, in which a branch of the Schweizerische Kreditanstalt channelled around 2.2 billion francs of Italian flight capital through the Liechtenstein company Texon and caused losses well above a billion francs, was the most serious Swiss banking scandal of the post-war period.
2. Its lasting legal consequence was the due diligence agreement of 1 July 1977 between the Swiss National Bank and the Swiss Bankers Association, which introduced customer identification, beneficial-owner declarations and private sanctions, and which survives today as the VSB 20.
3. The Lebanon Connection and the Kopp affair of 1988–89 accelerated the adoption of the money laundering offence and the offence of lack of diligence in Articles 305bis and 305ter of the Criminal Code, in force since 1 August 1990 and supplemented in 1994.
4. The Anti-Money Laundering Act of 10 October 1997, in force since 1 April 1998, extended due diligence and a reporting duty to the whole financial sector through self-regulatory organisations, a federal Control Authority and the Money Laundering Reporting Office.

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5. The Marcos, Abacha, Montesinos and Duvalier cases, in which Zurich prosecutors, courts and banks played central roles, turned Switzerland into a leading practitioner of asset return and made compliance one of the defining professions of the Zurich financial centre.

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