



Report on Banking Secrecy

Anti-Fraud and Anti-Money
Laundering Committee
&
Fiscal Committee

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INTRODUCTION

The European Banking Federation is publishing an update of its “Report on National Legislation on Banking Secrecy”. The previous version dated back to November 2002.

This survey is the result of a joint effort between the FBE Anti-Fraud and Anti-Money Laundering Committee and the FBE Fiscal Committee. It offers an inventory of national regulations on banking secrecy in Europe and beyond and introduces some valuable elements of comparison between countries.

The Annex proposes a comparative summary of the various exemptions in the listed countries and offers an extensive overview of the situation vis-à-vis the tax authorities.

This report has been prepared with all the necessary care and to the best of our knowledge on the basis of information supplied by our members and collected from October 2003 to February 2004. The FBE cannot be held responsible or liable in any way for possible omissions or inaccuracies.

EU MEMBER STATES

Austria

The *Austrian Banking Act* establishes general banking secrecy rules and stipulates a limited number of exceptions. Banks, their owners, members of their governing bodies, employees as well as other persons acting on behalf of banks are covered by these rules. If officials of the authorities or the Österreichische Nationalbank (Austrian Central Bank) become aware of information covered by banking secrecy in the course of their official activities they must keep such information secret; they are only released from this obligation in the conditions set out in paragraph 2.

- if a duty to inform the Financial Markets Authority exists pursuant to the provisions of the *Austrian Securities Supervision Act* or the *Austrian Stock Exchange Act*.

Banking secrecy rules do not apply:

- in criminal proceedings, and vis-à-vis the competent authorities responsible for dealing with fiscal infringements subject to penal proceedings;
- to information provided in respect of money laundering and deposit guarantee organisations;
- in the event of the customer's death, in dealings with the testators;
- to the competent court, if the customer is a minor or otherwise subject to legal guardianship;
- if the customer has consented explicitly in writing to the disclosure of the confidential information ;
- to general and customary credit reports on the economic situation of a company, unless the company has explicitly objected;
- if the disclosure is required to clarify issues of the bank - customer relationship, and finally

Belgium

In Belgium, banking secrecy is defined as 'professional secrecy'. It implies civil liability.

Even though banking secrecy is not subject to criminal sanctions, Belgian law recognises and guarantees banking secrecy by making it opposable to third parties (tax authorities, etc.)

In fiscal matters, banking secrecy is guaranteed through the *Code for Income Tax* (Article 318).

Derogations

There are numerous derogations, most of them fall within the following five categories:

- when the person concerned has given his or her consent: the bank can be released from its obligation of professional secrecy by the person concerned and, with the authorisation of that person, can communicate the relevant information to third parties.
- cases provided for in specific laws:

- money laundering: banks are obliged to report suspect transactions (in the context of the prevention of the laundering of money derived mainly from drug trafficking or organised crime) to the Belgian Financial Intelligence Unit (FIU) without risking civil, criminal or disciplinary proceedings for breach of secrecy (Article 20 of the law of 11.1.1993). They are also obliged to satisfy any request from the FIU for information.

- representation: Belgian law provides protection for the disabled through a system of representation, particularly with respect to the administration of their property. The representatives are appointed as temporary administrators and have access to information about the disabled person's property upon presentation of the relevant court order appointing them. The administration of goods belonging

to minors by their guardian is also covered by special legislation.

- dealings with supervisor bodies (Banking and Finance Commission)

- requests by judicial authorities acting within the framework of a criminal procedure :

The Code of Criminal Procedure stipulates that banks must satisfy requests for information (including freezing an account) from an examining magistrate. However, up to now, banks are not obliged (they may decide otherwise after analysing the balance of interests in question -general interest versus personal interest) to provide information to the public prosecutor, except in case of a mini procedure. However, one of the Belgian parliamentary assemblies has already passed an amendment to the Code of Criminal Procedure making it compulsory for banks to satisfy requests made by public prosecutors.

- fiscal inquiries:

- the administration may request information from the bank when a complaint has been lodged by a customer (Article 374 CIT);

- when the tax authorities control financial institutions, Article 318 of the CIT forbids the use of the information gathered in financial institutions' documents in order to tax the customers of those institutions. However, if the tax authorities discover fiscal fraud on the occasion of one of these investigations, they may claim information and documents may be seized. There must be concrete evidence.

In the case of a succession, an inventory of financial assets must be sent to the tax authorities, which may make inquiries covering the last 3 years.

Denmark

Pursuant to Art. 117 of the Danish Financial Business Act, members of the board of directors, managing directors, auditors and any employee and others are obliged to respect banking secrecy. Any breach of this obligation is punishable by sanctions.

The said persons must not disclose or use confidential information obtained during the performance of their duties without due cause.

"Due cause" means that confidential information may be disclosed in specific cases where it is justified, for instance in lawsuits (customer complaints involving a third-party customer), and for data processing purposes in central computer service centers. Banks are also allowed to give information to other banks regarding the economic status or creditworthiness of their customers according to guidelines issued by the Danish Bankers Association.

The principle of banking secrecy is waived as regards the provisions laid down for instance in the Danish legislation on tax control, the money laundering legislation and the banking legislation. The Danish Financial Supervisory Authority is entitled to obtain full information from banks.

The Tax Control Act makes it mandatory for banks to supply annually to the tax authorities details about the accounts of their customers, including interest on deposits, acquisition of bonds and interest coupons held. The tax authorities are also entitled to obtain information from banks about transactions over the accounts of their customers for use in assessing tax in concrete cases.

Routine information on customer matters may be disclosed for the performance of administrative tasks. Apart from this exception, customer information must not be disclosed to other companies, including group companies, for the purpose of marketing or advisory services unless the cus-

tomers prior written consent has been obtained. Finally, banking secrecy may be lifted by a court order, for instance in connection with a criminal investigation and subpoenas.

Finland

In Finland bank secrecy has been a legal concept from the beginning of the 1970s. Nowadays, bank secrecy is regulated under the *Credit Institutions Act*. According to the principle of bank secrecy, an employee of a bank or a credit institution who has obtained information on the financial position or private personal circumstances of a customer, or of any other person, or on a trade or business secret, must keep such information secret, unless the person for whose benefit the duty of secrecy has been provided agrees to its disclosure.

According to paragraph 94 of the *Credit Institutions Act*, anyone who, in his or her capacity as a member or deputy member of a governing body of a credit institution or a consolidated group undertaking or belonging to a consortium of credit institutions or as a representative of a credit institution or another undertaking operating on behalf of the credit institution or as their employee or agent, in performing his or her duties, has obtained information on the financial situation or private personal circumstances of a customer of the credit institution or of a consolidated group undertaking or a conglomerate referred to in the *Act on the Supervision of Financial and Insurance Conglomerates* or of another person connected with its operations or on a trade or business secret must keep it confidential unless the person for whose benefit the secrecy obligation has been provided agrees to its disclosure. Confidential information may not be disclosed to a general meeting of shareholders, a general meeting of trustees, a general meeting of a cooperative or a general meeting of the delegates or a general meeting of a mortgage society or to a shareholder or member attending the meeting.

A credit institution and a consolidated group undertaking may disclose the information to another organization belonging to the same group or a conglomerate referred to in the *Act on the Supervision of Financial and Insurance Conglomerates* for the purpose of customer service or customer-

relationship management and marketing as well as risk management of the group, consolidated group undertaking or conglomerate. In addition, a credit institution and a consolidated group undertaking may disclose the information in its customer register, necessary for marketing as well as customer services and other customer-relationship management purposes, to an organization of the same financial consortium as the credit institution if the party receiving the information is subject to the secrecy obligation provided for in this Act or to a corresponding obligation of secrecy.

Notwithstanding the above provisions, a credit institution may carry on credit reference services as part of its normal business operations. However, a bank or other credit institution must disclose the information covered by the secrecy obligation to prosecuting and pre-trial investigation authorities where it relates to the investigation of a crime and to any other authorities entitled to this information under the law.

The financial supervisory authority, which supervises banks, has an extensive right to information. Regulations exist under the law which give many authorities the right to obtain information. Authorities have the right to request such information only if the person refuses to provide the information or if the authorities have reason to doubt the information provided by the person concerned. The rights of the other authorities are much more limited than that of the financial supervisory authority; the authorities must give detailed explanations regarding the person, on whom they require information, including the purpose for which the information is required.

France

Bankers are subject to an obligation of professional secrecy, sanctioned by penal law. The courts moreover impose a “duty of discretion”, sanctioned by civil law.

a) In the penal context

Article 226.13 of the Penal Code covers all individuals who - by their status or profession – have access to confidential information and who have revealed this information in cases other than those permitted by the law. This law applies to bankers.

Article L511-33 of the *Financial and Monetary Code* actually imposes the obligation of professional secrecy punished by in Article L571-4 of the same Code and in Article 226.13 of the Penal Code, on any individual who participates in any capacity in the management or the administration of a credit institution or who is an employee of such an institution.

b) In the civil context

Independently of any penal aspect, the banker is subject to a duty of discretion under civil law, which does not depend on awareness of having breached the duty of professional secrecy.

Dispensations:

Article L511-33 of the *Financial and Monetary Code* only dispenses banks from their obligation of professional secrecy in three cases:

- cases covered by specific laws (right of communication to tax or customs authorities, disclosure of suspicion by banks to TRACFIN in the context of the prevention of the laundering of money derived from drug trafficking or organised crime*);

- relations with the Bank of France, the Banking Commission and the Commission for Stock Exchange Operations;

- requests by judicial authorities acting in the framework of a penal procedure.

It goes without saying that, in any situation, banks can be released from their obligation of professional secrecy by the person concerned who may authorise the bank to communicate information about him to third parties.

** French banks belonging to a financial group are allowed to transfer data necessary to the fight against money laundering and terrorism financing to other companies set up in other countries of the European Economic Area and belonging to the same group.*

Germany

The concept of German bank secrecy is based primarily on the civil law contractual agreement between the bank and the customer which obliges the bank to maintain customer confidentiality. Beyond this concrete relationship between the bank and its customer, bank secrecy is also an important cornerstone of the capital markets; and, as such, is also protected by German tax provisions whose purpose is to safeguard the trust relationship between citizens and the state in order to ensure the proper functioning of the capital markets. The duty of confidentiality and general bank secrecy imposed on German financial institutions may be breached only by specific Government laws or if the customer waives his right to bank secrecy. The tax authorities, for example, may only request information from banks on customers in individual non-routine cases where there is a legitimate reason for doing so. A deviation from this rule, e.g., a contractual agreement waiving bank secrecy for routine and general application, is inconsistent with these principles. On the other hand, bank secrecy does not apply in the case of established investigations by governmental authorities of criminal tax cases under criminal law.

The contractual provision regarding bank secrecy in general in the aforementioned sense is dealt with by the General Business Conditions. These contain the strict duty of a financial institution to maintain bank secrecy concerning customer-related facts unless:

1. there is a legal requirement to disclose information,
2. the customer has consented to disclosure, or
3. the bank is authorised to disclose banking affairs to a credit institution.

There are numerous exceptions to the banking secrecy requirement, based on legal obligations to disclose information to certain public authorities.

For instance, banks have to provide information:

- in the case of suspicion of money laundering under the *Money Laundering Act* to the local public prosecutor and police as well as to the German Financial Intelligence Unit at the Federal Police Authority (Bundeskriminalamt);
- in penal proceedings at the request of the public prosecutor, authorised by a court order;
- at the request of the German Financial Supervisory Authority (Bundesanstalt für Finanzdienstleistungsaufsicht);
- under certain circumstances in response to inquiries from fiscal authorities.

In addition, the obligation to disclose information was extended considerably by the *Fourth Financial Market Promotion Act* of July 2002. In order to fight terrorism, this Act lays down a procedure giving banking supervisors direct automated access to the key account information that must be held by banks in special databases. The procedure is designed to allow cash accounts and securities accounts held at banks in Germany to be quickly traced and identified. Banking supervisors may access the information in question (a) in order to perform their own tasks, (b) at the request of domestic and foreign law-enforcement agencies and courts and (c) at the request of the authorities responsible for enforcing financial sanctions.

The latter – see point 3 above - exception pertains to statements of a general nature concerning the economic status or creditworthiness of a customer. Such statements may relate to the customer's business activities or, if the customer agrees, to details of private accounts. Disclosure, generally, is permitted only if the request for disclosure is not contrary to the customer's legitimate interests.

Greece

The restrictions on banking secrecy in Greece are specifically defined (*Legislative Decree 1059/1971*). Exemptions to banking secrecy rules are authorised under the conditions set out below, in the following cases:

- when the banking information is considered to be necessary to establish that a crime constitutes an indictable offence. A derogation may be authorised in this case following a decision by the public prosecutor's office, the court or the body responsible for the criminal proceedings or the judicial enquiry (Article 3 of legislative Decree 1059/1971);
- pursuant to Article 8 of Law 2331/1995; the lawful disclosure of information related to the legislation on funds of criminal origin committed by an employee or by an executive, does not constitute a breach of any obligation of secrecy, including banking secrecy.
- when it relates to acts of money laundering, investigation and seizure of goods of criminal origin. In this case, all competent authorities may apply for access to the relevant information and have the right to call for the seizure of accounts and safe-deposit boxes and the freezing of the accused person's accounts (Law 2655/1998).
- when it relates to a posteriori tax controls of declarations by tax payers (Article 25 of Law 2214/1994) or serious tax offences (Article 44 of Law 2065/1992);
- when an auditor has been appointed to investigate the bank by the Governor of the Bank of Greece (the Central Bank), provided that criminal proceedings have been instituted for an offence which relates to the administration and operation of the bank and concerns the public interest. In this case, the Minister of the National Eco-

nomy applies for the derogation (Article 38 of Law 1828/1989).

- pursuant to Article 24 of Law 2915/2001, banking secrecy does not apply to a creditor who has the right to call for the seizure of the debtor's/ depositor's assets. The obligation of secrecy is derogated only for the sum, which is required for the creditor's satisfaction.

It should be noted that banking secrecy does not apply to certain persons or authorities explicitly defined under the Law, i.e. Bank of Greece supervisors, judicial authorities and the tax authorities in the case of joint bank accounts.

Ireland

There are no statutory enactments either of a criminal or civil nature, which impose a duty on a bank or its directors, officers and employees in Ireland to observe secrecy concerning customers' accounts. Consequently there is no penalty under criminal law for a breach of bank secrecy as such.

In common law (i.e. law based on decisions of judges), a bank owes a duty of secrecy/confidentiality to its customers. The duty of secrecy/confidentiality is a legal duty arising out of the implied contract and is fully recognised in case law. This definition has a close association with the law relating to the protection of confidences and an individual's personal right to privacy. The right of privacy under the Irish Constitution cannot be ignored in any discussion on the duty of confidentiality however the right is poorly defined. In addition, given that so much customer data is stored on computer nowadays, these issues blend into a bank's duties under the framework of the EU Directives on Data Protection.

The common law duty of confidentiality will extend to the following categories of information: (a) information as to the customers account balance; (b) information as to securities furnished by the customer; and (c) information obtained by the Bank in relation to the customer during the currency of the account which was obtained 'in the character of' a bank. The duty applies to information gleaned before the relationship of banker and customer commenced and after it ceased, and is not removed by the closing of the account.

There are four recognised situations in which a bank may be relieved from its duty of confidentiality. The four headings under which disclosure may be permissible are:

- where disclosure is made under compulsion of law e.g. court orders, subpoenas, exercise of powers of inspection and requiring production

of documents in connection with investigations under *Income Tax Acts*, orders in civil and criminal proceedings made under Bankers Books Evidence Acts and in relation to the discovery of documents.

- The *Criminal Justice Act 1994* as amended by the Criminal Justice (Theft and Fraud Offences) Act, 2001 imposes an obligation on credit institutions and on their directors, employees and officers to report to the Gardai Síochána where they suspect that an offence of money laundering has been, or is being, committed in relation to their business.

- where there is a duty to the public to disclose, e.g. where bank officials assist the Gardai in trying to find a missing person.

- where the interests of the bank require disclosure, e.g. disclosure by the bank of loan facilities to a customer in proceedings to recover payment.

- where disclosure is made with the express or implied consent of the customer, e.g. where a borrower gives the name of a bank as referee as to his creditworthiness.

It is conceivable that in suitable cases the court could build on or add to these exceptions. The limits of the duty must be ascertained according to common sense.

Italy

Bank Secrecy, although not expressly set out in specific laws, is carefully observed by the banks, which are as a rule obliged to refuse to divulge any information regarding relations with their own customers.

Requests for information made by the courts and those made by the financial administration are an exception to this rule.

Unlimited access to banking information is permitted if the relevant request is made by the criminal courts.

Decree 269 of the Minister of Treasury, Budget and Economic Planning issued on 4 August 2000, instituted a national register of accounts and deposits. This register, which is not yet operational since two further implementing decrees still have to be issued, provides for the establishment of an “operations centre” at the Ministry (now the Ministry of Economy and Finance) to which requests from authorised bodies (the courts and investigating magistrates, the Italian Foreign Exchange Office, the Finance Police, etc.) are to be addressed concerning accounts or deposits held (exclusively or jointly) in the name of persons under investigation or over which such persons have a power of attorney. The “operations centre” will forward such requests electronically (via the Interbank Automation Company, SIA) to financial intermediaries and the post office. These will respond by the same means to the “operations centre” which will then make the information available to the authorities that have requested it.

If, however, the request emanates from the tax authorities, the information must be given, subject to certain restrictions, in particular:

- the financial authorities and the special police tax unit (Guardia di Finanza) can only ask banks for details relating to individual tax

payers indicated by name; a copy of the accounts, i.e. documentation relating to current and deposit accounts, securities accounts and any other relevant account information;

- any request for information must be authorized by a senior official (manager of the regional office or the area commanding officer for the Guardia di Finanza). This authorisation must be attached to the request for information notified to the bank concerned;

- the bank is obliged to inform its customer of the request received as soon as possible (since, contrary to criminal investigations, the respect of secrecy concerning the documentation of pre-trial investigations does not apply);

- once they have received copies of the accounts, the tax authorities can ask for further data and documentation concerning these accounts by submitting specific questions to the bank;

- all the requests must be notified to the bank. The time limit fixed by the tax authorities runs from the date of notification and cannot be less than 60 days. This time limit can be extended for a further 30 days if the bank so requests;

- the tax authorities can also approach the banks directly to obtain information if this was not provided or when there are good grounds for doubting the reliability of the information provided.

Luxembourg

Luxembourg banking secrecy is considered to be a manifestation of a more general duty of professional secrecy as governed by article 458 of the Penal Code.

Moreover, Luxembourg banking secrecy is expressly governed by Article 41 of the Law dated 5 April 1993 on the Financial Sector. It imposes a general duty on any employees and other persons working for a financial institution to maintain secret any information gained in connection with their professional activity, under penalty of sanctions provided for under article 458 of the Penal Code (up to six months imprisonment and payment of penalties).

Several exceptions to bank secrecy do exist under which a financial institution has to reveal information to a third party:

- in connection with the Luxembourg financial institution supervisory body (CSSF);
- if provided in specific laws; especially as regards money laundering regulations. According to Article 40 of the Law dated 5 April 1993 on the Financial Sector, banks are obliged to collaborate with the Luxembourg authorities in the fight against money laundering and must inform the State Prosecutor on their own initiative of any fact which may be an indication of money laundering;
- in case of a criminal judicial investigation: Banks are obliged to collaborate and give access to the information to the investigating magistrate. The investigation by a Luxembourg investigating magistrate may be launched by himself or on the basis of a request of a rogatory commission by a foreign magistrate in accordance with international bilateral or multilateral assistance agreements. Rogatory commissions in relation to an offence qualifying as a tax swindle (« escroquerie fiscale ») are possible in Luxembourg banks.

Tax swindle is a criminal offence for which a Luxembourg investigating magistrate may launch a criminal investigation. Tax swindle is defined by the law dated 22 December 1993 (article 396(5) of the General Tax Law) as a tax fraud deriving from the systematic use of fraudulent manoeuvres in order to conceal relevant facts vis-à-vis the tax authorities or to persuade them of incorrect facts and relating to a significant amount of tax, either in general terms or in terms of the annual tax payable.

With regards to taxation, the *Grand-Ducal Decree* dated 24 March 1989 limits the powers of the tax authorities. The tax authorities cannot request any information for the purpose of taxation of a specific taxpayer to:

- a financial institution and other professionals of the finance sector;
- a tax exempt holding company governed by the law dated 31 July 1929;
- an investment fund.

No assistance is given to foreign authorities in other cases of tax fraud.

In case of death of a Luxembourg resident client of a bank, the bank must send an inventory of the financial assets to the Luxembourg tax authorities in charge of levying inheritance tax.

Portugal

Decree n° 298/92 of 31 December 1992 enacted the new general treatment of credit institutions and financial companies.

It contains standards for banking secrecy, establishing more flexible treatment than that previously in force.

Whilst banking secrecy is the rule, it can be relaxed in the following cases:

- communication to the central bank (Banco de Portugal), the Securities Market Committee and Deposit Guarantee Fund of information required for the performance of their tasks;
- when the Penal Code or the *Code on Penal Proceedings* establishes a duty to relax secrecy when the information is required to lay charges or for a criminal trial;
- when there is a legal provision placing strict limits on banking secrecy (e.g. legal provisions on money laundering, parliamentary enquiries, corruption and economic or financial crimes).

Portuguese penal law imposes a duty of co-operation with the courts, including the obligation to release documents to the court and the possibility for the latter to decide on the seizure of assets or documents deposited with banking institutions where these are essential to criminal proceedings.

For fiscal purposes, a law issued on December 2000 entitles the tax authorities to have free access (without a court order) to bank files and documents in the case of fiscal fraud, use of tax benefits or when the income declared by the tax payer is lower than the standard income (for the same economic activity).

Spain

Banking secrecy exists in Spain, although it is affected by considerable limitations. Its basis can be found in contracts, practice, in the law itself (Law 44/2002 specifically lays down that banks have to maintain strict confidentiality of the data concerning their clients and their operations; before the said Law, there only existed indirect legal references) and in the 1978 Constitution (specifically in the rule which confirms the right to personal and family privacy).

The limitations are principally in the fiscal area. Banking secrecy does not exist vis-à-vis the tax authorities; however, in this case, certain precautions must be taken and certain special procedures followed: in the event that a tax payer does not co-operate voluntarily in providing bank data, the tax authorities require a specific authorisation, on a case-by-case basis, from the regional tax authorities or the General Tax Division.

Furthermore, bank secrecy can not be opposed to judges or to some Spanish public prosecutors, such as the Anti-drug Enquiry Prosecutor. Another limitation derives from a law that allows Parliamentary Commissions to claim banking information on people in senior positions being investigated for corruption.

Sweden

The *Banking Business Act* (Chapter 1, Article 10) contains a provision stating that information concerning an individual's banking relationship may not be disclosed without legal cause. In most of the other laws concerning the financial sector there are identical provisions. In the event of a breach of this obligation of secrecy a bank may be obliged to pay damages to the customer and employees breaking the banking secrecy rule may be dismissed.

Banking secrecy covers all aspects of the relationship between the bank and the customer (for instance assets, transactions, loans). Banks are not even allowed to inform others that a certain person is a customer of the bank; this obligation of secrecy continues even after the relationship has ceased.

Legislation and case-law have established some exceptions to the banking secrecy rule.

The most important exceptions to the rule of banking secrecy are to be found in legislation stating that it is mandatory for banks to supply tax authorities annually with control statements on deposits, debts and interest credited and/or debited. Banks are also obliged to deduct withholding tax on interest credited.

If a public prosecutor or the police in charge of investigating a crime asks the bank for information concerning a customer, this is regarded as a legal cause which justifies disclosure of information by the bank. A special decision has to be taken by the authorities to start such an investigation. In a bill to the parliament the Government has suggested an amendment to the *Banking Business Act* stating that a credit institution is obliged to give information concerning an individual's banking relationship when a request is made by the prosecutor during a criminal investigation (the amendment will enter into force 1 July 2004).

The bank has also to provide information to the bailiff (the executory authority) concerning a customer's deposits and other assets with the bank.

The bank must, pursuant to the money laundering act and the act concerning measures against terrorist financing, inform the National Financial Intelligence Police of suspicious transactions and is not allowed to execute such transactions. Provided that the bank has acted in good faith it cannot be held liable for any breach of banking secrecy in this respect.

Other authorities which can obtain information from a bank are the Financial Supervisory Authority (FSA) and the Central Bank (the Swedish Riksbank). Information on a customer's financial or personal circumstances which has been passed on to the FSA is deemed to be confidential.

The bank is allowed to provide information to other banks and credit information agencies for the purpose of facilitating the assessment of the customer's creditworthiness.

Finally, it is of course possible for the person concerned to give his consent to the bank to disclose information.

Access to confidential information within a bank may only be authorised for those employees who need it for the purpose of their work.

The rules concerning the disclosure of information to subsidiaries are not quite clear. There is very little case-law on this issue. It is, however, regarded as possible for a bank to give information to a subsidiary if its activities are very closely linked to those of the bank and could also have been executed by a department of the bank. The bank must ensure that more or less the same rules concerning secrecy are applied by the subsidiary. If the subsidiary discloses information to third parties the bank is likely to be held responsible.

In order to ensure the same level of secrecy within a group, the bank can draw up agreements with the other companies in the group as well as with the employees who are allowed to deal with confidential information. In the internal instructions for the employees of the group there are rules concerning banking secrecy. The number of employees dealing with confidential information must be very limited. The information disclosed must be deemed to be necessary in order for the other company in the group to perform its activities.

The Netherlands

I. Bank secrecy and government

Secrecy with respect to the courts

It is not laid down in the Dutch legal system who in general has a duty of secrecy (duty to remain silent). However, it is a criminal offence for a person to reveal deliberately a secret if he knows or must reasonably suspect that he has an obligation to keep it secret by virtue of his office, his profession or legal regulations.

In addition, the law lays down that persons who have a duty of secrecy by virtue of their profession are not obliged to testify, i.e. they have a right to remain silent.

From the viewpoint of criminal law, banks have, according to case-law, no duty of secrecy towards their customer with respect to matters entrusted to them by the customer. As banks are not recognised by the courts as having a duty of professional secrecy, they do not have a right to remain silent if they are compelled to be a witness in a court of law.

In civil law, however, banks do have a duty of secrecy as a result of the *General Banking Conditions*. The courts have not given bankers the right to remain silent in court civil cases either.

Secrecy with respect to the tax authorities

Fiscal bank secrecy is not provided for in the *Algemene Wet Inzake Rijksbelastingen* (AWR; *National Taxation Act*). The AWR leaves no room for bank secrecy with regard to the bank's own liability to taxation.

In addition, the AWR obliges a person who runs a business or is self-employed in the Netherlands, upon request by the tax authorities, to make available for inspection the books and documents relating to that business or profession; this inspec-

tion can be of importance for levying taxes from third parties.

With a view to enabling the credit information system to function smoothly, however, complete credit files need to be submitted only in exceptional cases. In order to clarify the uncertainties which had arisen in this area, the government and the banks drew up a *Code of Conduct* for the tax authorities and bank employees. As of April 1998 the rules of the *Code of Conduct* were incorporated in the Decree of 1 April, 1998, AFZ 98/1228M, which was revised and adjusted to the *Personal Income Tax 2001 Act* on 18 April 2002 (retrospective effect up to and including 1 January 2001). Article 10 of the Decree provides the option for the tax authorities to forward serial inquiries related to non-identified persons instead of inquiries related to identified persons but only with respect to a limited number of subjects (e.g. interest and dividends).

Since 1 January 2001 the AWR obliges financial institutions, including banks, to notify to the tax authorities, on a yearly basis, the amounts of interest and dividends received, as well as the total value of assets as per 31 December.

The AWR also enables the tax authorities to obtain information from non-residents, provided the authorities state this information is relevant for tax levying in the Netherlands.

The WIB (*Act on international assistance in tax matters*, 24 April 1986) deals with the accomplishment of obligations arising under European directives and other international arrangements for assistance and provides for the transfer of information on non-residents to a foreign authority upon request in certain cases.

The *Multilateral Treaty on mutual administrative assistance in tax matters* (Strasbourg, 25 January 1988) was signed by the Netherlands on 26 June

1996 and entered into force on 1 February 1997. The obligations of the Netherlands to provide information under the relevant treaties is implemented through the WIB.

Secrecy with respect to monetary and economic authorities

The *Wet Toezicht Kredietwezen* (WTK; *Credit System Supervision Act*) empowers De Nederlandsche Bank to obtain from the institutions under its supervision all information which it judges necessary for supervisory purposes. The information obtained from individual institutions cannot be published; De Nederlands Bank can/must, however, publish certain combined data.

The WTK imposes a duty of secrecy on De Nederlandsche Bank with respect to the information divulged to it for the implementation of the WTK. The bank also observes this duty of secrecy in dealings with the government and the courts if the interests of customers are involved. Comparable rules exist for the supervision of investment services by the Autoriteit Financiële Markten (AuFM) in the *Wet Toezicht Effectenverkeer* (*Investment Services Supervision Act*).

In 1994 the Directive on Money Laundering was implemented in The Netherlands. Under the “*Wet Melding Ongebruikelijke Transacties*” (*Unusual Transactions Reporting Act*) banks are obliged to report unusual transactions to the authorities.

2. Bank secrecy and private individuals

Information on private customers is not given by banks to third parties other than to the tax authorities, the Reporting Centre for Money Laundering and in court.

The Data Protection Act limits the disclosure of personal data to third parties.

As of July 1989, banks no longer give information about business customers, but pass on information collected by Graydon, and obtained from open sources.

United Kingdom

Secrecy - or confidentiality - is widely recognised as an essential ingredient in the relationship between banker and customer. However, case law has established four general exceptions to this basic rule:

- where disclosure is under compulsion by law;
- where there is a duty to the public to disclose;
- where the interests of the bank require disclosure;
- where the disclosure is made by the express or implied consent of the customer.

The principal legal provisions requiring banks to disclose information about their customer's account are:

- Section 7 of the *Bankers' Books Evidence Act 1879* allows a party to court proceedings to apply to the court for an order to allow inspection of entries in a bankers' books for the purposes of the proceedings. Notice is given to the bank and to the customer. This power is used by the courts with great caution;
- Section 17 of the *Taxes Management Act 1970* provides for automatic notification each year to the revenue authorities of interest paid to all customers except those who are non-resident (companies) or not ordinarily resident (individuals), who have requested that their interest details are not notified. Regulations are currently being drafted that will involve further reporting, from 1 January 2005, to comply with the EU Savings Tax Directive;

- Section 20 of the same Act gives the revenue authorities power to obtain an Order for the disclosure of information from, for example, a bank in respect of the affairs of a particular customer, when the customer in question has failed or refused to supply the information himself. This power, however, can be exercised in limited circumstances only, and is not available as a weapon to compel banks to disclose details of the affairs of their customers generally;

- Regulations relating to the audit of compliance by UK banks with the rules relating to deduction and non-deduction of tax from interest allows the revenue authorities access to a wide range of material relating to customer accounts. In practice, the revenue authorities review only a small random sample of material and the purpose of the audits is very much towards checking the compliance by the bank concerned;

- Section 9 of the *Police and Criminal Evidence Act 1984* allows a police constable to obtain a court order requiring a bank to give him access to specified material for the purposes of a criminal investigation. He will have to show the court that he has reasonable grounds for asking for the information;

- Section 2 of the *Criminal Justice Act 1987* allows the Director of the Serious Fraud Office to require information relevant to any matter he is investigating;

- Section 109B of the *Social Security Administration Act 1992* (added in 2001) allows an authorised benefit officer or authorised local authority officer to obtain details of a benefit recipient's bank account where he has reason to suspect that the recipient may be obtaining benefit fraudulently;

• *The Terrorism Act 2000* and the *Anti Crime and Terrorism Act 2001* give law enforcement various powers to obtain information in the case of suspected terrorism offences. There are specific judicial safeguards. The relevant legislation can be found at the web-site for HM Stationery Office at www.hmso.gov.uk/acts.htm under Acts of Parliament for 2000 and 2001;

• *The Proceeds of Crime Act 2002*, provides the police with various powers to obtain information in the course of specific criminal investigations. There are specific judicial safeguards. The powers include a monitoring power whereby the bank account of a person under criminal investigation can be monitored for a period not exceeding 90 days. The relevant legislation can be found in sections 341 - 379 of the legislation at www.hmso.gov.uk/acts/acts2002/20020029.htm.

In addition, the court has an inherent power to order any person, including banks, to produce information to the court, but it is more usual to join the bank as defendant in order that the usual discovery rules should apply.

Cyprus

The *Banking Law of 1997* gave bank confidentiality statutory force. In particular Section 29(1) of the Banking Law provides that no director, chief executive, manager, officer, employee or agent of a bank and no person who has by any means access to the records of a bank, with regard to the account of any individual customer of that bank may, during the course of his employment or his professional relationship with the bank, as the case may be, or after the termination thereof, give, divulge, reveal, or use for his own benefit any information whatsoever regarding the account of any customer.

The exceptions to the application of this section are the following:

- the customer or his personal representatives gives written permission to this effect.
- the customer is declared bankrupt or in the case of a company being wound up.
- civil proceedings are instituted between the bank and the customer or his guarantor relating to customers' accounts.
- the bank has been served with a garnishee order attaching moneys in the account of the customer.
- the information is required in the course of his duties by a colleague in the employment of the same bank or its holding company or the subsidiary of the bank or its holding company or an auditor or legal representative of the bank.
- the information is required to assess the creditworthiness of a customer in connection with or relating to a bona fide commercial transaction so long as the information required is of a general nature and in no way related to the details of a customer's account.

- the information is given to the police under the provisions of any law or to a public officer who is duly authorised under that law to obtain that information or to a court in the investigation or prosecution of a criminal offence under such law.

- the provision of the information is necessary for reasons of public interest or for the protection of the interests of the bank.

- the information is provided for the purpose of maintaining and operating the archive in accordance with Section 41(4) of the Banking Law, to cover the need to disclose information to be used in the database in an attempt to combat the issue of dishonoured cheques.

Furthermore, the Prevention and Suppression of the *Money Laundering Activities Law of 1996* allows for the disclosure of information where a laundering offence is investigated.

Czech Republic

Czech banking secrecy is governed by Article 38, 38a, 38b and 39 of the *Act on Banks* (Act No. 21/1992 Coll. of 20 December 1991 as amended). Banking secrecy rules apply to all bank businesses, financial services of banks, including account and deposit statements. It imposes a duty on employees of a bank and members of its supervisory board to maintain confidentiality in business matters that concern the interests of the bank and its customers. This obligation continues after termination of the employment or similar relationship. The Law defines, however, some exemptions from this rule. The statutory body of a bank is entitled to exempt the employee of the bank from this obligation for the following reasons:

Information without the customer's prior written consent may be provided for:

- persons authorised to perform banking supervision;
- authorities entitled to investigate and pursue criminal activities in case of reporting a criminal act or in fulfilling a notification duty pursuant to a special legislative order (money laundering and organised crime);
- court of law for the purposes of civil proceedings;
- law enforcement authority (pursuant to a Criminal Procedure Code);
- tax authorities;
- Ministry of Finance and the Securities Commission when exercising statutory supervision;
- Ministry of Finance under conditions laid down by a special legislative order (money laundering and organised crime);

- social security authorities in proceedings for social security payments and contributions to the state employment policy owed by the customer;

- social security authorities in proceedings for social security benefits and state social support;

- health insurance institutions in proceedings for public health insurance payments owed by the customer;

- judicial executor authorised to perform execution;

- labour office in proceedings for the return of funds provided to the client from the state budget;

- social security authorities in proceedings for the return of a benefit paid to an account after the death of the recipient of the benefit (identification data on customer who is the account holder and on persons entitled to dispose of funds on that account and information on matters relating to that account); same information to labour office after the death of a customer;

- competent persons for the purposes of executing a decision or a tax execution (the account number and the identification code of the bank or foreign bank branch and the identification data of its customer who is the account holder); same information to persons who prove that they have suffered damage as a result of their own incorrect instruction to the bank or foreign bank branch and that without this information they cannot exercise their right to the surrender of this ungrounded enrichment within the meaning of the Civil Code.

Estonia

For the purposes of the *Act on Credit Institutions* all data which are known to a credit institution concerning the financial status, personal data, transactions, acts, economic activities, business or professional secrets, or ownership or business relations of the customers of the credit institution or other credit institutions are deemed to be subject to banking secrecy.

The following data are not deemed to be information subject to banking secrecy:

- data which are public or available from other sources to persons with a legitimate interest;
- consolidated data on the basis of which data relating to a single customer or the identities of persons included in the set of persons referred to in the consolidated data cannot be ascertained;
- a list of the founders and shareholders or members of a credit institution and data relating to the sizes of their holdings in the share capital of the credit institution, regardless of whether or not they are customers of the credit institution;
- information relating to the correctness of the performance of a customer's obligations to a credit institution.

Details of a customer which are subject to banking secrecy may be disclosed by a credit institution to third persons only with the written consent of the customer, unless the obligation or right to disclose information subject to banking secrecy arises from the provisions of the *Act on Credit Institutions*.

The managers and employees of a credit institution and other persons who have access to information subject to banking secrecy are required to maintain the confidentiality of such information

indefinitely, unless otherwise provided for in this Act.

A credit institution is required to disclose information subject to banking secrecy to the Bank of Estonia and the Financial Supervision Authority for the performance of their legal duties. In response to a written inquiry, a credit institution must disclose information subject to banking secrecy to:

- a court or, in the cases prescribed by law, a person specified in a court ruling;
- a pre-trial investigation authority and the Prosecutor's Office if criminal proceedings have been commenced, and on the basis of a request for legal assistance received from a foreign state pursuant to the procedure provided for in an international agreement;
- a bailiff pursuant to subsection 6415 (1) of the *Code of Enforcement Procedure* ;
- a tax authority pursuant to the provisions of the *Taxation Act*;
- the State Audit Office for the performance of its duties;
- a person entitled to succeed or a person authorised by the latter, a notary, a person carrying out an inventory of property estate and appointed by a notary and the court-appointed administrator of an estate and the consular representations of foreign states in connection with estates and data relating thereto, upon submission of relevant written documents;
- a person appointed by the Guarantee Fund pursuant to the *Guarantee Fund Act*;
- a foreign banking supervision authority or

other financial supervision authority through the Financial Supervision Authority if the obligation to maintain the confidentiality of information subject to banking secrecy extends to such an authority;

- a depositary of declarations of economic interest for the verification of the correctness of the data submitted in a declaration of economic interest of a person specified in the Anti-corruption Act in the case of suspicion of corruption.

Persons to whom information subject to banking secrecy is disclosed may use such information only for the purpose specified in the inquiry, and the obligation to maintain the confidentiality of such information indefinitely and the liability therefore extend to such persons unless otherwise provided by law.

Credit institutions have the right and obligation to disclose information subject to banking secrecy to the Financial Intelligence Unit in the cases and to the extent prescribed in the *Money Laundering Prevention Act*.

A credit institution has the right to disclose information subject to banking secrecy to a preliminary investigator, the public prosecutor and the courts in order to protect any rights or freedoms that have been violated or contested pursuant to the procedure determined by law.

Hungary

Banks are subject to an obligation of professional secrecy, sanctioned by criminal law.

In the criminal context:

Article 300/A. of the *Criminal Code* /Act No. IV/1978/ covers all individuals who hold secret information and who have revealed such secret information in cases other than those permitted by the law.

According to article 300/B. of *Criminal Code* a person fulfilling his obligation of reporting as prescribed in the Act on the *Prevention and Obstruction of Money Laundering* is not be punishable for breach of bank secrecy.

In the civil context:

The Act CXII. of 1996 on Credit Institutions and Financial Enterprises establishes the basic rules of banking secrecy. Banking secrecy rules apply to all bank businesses, financial services of banks. It imposes a duty on employees of a bank to maintain confidentiality in business matters that concern the interest of their customers: personal data, business activity, account balances and transactions.

Confidential customer information may only be revealed by banks to third parties in the following cases:

- where the customer of the financial institution or his legitimate representative requests the disclosure of the data;
- where an Act grants exemption from the obligation of bank secrecy.

The secrecy requirements shall not apply in these instances if the data are necessary for:

- the National Deposit Insurance Fund;

- public notaries involved in the execution of wills;
- authorities entitled to investigate and pursue criminal activities, the public prosecutor's office;
- courts of law in civil proceedings;
- the tax authorities, customs authorities, and social security agencies;
- bailiffs, liquidators acting in bankruptcy proceedings, liquidation proceedings;
- the national security service acting within the scope of its duties as defined by law;
- investigating authorities, if the bank account or the transaction is associated with: terrorism, money laundering, organized crime, trafficking of narcotic drugs, arms;
- the central credit information system;
- the Central Statistical Office, Ministry of Finance, the National Bank of Hungary, Hungarian Financial Supervisory Authority.

Latvia

Banks have an obligation of professional secrecy, sanctioned by Criminal law. Article 200 of the Criminal law covers all individuals who hold confidential information and who have revealed these secrets in cases other than those permitted by the law. This law covers banks. Article 64 of the Law on Credit institutions actually underlines the obligation of professional secrecy for any individual acting as a manager or administrator of a credit institution or who is an employee of such an institution.

Dispensations:

Article 63 of the *Law on Credit institutions* provides dispensations from professional secrecy, if the information is required by the:

- tax authorities;
- prosecutors;
- courts;
- Bank of Latvia;
- Financial and Capital Market Commission.

Lithuania

There are no specific laws on banking secrecy in Lithuania, but a duty to secure aforementioned secrecy is stipulated in the *Civil Code*, *Administrative Code*, *Criminal Code* and the *Law on Banks* of the Republic of Lithuania.

Banking secrecy is defined in the *Civil Code* of the Republic of Lithuania (Article 6.925).

A bank must secure secrecy of: a customer, his banking accounts, deposits and transactions.

Information, which is subject to banking secrecy, can be disclosed only for the customers to whom that aforementioned information is related, or their legal representatives. Such information may be disclosed to State institutions and their officials, also other persons, only in cases and according to the procedure stipulated by Law.

If a bank discloses banking secrets illegally, the customer has a right to claim damages.

The *Administrative Code* of the Republic of Lithuania (Article 1727) determines sanctions (fines) for the illegitimate disclosure of banking secrets.

The *Criminal Code* of the Republic of Lithuania (Article 211) determines sanctions for the illegitimate disclosure of commercial secrets. This prohibition to disclose commercial secrets is also applicable to banks.

The *Law on Banks* of the Republic of Lithuania defines the subject of banking secrecy: a banking secret is all information and data which is known to a bank about:

1. a customer's bank account, balance of an account, transactions with account capital, contract provisions according to which accounts were open;

2. a customer's debentures to the bank, contract provisions according to which debentures arose;

3. another financial service provided for a customer, contract provisions according to which a financial service is provided;

4. a customer's financial condition and assets, economic activities, plan for economic activities, customer's debentures to other persons or transactions with other persons, customer's commercial (trade) secrets.

The bank, personnel of the bank and any other persons which have access to information subject to banking secrecy, are required to maintain the confidentiality of such information indefinitely, unless otherwise provided in the *Law on Banks*.

Information which is subject to banking secrecy may be disclosed only for the customer of the bank, to whom that aforementioned information is related, or with the written request of the customer, in which it is noted for what purposes and what information has to be disclosed.

The bank has a right to disclose the information subject to banking secrecy to the courts or other institutions, if it is necessary to protect the legitimate interest of a bank and only that which is necessary for protection of its interests.

The bank may render information subject to banking secrecy to institutions named in the *Law on Money Laundering Prevention*, and also to other persons, if according to the law the bank has an obligation to provide such information for them.

Banks are obliged to report suspect transactions to the Financial Crime Investigation Service under the Ministry of the Interior of the Republic of Lithuania, according to the *Law on Money Laundering Prevention*.

The bank must disclose information subject to banking secrecy to:

- the courts;
- a pre-trial investigation authority and the prosecutors if criminal proceedings have been commenced;
- the tax authorities;
- the Bank of Lithuania;
- other State institutions authorized by law: the Customs Department under the Ministry of Finance of the Republic of Lithuania; the Police Department under the Ministry of the Interior of the Republic of Lithuania; the Special Investigation Service of the Republic of Lithuania; the Second Department of Operational Services under the Ministry of National Defence; the VIP Protection Department under the Ministry of the Interior; the Department of State Security; the State Border Protection Service under the Ministry of the Interior among others.

Malta

The duty of secrecy that applies to credit and financial institutions is expressly set out in the *Criminal Code* (Chapter 9 of the Laws of Malta), the *Professional Secrecy Act* (Chapter 377 of the Laws of Malta) and the *Banking Act* (Chapter 371 of the Laws of Malta). These laws regulate banking secrecy comprehensively and impose a duty on all officers, within the financial services sector, to maintain all information obtained in the course of their duties confidential at all times—even after cessation of their employment. Infringements are punishable by a fine or by imprisonment, or by both fine and imprisonment.

Confidentiality can only be lifted in particular and specific cases. These currently include:

- When so authorised under the *Banking Act*;
- When lawfully required under the provision of any other law [for example, the Social Security Act (Chapter 318 of the Laws of Malta)];
- When so required by a court order;
- For the purpose of the performance of the employee's duties or the exercise of his/her functions;
- In cases where money laundering is suspected (in such instances, bank employees are legally obliged to report);
- Between institutions forming part of the same group of companies (the term "group of companies" includes any body corporate registered or operating in Malta or in a foreign jurisdiction and forming part of the group of companies and which is further licensed or otherwise authorised under the laws of Malta or of that jurisdiction as the case may be, to carry out any activity equivalent to the business of banking or of the issuing of elec-

tronic money or any of the activities referred to in the Schedule to the *Financial Institutions Act* [Chapter 376 of the Laws of Malta]);

- Where customers themselves directly authorise the disclosure of information;
- When it can be shown, that at the time the information was revealed, the information had already legitimately entered the public domain.

Banks also have an obligation to disclose when required to do so:

- By a competent law enforcement or regulatory body investigating a criminal offence or a breach of duty;
- By a magistrate in the cause and for the purposes of in genere proceedings;
- By a criminal court while prosecuting for a criminal offence.

Recent amendments to legislation also permit disclosure of secret information in good faith in order to:

- Obtain advice or direction from the body regulating one's profession;
- Defend oneself against any claim with regard to professional work in connection with which the secret information has been obtained;
- Initiate and maintain judicial proceedings, seek the recovery of fees or other sums due, or the enforcement of other lawful claims or interests;
- Assist with the prevention, revealing, detection or prosecution of acts that amount or are likely to amount to a criminal offence, or to prevent miscarriage of justice.

Poland

In Poland, the basic secrecy regulation is Section 266 .1 of the Penal Code. Any person who, acting contrary to the provisions of an Act of Parliament or accepted obligations, makes public or makes use of any information obtained through his or her position in the course of professional, public, business or scientific activity, will be subject to fine or up to 2 years imprisonment.

This is a general regulation, however, and there are many exceptions contained in Acts introducing much more severe sanctions in cases of a breach of professional secrecy.

In the Polish legal system, banking secrecy covers all information about banking activities. The secrecy covers all information on persons who are parties to a contract with a bank, for the use of all types of banking services and persons who are not parties to a contract but merely executing the operations connected with the said contract.

Access to data covered by banking secrecy is possible only in specific situations and subject to the conditions defined in law.

According to Section 104, *Banking Law* of 29 August 1997 (OJ 140 item 939, with later amendments) banking secrecy covers all information:

- concerning banking activities and persons being parties to a contract, obtained during the negotiations and connected with the conclusion of a contract with a bank and its performance, apart from the information which is necessary for the proper execution of a contract by the bank;
- regarding persons who, not being parties to a contract, mentioned in paragraph 1, execute operations connected with the performance of the said contract, with the exception of cases when the Act provides for the release of information concerning such activities.

The scope of banking secrecy is very broad. The Act binds not only banks and bank employees but also all persons participating in the performance of banking activities.

The “owner” of the bank secret information is the person who is the party to the contract (bank customer). He or she may authorise the bank, in writing, to release certain information to a specific person. In all other cases the general principle prohibits release of banking secrets to third parties.

The exceptions to this rule have been precisely laid down in the provisions of several Acts listed below.

1) Banking Law

Under the provisions of Section 105 a bank is obliged to provide information protected by banking secrecy only to:

- Other banks and – on the principle of reciprocity - other institutions statutorily authorised to grant credits. Information is given on liabilities, turnover and balances of banking accounts to the extent necessary for granting loans, credits, bank guarantees and foreign currency operations as well as for the consolidation of financial reports. Under the provisions of paragraph 4 of this section, banks may, acting together with chambers of commerce, create institutions for collecting and making available to banks information on liabilities, turnover and balances of banking accounts to the extent necessary for granting credits, loans and bank guarantees. Such an institution – Biuro Informacji Kredytowej (Credit Information Bureau) was founded in 1997 and became fully operational in 2001.

At the request of:

- the Banking Supervision Commission (BSC) within the framework of its supervisory duties as well as at the request of BSC inspectors and persons authorised by the BSC resolution;
- a court or attorney in connection with criminal or tax evasion litigation against a physical person being the bank account holder;
- a Court or attorney in connection with criminal or tax evasion litigation in connection with the action of a legal person or entity without legal personality in the field of bank accounts and banking operation realised by the said person or entity;
- a Court in connection with inheritance proceedings or property separation proceedings or during alimony proceedings;
- the President of the General Customs Office in connection with criminal or tax avoidance litigation;
- the President of the Supreme Auditing Chamber as necessary for concluding auditing proceeding set up in the Supreme Auditing Chamber Act;
- the Chairman of the Securities Commission in the scope of supervision pursuant to the Public Trade in Securities Act;
- the President of the Bank Guarantee Fund (BGF) to the extent defined by the BGF Act;
- Auditors authorised to carry out a bank audit engagement concluded contractually with the bank;
- the Pension Fund Supervising Authority in the scope of supervision of a bank acting as a depositary pursuant to the basis of the Pension Funds act;
- the State Protection Services and its authorised officers to the extent necessary for carrying out controls on the basis of the *State Secrets (Defence of the Republic) Act*;

- the National Bank of Poland and other banks in the scope of foreign currency controls executed under provisions of the Foreign Currency Law.

Moreover, banks, according to Section 106, *Banking Law*, in the case of reasonable suspicion that it is being used to launder money (Section 299, Penal Code) are obliged to take preventive action in accordance with the provisions of the GIFI Act (see item 5 below).

2) Tax Ordinance Act of 29 August 1997

- Under the provisions of Section 82. 2, banks acting on a written request from the tax authorities are obliged to prepare and submit information on the account numbers of legal and physical persons dealing in business and to submit information to enable the owners of the said accounts to be identified. Under the provisions of Section 82.3, when requested in writing by the Minister of Finances or a duly authorised representative, banks must make accessible information required under the rules established under double taxation agreements;
- Under the provisions of Section 182 bank, if requested by the tax authorities, banks must prepare and submit the following information with regard to a party in tax avoidance proceedings: amount of bank accounts (including securities accounts), account balances and turnover, other securities acquired through the bank's intermediary as well as details of credit and loan agreements.
- The request for information may be submitted only after the tax authorities have requested from the person in question information on the subject listed above and the said person has refused to comply with the request. In their application to the bank, the tax authorities must

specify the scope of the information requested and specify the date when it should be made available. The request must also give the reasons why the information is sought, as well as proof that the party has refused to provide the information or authorisation to the tax authorities. Under the provisions of Section 185, if the above conditions are not fulfilled banks are entitled to refuse to provide the information. Under the provisions of Section 275.2 banks are obliged, if requested by the tax authorities, to prepare and submit information relative to tax deductions if such deductions have been declared by the taxpayer.

3) Tax Investigation Act of 28 August 1991

Under the provisions of Section 33, banks, acting on a written request from the General Inspector of Tax Investigation or a director of a tax investigation office, issued in connection with tax avoidance litigation, are bound to prepare and submit the following information with regard to the person under investigation: account balances (including securities accounts) and turnover, other securities acquired through the bank's intermediary, as well as details of credit and loan agreements.

4) National Bank of Poland Act of 29 August 1997

- Banks are bound under Section 23.2 to transfer to the NBP all data necessary for establishing monetary policy and for the periodical assessment of the State's financial situation including foreign currency balances and operations. Banks are also obliged to transfer to the NBP all data necessary for the assessment of their financial situation and banking sector risk. The confidentiality of the data is guaranteed by Section 23.5 which stipulates: the data can only be used for analytical work and for the appraisal

and preparation of balances of foreign assets and liabilities mentioned in this section and cannot be made accessible to third persons.

- The NBP Act also contains a general clause concerning secrecy. Section 55 provides that the NBP employees and members of the Monetary Policy Board and other advisory bodies operating within the NBP, must keep secret all information constituting state, banking or professional secrets obtained during their work at the NBP. This obligation continues to be binding even when they are no longer employed by NBP.

5) GIFl (General Inspector of Financial Intelligence) Act of 16 November 2000

Section 10 provides that banks, if requested in writing by the General Inspector, must make available documents concerning the transaction covered by the Act.

Sections 2.2, 8.1, 8.3 provide that institutions (including banks) covered by the Act should register every transaction in which they participate provided that the transaction falls within one of the following categories:

Category I - transactions satisfying all the following conditions:

- falls within the definition in Section 2.2 of the Act;
- value of the transaction exceeds EUR 10,000 either as an individual transaction or as a series of transactions if the circumstances indicate that the transactions are connected;
- it has been initiated by the customer of an institution covered by the Act.

Category II - transactions satisfying all the following conditions:

- it is within the meaning of Section 2.2 of the Act;
- there are indications that the means used in the transaction may originate from illegal or undisclosed sources.

Registration is not necessary if the transaction in question is a transfer between the accounts of the same customer or for inter-bank transactions.

6) The Police Act of 6 April 1990

This Act contains a provision concerning extremely dangerous crimes.

The Banking Act provides that in the case of banking secrets being revealed the bank is liable for any loss caused (Section 105.5). The deliberate disclosure of a banking secret is subject to a fine and up to 3 years in prison (*lex specialis* in comparison to the general provision described at the beginning of this contribution).

Under Section 108 a bank is not liable for any loss incurred during the execution of its duties for the prevention of the use of bank services for criminal purposes. If the suspicion of illegal operation turns out to be unfounded the State Treasury is liable.

Slovak Republic

All information and documents on matters concerning the bank's customers, which are not publicly available, especially information on transactions, account and deposit balances are subject to bank secrecy.

A bank is obliged to keep such information confidential and protect it against disclosure, misuse, damage, destruction, loss or theft. Information and documents on matters covered by bank secrecy may be disclosed by a bank to a third person only with the prior written consent of the customer concerned or upon his written instructions.

A bank is obliged to submit a report on all facts that are subject to bank secrecy, even without the customer's consent to persons mandated to exercise banking supervision and auditors and to the Deposit Protection Fund. Home savings banks must also disclose such information to persons mandated to control the issue of government home savings bonuses, and mortgage banks must disclose such information, if requested, to persons mandated to control the use of government bonuses in mortgage transactions.

A report on matters concerning a client that are subject to bank secrecy may be submitted by a bank or branch office of a foreign bank without the prior consent of the client concerned solely upon request made in writing by:

- a court of justice, including a notary public in the capacity of a court commissioner, for the purposes of civil proceedings to which the client of the bank or branch of a foreign bank is a party, or the subject of which is the property of the client of the bank or branch office of a foreign bank;
- a law enforcement authority for the purposes of a criminal prosecution;

- tax and customs authorities, for the purposes of tax or customs proceedings to which the client of the bank or branch office of a foreign bank is a party pursuant to a separate regulation, including the execution of a decision and enforcement proceedings;

- a financial control authority performing financial control pursuant to a separate regulation of the client of the bank or branch office of a foreign bank;

- a court executor assigned to perform execution pursuant to a separate regulation;

- a state administration authority for the purpose of executing a decision imposing an obligation on the client of the bank or branch office of a foreign bank, or on a creditor of the client of the bank or branch office of a foreign bank, to make a certain payment;

- the criminal police service and financial police service of the Police Corps for the purposes of performing their duties stipulated by law;

- the Ministry in the course of control exercised hereunder or under a separate regulation;

- receiver and preliminary receiver in bankruptcy and composition proceedings, if the client of the bank or branch office of a foreign bank is involved in proceedings pursuant to a separate regulation;

- the Financial Market Authority for the purpose of state supervision;

- a competent State authority for the purposes of discharging obligations arising from an international treaty binding upon the Slovak Republic.

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Banks and branch offices of foreign banks shall be obliged, at a written request, to disclose to the Ministry by the assigned date the list of clients subject to the International Sanction List, including their account numbers and account balance. A bank or branch office of a foreign bank may:

- a) Keep a register of clients who do not meet their commitments properly and in time ensuing from contractual relations between the bank and a client, and clients whom a bank or branch office of a foreign bank considers an unusual commercial transaction as stipulated by a separate regulation,
- b) Disclose, even without a client's approval, information from this register to other banks or branch offices of foreign banks, except for information considered an unusual commercial transaction; the information disclosed shall be subject to bank secrecy for these banks and branch offices of foreign banks.

Compliance with the obligation of banks to report suspicious banking transactions is not considered as a breach of bank secrecy. The same applies to the obligation of banks to notify the law enforcement authorities of any suspicion of a criminal act committed or contemplated in connection with matters which are otherwise subject to bank secrecy.

Employees of a bank, members of a bank statutory body or supervisory board are obliged to keep confidential any matters relevant to the interest of the bank and its customers. The obligation of confidentiality extends beyond the term of employment or the work contracts and the term of office.

For the purposes of bank secrecy, a person is deemed to be a customer of a bank if the bank has negotiated a transaction with him, even if the

transaction was not in the end executed, as well as a person who has ceased to be a customer of the bank.

Slovenia

The Law on Banking (published in the Official Gazette of the Republic of Slovenia - 7/99 on 5 February 1999 and 59/01 on 19 July 2001) establishes the basic rule of banking secrecy. A bank must treat as confidential all the data on customers, acquired in the course of its business.

Under article 103 of this law, members of a bank's bodies, shareholders of a bank, employees of a bank, or other persons who, in connection with their work in a bank or the provision of services for a bank, have access to confidential data, are not allowed to disclose such data to third persons or to make use of them or enable third persons to make use of them. There are however several exceptions to the rule of banking secrecy and professional secrecy requirements do not apply in the following instances:

- if the customer explicitly agrees in writing that certain confidential data may be communicated,
- if the data are necessary for establishing the facts in criminal procedures and the submission of such data is requested or ordered in writing by a competent court,
- as prescribed by the law regulating the prevention of money laundering,
- if such data are necessary for verifying a legal relationship between a bank and a customer in a court dispute,
- if such data are necessary in inheritance court proceedings and the submission of such data is requested or ordered in writing by a competent court,
- if such data are necessary for debt collection purposes and the submission of such data is requested or ordered in writing by a competent court,
- if such data are needed by the Bank of Slovenia or another supervisory authority for the needs

of supervision carried out in the framework of its competencies,

- if such data are required by the tax authorities in a procedure carried out in the framework of its competencies.

The Bank of Slovenia or other authorities or the courts must use the data acquired on the basis of the second paragraph of article 104 of the present law exclusively for the purpose for which the data have been acquired.

OTHER EU COUNTRIES

Andorra

In the Principality of Andorra, banking secrecy is a well-established principle of capital importance, bearing in mind that the Andorran financial system is one of the fundamental pillars of the State's economy. Accordingly, the principle has become enshrined in banking practice; banking secrecy exists by itself, as an unwritten standard derived from constant practice, because the situation imposes, in other words, the protection of personal data.

The Constitution guarantees the right to privacy (article 14) and stipulates the recognition of the freedom of companies to operate within the framework of the market economy as a fundamental economic principle of the State. The role of the public authorities in the organisation of the economic, mercantile, labour and financial systems, with a view to achieving a balanced development of society and the general good, must in any case be carried out within the framework of this market economy (articles 28 and 32). In such a way that, since 28 April 1993, and in an indirect and implicit way, banking secrecy is also underpinned by the protection of personal data and the right of companies to operate freely within the framework of the market economy.

The development of the Andorran legal system from the principles set out in the Constitution of 1993 has constituted a further step in the recognition of the principle of banking secrecy, which is subject to explicit protection. In this way, banking secrecy is structured as a duty or an obligation, imposed on bankers and their employees as a formula or means of safeguarding directly a particular juridical asset which is considered to be worthy of protection, specifically the right of privacy or, more precisely, the relevant aspects of the information given by the customers to the banks during the course of their business relations; at the same time, however, and in this case indirectly, such a configuration also supposes the defence of the rights and the interests of the bank themselves, since their prestige

is closely connected to preserving the concept of bank secrecy.

This obligation or duty constituting banking secrecy translates article 226 of the Penal Code, in the chapter covering offences against the protection of personal data, together with the more generic offences referring to the disclosure of secrets (articles 222, 223 and 224 Penal Code). The aforementioned article 226 of the Penal Code states that "any administrator or employee of a bank, credit institution or financial entity, who maliciously reveals confidential information concerning customers, will be given a prison sentence of up to four years. If the offence is committed for money or reward the maximum will be seven years in prison".

The Law of 29.12.2000 covering international co-operation on criminal matters and the fight against the laundering of money or securities deriving from international delinquency also reflects this consideration.

Bulgaria

Banking secrecy is basically regulated in the Law on Banks as follows (Article 52):

Bank employees, members of the bank's managing and governing bodies, officials from the central bank, liquidators, as well as any other person working for the bank, must not, unless authorized, disclose, use for their personal benefit or for the benefit of members of their families, facts and circumstances concerning the assets and transactions on accounts and deposits of the bank's customers and which have become known to them in the performance of their professional duties.

- All bank employees when taking office must sign a declaration regarding the preservation of bank secrecy.

- The provisions of para. 1 also apply to cases where the persons concerned are not in office or their activities have been terminated.

- Except for the central bank and for the purposes of and pursuant to the conditions set forth in Article 36, a bank may disclose information on the transactions and balances on individual customers accounts only with their consent or further to a court ruling.

- The Courts are entitled to decide on disclosure of the information under paragraph 4 and at the request of:

- the public prosecutor's office should there be reason to believe that a crime has been committed;
- the director of the regional tax directorate (amended, State Gazette, issue 103 of 1999) where:
 - by an act of tax authorities, it has been ascertained that the person subject to a tax inspection has not co-operated with the

inspection or has not kept proper accounts or that the said accounts contain significant errors or omissions;

- an act of a competent government body proves the occurrence of a fortuitous event which has led to the destruction of the accounting records of the person being investigated by the tax authorities.

- The director of the Agency of State Internal Financial Control and directors of territorial directorates where by an act of the state internal financial control body it has been ascertained (amended, State Gazette, issue 92 of 2000) that:

- the managers of the audited entity have not co-operated with the inspection;
- the audited entity has not kept any accounting records as required or said records are deficient or false;
- there are deficiencies;
- a public authority has ascertained the occurrence of a fortuitous event which has led to the destruction of the accounting records of the audited entity.

- The directors of the Customs Agency and regional customs directorates (new, State Gazette, issue 15 of 1998, amended, issue 63 of 2000) where:

- by an act of a customs authority, it has been ascertained that the person subject to inspection has frustrated the conduct of the customs inspection or has not kept proper accounting records or that there are significant imperfections in the said accounts;
- by an act of a customs authority, it has been

ascertained that customs requirements have been infringed;

- bank accounts are blocked to secure the collection of claims due to customs authorities as well as to secure the collection of fines, legal or otherwise;
- an act of a competent government body proves the occurrence of a fortuitous event which has led to the destruction of the accounting records of the entity subject to a customs inspection.

The district judge must make a reasoned decision in chambers no later than 24 hours after its submission, fixing the time limit for disclosure of the information under paragraph 4. The court ruling is not subject to appeal.

In response to a written request from the Director of the Central Service for Combating Organized Crime, the Director of the National Investigation Service or the Director of the National Police, banks are obliged to provide information on the balances and flow of funds on accounts of companies with over 50 percent state and/or municipal interest.

In response to a written request from the Chairman of the State Commission on Information Protection or directors of the security services and public order services (new, State Gazette, issue 45 of 2002), banks must provide information on the assets, accounts transactions and deposits of persons, subject to investigation for reliability under the terms and procedure of the Law on Protection of Classified Information. Consent to disclosure of this information by the person under investigation shall be enclosed with the request.

Croatia

Banking secrecy is explicitly set out in the *Banking Law* (of July 2002, Articles 98-100).

The *Banking Law* provides a definition of banking secrecy, names subjects responsible for keeping bank customer information confidential, as well as purposes for which confidential information may be disclosed.

Banks are obliged to keep confidential all information on particular savings deposits or other deposits, including transactions on accounts and any other facts or circumstances that banks have learned about a client in the course of providing services to the client or during business transactions with a client.

Bank board members, shareholders, bank employees and other persons who, given the scope of their work within the bank or with the bank, have access to confidential information, have the duty to keep confidential all client information. Subjects mentioned are not permitted to disclose client information to third parties, use this information against the interests of the bank or bank clients, or to enable third parties to use it.

Case law provides basic exceptions for banking secrecy disclosure:

- if the client gives explicit consent in writing so that specific confidential data may be disclosed;
- if confidential information disclosure is necessary for establishing facts in criminal offence proceedings or for investigation prior to proceedings, if ordered in writing by the court;
- if confidential information is disclosed to the Office for Money Laundering Prevention, as regulated by the Law on Prevention of Money Laundering;
- if disclosure is necessary in order to define the legal relationship between the bank and the

client, when requested or ordered in writing by the court;

- if the data is disclosed for the purpose of hereditary or other court proceedings on property ownership, based on request by the court in writing;
- if the data is disclosed for liquidation proceedings over the bank client's ownership, when requested or ordered by the court;
- if the data is disclosed to the Croatian National Bank, Foreign Currency Inspectorate, or other supervisory body for the purpose of supervisory activities based on its scope of work and within the regulatory framework, based on written request;
- if confidential information is disclosed to a company which may be founded by banks for the purpose of collecting and providing credit information about amounts, types of debt and payment regularity for all credit obligations of individuals and companies;
- if confidential information is necessary for tax authorities' procedures, based on laws regulating the scope of their work, and are disclosed per their written request;
- if confidential information is disclosed to agencies maintaining the bank deposit insurance scheme, based on laws regulating their scope of work.

The obligation to maintain banking secrecy remains even after the relationship between the bank and employee, shareholder or board member is terminated. The same applies for the employees of the central bank and other bodies, which obtain confidential client information.

The Croatian National Bank, courts and other bodies may use confidential information solely for purposes for which the information was obtained, and they are not permitted to reveal information to third parties, or enable third parties to acquire the information, except in cases regulated by law.

The Law on Prevention of Money Laundering (changes brought in 2003, effective from January 2004) allows disclosure of banking secrets to the Office for Prevention of Money Laundering and other relevant institutions, but specifically for purposes of prevention of money laundering or investigation of potential activities of money laundering, or financing terrorism, or other illegal activities (Article 15).

Code of Good Banking Practice (not a part of national legislation)

The Code of Good Banking Practice was voluntarily signed by the members of the Croatian Banking Association.

The Code of Good Banking Practice refers to confidentiality of banking information as one of the main principles of bank relations towards clients (Article 2.3.).

Furthermore, the Code recognizes banking secrecy as mandatory, so that information on client accounts “must not be divulged to anyone including companies belonging to the same owner, except for cases clearly defined by the law, at the client’s direct demand or with their explicit consent” (Article 5.2.).

Gibraltar

The position with regard to banking secrecy should be divided into the following categories-

- (a) *Position at common law;*
- (b) *Provisions of the Gibraltar Banking Ordinance;*
- (c) *Review of relevant EEC Directives affecting Gibraltar;*
- (d) *Miscellaneous legislation - in particular in the field of Anti-Money Laundering.*

(a) The Position at Common Law

The law relating to the banker's usual duty of secrecy or confidence towards his customer is largely case law based. The leading case in this field is *Tournier -v- National Provincial and Union Bank of England 1924 1 KB 461* in which it was held that the duty came into existence along with the banker/customer relationship. Subject to the qualifications set out below, a banker must release no information about the customer or his account whether the information was acquired before or after the account was opened or after it ceased and whether obtained direct from the customer or from some other sources and whether the account is in credit or overdrawn.

The Court of Appeal in that case in the judgment of Lord Justice Banks set out the qualification to the duty under four headings;

- (i) where disclosure is under compulsion by law;
- (ii) where there is a duty to the public to disclose;
- (iii) where the interests of the Bank require disclosure;
- (iv) where the disclosure is made by the express or implied consent of the customer.

The requirement to disclose matters under compulsion of law also covers the duty of the banker at common law to answer questions

as to his customer's affairs when he is asked to give evidence about them in the witness box in a Court of Law. In this respect the *Bankers' Book Evidence Act 1879* which applies in Gibraltar makes provision for bank books to be called for in legal proceedings. There is further provision under Section 7 of that Act with or without summoning the Bank to make an order seeking disclosure of various entries. The application should only be granted provided that it is not oppressive, is limited in time and is not used for ulterior motives. There ought to be no disclosure of entries in the account made prior to the period covered by a criminal charge as this could be said not to cast light on the offences charged. In ordinary civil litigation an Order under Section 7 is only normally made in respect of a party to litigation. In criminal cases an Order can be made against a non-party, but the jurisdiction of the Court to make such an Order should be exercised with "great caution" (*R.V. Grossman 1981 criminal Law Reports Page 396*).

(b) Provisions of the Gibraltar Banking Ordinance 1992

The provisions of the Gibraltar Banking Ordinance and in particular Section 59 to 63 deal with the supervision of deposit-taking businesses. Under these provisions the Banking Supervisor may require by notice in writing such information as may be prescribed for the purposes of prudential supervision of deposit-taking businesses. The Banking Supervisor may also require the submission of relevant documents where this is also required for the purposes of prudential supervision of deposit-taking businesses.

In connection with the above and also for the purposes of the prudential supervision of deposit-taking businesses the Banking Commissioner and the Banking Supervisor may inspect premises and businesses and require that documents, accounts

and records be submitted to him and may examine, make copies or retain the documents, accounts or records referred to for the purposes of the Ordinance.

Additionally the information may be obtained through the use of appointed reporting accountants or for such other purposes as may be deemed appropriate. The sections also permit the Commissioner to seek this information in order to assist another regulator in the performance of their regulatory functions.

(c) EEC Banking Directives affecting Gibraltar

Articles 28, 29 and 30 of Directive 2000/12/EC of the European Parliament and of the Council of 20 March 2000 relating to the taking up and pursuit of the business of credit institutions, which is transposed into Gibraltar law, deals with the secrecy and confidentiality provisions of confidential data and the conditions under which such information may be exchanged with other regulators.

(d) Miscellaneous Legislation

There is various miscellaneous legislation which may require information to be disclosed in certain circumstances. Amongst the most important of these are the *Drug Trafficking Offences Ordinance* and the *Criminal Justice Ordinance*.

Under this *Ordinance* a police or customs' officer may apply to a judge for an order to make certain material available in relation to particular material or of material of a particular description.

Such an *Order* would have effect notwithstanding any obligation as to secrecy or to any other restriction upon the disclosure of information imposed by statute or otherwise. Such an *Order* may also be made in respect of material in the possession of Government departments.

The provisions of the *Income Tax Ordinance* are also relevant to disclosures of information which may be ordered.

In relation to matters arising under the *Income Tax Ordinance* the Commissioner of Income Tax is empowered under Section 59(5) of the *Income Tax Ordinance* to have full and free access to any premises or places wherein the Commissioner has reason to believe there may be found any books, documents or accounts which should be produced.

Section 4 of the same *Ordinance*, however, imposes a duty of secrecy and confidentiality on any person employed in or having an official duty in the administration of the Ordinance and such a duty applies to all information, documents, returns, assessment lists and any copies of such lists.

Section 14(1) imposes a duty of secrecy and confidentiality on every person having any official duty in the administration of the Ordinance with regard to any information, documents and declarations relating to the identity of the beneficial owners or persons interested in any shares or bearer certificates or coupons issued under the provisions of the *Ordinance*. This only applies to the exempt companies and both the above are exempt.

The *Drug Trafficking Offences Ordinance*, The *Income Tax Ordinance* and The *Companies (Taxation and Concessions) Ordinance* are relevant, in the manner described to the duties of confidentiality and secrecy which pertain to financial institutions.

Iceland

Article 58 of the Commercial Banks and Savings Banks Act imposes a duty on all bank employees, members of the board and auditors to maintain confidentiality.

In addition, anyone receiving information of the sort referred to in Article 58 shall be bound by an obligation of confidentiality in the same manner as described therein. The party providing information shall remind the recipient of the obligation of confidentiality.

Infringement is punishable with either a fine or imprisonment.

This duty continues after the termination of employment.

However, there are several exceptions to this general rule:

- a judge can decide that information must be given in connection with a criminal investigation.
- the tax authorities can obtain information from the banks.
- the Central Bank of Iceland (the supervisory authority) is entitled to obtain all the information it judges necessary to enable it to exercise its supervisory function.
- suspicion of money laundering must be reported to the public prosecutor and he and the police are entitled to obtain information when investigating money laundering cases.
- when the customer gives his consent (Article 60).
- for the necessity of risk management and supervision on a consolidated basis: information may be communicated to the parent company of a financial undertaking (Article 59).

Monaco

Professional secrecy in Monaco is considered to be part of human rights and is intended to protect both the private life of the individual and the right to privacy in business affairs. Such protection is established by law.

The principle that banks and security portfolio management companies are subject to a rigorous duty to observe professional secrecy, is set out in the following legal text:

Article 308 of the *Monaco Criminal Code* imposes criminal sanctions (imprisonment and financial penalties) for breach of the duty to maintain professional secrecy.

The criminal liability imposed by the text is personal for individual bank managers and all bank employees, as corporate criminal liability is not recognised under the laws of Monaco.

The duty to maintain professional banking secrecy binds all bank employees, both during the course of their employment and after termination.

The duty applies to all confidential information and documents (not already in the public domain) which come into the possession of, or become known to the employee in the course of employment.

Independently of the criminal provisions, bankers are held to have a general civil duty of confidentiality, and should that duty be breached, the banker may be subject to sanctions under the civil liability of the bank or the banker.

The above-mentioned article 308 includes a few specific exceptions to the right to maintain banking secrecy: in particular the right to secrecy cannot be used as a defence against requests from the judicial authorities acting in the framework of a criminal procedure; additionally the same restriction applies

for requests by Regulators of banks and security portfolio management companies as well as anti-money laundering F.I.U. (SICCFIN in Monaco).

Norway

The *Act on Commercial Banks* establishes the basic rule of banking secrecy. Elected officers, employees and auditors of a bank are subject to banking secrecy, and any infringement is punishable by fines or up to three months imprisonment (unless the offence falls within the scope of a more severe penal provision).

The bank will also be liable for civil damages.

There are however several exceptions to the rule of banking secrecy:

- banking secrecy must be lifted if required by a court order;

- to disclose information as a witness; or,

- in connection with a criminal investigation.

However, the police can to a limited extent seize objects deemed to be of significance as evidence in a criminal case without a court order;

- disclosure of information to certain authorities is compulsory under the law, e.g. regarding:

- income tax controls: it is mandatory for banks, at the end of each fiscal year, to submit automatically to the tax authorities detailed statements on each customer concerning deposits and debts, interest credited or debited, etc. A similar obligation applies to securities. Furthermore, on request, the tax authorities can have access to all transaction data on a customer's account;

- mandatory information to the supervisory authorities (the Banking, Insurance and Securities Commission);

- suspicion of money laundering: such suspicions must be reported to the Central Unit for Investi-

gation and Prosecution of Economic and Environmental Crime (ØKOKRIM);

- execution of judgements for enforced-collection: information must be given to the authorities on request;

- collection of criminal or civil debts by the *Government Central Unit for Collection of Demands* (enforced collection by a special authority of, for example, fines, alimony and child support). Information must be given on request;

- currency transactions: All currency transactions must be reported to the Central Bank of Norway (Norges Bank);

- A bank can, if its Board so decides, disclose information to another bank without violating the code of banking secrecy.

- A bank may carry on credit reference activity.

- The bank can be released from secrecy by the person concerned.

The Norwegian Banking, Insurance and Securities Commission (Kredittilsynet) in a circular letter dated 17 April 2000 has provided an interpretation regarding the transmission of customer information between companies in the same financial group. According to this interpretation, the banking secrecy rules will not apply to so-called neutral information i.e. the customer's name, address, date of birth, employment, etc. and information about the type of banking relationship in general.

Russia

Legal relations related to banking secrecy are currently (as of 18.05.2002) regulated by the *Civil Code of the Russian Federation* and by the *Federal Law "On banks and banking"*.

Civil Code of the Russian Federation (Article 857 on banking secrecy):

- banks have an obligation of secrecy with regard to bank accounts and deposits, transactions and customers' personal data;
- information regarded as confidential may be disclosed only to customers themselves or to their legal representatives. Such information may be disclosed to Government institutions and their officials only in cases and according to the procedure stipulated by Law;
- in the event that a bank discloses information, regarded as falling within the scope of banking secrecy, without authorization, the customer whose rights are violated has a right to claim damages from the bank.

Federal Law "On banks and banking" (Article 26 on banking secrecy):

All Russian credit institutions and banks must treat as confidential details of all transactions, accounts and deposits of their customers and correspondents. All employees of credit institutions are obliged to preserve the secrecy of transactions, accounts and deposits of their customers and correspondents, and also any other information held by the credit institution, if it does not contradict Federal Law.

Information on transactions and accounts of legal entities and private individuals, involved in entrepreneurial activities without creating a legal entity, can be disclosed by the credit institution to such entities and individuals themselves,

to the courts, the "Schothnaja Palata" of the Russian Federation, the State tax authorities and the Tax Police, customs institutions of the Russian Federation in cases determined in Law on their activities, and in cases authorised by the public prosecutor's office and pre-investigation bodies.

Information on the transactions and accounts of private individuals may be disclosed by the credit institution to such individuals themselves, to Courts, and with the authorization of the public prosecutor's office to pre-investigation bodies if they are responsible for these particular files.

Information on transactions and accounts in case of death of the account holder may be disclosed by the credit institution to persons nominated by the account holder in his/her will, to notaries responsible for the inheritance and in the case of accounts of foreigners – to the respective foreign consular services.

Information on transactions of legal entities and private individuals, involved in entrepreneurial activities without creating a legal entity may be disclosed by the credit institution to the authorized institution, responsible for combating money laundering, in cases and in accordance with the procedure stipulated by the Federal law "on combating of money laundering".

The Central Bank of Russia (CB) must not disclose information on accounts, deposits, and also information on particular deals and on transactions disclosed in reports of the credit institutions made available to the CB during the execution of their licensing, supervision and control functions, except in the cases stipulated by the Federal Law.

Auditors must not disclose information on transactions, accounts and deposits of credit institutions, their customers and correspondents obtained

during their audit engagement, to third persons, except in the cases stipulated by the *Federal Law*. Authorized institutions, responsible for combating money laundering, must not disclose information obtained from the credit institutions in accordance with the *Federal Law “On combating of money laundering”*, to third persons, except in the cases stipulated by the *Federal Law*.

The Central Bank of Russia, credit institutions, auditors and other authorized institutions, responsible for combating money laundering and also their officials and employees are responsible for unauthorized disclosure of information, regarded as banking secrecy, in accordance with the *Federal Law*.

Switzerland

The customer confidentiality obligation for Swiss banks is set out in Article 47 of the Federal Law on Banks and Savings Banks, enacted on 8 November 1934. This article prohibits anyone who is an officer, employee, mandatory, liquidator or commissioner of a bank, a representative of the Federal Banking Commission, or an officer or employee of a recognized auditing company, from disclosing any information that a bank customer entrusts to them in this capacity. Although the law refers to “bank confidentiality”, the term “bank customer confidentiality” is really more accurate since it concerns a right of bank customers.

Bank customer confidentiality is not absolute.

Swiss bank customer confidentiality is not and has never been absolute. Information must for instance be disclosed by banks in the following situations:

- criminal investigations such as suspicion of money laundering, membership of a criminal organization, theft etc. Indeed, where they have grounds to suspect that assets are crime-related, financial institutions may inform the authorities without contravening their obligation to safeguard bank customer confidentiality (Article 305ter, Paragraph 2 Swiss Penal Code);
- bankruptcy proceedings;
- civil proceedings such as inheritance or divorce for instance;
- when providing international mutual assistance in criminal matters.

Tax law and duty of discretion

The Swiss tax system is based on the principle of self-declaration by the taxpayer. Banks are not obliged to report to tax authorities, either during the tax assessment process or in the event of an appeal.

The Tax Administration has no direct access to bank records.

At the federal level, an important tool against tax evasion is withholding tax, given that most forms of capital income in Switzerland are subjected to it at a standard rate of 35%. This direct withholding tax is designed to motivate recipients of taxable income to disclose such income and it is refunded to the taxpayer on the basis of the income declaration.

Banks cannot argue a duty of discretion in cases of tax fraud which is considered as a penal offence in several cantons and at the federal level and is subject to criminal prosecution.

International legal co-operation in criminal matters

Judicial authorities co-operate at the international level. Under the 1981 Federal Act on International Mutual Legal Assistance - this Act was revised in 1995 - Switzerland provides authorities in other countries with mutual assistance in criminal matters. In such proceedings, information may be exchanged; assets blocked and, if necessary, handed over to authorities in other countries. For mutual assistance to be provided in criminal matters, the key prerequisites which must be satisfied are that the matter constitutes an offence in the country of origin and in Switzerland, the principle of speciality and the principle of “proportionality”. Swiss courts will only apply measures such as lifting bank customer confidentiality if the matter constitutes a criminal offence under the laws of the relevant country as well under Swiss law. The rule of speciality dictates that the information disclosed in the course of mutual assistance may only be used for the purposes of the specific prosecution for which co-operation was authorised. Lastly, the principle of proportionality requires that restraint be exercised on minor matters or if the interests of uninvolved third parties are affected.

Administrative co-operation

In the context of administrative mutual assistance between banking supervisory authorities, Article 23.6 of the Federal law on banks and saving banks, which entered into force on 1st January 1995, states that the Banking Commission “may provide to foreign banking or financial market supervisory authorities information and documents which are not accessible to the public”. However, the release of such information is subject to three legal conditions:

- information may be conveyed exclusively for the purpose of the direct supervision of banks and other authorised financial institutions and intermediaries. The provision of administrative assistance to tax authorities is prohibited.
- the foreign authority seeking co-operation must be bound by official and professional confidentiality and must be the direct recipient of the information.
- the foreign authority seeking co-operation is not entitled to convey information to other authorities or public supervisory bodies other than with the prior consent of the FBC or general authorisation under a treaty. Information may not be conveyed to prosecution authorities if legal co-operation in criminal cases is restricted. This is aimed at making it impossible to “by-pass” prosecution assistance requirements.

Forthcoming Amendments to Current Law

When a foreign supervisory authority is afforded administrative co-operation with regard to a criminal prosecution (e.g., of insider trading), the information may be forwarded by the receiving authority to a criminal prosecutor only on the condition that the requirements of legal co-operation in criminal matters, as mentioned above, are met.

This means:

- (i) that the offence prosecuted by the foreign authority is a criminal offence in Switzerland as well (requirement of double incrimination) and
- (ii) that customer-privacy rights are respected.

In the case of insider trading under US Securities Law, these requirements have provoked a deadlock in administrative co-operation with the SEC since

- (i) the US definition of insider trading is broader than under Swiss law (article 161 of the Swiss Penal Code) and
- (ii) US procedures are public to some extent.

Therefore, the Swiss Federal Banking Commission and the Swiss Bankers Association, in a joint effort, have proposed an amendment to the Federal Stock Exchange Act in order to give up the requirements of double incrimination for a limited category of stock-exchange offences including insider trading and of maintaining the privacy rights in foreign criminal procedures. As general rules of Swiss co-operation in criminal prosecutions, these requirements will remain intact and only be relaxed to a clearly defined extent for the prosecution of stock-exchange offences. The Swiss Federal Government has opened a consultation procedure and a proposal, awaiting comments until 30 April, 2004. A separate Working Group of the Federal Government is preparing an amendment to article 161 of the Swiss Penal Code on insider trading to adapt it to international standards. Both initiatives are aimed at re-establishing a good working co-operation between Swiss and US authorities in the prosecution of insider cases.

Consequences of violating bank customer confidentiality

Anyone violating bank customer confidentiality, or who tries to induce others to violate it, faces imprisonment of not more than six months or a fine of not more than CHF 50,000. If the violation has been committed by negligence, the penalty is a fine not exceeding CHF 30,000. The violation of bank customer confidentiality remains punishable even after the termination of the official or employment relationship or the exercise of the profession (Art. 47, Federal Law on Banks and Savings Banks).

THIRD COUNTRIES

Australia

The common law position in Australia is that there is a banker's duty of secrecy. It arises out of contract and is not absolute but qualified.

The allowable exceptions to fulfilment of that duty fall under four headings:

- where disclosure is under compulsion by law;
- where there is a duty to the public to disclose;
- where the interests of the bank require disclosure;
- where the disclosure is made by the express or implied consent of the customer.

The nature of the information to which the obligation extends includes information obtained from sources other than the customer's actual account.

Federal privacy legislation, which can override the common law duty, requires that a banker who has possession or control of a record that contains personal information shall not disclose the information to a person, body or agency (other than the individual concerned) unless:

- the individual concerned is reasonably likely to have been aware, or made aware, that information of that kind is usually passed to that person, body or agency;
- the individual concerned has consented to the disclosure;
- the banker believes on reasonable grounds that the disclosure is necessary to prevent or lessen a serious and imminent threat to the life or health of the individual concerned or of another person;

- the disclosure is required or authorised by or under law or;

- the disclosure is reasonably necessary for the enforcement of the criminal law or of a law imposing a pecuniary penalty, or for the protection of the public revenue.

The *Australian Bankers' Association's Code of Banking Practice* contains provisions consistent with and supporting the position at law.

Japan

In Japan, there are no specific laws on banking secrecy that stipulate a duty of secrecy and specific violations.

However, banking secrecy is recognized as a legal obligation, both in practice and in judicial precedent. Thus, banks are considered to be legally bound to keep secrets concerning their dealings with customers as well as any information derived from such transactions. This duty of confidentiality is generally acknowledged to be based on the following legal principles:

- Standard commercial practices implemented by banks for a long period of time;
- A duty derived from the principle of good faith, and trust;
- Contracts between banks and their customers, which contain, explicitly or implicitly, bank obligations to maintain secrecy.

The duty of secrecy covers all financial data/information concerning customers, except for those widely known or publicised. These include details of assets/liabilities, business equipment and staff, business performance, accounting and financial affairs etc.

Banks are exempted from the duty of secrecy when there is due reason:

- when the customer consented to the disclosure. For example, data possessed by the Personal Credit Information Centre are filed by member financial institutions and shared by the members with the borrower's prior consent.
- when mandated by law, investigations by tax authorities, criminal investigations, inspections by bank supervisors and court orders fall under this category. The reporting of suspicious transactions to the competent authorities, required

by anti-money laundering legislation, also falls under this category.

- when required in the due course of the bank's business. A typical instance is when a bank as a litigant claims or waives its right.

Investigation by tax authorities is a vexing issue for banks and controversial in judicial decisions. There are two types of investigation: compulsory investigations stipulated by law and non-compulsory investigations. In the former, banks are exempted from a duty of secrecy vis-à-vis the customer. In the latter, the tax authorities require bank consent for investigation. However, the law stipulates that the bank cannot refuse this without due reasons, which include failure by the investigation to satisfy legal requirements. Concerning this point of contention, the courts have ruled that an investigation satisfies legal requirements if objective evidence is shown to indicate the necessity of the investigation. In such a case, banks have to comply, and therefore bank secrecy is not an issue.

In connection with the prevention of money laundering, the *Law for Punishment of Organized Crime, Control of Crime Proceeds and Other Matters* was enacted in February 2002. This law requires banks to submit suspicious transaction reports when banks suspect that the money banks accept is derived from illegal activities. Banks are exempt from a duty of secrecy with regard to this reporting as long as banks follow the legal requirements.

United States

There is a complicated array of Federal and State laws that govern the confidentiality of bank records in the United States. There is a duty of confidentiality based in common law (or jurisprudence) as well. Historically, the most significant concern relating to secrecy refers to government access to individual financial records, not private sector access. However, the U.S. has recently addressed how an institution may use customer information for commercial purposes in the landmark *Gramm-Leach-Bliley Financial Modernization Law* (1999).

The major law relating to government access to customer information is the *Right to Financial Privacy Act [RFPA]* (12 USC 3401). The RFPA is designed to protect consumer records (not business records) maintained by financial institutions from improper disclosure to federal government officials or agencies. Specifically, the Act prohibits disclosure to the federal government of customer records held by certain financial institutions without some form of due process; the issuance of a subpoena, search warrant or summons by an agency, judge or magistrate.

Under the Gramm-Leach-Bliley law, financial institutions cannot transfer customer information to third parties without providing notice of the practice to the customer. In most instances, the customer has an opportunity to deny the transfer of information. Information on suspected crimes is excepted from this notification requirement, so financial institutions are free to report potential crime to law enforcement without fear of liability to the customer. This same law also requires each institution to have a programme in place to protect information on customers from unauthorized access.

Financial institutions must also report potential crime (over 200 crimes are connected to money laundering) to the Treasury Department on a "Suspicious Activity Report (SARs)" and cannot notify a customer that the report has been filed. Govern-

ment officials who investigate SAR related crimes could have access to customer records without the need for an official government order. Notifying a person involved in the reported transaction that a SAR has been filed may result in criminal penalties.

In October 2001, the *USA Patriot Act* was enacted in response to the 9/11 attacks and, among other things, gave the U.S. intelligence agencies greater access to customer records through the exceptions under the *Right to Financial Privacy Act*. The law also created a system for financial institutions to "share" information about terrorism and money laundering and with the government, that previously did not exist. This last change has not been completely implemented.

ANNEX

Country	Legal Source of Banking Secrecy		Duty of Banking Secrecy not applying in relation to:					
	Legislated rule? (Its extent?)	Consent to disclosure possible?	Bank Supervising Authorities	Fiscal Authorities	Other State Authorities (non judicial)	Judicial Authorities	Special provisions on Money Laundering, Corruption, Organized Crime	Private Sector Legal Entities eligible for disclosure

EU Member States - 15 Members

Austria	Yes, established in the Austrian Banking Act.	Yes	Financial Markets Authority	The Government Authority for fiscal violations as to penal proceedings for intentional fiscal violations, with the exception of petty offences.		Criminal Courts in connection with ongoing criminal proceedings	Yes, banking secrecy rules do apply. Mandatory reporting to the FIU.	Deposit guarantee organizations, general and customary credit reports on the economic situation of an undertaking, unless it explicitly objected.
Belgium	Yes, but not from a criminal law point of view.	Yes	The Banking and Finance Commission.	Tax authorities are not awarded immediate access to bank files. This may happen when a complaint has been lodged by a customer or when tax authorities have concrete evidence about fiscal fraud mechanisms.		Banks must answer requests for information from an examining Magistrate, but not from a Public Prosecutor (subject to change).	Banks are obliged to report suspect transactions to the Belgian Financial Intelligence Unit, even without pertinent request	

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Denmark	Yes, with a general exception “for due cause”.	Yes	The Danish Financial Supervisory Authority is entitled to obtain all information from banks.	Banks must supply tax authorities annually with details on customer accounts (interest, acquisition of bonds and holding of interest coupons). In concrete cases, tax authorities may ask for additional information on account movements.		Criminal courts may order lifting of banking secrecy in connection with criminal investigations and <i>subpoenas</i> . Banks may procure information in customer lawsuits involving a third party customer.		Other banks can be given information on economic status or creditworthiness of a customer according to DBA Guidelines. Information cannot be disclosed to non-banks, -even within the same group-for marketing or consultancy purposes without
Finland	Yes	Yes	The Financial Supervisory Authority has extensive information rights.	Banks are obliged to inform tax authorities annually on certain details (interests) on customer accounts. In individualized non-routine cases, tax authorities may carry out inquiries as well as inspections on accounts movements.	Authorities stipulated by law enjoy limited information rights, but must justify in detail their demands.	Prosecuting and pre-trial investigation authorities may request information in relation to the investigation of a crime.		Credit institutions may disclose information to undertakings within their group for customer service and risk management purposes. Credit reference services are also permissible.

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France	Yes, in both criminal and civil law (known as duty of discretion).	Yes	The Bank of France, the Commission Bancaire and the Commission for Stock Exchange Operations.	Tax and Customs authorities enjoy a right of communication of information: - automatic exchange for annual savings income for each customer, - upon request in other cases.		Judicial authorities acting in the framework of penal procedures.	Banks suspecting laundering of money derived from drug trafficking or organized crime are obliged to inform TRACFIN	
Germany	No. It is primarily based on the civil law contract between customer and bank.	No	Under the 4th Financial Market Promotion Act, banking supervisors may have direct automated access to certain key data, either for their own use or on request by Courts and authorities responsible for enforcing financial sanctions.	Bank secrecy is protected by fiscal law provisions; Tax authorities have only information rights in individual non-routine cases when there exists a legitimate reason for doing so.		Investigations of Criminal tax cases under criminal law.		The bank may be authorised to disclose to credit institutions information of general nature concerning creditworthiness, if such disclosure is not contrary to the customer's legitimate

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Greece	Yes		The Bank of Greece.	Tax authorities in case of joint bank accounts and serious tax offences	Parliamentary commissions of enquiry.	Judicial authorities, when the information is considered necessary to establish an indictable offence.	The Indictment Chamber by ruling orders a derogation of banking secrecy, or even seizure and freezing of accounts.	
Ireland	Not under statutory law. At Common law, there exists a contractual duty of secrecy.	Yes, expressly or impliedly		Tax authorities investigating under Income Tax Acts have powers of inspection and requiring production of documents.		Court orders and subpoenas are permissible in both civil and criminal proceedings. Banks may disclose loan information in proceedings against the customer to recover payment	Banks are obliged to report to the Gardai Sióchana their suspicion that a money laundering offence is or has been committed in relation to their business.	Creditworthiness references possible upon consent.

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Italy	Not expressly stipulated yet. Carefully observed.			General obligation for banks and other financial intermediaries to transmit to the tax administration all the data and information deemed necessary to determine the tax liability of recipients of interest and other financial income. Does not apply when the income is subject to withholding tax on the part of the intermediary in definitive settlement of tax liability, which is the rule in taxing capital income. Also specific reporting requirements concerning non-residents receiving dividends and income exempt from Italian withholding tax. In addition, banks are required to report certain payments made by customers that are relevant to fiscal obligations, such as interest payments on mortgage loans, credit transfers for house renovations, and so on.		Criminal Courts on request have unlimited information rights.		

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Luxembourg	Yes		The supervisory authority of the financial sector (CSSF)	Tax authorities can not request any information from the bank for the purpose of taxation of the bank's clients, except in case of death of a Luxembourg resident client in order to ensure the right application of inheritance tax.		A Luxembourg magistrate can request information in connection with criminal investigation (national investigation or foreign investigation via a rogatory commission only in accordance with international agreements or, in absence of an international agreement, if the investigation is authorised by the Luxembourg Prosecutor).	Prosecutor (FIU) of any suspicion of laundering.	

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Portugal	Yes		The Central Bank of Portugal, the Securities Market Committee and the Deposit Guarantee Fund, to the extent required for performance of their tasks.	Tax authorities have free access to bank files, in cases of fiscal fraud.	Enquiries by the Parliament.	Courts, when information is required to lay charges or to adjudicate a crime. Courts may order the seizure of assets or documents when essential to criminal proceedings.	Banking secrecy can be relaxed in cases of money laundering, corruption and economic or financial crimes	
Spain	Yes, specifically as stated within law 44/2002, according to which banks have to maintain, with some legal exceptions, confidentiality of the data concerning their clients and their	Yes		Banking secrecy does not exist vis-à-vis tax authorities.		Judicial authorities in all matters	Banking secrecy is not opposed against Special Anti-drug Public Attorney or Parliamentary Commissions investigating corruption of Senior State Officials.	

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Sweden	Yes, with the general exception of "legal cause". Civil liability envisaged only		The Financial Supervisory Authority, the Central Bank.	Mandatory for banks to supply annual statements to the tax authorities.	The police and the bailiff entitled to information when investigating a crime or enforcing a judgment.	The Public Prosecutor, when investigating a crime.	On money laundering cases banks are obliged to inform the National Financial Intelligence Police of suspicious transactions.	Disclosure permissible to other credit institutions to facilitate assessment of customer's creditworthiness. Information to subsidiaries may also be given under conditions.
The Netherlands	Yes, through criminal law provisions, not in civil law cases		De Nederlandsche Bank and the Autoriteit Financiële Markten obtain all information deemed necessary for exercising supervision.	Banks are obliged to report to tax authorities interest and dividends paid to the clients as well as the total value of assets as per 31 December.		No duty of secrecy regarding criminal investigations or when bankers testify as witnesses	Unusual transactions and suspicions of money laundering must be reported to the Reporting Center for Money Laundering.	Banks no longer give information about business customers; they may merely pass on open source information.

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UK	No; it stems from the contractual relationship between customer and banker.	Yes, expressly or impliedly.		Banks are obliged to report annually to the Revenue Authorities interest paid to all customers resident in the U.K. Revenue Authorities may also obtain a Court Order related to data of a particular customer.		Courts through the issuance of a Court Order.		
EU Members States - Acceding countries								
Cyprus	Yes, statutorily.	Yes, if written.			The police; any officer authorized by law to obtain information. Bailiffs serving garnishing orders.	Courts in bankruptcy or winding up proceedings; in civil proceedings between customer and bank. Courts in the investigation or prosecution of a crime.	Pursuant to the Prevention and Suppression of the Money Laundering Activities Law of 1996, information may be disclosed where a laundering offence is investigated.	Information may be disclosed to the holding company or a subsidiary. General information is also divulged for creditworthiness assessments, and for operating the database of dishonored checks.

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Czech Republic	Yes	Yes	The Ministry of Finance and the Securities Commission when exercising statutory supervision	Tax authorities.	Social Security and Insurance authorities. Criminal acts must be reported, even when not investigated.	Courts of law in civil and criminal proceedings. Judicial executors authorized to enforce judgments	Notification duties to the Ministry of Finance exist pursuant to money laundering and organized crime legislation.	
Estonia	Yes.	Yes, if written	The Bank of Estonia, the Financial Supervision Authority for the performance of duties assigned thereto by law. Foreign supervision authorities must address themselves to the FSA.	The State Audit Office.	Pre-trial investigation authorities and Public Prosecutors. Bailiffs.	Courts or persons specified in court rulings. International legal assistance possible in criminal cases.	Credit institutions have the right and obligation to disclose information subject to banking secrecy to the Financial Intelligence Unit pursuant to the Money Laundering Prevention Act.	

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Hungary	Yes	Yes	Hungarian Financial Supervisory Authority, Hungarian National Bank, Ministry of Finance	Tax authorities, customs authorities.	Police, social security authorities, public notaries, National Deposit Insurance Fund, State Audit Office, bailiffs.	Criminal Courts, public prosecutor, international legal assistance in criminal cases, courts acting in civil proceedings concerning inheritance, bankruptcy, liquidation proceedings.	Banks are obliged to report suspicious transactions to the Hungarian National Headquarters /Intelligence Unit/. Banking secrecy can be relaxed in cases of money laundering, and organized crime, terrorism, trafficking of narcotic drugs, and illegal trafficking of arms.	Other banks can be given information on economic status or creditworthiness of the client from the central credit information system – according to the rules of Act on Credit Institutions

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Latvia	Yes	Yes	Financial and Capital Market Commission, Bank of Latvia	The State Revenue Service if: - a taxpayer has failed to submit the income declarations and tax calculations specified by the effective tax laws to the tax administration; - violations of the regulations governing the accounting procedures or tax requirements have been uncovered during the tax audit of a taxpayer; - a taxpayer does not effect tax payments in compliance with the effective tax laws	The State Auditors' Office, on legal persons charged with management of state property or financed from the budget, or engaged in procurement contracts with the government.	The court and the prosecutor's office if the information is required for: - a criminal or other case where property confiscation could be applied in due course of law; - a civil suit investigated to satisfy a civil claim arising from a criminal case; - a civil suit on levy of alimony if there is no salary or other property to encumber; - a civil suit on the division of a deposit constituting common property of spouses; - a case of insolvency and bankruptcy of a debtor; - a case of inheritance resulting from the death of a depositor.	Banks are obliged to report suspect transactions to the Office for the Prevention of Laundering of Proceeds Derived from Criminal Activity (Disclosures Office) even without pertinent request	Credit institutions shall be entitled to exchange directly or through an institution set up specifically for this purpose information on debtors.

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Lithuania	Yes	Yes	Bank of Lithuania	Tax authorities; Customs Department	Pre-trial investigation authority; Prosecutors	Courts	Financial Crime Investigation Service; Police department; Special Investigation Service; The Department of State Security	
Malta	Yes	Yes, if direct	The competent authority may enquire into the affairs of individual customers only to ensure compliance with the Banking Act or in cases where large exposures are involved. By practitioners in order to obtain advice or direction	Inland Revenue Department.	Social Security authorities.	Court order, competent law enforcement agency investigating a criminal offence, a magistrate during in genere proceedings, a criminal court while prosecuting for a criminal court while prosecuting for a criminal offence, and for other specific judicial proceedings.	There is a legal obligation to report suspicious transactions to the Financial intelligence Analysis Unit (FIAU).	Information on borrowing/mutual customers may be shared between institutions forming part of the same group of companies.

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Poland	Yes, from a criminal point of view.		Banking Supervisions Commission; the Chairman of the Securities Commission; the President of the Bank Guarantee Fund; the Pension Fund Supervising Authority; National Bank of Poland for foreign currency control matters; Ministry of Finance	The President of the General Customs Office in connection with criminal or tax avoidance litigation. The President of the Supreme Auditing Chamber; General Inspectors of Tax Investigation or Directors of Tax Investigation Offices.	Auditors; State Protection Services on the basis of the State Secrets Act; the General Inspector of Financial Intelligence.	Courts or attorneys in connection with criminal or tax evasion litigation, inheritance, property separation or alimony proceedings		The Credit Information Bureau collects and makes available for banks information on liabilities, turnover and balances of banking accounts in the scope necessary for granting credits, loans and bank guarantees.
Slovak Republic	Yes	Yes, if prior and written	The Financial Market Authority, the Deposit Protection Fund and the distinct Supervisory Authorities for mortgage and home savings banks.	Tax and customs authorities for tax or customs proceedings. The Financial Police Service of the Police Corps.		In civil procedures: Courts of justice, notary publics as court commissioners, court executors and receivers in bankruptcy. In criminal procedures any court.	Banks have an obligation to report suspicious banking transactions to the law enforcement authorities.	

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Slovenia	Yes	Yes, if explicit and written	The Bank of Slovenia or other supervisory authority for the needs of exercising supervision.	Tax authorities.		Courts may issue orders demanding disclosure of data necessary for establishing a crime. Courts in inheritance matters, debt collection matters and disputes between bank and customer.	The law regulating prevention of money laundering stipulates cases when banking secrecy does not apply.	
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Other European Countries

Andorra	Yes							
Bulgaria	Yes	Yes	The Bulgarian Central Bank for specific purposes only	Tax and customs authorities, upon petition to the Court.	The Chairman of the State Commission of Information Protection or Directors of Security and Public Order Services, with consent of the person investigated	Courts by means of a ruling. Public Prosecutors if there is a reason to believe that a crime has been committed.	The Directors of the Central Service against Organized Crime, the National Investigation Service and the National Police may order the procurement of information on accounts of state companies.	

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Croatia	Yes	Yes, if explicit and related to specific data	The Croatian National Bank, Foreign Currency Inspectorate. Also other supervisory bodies for the needs of supervising tasks	Tax authorities, to the extent necessary for tax procedures	When ordered formally by the court, bank secrecy may be disclosed to some other institutions.	By court order, when disclosure deemed necessary for establishing facts in criminal offence proceedings or investigations	Disclosing data is allowed for the Office for Prevention of Money Laundering and for other institutions, in order to investigate or prevent money laundering, including financing terrorism or other illegal activities.	Confidential information may be disclosed to companies founded by banks for collecting and providing credit information.
Gibraltar	No, it stems from the contractual relationship between customer and banker	Yes, expressly and implied	Financial Services Commission	Disclosure to Income Tax Office		Courts through the issuance of a Court Order	All suspicious transactions are required to be reported to Gibraltar Financial Intelligence Unit.	
Monaco	Yes, from a civil and criminal point of view.		Regulators of Banks and security portfolio management companies.			Judicial authorities requesting disclosure in the framework of a criminal procedure.	Anti-money laundering F.I.U.	

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Russia	Yes, from a civil law point of view.		The Central Bank of Russia, in its licensing, supervision and controlling functions. The CB is generally bound by banking secrecy itself.	The Schotnaja Palata of the Russian Federation; Tax Revenue Service; Tax Police; Federal Customs Authorities.	Pre-investigation authorities; Consular services.	Courts and Arbitral Tribunals; Notaries, the Procurator.	Banks can disclose information in cases stipulated by and in accordance with the Federal law "On combating money laundering". The competent authority is bound by banking secrecy itself.	
Switzerland	Yes, as a right of bank customers	Yes, by the customer	The Federal Banking Commission, in the context of administrative international mutual assistance, under conditions. The FBC does not provide data to foreign tax authorities.	No automatic information is possible; reporting on request only for tax fraud.		Courts in - Criminal investigations; - Bankruptcy & Civil proceedings. - International Mutual Assistance in criminal matters if the act prosecuted constitutes an offence under Swiss law.	When financial intermediaries have reasons to suspect that assets are crime-related, they must inform the competent authorities.	

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Third Countries								
Australia	Yes, arising out of contract.	Yes, expressly or impliedly	<p>Under common law, disclosure is permitted when the public interest or the bank's interest require it.</p> <p>Under Federal law, a banker shall not disclose information found in a record that contains personal information to a third person, body or agency unless:</p> <ul style="list-style-type: none"> the individual concerned is reasonably likely to have been aware, or made aware, that information of that kind is usually passed on to that person, body or agency; the individual concerned has consented to the disclosure; the banker believes on reasonable grounds that the disclosure is necessary to prevent or lessen a serious and imminent threat to the life or health of the individual concerned or of another person; the disclosure is required or authorised by or under law; or the disclosure is reasonably necessary for the enforcement of the criminal law or of a law imposing a pecuniary penalty, or for the protection of the public revenue. 					
Japan	Recognized through practice and precedent or due to the duty of good faith and trust (Another theory: stemming from implicit or explicit clause in the contract, stipulating secrecy).	Yes, if prior	Inspection by bank supervisors	Investigation by tax authorities may be compulsory or non-compulsory. In a non Compulsory investigation, banks may refuse disclosure with due reason.		Court orders. Criminal Investigation. Litigation between bank and customer	Obligation to report suspicious transactions to the competent authority under the law for Punishment of Organized Crime, Control of Crime Proceeds and Other Matters.	Upon consent, banks may file data with the Personal Credit Information Centre, whose database is shared by all member banks.

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USA	Yes, though various instruments at Federal and State level, combined with the Common Law duty of confidentiality.				Customer record may be disclosed to Federal Authorities with due process. Financial institutions may freely communicate potential crime to law enforcement.	Due process, i.e. subpoena, search warrant or summons is always necessary.	Financial institutions must report potential crimes connected to money laundering, be filing a Suspicious Activity Report (SAR), without notifying their customer. In the investigation that follows, no official order is needed for access to information. After 9.11, USA Patriot Act enhanced U.S. Intelligence Agencies rights to access customer records. It also created an information sharing system about terrorism and money laundering between banks and the government.	Financial institutions cannot transfer customer information to third parties without providing notice to the customers, giving them the right to opt out.