

BOOK REVIEW

SWITZERLAND'S ROLE AS AN INTERNATIONAL FINANCIAL CENTER. By Benedicte Vibe Christensen. Washington, D.C.: International Monetary Fund, 1986. 40 pp., \$7.50.

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In international financial circles, bank accounts have long supplanted "chocolate, cheese, and watches as a symbol of the Swiss economy."¹ Influenced by Switzerland's reputation for prudence and discretion in banking matters, overseas investors have reportedly placed more than \$140 billion in assets in Swiss banks.² In 1986, the three largest commercial banks in Switzerland each announced that their net profits increased twelve percent, and two other leading Swiss banks reported even greater increases.³ Switzerland's collective success in attracting foreign capital and generating profits may prove a cynosure for many United States commercial banks.

Conventional analysis of the Swiss banking system has attributed Switzerland's emergence as an international financial center to such factors as its political stability and neutrality, its geographic location, its multilingualism, the health of its currency and public finances, the initiative and enterprising spirit of its businesses, and the confidence of other nations in its banks.⁴ Without discounting any of these factors, Benedicte Vibe Christensen of the International Monetary Fund staff

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¹ California Bankers Ass'n v. Shultz, 416 U.S. 21, 30 (1974).

² Evans, *Forcing Discreet Money Into the Open*, EUROMONEY, Nov. 1986, at 170. Another author has estimated that total foreign deposits in Swiss banks have reached \$1 trillion. Manoff, *The Currency of Solvency*, HARPER'S MAG., Dec. 1986, at 56.

³ *Bank Results*, THE BANKER, Apr. 1987, at 15.

⁴ M. IKLE, SWITZERLAND: AN INTERNATIONAL BANKING AND FINANCE CENTER 155 (E. Schiff trans. 1972).

has sought, in a recent study,⁵ to identify other factors that conventional analysis has overlooked or ignored.

One of these additional factors is the existence of a universal banking system in Switzerland.⁶ Incorporated into Swiss law in 1934 — a time when other nations were imposing restrictions on banking activity in response to the worldwide banking crisis — the principle of universality has not only suited the needs of banks in a country emphatically devoted to federalism, but, in Christensen's words, "has given its banks a competitive advantage over countries in which specialized banking has prevailed."⁷ Switzerland's universal banking system may attract increasing scrutiny from United States bankers as more serious consideration is given to various proposals for restructuring the United States banking system.⁸

Another factor that Christensen believes has "undoubtedly also played a crucial role"⁹ is the maintenance of bank secrecy. Bank secrecy in Switzerland is derived from a private-law right to individual privacy, supported by principles of contract and agency law, and made enforceable through criminal sanctions.¹⁰ While the laws of other countries also offer bank secrecy to foreign investors, Swiss law makes a breach of bank secrecy punishable by imprisonment for not more than six months and a fine of not more than SFr 50,000.¹¹ Moreover, banks in Switzerland are obliged to provide information on customers' accounts to governmental authorities only when certain acts proscribed by Swiss law are being investigated.¹² This limitation on disclosure has been particularly troublesome for United States prosecutions of large

⁵ B. CHRISTENSEN, *SWITZERLAND'S ROLE AS AN INTERNATIONAL FINANCIAL CENTER* (1986). Christensen is with the European Department of the International Monetary Fund.

⁶ In a universal banking system all banks perform all types of banking transactions.

⁷ B. CHRISTENSEN, *supra* note 5, at 6.

⁸ See, e.g., *Financial Restructuring Proposals: Hearing Before the Senate Comm. on Banking, Housing, and Urban Affairs*, 100th Cong., 1st Sess. (1987); *Status of the U.S. Financial System: Hearing Before the Senate Comm. on Banking, Housing, and Urban Affairs*, 100th Cong., 1st Sess. (1987); H.R. REP. NO. 324, 100th Cong., 1st Sess. (1987).

⁹ B. CHRISTENSEN, *supra* note 5, at 1.

¹⁰ Note, *The Effect of Swiss Bank Secrecy on the Enforcement of Insider Trading Regulations and the Memorandum of Understanding Between the United States & Switzerland*, 7 B.C. INT'L & COMP. L. REV. 541, 547 (1984); see Note, *Banking Secrecy and Insider Trading*, 23 VA. J. INT'L L. 606, 607-09 (1983).

¹¹ Bundesgesetz über die Banken und Sparkassen [Federal Law Relating to Banks and Savings Banks], Nov. 8, 1934, amended by Federal Law of March 11, 1971, Systematische Sammlung des Bundesrechts [SR] 952.0, 1971 Recueil systematique du droit fédéral [RS] 952.0 (Switz.), Raccolta sistematica del diritto federale [RS] 952.0, art. 47.

¹² B. CHRISTENSEN, *supra* note 5, at 6.

scale tax evaders who have used Swiss financial accounts to conceal the profits of their crimes.

Christensen's study is especially useful in identifying the types of international capital transactions in which Swiss banks apparently have secured a competitive advantage. While Switzerland has not had a fully developed domestic money market, Swiss banks have traditionally had considerable success in medium and long-term operations such as public bond and note issues, and have lately found fiduciary accounts to be an increasingly important element among short-term transactions.¹³ Christensen's discussion of these transactions, and of the dynamics of the Swiss capital market,¹⁴ is both concrete and highly informative.

Christensen's review of recent developments in international financial markets is less satisfactory, principally where it examines Switzerland's competitiveness as an international financial center. Rejecting the view that "there is no such thing as competition between financial centers,"¹⁵ he observes not only that Switzerland competes with other financial centers, but also that its competitiveness has been adversely affected by several recent developments. One such development is deregulation in other major financial centers, which "has shifted part of international business to domestic markets, reducing Switzerland's traditional comparative advantage of having a universal banking system."¹⁶ Another development is a series of separate decisions by the United States, France, and West Germany to repeal their respective withholding taxes on interest income from securities owned by nonresidents.¹⁷ Because a number of Swiss financial institutions have shifted to providing more services to institutional investors, which usually have a relatively high turnover in their portfolios, Switzerland's maintenance of its withholding tax on interest income and its stamp duty on all securities transactions has reportedly affected its attractiveness to investors in several respects.¹⁸ Christensen notes that the stamp duty has helped to prevent a development of a Swiss money market, prevented Swiss banks from participating actively in Eurobond trading in Switzerland, and adversely affected securities transactions by dealers in Switzerland.¹⁹

¹³ *Id.* at 12-13.

¹⁴ *Id.* at 13-17.

¹⁵ M. IKLE, *supra* note 4, at 2.

¹⁶ B. CHRISTENSEN, *supra* note 5, at 27.

¹⁷ *Id.* at 27, 29.

¹⁸ *Id.* at 31. A subsequent article estimated that approximately 70% of the funds invested in Switzerland are managed for private individuals rather than institutions. French, *Fog Lifts On Swiss Money Mountains*, *EUROMONEY*, Mar. 1987, at 101.

¹⁹ B. CHRISTENSEN, *supra* note 5, at 32.

Since the publication of Christensen's study, the Swiss Parliament has voted to abolish the stamp duty on share transactions, even though the duty was expected to contribute approximately \$820 million to the Swiss federal budget in 1986.²⁰ In addition, the Swiss Minister of Finance announced in 1986 the abolition of a 6.2% turnover tax on physical gold transactions, the elimination of a 35% withholding tax on interbank deposits of less than one year, and a 50% reduction in the turnover duty on Eurobond purchases in the primary market.²¹

Christensen's analysis of Switzerland's competitiveness, however, is incomplete in three respects. First, he clearly states that the study "is mainly confined to the financial markets located in Switzerland,"²² but does not discuss the significance of increasing competition by foreign banks in the Swiss capital market. The number of main offices of foreign financial institutions in Switzerland has increased from 19 in 1968²³ to 226 in 1986.²⁴ Competition from the United States and other foreign nations has made substantial inroads into the market shares previously enjoyed by the large Swiss banks.²⁵

Second, Christensen's decision to focus primarily on Swiss financial markets, and to touch "only fragmentarily on the activities of Swiss-owned banks abroad,"²⁶ precludes consideration of the increased activity by Swiss banks in acquiring or competing directly with financial institutions outside Switzerland.²⁷ In the United States and Europe, for example, Swiss firms have been acquiring substantial ownership interests in leading banks and investment houses,²⁸ and United States subsidiaries of Swiss banks led or co-managed a number of significant domestic debt issues in 1986.²⁹ Similarly, in 1985 and 1986, one West German subsidiary of a Swiss bank lead-managed at least twelve issues in the Deutschemark foreign bond market and launched several inter-

²⁰ Parry, *Swiss Ease Rules on Share Transactions To Help Banks Keep Place in the Sun*, Am. Banker, Dec. 30, 1986, at 2, col. 1.

²¹ Evans, *Stich in Time Is Not Enough*, EUROMONEY, Nov. 1986, at 14.

²² B. CHRISTENSEN, *supra* note 5, at 1.

²³ M. IKLE, *supra* note 4, at 60-61.

²⁴ *Foreign Banks and Securities Houses in Switzerland*, EUROMONEY, Dec. 1986, at 111. This listing includes banks registered under Swiss law that are more than 50% foreign-owned. *Id.*

²⁵ Lee, *See What The Boys In The Back Street Will Do*, EUROMONEY, Dec. 1986, at 101.

²⁶ B. CHRISTENSEN, *supra* note 5, at 1.

²⁷ See Parry, *'Banked Out,' Swiss Seek Profits Abroad*, Am. Banker, Sept. 10, 1987, at 2, col. 1.

²⁸ See Lee, *On the Brink of Reconstruction*, EUROMONEY, Feb. 1988, at 57, 60; Sterngold, *Japanese Buying a Place on Wall Street*, N.Y. Times, Apr. 12, 1987, at E26, col. 1.

²⁹ Fanning, *Set Us Free*, FORBES, Feb. 23, 1987, at 94; see *Allied With UBS in Bonds*, EUROMONEY, July 1986, at 8.

national equity issues for West German companies.³⁰ If actions such as these are responses by Swiss banks to the deregulation and liberalization of foreign markets — a factor that, according to Christensen, has reduced the Swiss advantage of universal banking³¹ — the study should have mentioned them, if not examined them in some detail.

Third, Christensen merely summarizes Swiss bank secrecy law and a few recent revisions in that law without analyzing the possible effects of these and other legal revisions on Switzerland's competitiveness. In addition to the 1982 Swiss "Agreement XVI"³² and the 1981 Swiss law on international assistance in criminal matters³³ (both of which Christensen briefly mentions)³⁴, the Swiss Government has taken a number of steps that have improved cooperation with United States law enforcement agencies. For example, in recent years Swiss authorities have been granting approximately 800 foreign requests per year for banking information.³⁵ Moreover, the Swiss courts have supported the cooperative effort by permitting the release of such information in a number of highly publicized cases.³⁶ Switzerland has also shown what United States Attorney General Edwin Meese termed "outstanding cooperation in extraditing fugitives" to the United States.³⁷ In a significant United States drug money laundering case, the Swiss not only extradited the leading money launderer, but substantially assisted the United States authorities in the subsequent prosecution through, among other measures, the provision of Swiss bank records.³⁸ Finally, the Swiss Parliament has begun consideration of a bill to make insider

³⁰ Shirreff, *Grüezi Frankfurt!*, EUROMONEY, July 1986, at 36.

³¹ B. CHRISTENSEN, *supra* note 5, at 27.

³² Agreement XVI of the Swiss Bankers' Association with Regard to the Handling of Requests for Information from the Securities and Exchange Commission of the United States on the Subject of Misuse of Inside Information, Jan. 1, 1983, *reprinted in* 22 I.L.M. 7 (1983). Christensen refers to this Agreement as "Convention XVI." B. CHRISTENSEN, *supra* note 5, at 7.

³³ Bundesgesetz über internationale Rechtshilfe in Strafsachen [Federal Law on International Assistance in Criminal Matters], 1981 SR 351.1, 1981 RS 351.1, art. 1. See Friedli, *New Law Helps Lift Veil of Secrecy from Swiss Banking*, Legal Times, Dec. 5, 1983, at 11, col. 1.

³⁴ B. CHRISTENSEN, *supra* note 5, at 7.

³⁵ Putka, *Those Famed Swiss Bank Accounts Aren't Quite as Impenetrable as They Used to Be*, Wall St. J., June 20, 1986, at 21, col. 4.

³⁶ See, e.g., Supreme Court Opinion in the Second Santa Fe Case Concerning Judicial Assistance, May 16, 1984, *reprinted in* 24 I.L.M. 745 (1985).

³⁷ Address of Edwin Meese, III, Attorney General of the United States, before the Swiss-American Chamber of Commerce, the Swiss Bar Association, and the Swiss Bankers Association, Zurich, Switzerland 9 (Dec. 5, 1985) (available from the United States Department of Justice).

³⁸ United States Department of the Treasury, *Money Laundering and the Bank Secrecy Act: The Question of Foreign Branches of Domestic Financial Institutions* 24

trading a criminal offense,³⁹ and is expected to consider legislation to make money laundering criminal as well.⁴⁰

These developments have been, and will undoubtedly continue to be, highly useful for United States law enforcement authorities in numerous financial investigations. Nonetheless, some observers of the international banking system have concluded that these continuing changes in Swiss bank secrecy have prompted investors to place their funds in countries less inclined to allow exceptions to bank secrecy,⁴¹ and have encouraged Swiss banks to expand their services outside Switzerland to attract foreign capital that might otherwise flow to non-Swiss institutions.⁴² Christensen's omission of any discussion of these matters in analyzing Switzerland's position vis-à-vis other financial centers is puzzling at best.

These shortcomings appreciably weaken Christensen's study. They are not, however, fatal. Those familiar with international finance will readily recognize that Christensen has produced a well researched and often insightful overview of Switzerland's strengths and limitations as an international financial center. Fledgling students of international banking and finance, however, should be warned that Christensen's paper is merely a point of departure for further research and analysis, and is by no means the definitive work on the subject.

³⁹ Studer, *Insider Trading Bill Clears Swiss Lower Chamber*, Wall St. J., Oct. 8, 1987, at 44, col. 4; see Rapp, *Recent Developments in United States Insider Trading Prohibition and Swiss Secrecy Laws: Towards a Definitive Reconciliation?*, 5 INT'L TAX & BUS. LAW. 1 (1987). Pending the enactment of that legislation, Swiss and United States officials recently exchanged diplomatic notes on sharing of information in insider trading cases. *Insider Pact Reached*, Wash. Post, Nov. 11, 1987, at F1, col. 1.

⁴⁰ Parry, *Swiss Plan Law to Curb Laundering*, Am. Banker, Mar. 2, 1987, at 2, col. 1. The origin of this concept is a report on money laundering in Swiss law that a former Swiss federal prosecutor, Paolo Bernasconi, prepared at the behest of the Swiss Ministry of Justice. P. Bernasconi, *Le Blanchissage d'Argent en Droit Penal Suisse* (1986).

⁴¹ See Parry, *supra* note 27, at 2, col. 4.

⁴² Finn, *Luxembourg: Color it green*, FORBES, Apr. 20, 1987, at 42, 44.