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PKB PRIVATBANK SA convicted for corporate liability in connection with aggravated money laundering

Bern, 04.04.2024 - The Office of the Attorney General of Switzerland (OAG) has ordered PKB PRIVATBANK AG (PKB) to pay a fine of CHF 750,000 in a summary penalty order dated 28 March 2024. The investigation conducted by the OAG revealed that between 2011 and 2014, in the course of its business, the bank failed to take all reasonable and indispensable organisational measures to prevent the crime of aggravated money laundering committed by two employees, a consultant in charge of South American customer development and his direct hierarchical superior.

This criminal investigation was conducted in the context of the multiple proceedings initiated by the Office of the Attorney General (OAG) in connection with the international corruption case known as "LAVA JATO", with its epicenter in Brazil, in which the ODEBRECHT Group was involved and which also had repercussions in Switzerland. In this context, on 21 December 2016, the OAG issued a summary penalty order against two companies belonging to the ODEBRECHT group, for bribery of foreign public officials and money laundering (*see OAG press release dated del 21.12.2016*). It was established that several Brazilian companies had formed a cartel with the aim of favoring them in the award of public contracts by the company PETRÓLEO BRASILEIRO SA – PETROBRAS (hereinafter PETROBRAS). The companies agreed in advance on who would win the contract by manipulating the bids in the public tender. This allowed them to conclude contracts with PETROBRAS without any real competition and at a higher price. This illegal activity was based on the bribery of public officials working for PETROBRAS.

In February 2017, the OAG opened a criminal investigation for money laundering (Art.

305bis SCC) against an employee of PKB Bank, namely a consultant working in particular on the development of South American clients and responsible for relations with the ODEBRECHT Group. The investigation was later extended to include forgery of documents (Art. 251 SCC) and complicity in active bribery of foreign public officials (Art. 322septies para. 1 SCC in conjunction with Art. 25 SCC). In July 2018, the criminal investigation was extended to a second person, namely a PKB official and the direct hierarchical superior of the first bank official, initially for money laundering (Art. 305bis SCC) and later for forgery of documents (Art. 251 SCC).

On 12 January 2018, following a report submitted by PKB, which identified certain critical issues in relation to the bank's compliance with its obligations to adopt and implement anti-money laundering regulations, the OAG opened a criminal investigation against PKB on the grounds of corporate liability pursuant to Art. 102 para. 2 SCC in conjunction with Art. 305bis SCC.

Investigation

The investigation revealed that the first bank official had a privileged relationship with members of the ODEBRECHT group. In this context, as early as in December 2006, banking relations were opened with PKB in the name of companies traceable to the ODEBRECHT group, which formally had "front men" as their economic beneficiaries, in order to create so-called "slush funds", i.e. funds that could not be traced back to the Brazilian company itself, but were at its disposal. The same bank official ensured maximum flexibility for the ODEBRECHT client, allowing him to act in secret and to have assets of criminal origin flow into PKB, as corrupt donations intended to reward Brazilian public officials in order to obtain public contracts. The second bank official, although aware of his subordinate's actions, did not take the necessary steps to prevent the criminal activity.

In connection with the aforementioned criminal conduct, on 23 May 2022, as part of the criminal proceedings involving the two individuals, the OAG issued a summary penalty order against the second PKB employee for money laundering pursuant to Art. 305bis SCC, abandoning the hypothesis of forgery of documents. As for the first bank official, who was in charge of banking relations traceable to the ODEBRECHT group, the OAG instead charged him with money laundering, complicity in active bribery of foreign public officials and forgery of documents. Following the defendant's death on 20 January 2023, the OAG decided to abandon the proceedings against him and ordered the confiscation of more than CHF 52,000 and charged him the payment of the costs of the proceedings.

Corporate responsibility

The OAG's investigation of PKB revealed a lack of organisation in the area of anti-money

laundering at the bank at the time of the events. Money laundering activities amounting to more than USD 20 million were found to have taken place. PKB failed to properly identify and verify the identity of the beneficial owner of the deposited assets in certain client relationships opened at its Lugano branch, and failed to clarify the circumstances and purpose of the transactions made and to verify that the transactions were not unusual and/or there were suspicions as to their origin. The money laundering risk analysis, anti-money laundering measures and procedures in place at the bank between 2011 and 2014 were insufficient to prevent the commission of the crime of aggravated money laundering (Art. 305bis no. 2 SCC). The OAG therefore ordered PKB to pay a fine of CHF 750,000 in a summary penalty order dated 28 March 2024. PKB is charged with corporate liability (Art. 102 para. 2 SCC in conjunction with Art. 305bis no. 2 SCC). This decision takes into account PKB's cooperation in the investigation conducted by the OAG.

PKB has declared that it will not appeal the summary penalty order, which has therefore become final and legally binding. The summary penalty order may be requested, subject to the usual conditions, at the OAG's Legal Service (rechtsdienst@ba.admin.ch).

Decision to partially abandon the proceedings

In the context of the same criminal proceedings, and with reference to the additional offence of bribery of foreign public officials (Art. 102 para. 2 SCC in connection with Art. 322septies SCC), the OAG ordered the abandonment of the proceedings (Art. 319 para. 1 let. a CrimPC) on 28 March 2024.

The LAVA JATO case at the OAG

The conviction of PKB is part of a wider context of proceedings conducted by the OAG in relation to the LAVA JATO complex. There are currently some 20 criminal proceedings pending before the OAG, including three against financial institutions in Switzerland. Approximately CHF 16 million in assets have been seized in Switzerland under the authority of the OAG. Within the legally enforceable conclusions, forfeitures and claims for compensation (Articles 70 and 71 CC) totaling approximately CHF 300 million have been ordered. In addition, more than CHF 465 million have been refunded to the Brazilian authorities with the consent of the persons concerned.

Original text of the press release in Italian.

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[Press release of the OAG of 21 December 2016](#)

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