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The main reasons of the scandal with Banca Privada d'Andorra were lack of capacity of the regulators, says Burke Files

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Mr. Files is the head of an international investigative firm **Financial Examinations & Evaluations, Inc. (L7 Ventures)** specializing in asset recovery, due diligence, anti money laundering and intellectual property matters. Mr. Files has been the case manager on fraud investigations ranging from ten of thousands of dollars to over 3 billion.

He has received a Commission and a Medal of Merit from the President of the United States is an award-winning author and is frequently sought out by media as a quotable and reliable source.

He also is a published author of five books, in particular “Due Diligence for the Financial Professional” (winner of two book awards), and “Money and Budgets”.

In the interview to **all-andorra.com** Mr. Files analyzes situation with Banca Privada d’Andorra, possible ways out and also role that could Andorra play in the financial banking world in the future.

Interview: Alex Mostaslavski

How the situation with Banca Privada d’Andorra will affect in general the financial market of Andorra? Whether the banking sector of the country will become less attractive to clients (individuals and institutional investors)? Comparison with similar scandals in some Swiss banks.

There was a difference between what happened at Banca Privada d’Andorra and the scandals in the Swiss banks. The Banca Privada d’Andorra bank was connected to organized crime groups in Russia and China and used its correspondent accounts four U.S. banks to access the U.S. financial system. It was not an issue of skirting the edge, as US Authorities determined, that Banca Privada d’Andorra’s management was either so clueless or so aggressive in assisting organized crime and corruption – there was no reason to warn the bank – but rather just shut it down. But, Banca Privada d’Andorra was not singled out for punishment because it was Andorran – it was signaled out for its systemic failures. Swiss banks got the axe. Two Swiss banks closed because of their active efforts in helping clients. Bank Frey & Co. and Wegelin & Co. have closed. These Swiss banks actively worked with persons who were tax evading.

These banks join a list of banks that have been closed because of their actions. From FBME Bank of Tanzania, Banco Delta Asia – from Macao famed for being the North Korean bank of choice. But they are not alone. HSBC was shuttered by the Cayman

Island Monetary Authority for the money laundering in Mexico. In 2004 the Japanese ordered CitiBank to shutter its Private Banking Group. The government accused the operation as being nothing but a money laundering organization.

The effect of Banca Privada d'Andorra closing in Andorra is different as there are too few banks in Andorra. Andorra has a concentration of licenses in just a few enterprises. Thus, if there are 5 banks and one is lost – 20%± of the capacity is lost. Andorra needs more banking – not less.

How can banking systems of the country change after carrying out government investigations? What measures do government and other banks need to apply for improving the situation and preventing it in the future? What measures were taken by the Swiss authorities after similar events?

Andorra has 4 major banks and €3.3 Billion on the balance sheets. Switzerland has 275 banks and € 2,804.00 Billion on their balance sheets. They are very different environments with participants with very different missions.

After every “red faced moment” we learn from our oversights and the wise determine not to repeat those errors. As for what Andorra should do? Andorra has very wise and smart financial professionals – however, Andorra needs more. Andorra needs to think about what concurrent steps could be designed to expand financial sector professional capacity. This can be done through education, providing different and new opportunities. This is true not just for the commercial sector but also for the regulators and the educators.

The professional community, regulators, and educators should establish an organization of neutral ground to exchange share and grow the capabilities and opportunities of Andorra. It is an ideal that in those environments, one of free and open exchange, that solid knowledge and growth will occur.

It is worth noting that Banca Privada d'Andorra had undergone regular anti-money-laundering audits by KPMG and Deloitte since 2003. This also shows you the waste of retaining a Big 4 Accounting firm for an AML audit. For AML audits the Big 4 typically hire

new trainees and send them in to look for money laundering when most of these guys do not even understand how records can be manipulated. It goes back to a jurisdiction possessing real professional capacity, not looking for an over reliance on Big 4 branding.

What structural (and other) features of Andorra's banking system led to a possibility of such a situation?

Lack of capacity of the regulators and the lack of oversight, specifically effective oversight, of the Board of Directors of Banca Privada d'Andorra. This happens when an industry out grows the limits of its regulatory framework, and a company outgrows its previous scope of governance. It is a sign of growth, mind you a perverse sign of growth, but a sign of growth nonetheless. The bank utterly failed in its duty of governance. They failed in governance matters that are required by ALL international banking organization from Bank of International Settlements, the EU Banking Commission, and United States OCC and Federal Reserve. The shut down of the bank and the losses were preventable. Management, with proper governance, could have prevented the sanctions and the following losses. The shareholders and depositors of Banca Privada d'Andorra should look to management to be responsible for their losses as the losses were as a result of managerial failure.

The US or the EU Banking Commission or any of the nations FIUs are not consulting bodies – they are enforcement bodies. If you are failing, they do not send in a rescue team they send in an investigations and punishment team.

Comparison between banking systems of Switzerland and Andorra?

If Andorra tries to copy Switzerland – Andorra will fail as an Offshore Financial Center. Switzerland will do Switzerland better than Andorra can do Switzerland. Andorra needs to be Andorra. Andorra is a smaller jurisdiction and as such can be more nimble and adapt to financial services changes in the market place. Andorra as a nation and as a professional community needs to deliver products and services of value. It is about winning clients with those products and services that are utterly unique and compelling.

Never – and I mean Never in the history of business and finance have the rules and market place changed so fast. As a banker, if you offered the services you did 10 years ago – no one would come to your Door. Yes – Door – as in the physical thing you walk through. It may be a shock to many of the young digeratti that Doors are a physical thing – much different from a Landing Page. Now all have web sites and you think about SEO and connectivity. This is important today – but what about in 6 months or 2 years. Banks and traditional financial institutions are in the process of being disintermediated from the financial world. The “shadow banks” ten years ago were a third of the size of traditional banks. Now shadow banks are 4 times the size of traditional banks. What can Andorra do to capture the future? The present is the past the moment you have read this sentence.

Today there are only 5 local banks in Andorra operating on the market. Meanwhile, there are no foreign banks that want to enter the market. Whether it is an advantage or disadvantage of the Andorra financial system? Whether it is necessary to open the market for bigger competition? What measures must be used?

Who cares if foreign banks wishes to enter Andorra or not. The heck with them. It is Andorra growing – it is about Andorran banks and financial services growing and entering other markets. Andorra needs more banks, more funds, more insurance companies, risk pools, and merchant support services. Andorra needs more innovative ideas to pull **business in Andorra** ([/?page_id=72847](#)). This advantage must be crafted in law, it must be crafted in the professional community, and it must be crafted with an eye toward the future.

What services should be offered? One must look to those services and or products that are over regulated or poorly understood in your market space. Andorra’s market spaces may have some local components – but it is a reasonable assumption that a vast majority of the clients for Andorra come from outside the EU. The idea of retreating and rolling over is utter nonsense. Gambia has just set itself up as an offshore financial center based around a state of the art corporate registry. The Netherlands has an amazing set of systems in place for dealing with Intellectual Property. IP is the other 80% of the balance sheets for most public companies. OFC are growing in number – not shrinking. What can Andorra do to craft utterly compelling products and services to an environment that is tolerant of both success and failure – but not be tolerant of mischief?

In all of this, do not forget the judiciary. An honest and efficient method of dispute resolution is a must. Slow courts and arbitrary rulings will kill any jurisdiction. Why are Russian Oligarchs litigating their disputes in the US and the UK – they trust the courts. Why are IP cases being delivered to The Netherlands for litigation, as the courts will get an answer to the litigants in 6 weeks – not 6 months or 6 years.

When one considers an environment for an advantage as an OFC – the advantage is always an advantage crafted in to law, be it financial, dispute resolution, regulations etc.. The OFC's remove the undue burden of the over regulated oligopolies of the G20 without removing responsibility. Every opportunity / right has a corresponding responsibility.

Recently similar scandals have happened in the European banking market, and their frequency is increasing. The last exposures concerned primarily Swiss banks. What is the current situation in general in the European banking sector and how it was affected by these events? Did this affect the investment appeal of this segment of the economy?

A good question. The Central Bank of Moldova is on the hook for about a billion dollars missing. What is known, however, is that money amounting to nearly one-fifth of the country's gross domestic product (GDP) – over \$1 billion in total – vanished into thin air. Raddo Bank fined a billion for interest rate manipulation. The Libor scandal is ongoing – with over 20 banks and their trading departments still in the crosshairs. In 2014 BNP Paribas pays an 8.9 billion fine for laundering cash from Sudan –a full 25% of Sudan's GDP and in 2015 pays 140 more in a sanction violation case. How BNP Paribas was not named as a “Bank of Significant Money Laundering Concern” – is amazing – I am told it was a very close call. And yet I am told there are over 40 banks currently facing fines of 100 million or more.

The underlying issue for all of the fines is that the employees have little skin in the game. If they make their numbers they get a bonus. If they get it wrong the bank pays a big fine and the employee keeps their bonus. There is also a great deal of risk taking that is remote from the Board and the compliance office. These risks are often poorly understood if at all disclosed. It is an issue of poor management and misunderstood governance in banks that are – honesty too big for their current management structures.

Does this impact the attractiveness of investment in banks – YES, it does. Today the average European Bank's RoRWA is less than 1.2% which is less than inflation thus a vast majority of European banks are destroying value. Do the fines play a role – yes, both directly and indirectly. They play a direct role on those banks that have to pay the fine and the associated legal and regulatory look-back costs. The rest of the financial community pays a cost in running around like panicked chickens to see if they are next to be fined, and investing huge sums in mostly hollow costs to prevent a fine – meanwhile hollowing out those sectors of business that were once profitable.

Today, I would not buy one bank share from any of the 20 largest banks in the EU. These equities are buying shares in dinosaur scales. Most of these shares will lose value at least for the next 5 to 8 years. If I were to look for real opportunity in a Bank, I would look to Poland and the Czech Republic first, then to The Baltic Banks and Romania, now that they are really cleaning up corruption. Why these locations? There is less regulation and more opportunity. There is a hint – can you craft an environment that has less regulation and more opportunity. If so, that is the purpose of an OFC. Also, these banks are offering new services and a better customer interface for your chosen customers than the Dinobanks.

In connection with the current situation in Banca Privada d'Andorra and the subsequent recent downgrade of Andorra's rating by S&P, how attractive would be other sectors of the economy of Andorra for potential investors? How the latest scandals connected with the Swiss banks affected other segments of the economy of Switzerland?

According to World Bank 2013 statistics – Switzerland had a GDP of 685 Billion and Andorra a GDP of 3.2 Billion. Switzerland has a great deal more land, and a more diverse industrial base. 80% of Andorra's income is directly or indirectly from Tourism. This is a significant concentration. It is also of sufficient size – the concentration on tourism, that it is imperative for Andorra to develop additional economic diversification. Financial Services is one that can play a significant role in the future of the Principality – but it should not be copied from elsewhere – it should be made new, unique and utterly Andorran.

The bank secrecy in Andorra – how “real” it is considering the latest events as a result of which particular names of the banks’ clients became known?

Bank Secrecy is dead. However – Bank Privacy is very important. Like services or types of automobiles, privacy should be a scalar condition. Some may earn and may deserve a more private status. Other may not need or care. The financial services also need to make their systems secure from data theft either from a system hack or an inside theft. A proper level of security must be required of all who are dealing in financial services and commerce. Data security is more than employment agreements and the latest firewall updates. It cannot be left to individual choices, but must be made an Andorran policy followed with regulations. Something a bit more meaningful than a SAS 70, or its replacement, the SSAE 16. Accountants do not know enough about data security to be entrusted with data security. This type of approach is a must.

What can Andorra do to stabilize and then expand its role on the OFC Community?

Andorra should think about creating brand of “Financial Andorra”.

Very important thing is to develop immediately the professional infrastructure for the Principality through State sponsored education as well as a required continuing education for all in the financial services industry. Presentation sponsored by the State on a regular basis and required training for law, accounting, compliance, operations, IT and regulators.

Assemble a Navigation Team – a Team of utterly unbiased experts – not of the Principality – to guide the Principality in the development of the Brand Andorra as an OFC. No conflicts, no history within Andorra, no baggage.

PR technologies could be useful: encourage professional to author articles about Andorra in a variety of professional publications, not just finance – but technology, tourism, etc... Not advertisements – but professional articles.

Speak to and digests the recommendations of projections of the futurists looking at finance, payments systems, intellectual property, technology, investment vehicles, client connectivity, etc... Seek advantages in law and technology for the future of the economy as projected. Revise often.

Creation of destination events for the industries and professions you are targeting is also needed.

Do not forget education. Look to be a center of knowledge and a center of advanced learning in those fields in which Andorra's economy is to grow. Knowledge alone is insufficient for riches – but ignorance is a guarantee of poverty. The barriers have come down for education. Now anyplace there is an internet connect – an education can be offered.

Andorra should be more aggressive and forward looking in developing a uniquely Andorran financial service center. A financial service center based up creativity and responsibility that is very inclusive of ideas, professionals, customers and the future of financial services and commerce.

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