

2016

Agreement on the Swiss banks' code of conduct with regard to the exercise of due diligence (CDB 16)

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between the

Swiss Bankers Association ("SBA") on the one hand

and

the signatory banks ("banks") on the other hand

of 1 June 2015

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Preamble

- a) With a view to preserving the good name of the Swiss financial centre, nationally and internationally,
- b) with a view to substantiating due diligence rules concerning the identification of contracting partners along with the establishment of the controlling person and beneficial owner, and
- c) with a view to making an effective contribution to combating money laundering and terrorist financing,

the bank hereby contracts with the SBA in its capacity as the professional organisation charged with safeguarding the interests and reputation of the Swiss financial centre to comply with this code of conduct.

Chapter 1: Introduction

Art. 1 Scope

- ¹ This code of conduct applies to the banks and securities dealers and all their branch offices domiciled in Switzerland, but not to their foreign branches, representative offices and subsidiary companies (see Articles 11, 19 and 43).
- ² The banks may not, however, misuse any of their foreign branches or group companies engaging in banking and finance to circumvent this code of conduct.
- ³ This code of conduct is unconditionally applicable to all accounts, savings books, securities accounts and safe deposit boxes identified by number or codeword.

Art. 2 Relationship to other rules

- ¹ This code of conduct lays down binding rules for good conduct in banking in accordance with the code of professional ethics. It is designed to give specific effect to certain points of due diligence governed by the Anti-Money Laundering Act (Article 3 to 5 AMLA) and the concept of “the diligence that can be reasonably expected under the circumstances” in accepting assets according to Article 305^{ter} of the Swiss Criminal Code (SCC).
- ² The special duties of investigation for business relationships and transactions involving higher risks are set out in FINMA’s Anti-Money Laundering Ordinance (AMLO-FINMA).
- ³ Separate regulations govern the analogous application of the CDB to the business practice of credit card companies.

Art. 3 Commentary on this code of conduct

The SBA has compiled a commentary on the individual articles of the CDB. This commentary should be taken into account when interpreting this code of conduct.

Chapter 2: Verifying the identity of the contracting partner

Section 1 General provisions

Art. 4 Verifying the identity of the contracting partner

- ¹ The bank undertakes to verify the identity of the contracting partner when establishing business relationships.
- ² This applies to:
 - a) opening of accounts or passbooks;
 - b) opening securities accounts;
 - c) entering into fiduciary transactions;
 - d) renting of safe-deposit boxes;
 - e) entering into management agreements for assets deposited with third parties;
 - f) the execution of transactions involving trading in securities, currencies and precious metals as well as other commodities, where the amount concerned exceeds 25,000 Swiss Francs;
 - g) cash transactions exceeding the amount of 25,000 Swiss Francs.
- ³ A person correctly identified in connection with an existing relationship needs not be identified again when an existing relationship is extended.

Art. 5 Bearer savings books

No new bearer savings books may be opened. Existing bearer savings books must be cancelled the first time they are physically presented. The identity of those making withdrawals from bearer savings books must be established; no further deposits may be accepted.

Art. 6 Duty of identification irrespective of minimum thresholds

- ¹ Where a transaction lies below the minimum thresholds (Article 4 paragraph 2 letters f and g), the contracting partner must nevertheless be identified if there is a clear attempt to avoid identification by spreading an amount across a number of transactions (so-called "smurfing").
- ² Where there are grounds for suspecting that assets are derived from any of the sources set out in Article 9 paragraph 1 AMLA, the contracting partner must be identified, regardless of the minimum thresholds or exceptions from formal identification.

Art. 7 Information to be documented

- ¹ For natural persons, the following is to be appropriately documented: Name, first name, date of birth, nationality and the actual domicile address as well as the means used to prove identity.
- ² For legal entities and partnerships the following is to be appropriately documented: Company name and actual registered office as well as the means used to prove identity.
- ³ If a contracting partner comes from a country where date of birth or domicile address are not used, this information is not necessary.

Art. 8 Identification by other appropriate means

In exceptional cases where the identity of the contracting partner cannot be verified in the prescribed manner, for instance because an individual has no identification documents or because no appropriate documents exist for a public-law corporation or institution, the bank may verify the identity in another expedient manner by inspecting other credentials or by obtaining corresponding attestations from public authorities or, in the case of a legal entity, by obtaining the most recent certificate from a recognised firm of auditors. Attestations and copies of substitute documents must be kept on file, and a file note must be created giving the reasons for the exceptional situation.

Section 2 Natural persons

Art. 9 Identification on a face-to-face meeting

During a face-to-face meeting, the bank must identify the contracting partner by inspecting an official identification document with a photograph (passport, identity card, driving licence or some similar document) and putting on record a copy of the identification document.

Art. 10 Identification when a business relationship is established by correspondence

Where a business relationship is established by correspondence or via the internet, the bank must verify the identity of the contracting partner by obtaining an authenticated copy of an identification document as defined in Article 9 above and checking the contracting partner's address either by postal delivery or by another equivalent method.

Art. 11 Bodies authorised to provide authentication

- ¹ A copy of an identification document may be authenticated by
 - a) a branch office, representative office or group company of the bank;
 - b) a correspondent bank, another financial intermediary or an attorney accredited in Switzerland recognised for this purpose by the bank establishing the business relationship;
 - c) a notary or another public body that customarily issues such authentications.
- ² Also, identification provided from the data base of a provider recognised according to the Federal Law on the Certification of Electronic Signatures (CertES) together with electronic authentication of the customer is considered a valid authentication.

Section 3 Legal entities and partnerships

Art. 12 Identification based on an entry in the Swiss Commercial Register or an equivalent foreign register

Where a business relationship is established with a legal entity or partnership that is entered in the Swiss Commercial Register or an equivalent foreign register, the bank verifies the identity of the contracting partner either by means of a register extract issued by the registrar or by means of a written extract from a database maintained by the registry, a supervisory body or a trustworthy private individual.

Art. 13 Identification without an entry in the Swiss Commercial Register or an equivalent foreign register and identification of a public authority

- ¹ Legal entities and partnerships that are not entered in the Swiss Commercial Register or an equivalent foreign register must be identified either by means of a written extract from a database maintained by the supervisory authority or a trustworthy private individual or from the articles of association, or by means of equivalent documents.
- ² Public authorities are to be identified by an appropriate statute/adjudication or on the basis of other equivalent documents or sources.

Art. 14 Validity period of commercial register extracts and equivalent documents

Commercial register extracts and equivalent documents may not be more than twelve months old. An older document may be used in conjunction with an auditor firm's certificate that is up to twelve months old.

Art. 15 Checking the identity of persons establishing business relationships and taking note of power of attorney arrangements

- ¹ In the case of legal entities and partnerships, the identity of the individuals establishing the business relationship must be checked. This can be done by means of a copy of one of the documents set out in Article 9, or an authenticated copy of an identification document as set out in Article 10.
- ² The identity of the person establishing a business relationship can also be checked by means of an authenticated signature; such authentication may be issued by any of the individuals/entities set out in Article 11 of this agreement.
- ³ When establishing a business relationship with legal entities, the bank must also take note of and document the contracting partner's power of attorney arrangements.
- ⁴ When establishing a business relationship with financial intermediaries as defined in Articles 24 and 33, the procedure set out in paragraphs 1 to 3 may be substituted by an exchange of signature books, electronic codes or other means customarily used in the industry.
- ⁵ If the verification of the identity of the persons establishing business relationships or if any power of attorney arrangements have already been taken into account in connection with an existing business relationship, the verification of identity or the taking note of any power of attorney arrangements must not be repeated.

Art. 16 Identification of simple partnerships, companies in the process of foundation and trustees

- ¹ In the case of simple partnerships, the following persons are to be identified on starting a business relationship:
 - a) all partners or
 - b) at least one partner as well as those persons who are recognised as authorised signatories vis-à-vis the bank, or
 - c) for simple partnerships whose purpose is to protect the interests of their members or beneficiaries by way of mutual self-help, or which pursue political, religious, scientific, artistic, charitable, social or similar objectives, only those persons who are recognised as authorised signatories vis-à-vis the bank.
- ² In the case of companies that are in the process of foundation, the persons establishing the business relationship must be identified.
- ³ In the case of trust relationships, the trustee must be identified. The trustee must also confirm in writing that he/she is authorised to establish a business relationship with the bank on behalf of the trust.

Art. 17 Publicly known legal entities, partnerships and public authorities

- ¹ If the identity of a legal entity, a partnership or a public authority as contracting partners is publicly known, this fact may be documented instead of carrying out the procedure set out in Articles 12 to 15. The identity is deemed to be publicly known especially if the contracting partner is a public company or is directly or indirectly associated with a public company.
- ² The simplified procedure set out in paragraph 1 may not be used with domiciliary companies unless they are directly or indirectly associated with a public company.

Section 4 Special forms of identification

Art. 18 Accountholder is a minor as well as rental surety accounts

It is not necessary to identify the contracting partner

- a) when an account, securities account or passbook is opened in the name of a minor by an adult third party; instead of this the identity of the adult opening the account must be verified; Article 7 applies, *mutatis mutandis*; if the person opening the account, securities account or passbook is a minor, the identity of that person must be verified;
- b) a rental surety account is opened for a rented property located in Switzerland.

Art. 19 Identification within the group

If a contracting partner has already been identified within the group in an equivalent manner, i.e. by employing a standard of due diligence that complies with this agreement, a repeat of the procedure set out in Articles 9 to 16 is not necessary. In such cases, the group units concerned must hold copies of the original identification files. This provision is not applicable in cases where such transfer of data is prohibited by law.

Chapter 3: Establishing the identity of the beneficial owner of operating legal entities and partnerships

Section 1 General conditions

Art. 20 Establishing the identity of the controlling person

- ¹ If an operating legal entity or partnership has one or more controlling persons with voting rights or capital shares of 25% or more, these are to be identified in writing.
- ² A controlling person must generally be a natural person.
- ³ If no controlling persons according to paragraph 1 exist, those natural persons who exercise control over the legal entity by other discernible means should be identified.
- ⁴ If no controlling persons according to paragraphs 1 and 3 can be determined, the highest managing director should be identified as a substitute for the controlling persons.
- ⁵ This applies to:
 - a) opening accounts or passbooks;
 - b) opening securities accounts;
 - c) entering into fiduciary transactions;
 - d) entering into management agreements for assets deposited with third parties;
 - e) the execution of transactions involving trading in securities, currencies and precious metals as well as other commodities, where the amount concerned exceeds 25,000 Swiss Francs. Exempted from this is the execution of commercial transactions for parties for whom the bank does not also figure as a depositary bank, provided that payment and delivery occur via another bank;
 - f) cash transactions in excess of 25,000 Swiss Francs.
- ⁶ Exceptional conditions as defined in the second section of the third chapter (Articles 22 to 26) are reserved.

Art. 21 Information to be documented

- ¹ The contracting partner must confirm the name, first names and actual domicile address of the controlling person in writing or by using Form K.

- ² If a controlling person comes from a country where domicile addresses are not used, this information is not necessary.
- ³ Form K can be found in the appendix to this code of conduct. The bank is free to use its own form which reflects its particular requirements. The content of this form must be equivalent to that of the model form.

Section 2 Exemptions concerning the duty to establish the controlling person

Art. 22 Companies quoted on the stock exchange

Companies that are quoted on a stock exchange do not have to deliver any declaration concerning any controlling persons. Exceptional conditions as defined in Article 24, paragraph 2 remain reserved.

Art. 23 Public authorities

Public authorities do not have to deliver a declaration concerning any controlling persons.

Art. 24 Banks and other financial intermediaries as contracting partners

- ¹ Banks, securities dealers, fund managers, life insurance companies, CISA investment companies and CISA wealth management companies, as well as tax-exempted pension schemes having their registered office in Switzerland are not required to provide a declaration of their controlling persons.
- ² Banks, securities dealers and other financial intermediaries having their registered office or domicile in a foreign country have then to provide a declaration concerning controlling persons if they are not subject to any prudential supervision and regulation with respect to combating money laundering and terrorist financing.

Art. 25 Further exceptions concerning determination of controlling persons

- ¹ Companies or associations which protect the interests of their members or beneficiaries by way of mutual self-help or which pursue political, religious, scientific, artistic, social or similar aims, do not have to deliver any declaration concerning any controlling person as long as they exclusively pursue the above mentioned aims and have no discernible relationship to any high risk countries.
- ² Simple partnerships are not required to provide a statement concerning controlling persons.

Art. 26 Condominium owner and common ownership collectives

Condominium owner collectives, common ownership collectives that are registered in the real estate register as well as other collectives with similar aims are not required to declare any controlling persons.

Chapter 4: Establishing the identity of the beneficial owner of assets

Section 1 General Conditions

Art. 27 Establishing the identity of the beneficial owner

- ¹ The bank requires from its contracting partner a statement concerning the beneficial ownership of the assets
- ² Generally, the beneficial owners of the assets are natural persons.
- ³ This applies to:
 - a) opening accounts or passbooks;
 - b) opening securities accounts;
 - c) entering into fiduciary transactions;
 - d) entering into management agreements for assets deposited with third parties;
 - e) the execution of transactions involving trading in securities, currencies and precious metals as well as other commodities, where the amount concerned exceeds 25,000 Swiss Francs. Exempt from this is the execution of commercial transactions for parties for whom the bank does not figure as a depositary bank, so long as payment and delivery are carried out via another bank;
 - f) cash transactions in excess of 25,000 Swiss Francs.
- ⁴ Where a business relationship with a natural person is established by correspondence, the bank must demand a declaration using Form A in any case. Exempted are the special cases as set out in Article 18.
- ⁵ Exceptional conditions as defined in the second section of chapter 4 remain reserved (Articles 29 to 36).

Art. 28 Information to be documented

- ¹ If the contracting partner declares that the beneficial owner is a third party, then the contracting partner has to document the latter's last name, first name, date of birth and nationality, along with actual domicile address, or the company name, address of registered office and country of registered office using Form A.
- ² If the beneficial owner comes from a country where date of birth or domicile address are not used, this information is not necessary.
- ³ If the bank has information according to paragraph 1 at its disposal, it can, as an exception, make a note of this data in a memo. In particular, such an exception is

given when the contracting partner cannot be immediately contacted or is difficult to contact in order to obtain a completed Form A in a timely manner or has another business relationship with the bank.

- ⁴ In exceptional cases, the information required concerning the beneficial owner can also be provided by means of simple copies of identification documents or simple copies of other documents issued by an official authority as set out in Article 9 ff. In such cases, the last name and first name or company name as an absolute minimum must be documented on Form A.
- ⁵ Form A can be found in the appendix to this code of conduct. The bank is free to use its own form which reflects its particular requirements. The content of this form must be equivalent to that of the model form.
- ⁶ The bank may add the account/securities account number subsequently to an already filled in and signed form.
- ⁷ Paragraphs 1, 2 as well as 4 to 6 are also similarly applicable to Forms I, S and T.

Section 2 Exceptions from the obligation to identify the beneficial owner

Art. 29 Natural Persons

If the bank has no doubts that the contracting partner is identical to the beneficial owner, it is exempt from any duty according to article 27, paragraph 1. The bank has to make an appropriate note of this circumstance.

Art. 30 Operating legal entities and partnerships not quoted on the stock exchange

The bank only has to obtain a statement concerning the beneficial ownership of assets from operating legal entities and partnerships not quoted on the stock exchange when the operating legal entity or private company which are not quoted on the stock exchange declares that it holds the assets in its possession for a particular third party.

Art. 31 Companies quoted on the stock exchange

Companies that are quoted on the stock exchange do not have to deliver any declaration concerning any beneficial ownership. Exceptional conditions as defined in article 33, paragraphs 2 and 3 remain reserved.

Art. 32 Public authorities

Public authorities do not have to deliver a declaration concerning any beneficial ownership.

Art. 33 Banks and other financial intermediaries as contracting partners

- ¹ Banks, securities dealers, fund managers, life insurance companies (Article 42 reserved), CISA investment companies and CISA wealth management companies, as well as tax-exempted pension schemes having their registered office in Switzerland are not required to provide a declaration of beneficial ownership.
- ² Banks and securities dealers having their registered office or domicile in a foreign country have then to provide a declaration concerning the beneficial owner if they manage secondary accounts for unnamed clients and are not subject to appropriate supervision and regulation with respect to combating money laundering and terrorist financing.
- ³ Further financial intermediaries having their registered office or domicile in a foreign country have then to provide a declaration concerning beneficial ownership if they are not subject to any appropriate prudential supervision and regulation with respect to combating money laundering and terrorist financing.
- ⁴ If there are indications of misuse of a bank, securities dealer or other financial intermediary or if a general warning has been issued by the Swiss Financial Market Supervisory Authority (FINMA) or the SBA regarding individual institutions or institutions in a specific country, such institutions must be required to provide a declaration of beneficial ownership, or other measures must be taken.

Art. 34 Simple partnerships

- ¹ If, for a business relationship with partners of a simple partnership, the partners themselves are the beneficial owners, then no statement concerning beneficial ownership has to be obtained as long as the partners are identified according to article 16, paragraph 1 letter a and the entitlement of the partners of the simple partnership is noted in writing.
- ² Simple partnerships with more than four partners which protect the interests of their members or their beneficiaries as part of mutual self-help or which pursue political, religious, scientific, artistic, charitable, social or similar aims, do not have to deliver any declaration concerning any beneficial ownership as long as they exclusively pursue the above mentioned aims and have no discernible relationship to any high risk countries.

- ³ If a simple partnership which holds the assets deposited at a bank for a third party, this third party is to be declared as the beneficial owner according to Article 28, paragraph 1.

Art. 35 Condominium owner and common ownership collectives

For condominium owner collectives and common ownership collectives that are registered in the real estate register as well as other collectives with discernible aims, no beneficial ownership has to be declared.

Art. 36 Individuals and entities that are bound by professional confidentiality

- ¹ The bank can abstain from establishing the beneficial owners for accounts and securities accounts that are held by lawyers or notaries licensed in Switzerland or firms of lawyers or notaries organised in the form of a company on behalf of their clients provided they declare in writing that
- a) they are not themselves the beneficial owners as far as the assets are concerned; and
 - b) they are subject to the corresponding cantonal and federal legislation in their capacity as lawyers or notaries; and
 - c) they are bound by professional confidentiality (Article 321 Swiss Criminal Code) in respect of the assets deposited; and
 - d) the account/securities account is exclusively used for the purposes of their activity as lawyers or notaries.
- ² Written confirmation has to be provided on Form R.
- ³ If the bank discovers that such a confirmation was wrongly provided, it has to demand a declaration from the contracting partner concerning beneficial ownership on Form A. If such a declaration concerning beneficial ownership is not provided, the business relationship must be terminated.

Section 3 Particular duties concerning identification

Art. 37 Collective accounts and collective safekeeping accounts

- ¹ For collective accounts and collective safekeeping accounts, the contracting partner must provide the bank with a complete list of the beneficial owners of the assets containing the information set out in Article 28 and must notify the bank of any changes without delay.
- ² Collective accounts of operating companies, which are used to process transactions involving professional services are not deemed collective accounts. The bank shall make a record of this in its files.

Art. 38 Collective investments and investment companies

- ¹ If the contracting partner is a collective investment or an investment company with 20 investors or fewer, the bank has to obtain a statement concerning the beneficial owners.
- ² If the contracting partner is a collective investment or an investment company with more than 20 investors, the bank has to obtain a statement concerning the beneficial owners only in the case that the collective investment or investment company is not subject to an appropriate supervision or regulation with respect to combating money laundering and terrorist financing.
- ³ Collective investment forms and investment companies with a domicile in high-risk countries and non-cooperative jurisdictions according to FATF are not considered as being registered by an appropriate supervisory or regulation body with respect to combating money laundering and terrorist financing for the purpose of paragraph 2.
- ⁴ Collective investments or investment companies that are quoted on the stock exchange are not required to provide any declaration regarding beneficial ownership.
- ⁵ Likewise, the bank can abstain from identifying the beneficial owners of a collective investment or an investment company if a financial intermediary as defined in Article 33 acts as its promoter or sponsor and provides evidence that it applies appropriate rules to combat money laundering and terrorist financing.

Art. 39 Domiciliary companies

- ¹ For domiciliary companies, a statement using Form A regarding the identity of the beneficial owner is required from the contracting partner.
- ² For the purposes of this agreement, the term “domiciliary companies” includes, subject to paragraph 4, all legal entities, companies, establishments, foundations, trusts, fiduciary companies or similar associations, either Swiss or foreign, that are not operating.
- ³ Indications that a company is a domiciliary company include
 - a) it has no business premises of its own (for example c/o address, registered office with a lawyer, fiduciary company, bank, etc.); or
 - b) it has no employees of its own.

If, despite the presence of either or both of these indications, the bank does not deem the contracting partner to be a domiciliary company, it must document the reason for this decision.

- ⁴ The following are not considered as domiciliary companies:
 - a) Those companies whose purpose is to protect the interests of their members or beneficiaries by way of mutual self-help, or which pursue political, religious, scientific, artistic, charitable, social or similar aims. They therefore do not have to provide any declaration concerning beneficial ownership as long as they only exclusively pursue the above mentioned aims.
 - b) Those companies which are majority holders of one or more operating companies and whose main purpose is not the administration of the assets of third parties (holding companies).
- ⁵ Domiciliary companies noted on the stock exchange do not have to provide any declaration concerning beneficial ownership.
- ⁶ If the bank knows the beneficial owner and if it is in possession of the information set out in Article 28, it may document this in a file note and waive the requirement for Form A.

Art. 40 Foundations

- ¹ The information required for foundations is to be declared by the contracting partner using a written declaration or Form S. The written declaration must have a similar content as shown in the sample form.
- ² Associations of individuals or asset-holding entities where no specific individuals are the beneficial owners are to be treated similarly to foundations according to paragraph 1.

- ³ For operating foundations their controlling persons are to be declared according to Article 20 ff.

Art. 41 Trusts

The information required for trusts is to be declared by the contracting partner using a written declaration or Form T. The written declaration must have a similar content as shown in the sample form.

Art. 42 Life insurance policy with separate account/securities account (insurance wrapper)

- ¹ In the following four cases concerning a life insurance policy, the contracting partner has to declare who is the insured person or, if different from the insured person, the actual premium payer:
- a) The assets payed into the insurance scheme come from an immediately pre-existing contract between the particular bank and the insured person or actual premium payer or from a contracting relationship in which the premium payer was the beneficial owner; or
 - b) the insured person or actual premium payer has a power of attorney or a right of information concerning the investment deposit account; or
 - c) the assets brought into the insurance policy are administered according to an investment strategy agreed between the particular bank and the insured person or actual premium payer; or
 - d) the insurance company does not confirm that the insurance product conforms to the valid requirements concerning life insurance of the insured entity's domicile or where tax is paid, including regulations concerning biometric risks.
- ² The identification of the insured person or the actual premium payer is to be made using Form I.
- ³ If the bank enters into a relationship on the basis of a confirmation of the insurance company that none of the cases as set out in paragraph 1 apply, the confirmation of the insurance company must also contain a description of the properties of the insurance product with respect to the above-mentioned letters a to d.
- ⁴ If the bank, during a customer relationship, notes that the insured person or actual premium payer can directly or indirectly influence individual investment decisions in other ways, the insured person or actual premium payer is to be identified in writing.

Chapter 5: Delegation and monitoring regulations

Section 1 Delegation

Art. 43 Delegation of the identification of the contracting partner, establishment of the controlling person and of the beneficial owner

- ¹ The bank may, by way of written agreement, mandate the verification of the identity of a controlling person as well as that of a beneficial owner when:
 - a) it has instructed such mandatory as to its tasks; and
 - b) it is able to monitor the proper execution of the verification of identity of the contracting partner as well as that of the controlling person and beneficial owner.
- ² The mandatory must forward all identification files and any identification of the controlling person and beneficial owner to the bank and certify that any copies forwarded are identical to the corresponding originals.
- ³ Further delegation as well as the opening of correspondence by the mandatory is prohibited.
- ⁴ Within a corporation or group, or, in the case of delegation to another financial intermediate according to Article 33 and as far as they are subject to any prudential supervision or regulation with respect to combating money laundering and terrorist financing, the responsibility for identification of the contracting partner and the establishment of the controlling person or beneficial owner may be delegated without a written agreement.

Section 2 Duty to document

Art. 44 Duty to ensure

The bank must ensure that the process of identification of the contracting partner, the establishment of the controlling person and of the beneficial owner is documented. The documents requested for these means have to be kept.

This duty also includes ensuring that the receipt of the identification documents by the bank, or their availability in the bank's system, is fully documented.

Art. 45 Point in time for fulfilling the duty to document

Basically, all the necessary documents for the identification of the contracting partner, the establishment of the controlling person and the beneficial owner must be available in an appropriate form before an account can be used. If particular information and/or documents are not available, the account may be used in exceptional circumstances, but this information and/or documents must be made available as soon as possible. After 90 days the account must be blocked for withdrawals until all the documents are available to the bank. The bank can also annul the business relationship unless forbidden by Articles 9 ff. of the AMLA.

Section 3 Duty to repeat procedures

Art. 46 Duty to repeat due diligence with respect to this code of conduct

- ¹ The bank must repeat the procedure concerning the identification the contracting partner, the determination of the controlling person and the beneficial owner if any doubts arise as to,
 - a) whether the information given concerning the identity of the contracting partner is accurate;
 - b) whether the controlling person is still the same;
 - c) whether the beneficial owner is still the same; or
 - d) whether the statements made on Forms A, I, K, R, S and T are correctand if these doubts cannot be eradicated through any enquiries.
- ² The bank has to terminate its current business relationship with the contracting partner as quickly as possible if it determines that it was deceived as far as the identification of the contracting partner is concerned, or that false information was deliberately provided concerning the controlling person and the beneficial owner, or, also, when any doubt still arises concerning the information provided by the contracting partner when carrying out the process according to paragraph 1.
- ³ Relationships with the contracting partner may no longer be terminated if the requirements for the reporting duty (Article 9 AMLA) are fulfilled.

Chapter 6: Prohibition of active assistance in the flight of capital

Art. 47 Flight of capital

Banks may not provide any active assistance in transferring capital from countries whose legislation restricts the investment of funds abroad.

Art. 48 Definition of flight of capital

- ¹ Flight of capital is the unauthorised transfer of capital in the form of foreign exchange, banknotes or securities from a country that forbids or restricts such transfers abroad by its residents.
- ² The mere duty to report cross-border currency transfers is not deemed a restriction of capital movement.

Art. 49 Transfers of capital abroad

Article 47 does not apply to transfers of capital abroad from Switzerland.

Art. 50 Forms of active assistance

The following acts constitute active assistance:

- a) organised meetings with clients abroad outside the bank's premises for the purpose of accepting funds;
- b) participation abroad in the setting up of offsetting transactions if the bank knows or, based on the totality of the circumstances, must reasonably know that the offsetting is aimed at furthering the flight of capital;
- c) active collaboration with individuals and companies that arrange for the flight of capital on behalf of third parties or provide assistance in this respect
 - i. by issuing orders;
 - ii. by promising commissions;
 - iii. by maintaining their accounts if the bank is aware that such individuals and companies are using their accounts for business purposes to assist in the flight of capital;
- d) by referring the contracting partner to individuals and companies listed in letter c.

Art. 51 Visits to clients abroad

Visits to clients abroad are permitted provided the officer acting on behalf of the bank does not accept any funds that may not be legally transferred, give advice to assist in the illegal transfer of capital or participate in any offsetting transactions.

Art. 52 Receipt of assets in Switzerland

Except where otherwise stated, assets of foreign clients in Switzerland may be accepted.

Chapter 7: Prohibition of active assistance in tax evasion and similar acts

Art. 53 Tax evasion and similar acts

Banks must not provide any assistance to their contracting partners in acts aimed at deceiving Swiss or foreign authorities, particularly tax authorities, by means of incomplete or otherwise misleading attestations.

Art. 54 Incomplete or misleading attestations

- ¹ Banks may not provide incomplete or otherwise misleading attestations to the contracting partner itself or, at the latter's request, directly to authorities in Switzerland or abroad.
- ² The term "authorities" specifically includes tax authorities, customs, currency and bank supervisory authorities as well as criminal prosecution authorities.

Art. 55 Attestations provided for a specific purpose and changes to attestations

- ¹ The prohibition applies to specific attestations requested by the contracting partner for submission to authorities.
- ² Banks may not alter routinely issued records, such as account and securities account statements, credit and debit advices or statements concerning foreign exchange transactions, coupon and stock exchange transactions, for the purpose of deception.

Art. 56 Definition of incomplete attestations

- ¹ An attestation is incomplete if a bank suppresses relevant facts in order to deceive authorities, for example if, at the request of the contracting partner, the bank omits individual items in a specific confirmation or in an account or securities account statement.
- ² It is not necessary to mention in account or securities account statements that other accounts or securities accounts are maintained for the same contracting partner.

Art. 57 Definition of misleading attestations

An attestation is misleading if the facts are presented in an untruthful manner to deceive the authorities, for example

- a) by showing false dates, false amounts or fictitious rates/prices or by issuing credit and debit advices showing false information about the persons credited or debited;
- b) by attesting to fictitious claims or debts (regardless of whether or not the attestation corresponds to the bank's accounts);
- c) by allowing the contracting partner to use the bank's nostro accounts if this enables the contracting partner to reduce its tax liability.

Chapter 8: Audit and procedural provisions

Art. 58 Application

With the signing of this code of conduct the bank acknowledges that it is subject to these audit and procedural provisions.

Section 1 Proceedings

Art. 59 Auditing

- ¹ By signing this code of conduct, the bank instructs and authorises their audit firm to review compliance within the framework of obligatory verification according to FINMA circular 13/3 and confirm agreement in respect of the provisions set out in paragraph 2, and to report violations of the rules of professional conduct in line with the details in paragraphs 3 and 4.
- ² Compliance with the rules of professional conduct must be assessed on the basis of annual compliance audits with audit level “audit” according to margin number 33 of FINMA circular 13/3. These audits must cover business relationships which have been established since the last audit was carried out. In determining the scope of the random sample, and in the audit itself, a risk-oriented approach is to be adopted. This should take particular account of the nature of the business activity and the number and volume of the business relationships established since the last audit was carried out. Audit activities must be coordinated with the bank’s internal auditors. The auditors must examine at least half of the random sample.
- ³ Where an audit firm identifies minor violations as described in Article 63, it must instruct the bank to rectify the situation within a maximum of six months after the latter has been notified. This deadline may be extended once, subject to an application giving reasons. If the shortcoming is not rectified within this period, the audit firm must report this fact to the supervisory board and to the FINMA. The report must be submitted within one month of expiry of the deadline for rectification.
- ⁴ If the audit firm identifies violations of this agreement that cannot be deemed minor as defined in Article 63, it must report these to the supervisory board and to the FINMA. The report must be submitted within one month of the violation being identified.

Art. 60 Investigations

- ¹ When contract violations are suspected, the investigator carries out the necessary investigations on behalf of the supervisory board and proposes to the supervisory board to carry out sanctioning procedures and/or to wholly or partly stop the investigations. The investigator transfers the documents of the investigation to the supervisory board along with the proposal.
- ² The investigator determines whether a violation of the code of conduct has taken place, but is not competent for establishing, on a preliminary basis, whether the provisions of the AMLA-FINMA have been violated.
- ³ In his request for information, the investigator informs the bank why it is being included in the investigations.
- ⁴ When the investigator ascertains only minor cases according to Article 63 the investigator has the competence to terminate the investigations as long as the bank acknowledges that a violation of the code of conduct has occurred and agrees to correct their shortcomings within six months and to carry the cost of the investigation. This deadline may be extended once, subject to an application giving reasons. If the shortcomings are not corrected within this period of time, the investigations will continue. Where investigations are closed, reasons for doing so must be given in writing and the bank concerned and the supervisory board must be informed.
- ⁵ The SBA issues regulations governing the investigation procedure, as well as the status of the investigators and the banks affected by the investigations.

Art. 61 Sanctions

- ¹ The supervisory board is responsible for the investigation and disciplinary action with respect to any violation of this code of conduct. It executes the sanctioning proceedings. If a violation is determined, it defines, as part of the proceedings, an appropriate fine as defined by Article 64 and/or closes the case either completely or in part.
- ² If a bank refuses to cooperate with investigations carried out by the supervisory board or an investigator, the supervisory board may impose a fine as defined in Article 64.
- ³ The supervisory board informs the FINMA of its decisions.
- ⁴ If the bank that is at fault accepts the decision of the supervisory board, the proceedings are at an end. Otherwise, the arbitration procedure set out in Article 68 must be initiated and carried out.

- ⁵ The supervisory board issues procedural regulations governing the procedure that it is to carry out, and determines how the costs are to be borne. The supervisory board is responsible for the collection of the procedural costs and costs incurred during the investigation.

Art. 62 Abbreviated process

- ¹ For simple cases, the bank can make an application to the supervisory board by means of self-indictment asking that an abbreviated process be carried out. The audit firm's report should be attached to the application.
- ² The supervisory board decides conclusively with respect to the execution of any abbreviated process.
- ³ If the supervisory board cannot make any such decision on the basis of the available facts, an abbreviated process cannot be carried out. The supervisory board passes the case on to an investigator.
- ⁴ If the supervisory board decides to carry out an abbreviated process, it makes a decision on the appropriate fine as defined in Article 64 and/or closes the case either completely or in part. It informs the bank of its judgment. The bank has, within ten days, the possibility of asking the supervisory board for a written substantiation of its decision.
- ⁵ If a written substantiation is requested, the time allowed for the payment of the fine starts when the written substantiation is delivered.

Section 2 Sanctioning rules

Art. 63 Minor cases

In minor cases, the proceedings against the bank at fault must be closed without any sanction. A violation of the code of conduct will in particular be considered minor if the objective of the agreement, i.e. the identification of the contracting partner, the establishment of the controlling person and of the beneficial owner, has been achieved despite formal shortcomings. The following are examples of minor violations:

- a) use of documents that are more than twelve months old to identify a legal entity or partnership;
- b) use of an incomplete or incorrectly completed Form A, provided that the last name and first name (or company name) of the beneficial owner are stated and the contracting partner has signed the form; the same applies, to incomplete Forms I, K, S and T;
- c) where the volume of assets involved does not exceed 25,000 Swiss Francs;

d) where the matter has not been recorded in accordance with regulations in an appropriate way.

Art. 64 Violations of the rules of this code of conduct

- ¹ In the event of a violation of this code of conduct, the bank that is at fault can be obliged to pay the SBA a fine of up to 10 million Swiss Francs. In assessing the level of the fine, due account must be taken of the seriousness of the violation, the degree of culpability and the bank's financial situation. Measures imposed by other authorities with respect to the same issue must also be taken into account. The amount of the fine is determined in accordance with the procedure set out in Article 61 and, where appropriate, Article 62.
- ² The SBA will use the fines to cover any negative cost balance, and may apply any remaining surplus to a charitable cause of its choosing.

Art. 65 Limitation period

No action will be further taken in respect of violations of this code of conduct that occurred more than five years previously. The limitation period remains suspended for the duration of the proceedings.

Section 3 Organisation

Art. 66 Supervisory board

- ¹ The SBA appoints a supervisory board consisting of at least five people to investigate and take action against violations of this code of conduct according to Article 61. The majority of the board's members must be independent.
- ² The supervisory board elects one or more secretaries and regulates their responsibilities.
- ³ The term of office is five years. The Board of Directors of the SBA can extend the term of office by one year. They may be re-elected. Only persons who have not yet reached the age of 70 may be elected as members of the supervisory board and secretaries. If any person so elected reaches the age of 70 during their term of office, their term may be terminated.
- ⁴ As authorised officers as defined in Article 47 of the Banking Act, the members of the supervisory board and the secretaries are obliged to maintain strict confidentiality regarding any facts of which they become aware during the investigation and sanctioning procedure. The bank may not invoke banking confidentiality vis-à-vis the supervisory board.

- ⁵ The supervisory board periodically informs the banks and the general public of its decision-making practice, to the extent permitted by the rules of banking and professional confidentiality.
- ⁶ The supervisory board may – in agreement with the Board of Directors of the SBA – provide the banks with interpretations of the code of conduct. Banks must submit applications to this effect to the SBA.

Art. 67 Investigators

- ¹ The SBA appoints one or more investigators. Where a violation of this code of conduct is suspected, the investigators carry out the necessary investigation and recommend to the supervisory board that it carries out a sanctioning process or that it closes the proceedings in its own competence.
- ² The term of office is five years. The Board of Directors of the SBA can extend the term of office by one year. They may be re-elected. Only persons who have not yet reached the age of 70 may be elected. If any person reaches the age of 70 during their term of office, their term may be terminated.
- ³ As authorised officers as defined in Article 47 of the Banking Act, the investigators are obliged to maintain strict confidentiality regarding any facts of which they become aware during the investigation and sanctioning procedure. The bank may not invoke banking confidentiality vis-à-vis the investigators.

Section 4 Arbitration procedure

Art. 68 Arbitration procedure

- ¹ If the fine which the supervisory board deems appropriate is not paid by the date prescribed, an arbitration tribunal based in Basel must – upon a complaint brought by the SBA – hand down a final ruling on whether a breach of due diligence has been committed, and any fine to be paid as a result. To this end, the banks submit themselves to the jurisdiction of the courts of Basel.
- ² The SBA and the bank each nominate an arbitrator, and the two arbitrators then jointly nominate the tribunal umpire.
- ³ The arbitration procedure begins as soon as the SBA has nominated its arbitrator.
- ⁴ If the bank concerned fails to nominate its arbitrator within 30 days of receiving a written notice from the SBA regarding the initiation of the arbitration procedure, or if the two arbitrators are unable to agree on the nomination of the umpire within 30 days of accepting their appointment as arbitrators, the Court of Appeals (“Appellationsgericht”) of the Canton of Basel-Stadt will, upon application from one of the parties, proceed to make the appointment.

- ⁵ If an arbitrator is unable to discharge his office for any reason, the party that nominated him must nominate a new arbitrator within 30 days, failing which the Court of Appeals of the Canton of Basel-Stadt will, upon application from the other party, proceed to make the appointment.
- ⁶ If the umpire is unable to discharge his office for any reason, the arbitrators must nominate a new umpire within 30 days, failing which the Court of Appeals of the Canton of Basel-Stadt will, upon application from one of the parties, proceed to make the appointment.
- ⁷ If an arbitrator is replaced in accordance with paragraphs 5 and 6 above, the proceedings in which the first arbitrator was involved will remain valid.
- ⁸ Subject to the mandatory provisions of the Swiss Civil Process Order, the provisions of the latter apply only to the extent that the parties or – should the latter waive its rights in this respect – the court of arbitration adopt no other rules of procedure.
- ⁹ As authorised officers as defined in Article 47 of the Banking Act, the arbitrators are obliged to maintain strict confidentiality regarding any facts of which they become aware during the arbitration procedure. The bank may not invoke banking confidentiality vis-à-vis the arbitrators.

Chapter 9: Final clause

Art. 69 Entry into force

- ¹ This code of conduct comes into force on 1 January 2016.
- ² The SBA and each signatory bank may withdraw from the agreement on the code of conduct subject to a notice period of three months to the end of the contracting year, but no earlier than 31 December 2020.
- ³ The SBA reserves the right – following consultation with or at the request of the FINMA (see Article 16 AMLA) – to apprise the banks of supplementary regulations during the period of the agreement.
- ⁴ The SBA reserves the right to unilaterally amend or cancel the sanction rules (Articles 58 to 68) if new legal provisions or developments in the law lead to inappropriate multiple sanctions in respect of the same circumstances.

Art. 70 Transitional provisions

- ¹ The existing forms need not be replaced with respect to existing business relationships.
- ² According to the procedures set out in this agreement, any breaches of the “Swiss banks’ code of conduct with regard to the exercise of due diligence” of 2008 will also be evaluated.
- ³ The new rules governing the identification of contracting partner and the establishment of the controlling person and of the beneficial owner must be applied in respect of any new business relationship established after the date on which this code of conduct comes into force or where the procedure for the identification of the contracting partner or the establishment of the beneficial owner as defined in Article 46 needs to be repeated after this code of conduct comes into force. The new code of conduct may be applied to existing business relationships if they are deemed more beneficial.

A

Declaration of identity of the beneficial owner

Account/securities account number:

Contracting partner:

Category (where appropriate):

The contracting partner hereby declares that the person(s) listed below is/are the beneficial owner(s) of the assets deposited under the above relationship. If the contracting partner is also the sole beneficial owner of the assets, the contracting partner's details must be set out below:

Last name(s)/entity: _____

First name(s): _____

Date(s) of birth: _____

Nationality: _____

Actual address of domicile/registered office: _____

The contracting partner hereby undertakes to automatically inform the bank of any changes.

Date

Signature(s)

It is a criminal offence to deliberately provide false information on this form (article 251 of the Swiss Criminal Code, document forgery).

Information on life insurance policies with separately managed accounts/securities accounts (so-called insurance wrappers)

Account/securities account number:

Contracting partner:

Category (where appropriate):

Pursuant to article 42 of the Agreement on the Swiss banks' code of conduct with regard to the exercise of due diligence (CDB 16), the contracting partner hereby declares to be a certified and regulated insurance company and that the assets under the above relationship are held under the terms of a specific life insurance policy.

In relation with the above insurance policy, the contracting partner gives the following further details:

1. Policy holder

Last name(s)/entity _____

First name(s): _____

Date(s) of birth: _____

Nationality: _____

Actual address of domicile/registered office: _____

2. Person actually (not in a fiduciary capacity) paying the premiums (to be filled in if not identical with point 1 above):

Last name(s)/entity _____

First name(s): _____

Date(s) of birth: _____

Nationality: _____

Actual address of domicile/registered office: _____



The contracting partner hereby undertakes to automatically inform the bank of any changes of the information contained herein. The contracting partner hereby also declares having been given permission by the above individuals to transmit their data to the bank.

Date

Signature(s)

It is a criminal offence to deliberately provide false information on this form (article 251 of the Swiss Criminal Code, document forgery).

K

Establishing of the controlling person of operating legal entities and partnerships both not quoted on the stock exchange

(for operating legal entities and partnerships that are contracting partner as well as analogously for operating legal entities and partnerships that are beneficial owners)

Account/securities account number:

Contracting partner:

Category (where appropriate):

The contracting partner hereby declares that (tick the appropriate box):

- the person(s) listed below is/are **holding 25% or more of the contracting partner's shares (capital shares or voting rights);** or
- if the capital shares or voting rights cannot be determined or in case there are no capital shares or voting rights of 25% or more, the contracting partner hereby declares that the person(s) listed below **is/are controlling the contracting partner in other ways;** or
- in case this/these person(s) cannot be determined or this/these person(s) does/do not exist, the contracting partner hereby declares that the person(s) listed below is/are the **managing director(s).**

Last name(s)/entity

First name(s):

Actual address of domicile/registered office:

K

Fiduciary holding of assets

Is a third person the beneficial owner of the assets held in the account/securities account?

- No.
- Yes. → The relevant information regarding the beneficial owner has to be obtained by filling in a separate form A.

The contracting partner hereby undertakes to automatically inform the bank of any changes to the information contained herein.

Date

Signature(s)

It is a criminal offence to deliberately provide false information on this form (article 251 of the Swiss Criminal Code, document forgery).

S

Foundations (as well as similar constructs)

Account/securities account number:

Contracting partner:

Category (where appropriate):

Pursuant to article 40 of the Agreement on the Swiss banks' code of conduct with regard to the exercise of due diligence (CDB 16), the undersigned hereby declare(s) that as board member of the foundation, or of the highest supervisory body of an underlying company of a foundation, known as:

and, in such capacity, provide(s) to the best of his/her/their knowledge the following information to the bank:

1. Name and information pertaining to the foundation (tick the two boxes applicable):

Type of foundation: Discretionary foundation or Non-discretionary foundation
and

Revocability: Revocable foundation or Irrevocable foundation

2. Information pertaining to the (ultimate economic, not fiduciary) founder (individual(s) or entity/-ies):

Last name(s), first name(s)/entity

Actual address of domicile/registered office

Country

Date(s) of birth

Nationality

Date of death (if deceased)

In case of a revocable foundation: does the founder have the right to revoke the foundation?

Yes

No

S

3. If the foundation results from the restructuring of a pre-existing foundation (re-settlement) or the merger of pre-existing foundations, the following information pertaining to the (actual) founder(s) of the pre-existing foundation(s) has to be given:

Last name(s), first name(s)/entity

Actual address of domicile/registered office

Country

Date(s) of birth Nationality Date of death (if deceased)

4. Information

- a) pertaining to the beneficiary/-ies at the time of the signing of this form:

Last name(s), first name(s)/entity

Actual address of domicile/registered office

Country

Date(s) of birth Nationality _____

Has/Have the beneficiary/-ies an actual right to claim a distribution? Yes No

- b) and in addition to certain beneficiaries or if there is/are no defined beneficiary/-ies pertaining to (a) group(s) of beneficiaries (e.g. descendants of the founder) known at the time of the signing of this form:

S

5. Information pertaining to (a) further person(s) having the right to determine or nominate representatives (e.g. members of the foundation board), if these representatives may dispose over the assets or have the right to change the distribution of the assets or the nomination of beneficiaries:

Last name(s), first name(s)/entity

Actual address of domicile/registered office

Country

Date(s) of birth

Nationality

In case of a revocable foundation: is/are there (a) further person(s) with the right to revoke the foundation?

Yes

No

The contracting partner(s) hereby undertake(s) to automatically inform the bank of any changes to the information contained herein.

Date

Signature(s)

It is a criminal offence to deliberately provide false information on this form (article 251 of the Swiss Criminal Code, document forgery).

T

Declaration for trusts

Account/securities account number:

Contracting partner:

Category (where appropriate):

Pursuant to article 41 of the Agreement on the Swiss banks' code of conduct with regard to the exercise of due diligence (CDB 16), the undersigned hereby declare(s) that as a trustee or a member of the highest supervisory body of an underlying company of a trust known as:

and, in such capacity, provide(s) to the best of his/her/their knowledge the following information to the bank:

1. Name and information pertaining to the trust (tick the two boxes applicable):

Type of trust: Discretionary Trust or Non-discretionary Trust
and

Revocability: Revocable Trust or Irrevocable Trust

2. Information pertaining to the (ultimate economic, not fiduciary) settlor of the trust (individual(s) or entity/-ies):

Last name(s), first name(s)/entity

Actual address of domicile/registered office

Country

Date(s) of birth

Nationality

Date of death (if deceased)

In case of a revocable trust: does the settlor have the right to revoke the trust?

Yes No

T

3. If the trust results from a restructuring of a pre-existing trust (re-settlement) or a merger of pre-existing trusts, the following information pertaining to the (actual) settlor of the pre-existing trust(s) has to be given:

Last name(s), first name(s)/entity

Actual address of domicile/registered office

Country

Date(s) of birth

Nationality

Date of death (if deceased)

4. Information

- a) pertaining to the beneficiary/-ies at the time of the signing of this form:

Last name(s), first name(s)/entity

Actual address of domicile/registered office

Country

Date(s) of birth

Nationality

Has/Have the beneficiary/-ies an actual right to claim a distribution?

Yes

No

- b) and in addition to certain beneficiaries or if no beneficiary/-ies has/have been determined, pertaining to (a) group(s) of beneficiaries (e.g. descendants of the settlor) known at the time of the signing of this form:

5. Information pertaining to the protector(s) as well as (a) further person(s) having a right to revoke the trust (in case of revocable trusts) or to appoint the trustee of a trust:

- a) Information pertaining to the protector(s)

Last name(s), first name(s)/entity

T

Actual address of domicile/registered office

Country

Date(s) of birth

Nationality

In case of a revocable trust: does the protector have the right to revoke the trust?

Yes

No

b) Information pertaining to (a) further person(s)

Last name(s), first name(s)/entity

Actual address of domicile/registered office

Country

Date(s) of birth

Nationality

In case of a revocable trust: Has/have this/these further person(s) the right to revoke the trust?

Yes

No

The contracting partner(s) hereby declare(s) to be entitled to open a bank account for the trust above.

The contracting partner(s) hereby undertake(s) to automatically inform the bank of any changes to the information contained herein.

Date

Signature(s)

It is a criminal offence to deliberately provide false information on this form (article 251 of the Swiss Criminal Code, document forgery).

Imprint

Publisher

Swiss Bankers Association (SBA)

Layout

Hanspeter Stoll, Bottmingen

Print

Gremper AG, Pratteln

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