

2008

Agreement on the Swiss banks' code of conduct  
with regard to the exercise of due diligence (CDB 08)

**Agreement  
on the Swiss banks' code of conduct  
with regard to the exercise of  
due diligence (CDB 08)**

between the  
Swiss Bankers Association  
("SBA")

on the one hand and  
the signatory banks  
("banks")

on the other hand  
of 7 April 2008



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# Introduction

## Art. 1 Preamble

- a) With a view to preserving the good name of the Swiss banking community, nationally and internationally,
- b) with a view to laying down rules ensuing business conduct that is beyond reproach when establishing business relationships and in the area of banking confidentiality, and
- c) with a view to making an effective contribution to combating money laundering and terrorist financing,

the banks hereby contract with the SBA in its capacity as the professional organisation charged with safeguarding the interests and reputation of Swiss banking

- a) to verify the identity of their contracting partners and, in cases of doubt, to obtain from their contracting partners a declaration as to the identity of the beneficial owner of the assets;
- b) not to provide any active assistance in the flight of capital;
- c) not to provide any active assistance in tax evasion and similar acts by providing incomplete or misleading attestations.

### 1 Geographical scope

<sup>1</sup>This agreement applies to the signatory banks and securities dealers and all their branches domiciled in Switzerland, but not to their foreign branches, representative offices and subsidiary companies (but see points 11, 19 and 21).

<sup>2</sup>The banks may not, however, misuse any of their foreign branches or group companies engaging in banking and finance to circumvent this agreement.



## **2 Relationship to other regulations**

This agreement in no way modifies the obligation to observe banking confidentiality. It cannot and is not intended to

- a) *de facto* incorporate into Swiss law the application of foreign legislation in currency, fiscal and economic matters, or declare such legislation to be applicable to Swiss banks (unless this is provided for under current international treaties and Swiss law);
- b) depart from current legal practice in the field of international law;
- c) modify provisions under civil law governing relations between banks and their contracting partners.

## **3 Relationship to the Swiss Anti-Money Laundering Act (AMLA) and the SFBC Money Laundering Ordinance (MLO SFBC)**

This agreement lays down binding rules of good conduct in banking as a code of professional ethics. They are designed to give specific effect to certain points of due diligence governed by the Anti-Money Laundering Act (Art. 3 – 5 AMLA) and the concept of “the diligence that can be reasonably expected under the circumstances” in accepting assets (Art. 305ter of the Swiss Penal Code).<sup>1</sup> The special duties of investigation for business relationships and transactions involving higher risks are set out in MLO-SFBC. It is not the intention to impede normal banking business.

## **4 Commentary on the agreement**

The SBA has compiled a commentary on the individual articles and margin notes of CDB 08. This commentary should be taken into account when interpreting the code of conduct set out in this agreement.

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<sup>1</sup>Separate regulations govern the analogous application of the CDB to the business practice of credit card companies.

## **A Verifying the identity of the contracting partner and identifying the beneficial owner**

### **Art. 2 Verifying the identity of the contracting partner**

<sup>1</sup>The banks undertake to verify the identity of the contracting partner when establishing business relationships.

<sup>2</sup>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 CHF 25,000;
- g) cash transactions exceeding the amount of CHF 25,000.

<sup>3</sup>When establishing additional business relationships with contracting partners whose identity has already been duly verified there is no requirement to repeat the identification of such partners. This also applies to checking the identity of persons establishing business relationships and taking note of power of attorney arrangements as set out in point 14 and establishing business relationships under point 15.

### **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.

## **6 Securities**

The term “securities” is to be understood as meaning standardised securities suitable for trading in large quantities, non-certificated rights having the same function (inscribed stocks), and derivatives (see Art. 2 (a) of the Stock Exchange Act). It also covers non-standardised financial products.

## **7 Cash transactions**

The term “cash transactions” is to be understood as meaning transactions carried out at a bank’s teller window (currency exchange, purchase and sale of precious metals, cash subscriptions to bank cash bonds and debenture loans, cash sale of traveller’s cheques, cashing of cheques, etc.). Cash deposits into and cash withdrawals from existing accounts/passbooks as well as incoming or outgoing delivery of certificated securities in connection with existing securities accounts are not deemed cash transactions (see point 5 however).

## **8 Duty of identification irrespective of minimum thresholds**

<sup>1</sup>Where a transaction lies below the minimum thresholds (Art. 2 (2) (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 (“smurfing”).

<sup>2</sup>Where there are grounds for suspecting that assets are derived from any of the sources set out in Art. 9 (1) AMLA, the contracting partner must be identified, regardless of the minimum thresholds (Art. 2 (2) (f) and (g)) or exceptions from formal identification (point 18).

## **1. Individuals**

### **9 Identification during a face-to-face meeting**

During a face-to-face meeting, the bank must identify the contracting partner by inspecting and photocopying an official identification document with a photograph (passport, identity card, driving licence or some similar document) and putting on record the information required under point 22.

### **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 point 9 above and checking the contracting partner's address either by postal delivery or by another equivalent method.

### **11 Bodies authorised to provide authentication**

<sup>1</sup>A copy of an identification document may be authenticated by

- a) a branch, representative office or group company of the bank,
- b) a correspondent bank or another financial intermediary recognised for this purpose by the bank establishing the business relationship,
- c) a notary or another public body that customarily issues such authentications.

<sup>2</sup>Identification provided during delivery or collection of post using an official identification document is also deemed to be valid, provided that such identification enables delivery solely to the intended recipient.

## **2. Legal entities and partnerships**

### **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.

### **13 Identification without an entry in the Swiss Commercial Register or an equivalent foreign register**

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.

### **14 Checking the identity of persons establishing business relationships and taking note of power of attorney arrangements**

<sup>1</sup>In the case of legal entities and partnerships, the identity of the individuals establishing the business relationship must also be checked. This can be done by means of a copy of one of the documents set out in point 9, or an authenticated copy of an identification document as set out in point 10.

<sup>2</sup>The identity of the person(s) 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 point 11 of this agreement.

<sup>3</sup>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.

<sup>4</sup>When establishing a business relationship with financial intermediaries that are subject to specific legal supervision as defined in point 34, the procedure set out in point 14 (1) – (3) may be substituted by an exchange of signature books, electronic codes or other means customarily used in the industry.

## **15 Identification of ordinary partnerships, companies in the process of foundation and trustees**

<sup>1</sup>In the case of ordinary partnerships, the persons recognised as authorised signatories vis-à-vis the bank must be identified.

<sup>2</sup>In the case of companies that are in the process of foundation, the persons establishing the business relationship must be identified.

<sup>3</sup>In the case of trust relationships, the trustee must be identified. The trustee must also confirm in writing (e.g. by means of Form T), that he/she is authorised to establish a business relationship with the bank on behalf of the trust.

## **16 Validity period of commercial register extracts and equivalent documents**

Commercial register extracts and equivalent documents may not be more than 12 months old. An older document may be used in conjunction with an auditor's certificate that is up to 12 months old.

## **17 Publicly known legal entities**

<sup>1</sup>If the identity of a legal entity as contracting partner is publicly known, this fact may be documented instead of carrying out the procedure set out in points 12 – 14. 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.

<sup>2</sup>The simplified procedure set out in para. 1 may not be used with domiciliary companies unless they are directly or indirectly associated with a public company.

### **3. Special cases**

#### **18 Accountholder is a minor; rental surety accounts**

It is not necessary to formally verify the identity of a contracting partner when

- a) an account, securities account or passbook is opened in the name of a minor by an adult third party, provided that the assets deposited at the outset do not exceed CHF 25,000; however, the identity of the adult opening the account must be verified; point 22 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.

#### **19 Identification within the group**

If a contracting partner has already been identified within the group in an equivalent manner, i.e. employing a standard of due diligence that complies with this agreement, a repeat of the procedure set out in points 9 – 15 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.

#### **20 Verification of identify in another expedient manner**

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 corporation or institution, the bank may verify the identity in another expedient manner by inspecting other credentials or obtaining corresponding attestations from public authorities or, in the case of a legal entity, 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 created giving the reasons for the exceptional situation.

## **4. General regulations on identity verification and supervision**

### **21 Delegation of identification**

<sup>1</sup>The bank may, by written agreement, appoint an individual or a company to verify the identity of a contracting partner, provided that

- 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.

<sup>2</sup>The mandatory must forward all identification files to the bank and certify that any copies forwarded are identical to the corresponding originals.

<sup>3</sup>The appointment of a third party by the mandatory is prohibited.

<sup>4</sup>Within a corporation or group, responsibility for identification may be transferred without a delegation agreement.

### **22 Duty to keep documentary records**

An appropriate record must be kept of the contracting partner's last name, first name, date of birth, nationality, address, or company name and domicile, as well as of the means used to verify their identity. The date of birth and address or domicile may be omitted if the contracting partner is from a country where such data is not customarily used. A photocopy of the official identification document and other identification files must be retained.



### **23 Duty to document procedures**

<sup>1</sup>The bank must ensure that the process of identification is documented adequately and consistently.

<sup>2</sup>This duty also includes ensuring that receipt of the identification documents by the bank, or their availability in the bank's system, is fully documented.

### **24 Deadline for complying with the duty to keep documentary records**

All documents required for identification must normally be on file in the appropriate form before an account can be used. If only certain details are missing the account may be used, but the missing information must be obtained as quickly as possible. After 90 days at the latest, the account must be blocked for all deposits and withdrawals until the bank is in possession of complete documentation. The bank may also terminate the business relationship unless this is prohibited by Art. 9 ff AMLA (see also Art. 6 (4) of this agreement).

### **Art. 3 Establishing the identity of the beneficial owner**

<sup>1</sup>The bank is entitled to assume that the contracting partner and the beneficial owner are one and the same. If the contracting partner is not the same as the beneficial owner, or if this is in doubt, the banks must require the contracting partner to complete Form A, thereby providing a written declaration of the identity of the beneficial owner.

<sup>2</sup>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 CHF 25,000;

<sup>3</sup>In the case of cash transactions as defined in Art. 2 involving amounts in excess of CHF 25,000, the contracting partner must always be required to provide a declaration as to the identity of the beneficial owner. The banks must retain a written record of the contracting partner's declaration. The use of Form A is optional.

<sup>4</sup>If the beneficial owner of a business relationship is an ordinary partnership or association that is not entered in the commercial register, no declaration as to the identity of the beneficial owner need be obtained provided that the beneficial ownership of the ordinary partners or group is documented in writing and the credits booked under this relationship do not exceed CHF 25,000.

## **25 Doubts as to whether the contracting partner and the beneficial owner are the same**

<sup>1</sup>The assumption that the contracting partner and the beneficial owner are one and the same will cease to apply if unusual circumstances are observed.

<sup>2</sup>Such unusual circumstances would include:

- a) where a power of attorney is granted to an individual or entity that does not recognisably have a sufficiently close link to the contracting partner; this does not include powers of attorney for the management of assets which merely allow for transactions within a business relationship and do not permit withdrawals of funds;
- b) where the assets deposited or promised are disproportionate to the financial standing of the contracting partner, insofar as the bank is aware of their financial standing;
- c) or where other unusual circumstances are observed during contact with the contracting partner.

## **26 Establishing a business relationship with an individual by correspondence**

If a business relationship is established with an individual by correspondence, a declaration on Form A must invariably be provided, except in the special cases set out in point 18.

## **27 Information to be documented**

<sup>1</sup>If the contracting partner declares that the beneficial owner is a third party, the latter's last name, first name, date of birth, nationality, address and country of domicile, or the company name and address and country of domicile in the case of a legal entity, must be documented using Form A. The banks may reserve the right to apply Art. 3 (3). The date of birth and address or domicile may be omitted if the beneficial owner is from a country where such data is not customarily used.

<sup>2</sup>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 point 9 ff. In such cases, the last name and first name (or company name) as an absolute minimum must be documented on Form A.

<sup>3</sup>The bank may also insert the account or securities account numbers later in a form that has already been completed and signed.

## **28 Signing Form A**

Form A may be signed by the contracting partner or their designated signatory authorised by means of a written specific or general power of attorney. In the case of legal entities, Form A or the power of attorney must be signed by authorised signatories named in the company's documentation.

## **29 Serious doubts as to the accuracy of the contracting partner's declaration**

If serious doubts persist concerning the accuracy of the contracting partner's declaration and these cannot be dispelled by further clarification, the bank must refuse to establish the business relationship or execute the transaction.

### **30 Model Form A**

Form A is attached as a schedule to this agreement.

### **31 Own Form A**

The banks may use forms of their own which reflect their own particular requirements. The content of these forms must be equivalent to that of the model form.

### **32 Collective accounts and collective safekeeping accounts**

<sup>1</sup>For collective accounts and collective safekeeping accounts, the contracting partner must provide the bank with a complete list of the beneficial owners containing the information set out in point 27, and must notify the bank of any changes without delay.

<sup>2</sup>Accounts of operating companies, which are used to process transactions involving professional services such as collection, property management, factoring, etc. are not deemed collective accounts. Likewise, accounts of regulated money transfer and money transport companies are not deemed collective accounts. The bank shall make a record of this in the file.

### **33 Collective investments and investment companies**

<sup>1</sup>If a collective investment or investment company has 20 investors or fewer, these must be identified as beneficial owners.

<sup>2</sup>Collective investments and investment companies that are listed on a public exchange are not required to provide any declaration regarding beneficial ownership. Likewise, the bank may waive the requirement to identify the beneficial owners of a collective investment or investment company if a financial intermediary as defined in point 34 acts as its promoter or sponsor and provides evidence that it applies appropriate rules to combat money laundering and terrorist financing.

### **34 Banks, other financial intermediaries and Swiss public authorities as contracting partners**

<sup>1</sup>Banks and securities dealers having their registered office in Switzerland or abroad are not normally required to provide a declaration of beneficial ownership. The definition of such entities is governed by the specific laws of their country of domicile. However, declarations of beneficial ownership are required when a bank or securities dealer that is not subject to appropriate supervision and regulation in respect of money laundering and terrorist financing holds sub-accounts on behalf of unnamed clients.

<sup>2</sup>Other financial intermediaries resident or having their registered office in Switzerland are not required to provide a declaration of beneficial ownership. The same applies to other financial intermediaries domiciled outside Switzerland that are subject to appropriate supervision and regulation in respect of combating money laundering and terrorist financing. The existence of appropriate supervision and regulation in respect of money laundering and terrorist financing may also be assumed if a foreign financial intermediary is part of a company subject to consolidated supervision where the parent company is domiciled in a country that exercises appropriate supervision and regulation in respect of combating money laundering and terrorist financing.

<sup>3</sup>The term “other Swiss financial intermediaries” covers financial intermediaries as defined in Art. 2 (2) and Art. 2 (4) (b) of the Anti-Money Laundering Act. The definition of foreign financial intermediaries is governed by the specific laws of their country of domicile.

<sup>4</sup>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 Federal Banking Commission 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.

<sup>5</sup>Swiss public authorities are not required to provide a declaration of beneficial ownership.

**35 Delegating the duty to identify the beneficial owner and deadline for compliance with the documentation requirement**

<sup>1</sup>The task of identifying the beneficial owner may be delegated to third parties. It may be carried out by applying the provisions of point 21, *mutatis mutandis*.

<sup>2</sup>Point 24 applies to the identification of the beneficial owner, *mutatis mutandis*.

**36 Duty to document procedures**

<sup>1</sup>The bank must ensure that the process of identifying the beneficial owner is documented adequately and consistently.

<sup>2</sup>This duty also includes ensuring that receipt of the documents used to identify the beneficial owner by the bank, or their availability in the bank's system, is fully documented.

**37 Special rule for domiciliary companies and individuals/entities that are bound by professional confidentiality**

The above must be read subject to the special provisions on domiciliary companies and individuals/entities that are bound by professional confidentiality (Art. 4 and 5, points 38 – 46).

## **Art. 4 Procedure for domiciliary companies**

<sup>1</sup>For the purposes of this agreement, the term “domiciliary companies” includes (subject to paragraph 2) all legal entities, companies, establishments, foundations, trusts/fiduciary companies or similar associations, either Swiss or foreign, that do not engage in any commercial or manufacturing business or any other form of commercial operation.

<sup>2</sup>Legal entities and companies whose purpose is to safeguard 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, are not considered to be domiciliary companies, provided they pursue solely the objectives set out in their articles of association.

<sup>3</sup>Swiss and foreign domiciliary companies must be required to provide:

- a) a commercial register extract or equivalent document for identification (see points 12 – 16);
- b) a declaration by the contracting partner using Form A or T or a document of equivalent content as defined in points 31 and 43 respectively, identifying the beneficial owner of the assets.

<sup>4</sup>If the bank knows the beneficial owner and if it is in possession of the information set out in point 27, it may document this in a file note and waive the requirement for Form A.



### **38 Concept of a domiciliary company**

<sup>1</sup>Indications that a company is a domiciliary company include:

- a) it has no business premises of its own (c/o address, registered office with a lawyer, fiduciary company, bank, etc.) or
- b) it has no employees of its own.

<sup>2</sup>If, despite the presence of either or both of the indications set out in para. 1, the bank does not deem the contracting partner to be a domiciliary company, it must document the reason for this decision.

### **39 Holding companies, real estate companies, etc.**

The definition of a domiciliary company will, in particular, not extend to companies, establishments, foundations, trusts/fiduciary companies that hold a majority interest in one or more companies that conduct any commercial or manufacturing business or any other form of commercial operation, and whose principal objective is not the management of assets for third parties. This provision can also be applied, *mutatis mutandis*, to companies that hold and manage real estate. The bank must keep evidence of this circumstance on file.

### **40 Beneficial owner of a domiciliary company**

The beneficial owner of a domiciliary company may be an individual or legal entity that engages in a commercial or manufacturing business or any other form of commercial operation. A domiciliary company cannot itself be the beneficial owner.

### **41 Method of identifying the beneficial owner**

The identity of the beneficial owners must be established and documented as defined in points 27 and 28. Point 29 applies.

## **42 Listed companies**

If a domiciliary company is listed on a public exchange, there is no requirement to establish the identity of its beneficial owners.

## **43 Assets without any specific beneficial owner**

<sup>1</sup>In the case of associations of individuals or asset-holding entities and foundations where no specific individuals or entities are the beneficial owners (e.g. discretionary trusts), the contracting partner must be required to provide a written declaration that this is the case, rather than identifying the beneficial owner. The declaration must also contain information about the actual founders (and not those acting in a fiduciary capacity) and, if identifiable, those individuals or entities that are empowered to issue instructions to the contracting partner or its corporate bodies, as well as those persons or entities that are potential beneficiaries (by category, e.g. “members of the founder’s family”). Any curators, protectors, etc. must also be listed in this declaration.

<sup>2</sup>Form T may be used for this declaration. Form T is attached as a schedule to this agreement. The banks may create forms of their own which reflect their own particular requirements. The content of these forms must be equivalent to that of the model form.

## **44 Procedure for revocable vehicles**

<sup>1</sup>For revocable vehicles (such as revocable trusts), those authorised to issue such revocation must be listed as the beneficial owners.

## **45 Change in signing authority**

If any changes are made in the signatures authorised by a domiciliary company in the course of its business with the bank, the bank must repeat the procedure set out in Art. 4 (3) (b) if it identifies any circumstances as defined in Art. 6 (1). If the bank is unable to precisely establish the identity of the beneficial owners, Art. 6 (3) will apply.

## **Art. 5 Individuals and entities that are bound by professional confidentiality**

Banks may waive the identification of beneficial owners of accounts or securities accounts held by lawyers or notaries licensed in Switzerland or firms of lawyers or notaries organised as a company on behalf of their clients provided they confirm to the bank in writing that

- a) they are not themselves the beneficial owners of the assets deposited 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 (Art. 321 of the Swiss Penal Code) in respect of the assets deposited and
- d) the account/securities account is used solely for the purposes of their activity as lawyers or notaries.

### **46 Model Form R**

<sup>1</sup>Form R is provided for the declaration under Art. 5. This is attached as a schedule to this agreement. The banks may create forms of their own which reflect their own particular requirements. The content of these forms must be equivalent to that of the model form.

## **Art. 6 Repeating the verification of the contracting partner's identity or identification of the beneficial owner (Art. 2 – 5)**

<sup>1</sup>The bank must repeat the procedure set out in Art. 2 (9) – (24) and Art. 3 and 4 (25) – (45) if during the business relationship doubts arise as to,

- a) whether the information given concerning the identity of the contracting partner is accurate,
- b) whether the contracting partner is identical with the beneficial owner or
- c) whether the declaration made as to beneficial ownership is accurate

and these doubts cannot be eradicated through normal enquiries.

<sup>2</sup>If a bank establishes that a declaration as defined in Art. 5 of this agreement has been issued erroneously, it must require the contracting partner to provide the declaration of beneficial ownership using Form A. If the declaration of beneficial ownership is not provided, the business relationship must be terminated.

<sup>3</sup>Banks are required to terminate their relationship with the contracting partner if they establish that the bank has been deceived when identifying the beneficial owner, that false information regarding beneficial ownership has deliberately been provided to them, or if doubts about the information provided by the contracting partner persist even after the procedure set out in Art. 1 has been carried out.

<sup>4</sup>Relationships with the contracting partner may no longer be terminated if the requirements for the reporting duty (Art. 9 AMLA) are fulfilled.

#### **47 Termination of an existing business relationship**

Existing relationships must be terminated as rapidly as possible under the terms of the contracts concerned. If the bank is unable to contact the contracting partner due to correspondence instructions, it can postpone the termination of the relationship until the contracting partner's next visit or until the next occasion on which correspondence is delivered.

## **B Prohibition of active assistance in the flight of capital**

### **Art. 7 Flight of capital**

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

#### **48 Definition of flight of capital**

<sup>1</sup>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.

<sup>2</sup>The mere duty to report cross-border currency transfers is not deemed a restriction of capital movement.

#### **49 Transfers of capital abroad**

Art. 7 does not apply to transfers of capital abroad from Switzerland.

#### **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
- by issuing orders;
  - by promising commissions;
  - 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 (c).

## **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.

## **52 Receipt of assets in Switzerland**

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

## **C Prohibition of active assistance in tax evasion and similar acts**

### **Art. 8 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.

#### **53 Incomplete or misleading attestations**

<sup>1</sup>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.

<sup>2</sup>The term "authorities" specifically includes tax authorities, customs, currency and bank supervisory authorities as well as criminal prosecution authorities.

#### **54 Attestations provided for a specific purpose and changes to attestations**

<sup>1</sup>The prohibition applies in particular to attestations requested by the contracting partner for submission to authorities.

<sup>2</sup>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.

#### **55 Definition of incomplete attestations**

<sup>1</sup>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.



<sup>2</sup>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.

## **56 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.

## **D Other provisions**

### **Art. 9 Numbered accounts**

The provisions of this agreement apply without restriction to accounts, passbooks, securities accounts and safe-deposit boxes maintained under a number or code.

#### **57 Inclusion of numbered accounts in confirmations**

Confirmations covering all the business relationships with a contracting partner must also include accounts and securities accounts maintained under a number or code, including fiduciary deposits.

### **Art. 10 Auditing**

<sup>1</sup>In its Circular 05/1 “Audit” the Swiss Federal Banking Commission has set out the assessment of compliance with anti-money laundering provisions, which also include this agreement, as a mandatory audit. Procedures and internal controls on the establishment and maintenance of business relationships must be assessed in line with the rules set out in this circular. By signing this agreement, the banks instruct and authorise their auditors to review compliance with the agreement in respect of the provisions set out in Art. 2, and to report violations of the agreement in line with the details in paragraph 3.

<sup>2</sup>Compliance with Art. 2 – 9 of this agreement must be assessed on the basis of annual compliance audits. 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.

<sup>3</sup>Where an auditor carrying out its audit under the terms of Art. 10 of this agreement identifies minor violations as described in Art. 11, 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 auditor must report this fact to the supervisory body established under Art. 12 of this agreement and to the Swiss Federal Banking Commission. The report must be submitted within one month of expiry of the deadline for rectification.

<sup>4</sup>If the auditor identifies violations of this agreement that cannot be deemed minor, it must report these to the supervisory body established under Art. 12 of this agreement and to the Swiss Federal Banking Commission. The report must be submitted within one month of the violation being identified.

## **Art. 11 Violations of the agreement, sanctions**

<sup>1</sup>In the event of a violation of this agreement, the bank that is at fault must pay the SBA a fine of up to CHF 10 million. 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 Art. 12 and, where appropriate, Art. 13. 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.

<sup>2</sup>In minor cases, the bank at fault must be issued with a reprimand rather than a fine, or the proceedings must be closed without any sanction. A violation of the agreement will in particular be considered minor if the objective of the agreement, i.e. the verification of the contracting partner's identity and identification 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 12 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, *mutatis mutandis*, to an incomplete Form T;
- c) where the volume of assets involved does not exceed CHF 25,000;
- d) where the matter has not been recorded in accordance with point 17, para. 1, 32, point 2, 38, para. 2 or point 39.

<sup>3</sup>In the case of violations of Art. 6 – 8, sanctions will only be applied if the violation was deliberate.

<sup>4</sup>No action will be taken in respect of violations of the agreement that occurred more than five years previously. In the case of breaches of the duty to verify the identity of the contracting partner and identify the beneficial owner, the five-year period will begin at the moment when the violation is rectified or the business relationship is terminated.

<sup>5</sup>The following will also be assessed on the basis of the procedures laid down in this agreement:

- a) violations of the 2003 Agreement on the Swiss banks' code of conduct with regard to the exercise of due diligence
- b) violations of the 1998 Agreement on the Swiss banks' code of conduct with regard to the exercise of due diligence, provided investigations are begun before 30 June 2008.

No action will be taken in respect of other violations of the 1998 agreement or older agreements.

## **Art. 12 Supervisory board, investigators**

<sup>1</sup>The SBA appoints a supervisory board consisting of at least five people to investigate and take action against violations of this agreement. The majority of the board's members must be independent. The board elects one or more secretaries and regulates their responsibilities.

<sup>2</sup>The SBA appoints one or more investigators. Where a violation of the agreement is suspected, the investigators carry out the necessary enquiries and recommend to the supervisory board that it issues a declaratory ruling setting out the violation of the agreement, imposes a fine or issues a reprimand against the bank concerned as set out in Art. 11, and/or that the proceedings should be partially or completely closed.

<sup>3</sup>The investigators determine whether a violation has taken place, but are not responsible for establishing, on a preliminary basis, whether the provisions of the Money Laundering Ordinance have been violated.

<sup>4</sup>Investigators have the power to close the investigation on their own initiative if they conclude that the agreement has not been breached, or when all of the following conditions, taken together, are met:

- a) the violations of the agreement are individual or isolated (minor violations)
- b) the violation or violations can be rectified within a reasonable period;
- c) the bank acknowledges that a violation or violations has/have occurred, and undertakes to rectify the shortcomings within the set period and bear the costs of the investigation;
- d) the bank has not already filed a report pursuant to Art. 9 AMLA, nor has a Swiss criminal prosecution authority launched its own investigation into money laundering or terrorist financing.

<sup>5</sup>Where investigations are closed, reasons for doing so must be given in writing and the bank concerned and the supervisory board must be informed. It is the responsibility of the supervisory board to collect the costs of the investigation.

<sup>6</sup>When requesting information from the bank, the investigator must inform it as to why it has been involved in the investigation.

<sup>7</sup>If the investigation reveals violations of this agreement that are not deemed minor, the investigator must pass the files to the supervisory board and request it to carry out the sanction procedure. The supervisory board determines the appropriate fine in application of Art. 11.

<sup>8</sup>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 Art. 11.

<sup>9</sup>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 Art. 13 must be initiated and carried out.

<sup>10</sup>The SBA issues regulations governing the investigation procedure, as well as the status of the investigators and the banks affected by the investigations. The supervisory board issues procedural regulations governing the procedure which it is to carry out, and determines how the costs are to be borne.

<sup>11</sup>The supervisory board informs the Swiss Federal Banking Commission of its decisions. If abuses on the part of individuals/entities that are bound by professional confidentiality are identified, the supervisory board may also inform the relevant disciplinary body.

<sup>12</sup>The term of office of the members of the supervisory board and the investigators is five years. 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, investigators and secretaries. If any person so elected reaches the age of 70 during their term of office, their term may be terminated.

<sup>13</sup>As authorised officers as defined in Art. 47 of the Banking Act, the members of the supervisory board, the secretary and the investigators are obliged to maintain strict confidentiality regarding any facts of which they become aware during the investigation and sanction procedure. The banks may not invoke banking confidentiality vis-à-vis the supervisory board or an investigator.

## **58 Provision of information regarding the decision-making practice of the supervisory board**

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.

## **59 Interpretations of the code of conduct**

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. 13 Arbitration procedure**

<sup>1</sup>If the fine which the supervisory board deems appropriate is not paid by the date prescribed, an arbitration tribunal sitting 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.

<sup>2</sup>The SBA and the bank each nominate an arbitrator, and the two arbitrators then jointly nominate the tribunal umpire.

<sup>3</sup>The arbitration procedure begins as soon as the SBA has nominated its arbitrator.

<sup>4</sup>If one of the parties fails to nominate its arbitrator within 30 days of receiving a written notice from the other party 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 the City of Basel will, upon application from one of the parties, proceed to make the appointment.

<sup>5</sup>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 the City of Basel will, upon application from the other party, proceed to make the appointment.

<sup>6</sup>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 the City of Basel will, upon application from one of the parties, proceed to make the appointment.

<sup>7</sup>If an arbitrator is replaced in accordance with para. 5 and 6 above, the proceedings in which the first arbitrator was involved will remain valid.

<sup>8</sup>Subject to the mandatory provisions of the Swiss Concordat on Arbitration and the Code of Civil Procedure of the Canton of the City of Basel, 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. The maxim of contingency is applicable no earlier than as of the second exchange of pleadings.

<sup>9</sup>The court of arbitration is also subject to the duty of confidentiality set out in Art. 12 (8).

## **Art. 14 Entry into force**

<sup>1</sup>This code of conduct comes into force on 1 July 2008.

<sup>2</sup>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 contractual year, but no earlier than 30 June 2013.

<sup>3</sup>The SBA reserves the right – following consultation with or at the request of the Swiss Federal Banking Commission (see Art. 16 AMLA) – to apprise the banks of supplementary regulations during the period of the agreement.

<sup>4</sup>The SBA reserves the right to unilaterally amend or cancel the sanction rules (Art. 11 – 13) if new legal provisions or developments in the law lead to inappropriate multiple sanctions in respect of the same circumstances.



## Art. 15 Transitional provision

<sup>1</sup>The existing Forms A need not be replaced in respect of existing business relationships. In particular, they need not be replaced by the new Forms T.

<sup>2</sup>The new rules governing verification of the identity of contracting partners and identifying beneficial owners must be applied in respect of any new business relationship established after the date on which this agreement comes into force or where the procedure for identifying beneficial owners as defined in Art. 6 needs to be repeated after this agreement comes into force. The new rules may be applied to existing business relationships if they are deemed more beneficial.

<sup>3</sup>Existing Forms R that differentiate between the various activities of a notary or lawyer will remain valid after CDB 08 comes into force in respect of all individuals/entities that are bound by the duty of professional confidentiality under Art. 321 of the Swiss Penal Code, and need not be replaced by the new Form R. Existing Forms R will also remain valid if the contracting partner is reorganised in the form of a company.

<sup>4</sup>The new provisions of Art. 14 (Verifying the identity of persons establishing business relations and taking note of power of attorney arrangements) and point 15 (2) (Identification of companies that are in the process of foundation) come into force on 1 July 2009.

<sup>5</sup>The new provisions governing the eligibility of members of the supervisory board, the secretary and the investigators do not apply to currently serving members of the supervisory board who are standing for re-election as of 1 July 2008.

# A

## Declaration of identity of the beneficial owner (Form A pursuant to Art. 3 and 4 CDB)

Account/securities account number:

Contracting partner:

\_\_\_\_\_

\_\_\_\_\_

Category (where appropriate):

\_\_\_\_\_

\_\_\_\_\_

The contracting partner hereby declares that the individual(s)/partnership(s)/legal entity (entities) 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, first name (company name)	Date of birth	Nationality	Address/ registered office	Country
---	---------------	-------------	-------------------------------	---------

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

The contracting partner 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 (Art. 251 of the Swiss Penal Code, document forgery; penalty: imprisonment for up to five years or a fine).

# R

Account/securities account no.:

Contracting partner:

\_\_\_\_\_

\_\_\_\_\_

Category (where appropriate):

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

## Account/securities account opening declaration

### by a Swiss lawyer/notary

### by a Swiss firm of lawyers/notaries

I am not myself the beneficial owner of the assets deposited.

Our firm of lawyers/notaries is not itself the beneficial owner of the assets deposited.

I am a lawyer/notary and am subject to the relevant cantonal and federal legislation.

Individuals who are connected to our firm of lawyers/notaries are themselves lawyers/notaries and are subject to the relevant cantonal and federal legislation.

I am bound by professional confidentiality in respect of the above account/securities account (Art. 321 of the Swiss Penal Code), and this account/securities account is used solely for activities as a lawyer/notary.

Our firm of lawyers/notaries confirms that the above lawyers/notaries are bound by professional confidentiality in respect of the above account/securities account (Art. 321 of the Swiss Penal Code), and that this account/securities account is used solely for activities as a lawyer/notary.

Date

Signature(s)

\_\_\_\_\_

\_\_\_\_\_

It is a criminal offence to deliberately provide false information on this form (Art. 251 of the Swiss Penal Code, document forgery; penalty: imprisonment for up to five years or a fine).

This form may not be used in connection with commercial activities in the nature of financial intermediation.

# T

Account/securities account number:

Contracting partner:

\_\_\_\_\_

\_\_\_\_\_

Category (where appropriate):

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

## **Declaration for organised associations of individuals, assets or patrimony without specific beneficial owners upon opening a bank account with**

\_\_\_\_\_ (the Bank)

Pursuant to point 43 of the Agreement on the Swiss banks' Code of Conduct with regard to the exercise of due diligence (CDB 08) the undersigned hereby declare(s) that, as trustee, board member of the foundation or board member of an underlying company belonging to the trust or to the foundation, etc. known as

\_\_\_\_\_

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

1. Information pertaining to the trust, foundation, etc:

Type of entity (trust, foundation, etc.): \_\_\_\_\_

2. Information pertaining to the settlor(s) (actual, not fiduciary):

Last name: \_\_\_\_\_

First name: \_\_\_\_\_

Date of birth: \_\_\_\_\_

Nationality: \_\_\_\_\_

Address and country of domicile: \_\_\_\_\_

# T

3. Information pertaining to the individual(s) who is/are the first beneficiary(ies) or class(es) of beneficiaries (e.g. issue of the settlor) if no specific beneficiary(ies) is/are designated:

Last name(s): \_\_\_\_\_

First name(s): \_\_\_\_\_

Date of birth: \_\_\_\_\_

Nationality: \_\_\_\_\_

Address(es) and country(ies) of domicile: \_\_\_\_\_

\_\_\_\_\_

4. Information pertaining to the protector(s) and/or third party(ies) disposing of a power of nomination or appointment, provided that such power obliges the representatives (trustees, board members of a foundation, etc) to dispose of the assets or to change the attribution of the assets or the appointment of beneficiaries:

Last name(s): \_\_\_\_\_

First name(s): \_\_\_\_\_

Date of birth: \_\_\_\_\_

Nationality: \_\_\_\_\_

Address(es) and country(ies) of domicile: \_\_\_\_\_

\_\_\_\_\_

The undersigned confirm(s) that he/she is/they are entitled to open an account with the Bank for the above-mentioned trust, foundation, etc...

The undersigned hereby undertake(s) to immediately inform the Bank of any change to the information contained herein.

Date

Signature(s)

\_\_\_\_\_

It is a criminal offence to deliberately provide false information on this form (Art. 251 of the Swiss Penal Code, document forgery; under penalty of imprisonment or a fine).

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