Swiss Banking

Explanatory notes on the revised Guidelines on the treatment of assets without contact and dormant assets held at Swiss banks (Guidelines on Dormant Assets)

2022
Swiss Bankers Association (SBA)

1 Codes of conduct

Margin no. 12, footnote 2: Passing customers
In a clarification of existing practice, passing customers are, as with the Agreement on the Swiss banks' code of conduct with regard to the exercise of due diligence (CDB), not deemed to be customers within the meaning of these Guidelines.

Margin nos. 23a–23c: Definition of "assets"
On the basis of the existing, uncontested practice, it is specified that the assets which may become assets without contact or dormant assets are accounts, passbooks, custody accounts and safe-deposit boxes (margin nos. 23a–23b).

The Guidelines now also apply to *"other assets that can no longer be attributed to a customer relationship, provided the bank knows or has a reason to suspect that they belong to a customer or a former customer (examples being remaining balances on debit and credit cards, balances on collective accounts or collective custody accounts opened before the rule set out in margin no. 39, former custody account holdings and income [e.g. from corporate actions], over-the-counter or night safe payments that cannot be attributed to a customer, and ATM payments that were not accepted and cannot be attributed to a customer) "*.
One illustrative example is the fire at the headquarters of Swiss Bank Corporation in Basel on 8 December 1978. It resulted in the destruction of countless customer dossiers (which only existed on paper at the time), many of which could not be subsequently reconstructed; all that remained were the assets.

Assets do not include in particular objects lost, for example in the banking hall, without a concrete connection to a client relationship within the meaning of margin no. 23c of the Guidelines. Art. 720 et seq. of the Civil Code shall apply to them.

Margin no. 24, footnote 3: Last contact in the case of customers to whom post is regularly sent
In line with the existing practice of many banks, the last contact for customers to whom post was regularly sent is deemed to be the first date on which correspondence sent to the customer is returned (margin no. 13 et seq.). In our view, this also applies to the interpretation of Art. 45 of the Banking Ordinance.

Margin no. 28: Preventive customer information measures
The examples of measures to avoid loss of contact have been deleted. In an era of digital transformation, it is insufficiently complete and, in some cases, outdated. Given banks' existing experience, they can be relied upon to exercise their own responsibility.

Margin no. 30: Non-binding nature of SBA leaflets
It is self-evident that leaflets supplied to the banks by the SBA are not binding but merely a possible model text for the bank to use; accordingly, this does not need to be explicitly stated. Only the Guidelines themselves are legally binding, and a leaflet of this kind must of course therefore comply with them.

Margin no. 39: Removal of the upper limit for collective accounts
Collective accounts designed to simplify the administration of account balances are an internal measure taken by banks themselves, but do not absolve the banks of responsibility for retaining documents

relating to customer relationships that are without contact or dormant. Rebooking to a collective account has no legal implications in respect of the customer. Provided these conditions are adhered to, there is no longer any reason to limit the use of collective accounts to credit balances of no more than CHF 1,000.

Margin no. 46: Reinvestments of custody accounts
A clarification reflecting existing practice stipulates that the bank may carry out reinvestments "on the basis of an existing customer profile". However, the misleading final sentence of this section (*" The bank may also invest in other assets to avoid loss or, where appropriate, improve performance. "*). has been deleted. The preceding sentences are sufficient on their own, and the deleted sentence could induce a bank to engage in an overly speculative investment, and thus be counter-productive.

Margin no. 48: Procedure in respect of safe-deposit boxes
It is made clear that when opening a safe-deposit box, it is sufficient for the bank to keep a record of the opening; it is not necessary to involve someone subject to a professional duty of confidentiality or the auditor. Two sentences have been added stating that the bank *"may destroy contents with no value after documenting them"*. To prevent abuse of this provision, a list of examples of such contents is provided. This pragmatic simplification will facilitate any liquidation proceedings that may be necessary at a later date (cf. margin nos. 92 et seqq.)

Margin no. 50a: Rule on fees
Recurring fees must not be charged after the assets are published (margin nos. 74–88). Analogously, fees may no longer be charged on assets that fall below the threshold for publication of CHF 500 per customer. This corresponds to a recommendation in our Circular No. 7886 of 25 April 2016, which has now been incorporated into the wording of the Guidelines.

Margin nos. 57–71: Searches through the "Central Claims Office" and publication platform
Apart from the choice of a new service provider, this section has been systematically and editorially revised, but without making any fundamental changes. We list some of the clarifications that are important in practice below.

Margin no. 60: Value of assets subsequently falling below the publication threshold
Here we have clarified the existing rule by stating that if the value of the assets falls below the CHF 500 threshold after publication, the publication must be deleted. This corresponds to the material rule in the law and the ordinance, which states that the publication requirement applies only to assets in excess of CHF 500 (or where the value is unknown).

Margin no. 70: Duty of confidentiality (bank-client confidentiality)
The fact that the Central Claims Office and the service provider responsible for the database act on behalf of the banks and authorised persons (where applicable), is self-evident and need not explicitly be mentioned. This is also stipulated in the banks' contracts with Econis AG.

Margin nos. 74–74b: Swiss Banking Ombudsman as "contact point"
The statement that the Swiss Banking Ombudsman serves as contact point for claims in respect of published assets is only true in theory: since the publication platform was launched at the end of 2015,

the system has forwarded such claims electronically to the bank concerned and the Swiss Banking Ombudsman is able to view the database. The Ombudsman only steps in to provide assistance in exceptional cases, when claimants are unable to cope with the system themselves or wish to be informed of the status of processing of their claim by the bank.

Margin nos. 75 and 88: Banks' annual publication date
Under current law, banks are in principle free to decide for themselves when they wish to publish their dormant assets, subject to compliance with the legal requirements and 60 years after the last contact with the customer. However, the SBA regularly recommends that they all publish together on a specified date (most recently 15 December 2021 in accordance with Circular No. 8064 of 16 November 2021). Most banks comply with this, and it is helpful to the public and persons looking for assets if the new data that are to be published all appear on the same day. However, banks are at liberty to make subsequent or additional publications on other dates.

Margin no. 82: Incompleteness of the information to be published in the banks' documentation
It is often the case that a bank does not have all the information it is required to publish in respect of a dormant asset. Art. 49 para. 3 of the Banking Ordinance requires publication only *"where available"*. The SBA came up with some technical clarifications to deal with this situation in its Circular No. 7864 of 19 October 2015, the basis for which has now been established in the Guidelines (e.g. if the date of birth or last customer contact is not known).

Margin no. 90: Examination of claims received by the bank
The procedure and standard for the bank's examination of claims received are now set out in greater detail:

- essentially the same standard as for enquiries via the Swiss Banking Ombudsman prior to publication (reference to margin no. 67);
- the only difference being the absence of a preliminary examination by the Swiss Banking Ombudsman;
- a new duty to contact the claimant within one month (at least in the form of a confirmation of receipt, if the examination requires more time);
- the option, in exceptional cases, to request further information from the claimant via the Swiss Banking Ombudsman before contacting the claimant (for example if there is a suspicion that the contact is fraudulent).

2. Central database and publication platform

Margin no. 57: New service provider
Originally, SIX SAG AG, a subsidiary of SEGA (later SIX SIS AG), developed the central NaDa database to record certain personal data on assets without contact and dormant assets at Swiss banks, and provided the corresponding services to the banks on the basis of service-level agreements between SIX SIS AG and the individual banks. When SIX SIS AG sold its subsidiary in 2015 it took over the database, its operation and the corresponding services itself, without the Guidelines being amended at the time (although the agreements between SIX SIS AG and the banks presumably were). In 2015, SIX SIS AG was

commissioned by the SBA to develop the complementary Narilo platform to publish long-term dormant assets in accordance with the then new Art. 37m of the Banking Act.

In 2018, the SBA's Board of Directors decided to have the NaDa/Narilo application reprogrammed to take account of the banks' changed requirements, and in 2019 resolved to transfer the task of operating it to Econis AG in Dietikon. In consultation with the SBA, SIX SIS AG decided to cease operation of NaDa/Narilo, and terminated its contracts with the banks with effect from 30 April 2021. The new system has been ready for operation since April 2021, the data were successfully migrated at the start of May 2021, and the system has been operationally available to the banks since 17 May 2021.

The revised text no longer mentions the chosen provider by name, not least because there had already been provision (in margin no. 74) for the SBA to select a new provider, which meant that the Guidelines would not have to be amended again in the event of a change.

3. Liquidation of unclaimed assets (delivery to the federal government)

Margin nos. 92a–92i: Procedure in the event of liquidation

This section of the Guidelines sets out the rules published in Circular No. 7912 of 16 December 2016:

- accounts must be liquidated;
- custody accounts must be liquidated, with the exception of "penny stocks" that have little or no value and do not have to be delivered,
- published assets are free of interest and fees with effect from the publication date (in the Circular this applied only to assets up to CHF 10,000). Furthermore, as the reference to margin no. 50a indicates, recurring fees may no longer be charged on assets that fall below the threshold for publication of CHF 500;
- contents of safe-deposit boxes must be liquidated in the manner that promises the highest proceeds (normally via a public auction);
- assets that cannot be realised or have no liquidation value must be offered to the federal government (Art. 54 para. 2 of the Banking Ordinance), unless the latter has waived its right to them in advance or they have been destroyed before the obligation to liquidate 60 years after the last contact with the customer arises (margin no. 48);
- documents that have only a historical or other non-financial value should also be offered to the federal government;
- liquidation costs may be deducted from the liquidation proceeds (Art. 57 para. 1 of the Banking Ordinance), as a lump sum in respect of a specific delivery date.

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