Swiss Banking

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

2022
Swiss Bankers Association (SBA)

Preliminary

1 The following Guidelines seek to ensure that organisational measures are in place to ensure contact remains or can be restored between banks and customers. They also seek to set out the details of the legal process for publication and liquidating dormant assets in the interests of those affected.

2 In particular, they serve the following purposes:

3 • Preventing contact with the customer from being broken off;

4 • Protecting against the misuse of assets when contact with the customer has been broken off;

5 • Managing assets in accordance with consistent principles when contact with the customer has been broken off;

6 • Restoring contact between banks and beneficiaries;

7 • Making it easier for customers and other beneficiaries[1] to search for assets;

8 • Implementing in appropriate form the provisions of article 37m of the Banking Act and articles 49–59 of the Banking Ordinance on the publication and liquidation of dormant assets.

1 Heirs, for example.

Terms – Basic principles on absence of contact and on dormancy

9 **Introductory remarks:** The term "dormant assets" is defined in article 45 of the Banking Ordinance; dormancy begins 10 years after the last documented contact with the customer. As described below, contact with the customer may be broken off at any time, resulting in absence of contact and placing the bank under the obligation to act in accordance with these Guidelines even before the 10-year period has elapsed. Accordingly, a distinction must be drawn between

10 • Dormancy (Banking Ordinance[2]) and

11 • Absence of contact (Guidelines).

12 **Absence of contact:** This occurs in principle when the customer or their authorised agent (hereinafter referred to collectively as "the customer"[3]) fails to contact the bank and the bank is unable to contact the customer. If an authorised agent of the customer is also the customer's independent portfolio manager, and if the business relationship between the authorised agent and the customer is without contact, the authorised agent may inform the bank. As a consequence, the customer relationship will also be considered to be without contact for the bank.

13 Absence of contact occurs in the case of a customer to whom post is regularly sent when:

14 • The correspondence sent to the customer is returned;

15 • There is no other contact whatever with the customer;

16 • Measures taken by the bank to contact the customer (see IV. 2. and 3.) have failed.

17 In the following cases, absence of contact occurs only after a period of 10 years (concurrently with dormancy under article 45 of the Banking Ordinance), unless the bank has previously received knowledge that the customer has died and any heirs or authorised agents cannot be contacted:

18 a) Savings passbooks: When 10 years have passed without the customer having had interest entered and there has been no other contact with the customer.

19 b) Safe-deposit boxes: When the customer has not visited their safe-deposit box for 10 years, and there has been no other contact with the customer.

20 c) Poste restante at the bank or other special instructions of the customer: When there has been no contact with the customer for 10 years.

2 English translation of legal quotes (Banking Act, Banking Ordinance) by SBA.

3 Passing customers, who do not have to be documented as contracting partners under the Agreement on the Swiss banks' code of conduct with regard to the exercise of due diligence (CDB), are not deemed to be customers within the meaning of these Guidelines.

21 **Digital banking relationships** (e-banking, mobile banking): Absence of contact occurs when there has been no contact with the customer for 3 years, unless the bank has previously received knowledge that the customer has died and any heirs or authorised agents cannot be contacted.

22 **Contact:** Means any news, instruction, message or statement received from the customer or their heir which triggers a movement on the account or custody account, or an entry in the files. The same applies in the case of e-banking or mobile banking, plus any login using the customer's means of identification, where such login can be ascertained. There is no longer deemed to be any contact in cases where in the event of the customer's death any heir or authorised agent does not assist in the provision of proof of legal succession within a reasonable period.

23 **Customer relationship:** Absence of contact relates to the customer of a bank in Switzerland and not to a particular contractual relationship with them. Where a customer has several accounts, passbooks, custody accounts or safe-deposit boxes, any contact concerning a single one of them precludes all of them from being without contact.

23a **Assets:** The following may become assets without contact or dormant assets:

23b • accounts, passbooks (including bearer savings books), custody accounts and safe-deposit boxes;

23c • 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). Simple settlement differences (e.g. due to rounding) are not deemed to be assets within the meaning of these Guidelines.

24 **Dormancy** (article 45 of the Banking Ordinance):
"[1] Assets are considered dormant if the bank or person under article 1b of the Banking Act has been unable to make contact for 10 years following the last contact with the bank customer or their heirs (beneficiaries) or one of their authorised agents.

[2] The last contact is considered to be the last contact shown in the records of the bank or person under article 1b of the Banking Act[4].

[3] Assets which are transferred to another bank or person under article 1b of the Banking Act owing to the liquidation of the transferring bank or person under article 1b of the Banking Act are considered dormant before 10 years have expired if the transferring bank provides evidence that it has taken all necessary steps to restore contact with the beneficiary."

25 The occurrence of dormancy does not abrogate absence of contact under these Guidelines. However, restoration of contact with the customer abrogates both absence of contact and dormancy.

4 See also margin no. 13 et seq.

I. Preventive measures against loss of contact with the customer

26 Banks must use preventive measures to take precautions and create instruments to avoid contact with customers being broken off.

1. Product design

27 Banks should design their products so as to ensure contact between customer and bank and as far as possible minimise the risk of losing contact.

2. Customer information

28 Banks should inform customers verbally or in writing of the problems and consequences of absence of contact when opening a business relationship and on further suitable occasions, and draw their attention to their own responsibility to avoid loss of contact.

29 During personal conversations with the customer where the subject of absence of contact is raised, the implications of their death, which may harbour particular risks in this respect, should also be discussed.

30 Banks may provide customers with a leaflet for general information. The Swiss Bankers Association may make such a leaflet available to banks.

II. Supervising and managing assets without contact

1. Organisational measures

31 Banks must issue internal directives containing the following measures for central processing:

32 • A suitable control system must ensure that all assets without contact are identified promptly and completely.

33 • The assets in question must be specially highlighted and recorded centrally by the bank in order to make it easier for beneficiaries to search for them.

34 • Suitable security measures must be put in place to protect the assets in question from unauthorised access.

35 • Banks must designate internal units or persons responsible for handling assets without contact.

36 • Special archiving principles (see margin no. 51–52 below) must be observed for the assets in question.

37 • These Guidelines apply equally to numbered accounts, numbered custody accounts and safe-deposit boxes.

38 • Banks must keep a record of the costs to be charged to customers for dealing with assets without contact.

39 • Banks may pool existing accounts in a collective account at their own discretion. If they do so, the information required for any publication or liquidation under article 49 (3) of the Banking Ordinance (margin nos. 82–85) must be archived as far as available, and margin nos. 51 and 52 continue to apply.

2. Protection of beneficiaries' rights in the event of absence of contact and waiver of right to terminate

40 The rights of customers and their heirs in respect of the bank are not affected by absence of contact.

41 **Waiver of right to terminate:** The bank waives the right to terminate contractual relationships with customers merely on the grounds of absence of contact and to thereby trigger a limitation period.

42 **Exception:** Banks have the right to terminate a contractual relationship or set off their claims against the customer or their heirs, if they are not met when due or are no longer covered. Special regulations, in particular regulations issued by governments and other authorities requiring termination or making it seem appropriate, may also apply.

3. Managing assets so as to protect interests in the event of absence of contact

43 The bank must protect the reasonable interests of customers or their heirs who are the beneficiaries of assets in the event of absence of contact. Banks must issue internal directives to ensure such assets are managed in a consistent manner. The following principles must be observed:

44 • **Savings accounts** must be continued unchanged and interest accrued at the bank's current rates.

45 • **Current accounts and similar balances** must be invested to protect the customer's interests, i.e. diligently and, as far as the customer's interests allow, profitably (e.g. in savings accounts, medium-term notes or a fund with a conservative risk profile).

46 • **Custody accounts** should be continued as usual; money from maturing securities and accumulated interest should be invested in similar or other suitable securities or savings products, taking into account the investment situation at the time of reinvestment. The bank may carry out reinvestments on the basis of an existing customer profile. Smaller

custody accounts may be transferred to, for example, a fund or similar to generate an appropriate return at the discretion of the bank.

47 • **Portfolio management mandates** must be continued unchanged. If the instructions or investment strategy laid down by the customer are manifestly detrimental to their interests, the bank may make appropriate amendments to the investment strategy.

48 • **Safe-deposit boxes** may be opened, especially when the rent is no longer covered, in accordance with internal directives. Even where the rent is covered, safe-deposit boxes may be opened in the event of dormancy or absence of contact in order to complete the search measures or with a view to liquidation. The contents of safe-deposit boxes that have been opened may be stored centrally. The bank must keep a record of the opening of a safe-deposit box. It may destroy contents with no value after documenting them. Contents with no value include in particular bank documents with no relevance to the customer relationship or its restoration (e.g. uncompleted forms or copies of bank documents that no longer have any information value or are also available electronically), blank paper, empty envelopes, boxes and other containers, paper clips, and writing instruments.

49 If the contents of a safe-deposit box are standard bank assets and administrative action or investment seems to be required in the customer's interests, the bank must take the necessary steps. For all other assets, the bank's actions are restricted to safekeeping.

4. Costs and fees

50 The bank's usual fees and costs continue to apply in cases of absence of contact or dormancy. Banks may also charge the customer for costs incurred for making inquiries and for special handling and treatment of assets without contact. Expenditure which leads to disproportional charges for the customer must be avoided (see also margin no. 54).

50a Recurring fees must not be charged after the assets are published (margin nos. 74–88). In addition, fees may no longer be charged on assets that fall below the threshold for publication if they have been dormant for 50 years or there has been no customer contact for 60 years (margin nos. 75, 76 and 79).

III. Archiving

1. Archiving in the event of absence of contact

51 The bank must archive contractual/basic documents and account/custody account statements held when absence of contact occurs beyond the statutory retention period (article 958f CO) until liquidation (article 37m of the Banking Act, article 57 of the Banking Ordinance) or restoration of contact with the customer. The extended archiving requirement does not apply to relationships closed by the bank for lack of credit balance.

2. Nature of archiving

52 Documents and records may be archived in any standard form, e.g. original files, electronic data media or similar.

IV. Searching for beneficiaries – restoring customer contact

1. Principles for searching for beneficiaries

a) Bank-client confidentiality

53 Bank-client confidentiality must be observed when searching for the beneficiary of assets without contact. This is without prejudice to any action taken by the bank under articles 37l–37m of the Banking Act and articles 46–59 of the Banking Ordinance (margin nos. 72–92).

b) Proportionality of search measures

54 Searches by banks for individual beneficiaries must be proportionate. The costs and effort should reflect the amount of assets concerned and remain proportionate overall.

2. Searches by banks

55 Once a bank ascertains that contact has been lost with a customer, attempts must be made to restore contact with the customer by means of internal inquiries such as address books, electronic telephone books, the internet etc., or with the assistance of service providers.

56 If these measures are unsuccessful, it is for the banks to decide whether and when they appoint an agent to search for the customer/heir. Again, such action by the bank must be proportionate.

3. Searches through the Central Claims Office

57 **Central Claims Office:** For the search of beneficiaries for assets without contact, the Board of Directors of the Swiss Bankers Association appoints the Swiss Banking Ombudsman as the Central Claims Office. A service provider appointed by the Swiss Bankers Association administers the database of assets without contact (hereinafter referred to as "the database").

a) Banks' obligation to report

58 Banks in Switzerland are obliged to enter the details of all customers without contact where the assets amount to more than CHF 500, and the details of all safe-deposit boxes, into

the database if their investigations are unsuccessful (margin no. 55). Only the Swiss Banking Ombudsman, as the Central Claims Office, has access to the database.

59 The report must contain the surname, first name, date of birth, nationality and address of the customer and any authorised agent, where available. This also applies to numbered or pseudonym accounts and custody accounts.

60 Once contact with a customer has been restored, the information in the database must be deleted by the relevant bank. The same applies when an asset without contact has fallen in value to less than CHF 500 or been exhausted or absorbed, for instance, as a result of being used to pay costs or fees charged (see margin no. 50) or for offsetting purposes.

b) Conditions for initiating an enquiry by the Central Claims Office

61 Anyone who credibly claims to be a customer or heir of a deceased or missing customer of a bank or a representative of such but does not know the name of the bank can ask the Central Claims Office to make inquiries into dormant assets. The Central Claims Office requires:

62 • A credible claim that there is a customer relationship with a bank in Switzerland;

63 • The name of the person for whom the account, passbook, custody account or safe-deposit box was held;

64 • Documentary evidence of the entitlement of the claimant to any account, passbook, custody account or safe-deposit box that may still exist, specifically their identity and inheritance status.

c) Preliminary examination by the Central Claims Office

65 The Central Claims Office makes a preliminary examination of the documents submitted. If the request is deemed to be justified, it carries out a search of the database.

d) Forwarding the request to the relevant bank

66 If the information in a claim matches a name in the database sufficiently closely, the Central Claims Office forwards the claim to the relevant bank for examination.

e) Decision by the bank

67 The bank must examine the applications received with appropriate diligence and decide on the claimant's entitlement based on the information available. If any further information is required, the bank may request this through the Central Claims Office.

68 If the decision is favourable, the bank must report the findings of its inquiry either to the Central Claims Office or directly to the claimant; if the latter, the Central Claims Office must be informed at the same time.

69 If the decision is negative, the bank must report its findings to the Central Claims Office together with a short substantiation. If there is any doubt, the Central Claims Office is entitled to examine the bank's records and if necessary issue a recommendation, together with instructions to contact the claimant in order that the claimant can enforce their claim against the bank directly.

f) Confidentiality

70 The Central Claims Office and the service provider responsible for the database are subject to bank-client confidentiality under article 47 of the Banking Act.

g) Fees

71 In principle, the Central Claims Office charges fees for handling such claims that are payable by the claimant. It may waive these as it deems appropriate in special circumstances, e.g. cases of financial hardship. The fees are set by the supervisory body of the Central Claims Office in consultation with the Swiss Bankers Association. The service provider responsible for the database may also charge banks a registration fee.

V. Transfer to another bank and liquidation in the event of dormancy

72 The measures to be taken in the event of dormancy are based on article 37l–37m of the Banking Act and articles 45–59 of the Banking Ordinance. The Banking Act and Banking Ordinance take precedence over these Guidelines, whose purpose is to implement their application in practice.

1. Transfer to another bank

73 In the event of the transfer of dormant assets to another bank and within the framework of the provisions of article 37l of the Banking Act and articles 46–48 of the Banking Ordinance, banks are free to decide about their proceedings.

2. Publication and liquidation

a) Publication

74 Under article 50 (2) of the Banking Ordinance, the banks provide an electronic platform for the publication of dormant assets. A service provider appointed by the Swiss Bankers Association runs this platform, which meets state-of- the-art security requirements. Claimants must enter their claims to published assets electronically on the platform, which forwards them automatically to the relevant bank.

74a The Board of Directors of the Swiss Bankers Association has appointed the Swiss Banking Ombudsman as contact point for the platform (Central Claims Office).

74b The Central Claims Office provides general information on the platform and handles queries concerning claims reported via the platform (e.g. from claimants who have not yet had a response and wish to know the status of their claim). By way of exception, the Central Claims Office may also accept written claims to published assets. It forwards these to the relevant bank without reviewing them.

75 Banks must publish assets of over CHF 500 that have been dormant for 50 years or for which there has been no customer contact for 60 years (article 49 of the Banking Ordinance, see margin nos. 82–85 below). To this end, they enter information on these assets in the database at least once a year (see margin no. 88). The service provider responsible for the database takes the information from the bank unchanged and publishes it as instructed by the bank, normally once a year on a date recommended by the Swiss Bankers Association.

76 When calculating whether the threshold of CHF 500 making publication obligatory has been reached, the calculation basis is the total value of dormant assets the bank holds for the same beneficiary (article 59 (2) of the Banking Ordinance). Valuation of the assets is based on the following principles:

77 • **Accounts and passbooks:** The balance plus the contractual rate of interest up to the end of the preceding year, less fees and costs (see margin no. 50).

78 • **Securities and precious metals:** The market price or market value at the end of the preceding year, less fees and costs (see margin no. 50). Where a market price or value is not available, the nominal value applies.

79 • **In the case of assets whose value is immediately recognisable as not exceeding CHF 500,** no publication is required. This applies, for instance, to the contents of safe-deposit boxes. However, the bank is authorised to publish such assets should it choose to do so. In this case, the assets are published with the remark "Safe-deposit box – value unknown". In the case of assets whose value could possibly exceed CHF 500, publication is obligatory, along with the remark "Safe-deposit box – value unknown".

80 "If publication of an advertisement with the aim of locating the beneficiaries in a particular case is deemed suitable in another communication medium, the bank or the person under article 1b of the Banking Act must also publish the request for information in this communication medium" (article 50 (3) of the Banking Ordinance).

81 If the information available allows the bank to subsequently restore contact with the customer (see margin no. 53–73), the assets concerned are no longer dormant, and the entry in the database must be deleted.

82 "Where available", the following information must be published (article 49 (3) of the Banking Ordinance), whereby the Swiss Bankers Association may publish technical explanations of specific issues, in particular in the event of incomplete data, in a circular:

83 • **"The address to which a claim to the published asset is to be sent"** (article 49 (3)(a)).

84 • **"Name, date of birth and nationality or company name of the beneficiary and the last known domicile or registered office**" (article 49 (3) (b)). This also applies in particular to numbered and pseudonym accounts or passbooks. In the case of safe-deposit boxes, the corresponding information on the person who rented it is to be published. The date of birth is only relevant for natural persons.

85 • **"The account or passbook number, where the otherwise available information appears insufficient for the identity check"** (article 49 (3) (c)).

86 A decision may be taken not to publish, where such a decision is in the "clear interests of the beneficiary" (point 3 under article 49 (3)) e.g. in the case of prominent and politically exposed persons.

87 Publication must make clear that, where claims are manifestly unfounded (article 53 (3) of the Banking Ordinance), the bank may charge the costs incurred in examining the claim (article 49 (4) (a)), and also that "claims become null and void upon liquidation of the assets" (para 4 (b)).

88 "Several dormant asset positions may be published together" (article 50 (5) of the Banking Ordinance). This means that it is not necessary to publish every position separately; several positions may be listed together and published, for instance, at regular intervals, but at least once a year.

89 Reported claims (margin no. 74, third sentence) are forwarded to the relevant bank.

90 "On receiving forwarded claims to dormant assets, the bank or person under article 1b of the Banking Act must examine these on a case-by-case basis in accordance with the relevant legal and contractual provisions" (article 53 (1) sentence 1 of the Banking Ordinance). It does so according to the same standard as for assets without contact and dormant assets that have not yet been published and for which a claim has been reported to the Central Claims Office by a claimant (margin no. 67). The only difference is that the Swiss Banking Ombudsman does not carry out a preliminary examination of claims pertaining to published assets before forwarding them. The bank contacts the claimant – or at least sends the claimant a confirmation of receipt – within one month. If it requires additional information, it should usually request this directly from the claimant. If there are particular reasons for doing so, the bank may refrain from contacting the claimant directly or sending a confirmation of receipt and request the additional information through the Central Claims Office.

90a "If, on examining the claim, the bank finds that it is justified, the assets in question are no longer considered dormant" (article 53 (2) of the Banking Ordinance). As soon as it has contacted the

beneficiary or beneficiaries and notified them that their claim has been recognised and that they have power of disposal over the assets, it deletes the publication (margin no. 58).

91 The bank notifies the claimant if it finds that a claim is not justified. "The bank or person under article 1b of the Banking Act must document the results of its investigations in such a way as to ensure that the investigations are transparent" (article 53 (4) of the Banking Ordinance).

b) Liquidation

92 The bank must liquidate the assets within 2 years of the expiry of the reporting deadline if no claim was reported during that time, or within two years of "finding that the claims made are not justified" and keep a record both of the decision to liquidate the assets and of the liquidation of the assets (articles 54–57 of the Banking Ordinance). The bank must make arrangements for such assets to be liquidated in a way that, in the bank's due judgement, will allow for the best possible liquidation proceeds. Means of realising assets include in particular public auction, internet auction and private sale. Assets may not be sold privately to employees of the bank or their family members. The bank may arrange for assets to be transferred to specialised persons or companies for realisation. Dormant assets that could not be realised in the realisation process arranged by the bank, or those that, in the bank's judgement, have no liquidation value, must be offered by the bank to the government. If the government does not accept the assets, the bank may dispose of them in a proper, environmentally compatible way or give them to a recognised charitable organisation (article 54 (2) of the Banking Ordinance). Net proceeds resulting from liquidations must be transferred to the Federal Finance Administration at least once a year; upon this transfer, the liquidations concerned are complete and the claims of the beneficiaries become null and void (article 37m (2–3) of the Banking Act and article 57 of the Banking Ordinance).

92a The following specific rules apply to liquidation:

92b • Account balances must be liquidated.

92c • Custody accounts must be liquidated, with securities being sold at market prices and the proceeds credited to the related account. This does not apply to securities that currently have little or no value ("penny stocks"), which are not subject to compulsory liquidation and delivery; they may be booked out by the bank.

92d • No interest: Any assets delivered after they have been published are to be delivered interest-free with effect from the publication date.

92e • No fees: Margin no. 50a applies. The bank is entitled to charge any extraordinary costs and expenses.

92f • Contents of safe-deposit boxes must be liquidated in the manner that promises the highest proceeds. If no better option can be found, the bank offers the items to a liquidator for public auction.

92g • Assets that cannot be realised or have no liquidation value must be offered to the federal government (article 54 (2) of the Banking Ordinance), provided they have not been destroyed before the obligation to liquidate under margin no. 48 takes effect, in the form of a list containing meaningful descriptions of the items offered, accompanied by photographs and sent to the Head of Legal Services at the Federal Department of Finance, General Legal Services Section. This obligation to offer does not apply to documents with no value such as account and custody account statements, photographs, newspaper clippings etc.

92h • Documents that may have a non-financial value for the Confederation on historical or other grounds must be offered to the federal government.

92i • Liquidation costs incurred by the bank may be deducted from the liquidation proceeds before they are transferred to the Federal Finance Administration (article 57 (1) of the Banking Ordinance), applicable collectively to all liquidation proceeds delivered by the bank on a given date. The liquidation costs may be quoted as a lump sum in the liquidation record as long as this is made clear.

VI. Entry into force

93 These Guidelines enter into force on 1 July 2022 and replace those of 1 January 2015.

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