

2014

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

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 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 beneficiaries 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 liquidation of dormant assets.

Terms – Basic principles on absence of contact and on dormancy

9 *Introductory remarks:* The term "dormant assets" has been redefined 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 Ordinance¹) and

11 • Absence of contact (Guidelines).

12 *Absence of contact:* This occurs in principle when the customer or their authorised agent fails to contact the bank and the bank is unable to contact the customer or their authorised agent. If the customer's authorised agent is also the customer's independent asset manager or investment advisor, 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.

¹ English translation of legal quotes (Banking Act, Banking Ordinance) by SBA.

19 b) Safe-deposit boxes: When there is no record of the customer having 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;

21 *Electronic banking relationships* (e-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 authorised agent or 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, plus any login using the customer's means of identification or those of any authorised agent, 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, pass-books, custody accounts or safe-deposit boxes, any contact concerning a single one of them precludes all of them from being without contact.

24 *Dormancy* (article 45 of the Banking Ordinance):

¹ Assets are considered dormant if the bank 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 bank's records.

³ Assets which are transferred to another bank owing to the liquidation of the transferring bank 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.

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 and to minimise the number of customer relationships that become without contact.

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. For example, it does not seem sensible to charge customers for closing an account, in so far as this induces them to leave a small residual balance.

2. Customer information

28 Banks should inform and advise 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. This includes informing the bank of any changes of address and naming a general authorised agent or special contact person the bank can approach exclusively in the event of absence of contact.

29 During personal conversations with the customer where the subject of absence of contact is raised, the question of inheritance, 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, but it is not binding on any individual bank.

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 • Amounts below CHF 1,000 may be pooled in a collective account at the bank's discretion.

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 • Securities 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 re-investment. Smaller custody accounts may be transferred to, for example, a fund or similar to generate an appropriate return at the discretion of the bank. The bank may also invest in other assets to avoid loss or, where appropriate, improve performance.

- 47 • Asset 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 (keeping a written record and in the presence of, for example, the auditor or someone subject to a professional duty of confidentiality). Even where the rent is covered, safe-deposit boxes may be opened in the event of dormancy in order to complete the search measures and with a view to liquidation. The contents of safe-deposit boxes that have been opened may be stored centrally.

49 If the contents of a safe-deposit box are standard bank assets and administrative action (e.g. redeeming coupons) 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).

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.

2. Nature of archiving

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

IV. Restoration of contact with the customer

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.

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, if possible also by contacting authorised agents or other contact persons (see margin no. 28), 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. SIX SAG administers the database of assets without contact.

a) Banks' obligation to report

58 Banks in Switzerland are obliged to report to SIX SAG the details of all customers without contact where the assets amount to more than CHF 500, and the details of all safe-deposit boxes. Only the Swiss Banking Ombudsman, as the Central Claims Office, has access to the database.

59 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 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.

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

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 enters the claim in the database administered by SIX SAG.

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 SIX SAG handle inquiries on behalf of the banks and the potential customer and as such 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. SIX SAG 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

74 Under article 50 (2) of the Banking Ordinance, the banks provide an electronic platform for the publication of dormant assets. SIX SAG (or, where appropriate, another service provider appointed by the

Swiss Bankers Association) runs this platform, which meets state-of-the-art security requirements. The Board of Directors of the Swiss Bankers Association has appointed the Swiss Banking Ombudsman as the body to which claims to dormant assets are to be reported (the Central Claims Office).

75 Banks must publish assets of over CHF 500 that have been dormant for 50 years (article 49 of the Banking Ordinance). To this end, they report information on these assets to SIX SAG (see margin no. 88) on an ongoing basis or at regular intervals, but at least once a year. SIX SAG takes the information from the reporting bank unchanged and publishes it as and when received.

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 one person (article 59 (2) of the Banking Ordinance). Valuation of the assets is based on the following principles:

- 77 • Credit balances 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 is not immediately recognisable but 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 must also publish the request for information in this communication medium" (article 50 (3) of the Swiss Banking Ordinance).

81 If the information available allows the bank to subsequently restore contact with the customer (see margin no. 53–73) and this takes place, the assets concerned are no longer dormant and therefore no longer have to be published or liquidated.

82 "Where available", the following information must be published (article 49 (3) of the Banking Ordinance):

83 • "The address to which the report is to be sent" (article 49(3) (a)). As a rule, this is the Central Claims Office, which forwards the report to the bank concerned.

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" (article 49(3) Preliminary) 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. The bank itself decides which positions to publish together, when and at what intervals, subject to the provisions of the Act, the Ordinance and the Guidelines.

89 The Swiss Banking Ombudsman or the service provider acting on its behalf in accordance with margin no. 74 forwards all reported claims to the reporting bank where the information included in such claims are sufficiently consistent with the information published.

90 "On receiving forwarded claims to dormant assets, the bank 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). If it requires additional information, it may usually request this from the person making the claim or, if there are particular reasons for doing so, from the Central Claims Office. "If, on examining the claim, the bank finds that a claim is justified, the assets in question are no longer considered dormant" (article 53 (2) of the Banking Ordinance). In such a case, the bank notifies the claimant directly while at the same time notifying the Central Claims Office.

91 The bank also notifies the Central Claims Office if it finds that a claim is not justified. The Central Claims Office and SIX SAG act on behalf of the banks and, where relevant, their customers; they are therefore bound by bank-customer confidentiality (article 47 of the Banking Act). "The bank 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).

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).

VI. Entry into force

93 These Guidelines enter into force on 1 January 2015 and replace those of 1 July 2000.

94 Assets that have been dormant for 50 years after 1 January 2015 must be reported to SIX SAG either on an ongoing basis or at regular intervals, but at least once a year, for publication.

95 "For assets that, upon entry into force of the amendment of 22 March 2013" – on 1 January 2015 – "have been dormant for over 50 years, there is a publication period of five years" (transitional provision for the amendment of the Banking Act of 22 March 2013).

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