

Switzerland

Thouvenin Rechtsanwälte
Zurich

Swiss banks' code of conduct

In 1977 Swiss banks for the first time introduced their self-regulatory Agreement on the Swiss Banks' Code of Conduct with regard to the exercise of due diligence. The Code aims to preserve the good reputation of the Swiss banking industry in its fight against money laundering and terrorism financing through the introduction of due diligence rules.

Since its enactment the Code has been revised on a five-yearly basis; the latest version of the Code will be effective as of July 1 2008 (CDB 08). The common consensus is that Switzerland has the strictest rules in regard to the identification of bank account holders and beneficial owners.

In 2005 Switzerland underwent a country examination through the Financial Action Task Force on Money Laundering (FATF). The FATF made a number of recommendations that have now been taken care of in the CDB 2008. More than before, the CDB is taking a risk-based approach in connection with account opening and operating formalities. In the past certain formalities appeared to be rather erratic. The revision now allows for more flexibility, where appropriate, under a risk-based approach, of course always considering that the CDB provides for minimum standards.

Failure to comply with CDB rules triggers financial penalties. However, the sanctions foreseen in the Code in events where a bank fails to duly verify and document the identity of the account holder and beneficial owner only apply to institutions that are parties to the Code. Hence, the Code is to be distinguished from the financial due diligence process as regulated in the Money Laundering Act and Money Laundering Ordinance, which remains in the competence of the Federal Banking Commission.

The framework and content of the CDB have not changed fundamentally. Innovations and developments largely relate to the processing of identification of contractual partners, identification of beneficial owners, documentation of account openings for holding companies

and trusts, and certain procedural rules.

Lastly, there is the good news that the Swiss Federal Banking Association has now also provided a written commentary to the CDB. The commentary clarifies the Code and will help practitioners better understand clauses of the Code that are open to interpretation (see www.swissbanking.org/).

Dr Daniel Stoll