

Guidelines of the Swiss Bankers Association

on the treatment of dormant accounts,
custody accounts and safe-deposit boxes
held in Swiss banks

(replaces the guidelines dated
8th September 1995)

Preliminary

The purpose of these guidelines is to provide for a continuous contact, respectively a restorable contact, between customer and bank by organizational measures. In particular, they serve the following:

- prevention, i.e. to prevent the loss of contact with the customer.
- protection against misuse of assets when contact with the customer has been lost.
- administration of assets according to uniform principles when contact with the customer has been lost.
- restoration of the contact between banks and proxies while safeguarding confidentiality as required by law.
- facilitation of inquiries by customers, respectively proxies, concerning assets.

Terms

Dormancy occurs basically when the customer, respectively proxy, fails to contact the bank and the bank is unable to contact the customer or his or her proxy.

Dormancy occurs in case of a customer to whom post is regularly sent when:

- the correspondence sent to the customer is returned and
- there exists no contact whatever with the customer nor news of him or her and
- the measures taken by the bank to contact him or her (see IV. 2. and 3.) have failed.

In the following cases dormancy occurs after a period of 10 years, except when the bank has proof that the customer is deceased and that contact with eventual heirs or proxies is not possible:

- a) savings book: when 10 years have passed in which the customer fails to have interest registered, and no contact with or news of him or her exists.

- b) safe-deposit boxes: when the customer fails to visit his or her safe-deposit box for 10 years, according to protocol, and no contact with or news of him or her exists.
- c) poste restante at the bank or other special instructions of the customer: when no contact exists with the customer for the last 10 years and otherwise no news of him or her has been received during the last 10 years.

News means any instruction, message or statement received from the customer, respectively his or her proxy or heir, which precipitates changes in the account, respectively deposit, or an entry in the files.

Customer relations: Dormancy refers to the customer of a bank in Switzerland and not to a single contractual relation with him or her. If a customer has several accounts, bank-books, custody accounts or safe-deposit boxes, then any news or contact concerning only one of them precludes all of them from being dormant.

I. Preventative measures against loss of contact with the customer

No.

- 1 The banks shall take precautions and create instruments by means of preventative measures in order to avoid loss of contact with customers and to keep the number of new dormant customer relations to a minimum.

1. Product development

- 2 The banks shall develop their products so that the contact between customer and bank is secured, respectively the risk of losing contact can be avoided where possible. For example, it does not seem very sensible to charge the customer for closing his or her account as this induces him or her to leave a small residue in the account.

2. Customer information

- 3 The banks shall inform and advise their customers about problems and consequences of dormancy verbally or in writing at the opening of business relations and on further occasions where practical, and they should draw the customer's attention to his or her responsibility to avoid loss of contact. This includes, among other measures, informing the bank of any changes of address and naming a proxy or trusted person the bank can contact in case of dormancy.
- 4 During personal conversations with the customer where the subject of dormant assets is raised, the question of inheritance should also be discussed.
- 5 The banks can provide the customer with a pamphlet as general information on this subject. The appendix to these guidelines may serve as an example of the form such information could take for specific customer groups.

II. Supervision and administration of dormant assets

1. Organizational measures

- 6 The banks shall issue internal directives including the following measures for central processing:
- 7 • A suitable control system shall ensure that dormant assets are promptly and completely detected.
- 8 • The assets in question are to be earmarked and recorded centrally by the bank in order to facilitate any search entitled persons may make.
- 9 • The assets are to be safeguarded against unauthorized access by means of suitable security measures.
- 10 • The banks are to designate the internal positions or persons responsible for handling dormant assets.
- 11 • The special standards for the safeguarding of files (see III below) are to be heeded in the case of dormant assets.
- 12 • These Guidelines apply equally to numbered accounts, numbered deposits and safety-deposit boxes.
- 13 • The costs to be carried by the customer for processing dormant assets are to be noted within the banks' internal directives.
- 14 • Small amounts up to CHF 1'000 can, at the bank's discretion, be pooled in a collective account instead of being maintained in an individual account.

2. Protection of rights of the entitled in the case of dormancy and waiver of the right to terminate

- 15 In cases of dormancy the *rights of the customer* or his heirs against the bank remain intact.
- 16 *Waiver of right to terminate:* The bank shall waive the right to terminate contractual relationships on the grounds of dormancy and thus a statute of limitations does not apply.
- 17 *Exception:* The banks have the right to terminate the contractual relationship or charge fees when their demands on the customer or his or her heirs are not met or not covered when due. Furthermore, special cantonal regulations may be applicable.

3. *Protecting interests in the administration of assets in the case of dormancy*

- 18 The bank has a clear duty to protect the customer's interests or those of his or her heirs concerning dormant assets. The banks shall issue internal directives to secure a uniform management of such assets, thereby respecting the following principles:
- 19 • *Savings accounts* are to be continued as usual and interest paid at the bank's valid rates.
- 20 • *Current accounts* and similar assets are to be invested in the interest of the customer, i.e. carefully and profitably (e.g. as savings accounts, medium-term notes or unit trusts with low-risk profiles).
- 21 • *Security deposits* are to be continued as usual; monies from repaid titles and accrued yields are to be invested in similar or other suitable securities, whereby the investment situation at the time of reinvestment is to be taken into account. The bank can transfer smaller deposits to a unit trust or similar, at its own discretion, for the purpose of obtaining an adequate yield. The bank can invest in other forms of investment to avoid diminishing values or to improve performance.
- 22 • *Commissions to administer assets* are to be continued unaltered. If instructions or investment aims laid down by the customer are obviously detrimental to his or her interests then the bank can make corrections in his or her investment policy.
- 23 • *Safe-deposit boxes* may be opened, especially when the cost of leasing is not covered, by following the written internal directives and e.g. summoning an auditor or other person bound to professional secrecy. The contents can be kept centrally for safeguarding.
- 24 If the contents are bankable assets and if, in the customer's interest, administrative measures (e.g. redeeming coupons) or investment seem to be required, then the bank shall take the necessary steps. In the case of other assets, the bank shall restrict its activity to safe-keeping.

4. *Costs and expenses*

- 25 The bank's usual debited costs and expenses also apply in cases of dormancy. Furthermore, the banks can charge the customer for costs incurred for inquiries as well as for the special handling and supervision of dormant assets. Expenditures which lead to disproportional expenses for the customer are to be avoided (see no. 30 below).

III. Safeguarding of documents

1. Safeguarding of documents in the case of dormancy

- 26 In the case of dormant customer relations the bank is to safeguard the relevant original contractual documents as well as the records of transactions which existed at the beginning of dormancy until delivery to a location to be named by the legislator, respectively until the restoration of contact with the customer, beyond the legal period of time for safeguarding.

2. Safeguarding of documents in the case of closure of accounts

- 27 In the light of recent events it would seem to be prudent to safeguard the more important data concerning closed accounts beyond the legal limit of 10 years. The Board of Directors of the Swiss Bankers Association leaves the decision to the banks whether or not to safeguard the relevant data concerning closed accounts for more than 10 years.

3. Type of safeguarding

- 28 The documents and records may be safeguarded in any one of the usual forms such as original documents, electronic data medium or film.

IV. Restoration of contact with customers

1. Principles in the search for entitled persons

a) Confidentiality as required by law

29 In the search for persons entitled to dormant assets customer confidentiality must be upheld as required by law (bank customer confidentiality).

b) Cost-benefit of inquiry measures

30 The bank's individual inquiries about entitled persons must follow the principle of proportionality. Effort and cost have to remain in proportion to the amount of assets concerned as well as proportional as a whole.

2. Inquiries by the bank into domestic customers

a) Instant internal measures to be taken by the bank

31 As soon as a bank ascertains that contact has been lost with a domestic customer then attempts shall be made to restore contact with the customer by means of internal inquiries such as address books, electronic telephone book, internet etc., and also by contacting proxies or other contact persons (see no. 3 below).

b) Institutionalized measures

32 The Swiss Post Office, in conjunction with other companies, has developed a system which in many cases allows the current validity of domestic customer addresses to be verified and also in the case of returned mail to trace individual changes of address. Inquiries into earlier changes of address are possible. This system shall be made available to the banks, under special consideration of confidentiality as required by law, centrally by the SEGA AKTIENREGISTER AG (SAG). The Swiss Bankers Association and the SAG shall inform banks in detail about this system.

33 The banks are recommended to make use of this system.

3. *Inquiries by the bank into foreign customers*

- 34 *Inquiries abroad:* The possibilities as shown in no. 32 above may be partially used for inquiries into addresses abroad, especially for neighboring countries. If these measures bring no results, it is left to the banks to decide whether and when they assign a confidential person to inquire into the customer or his or her heirs. Such decisions are to be made on a case-by-case basis using the cost-benefit principle.

4. *Inquiries by entitled persons via Central Claims Office*

- 35 *Central Claims Office:* The Board of Directors of the Swiss Bankers Association continues to utilize the Banking-Ombudsman as the Central Claims Office for inquiries by entitled persons into dormant assets at Swiss banks. The SEGA AKTIENREGISTER AG (SAG) administers the databank of dormant assets.

a) Banks' obligation to report

- 36 The banks in Switzerland are obliged to report to SAG the data of dormant customers for all assets amounting to more than CHF 100, as well as for all safe-deposit boxes. SAG shall install and maintain the databank according to the most modern security standards. Only the Banking-Ombudsman, as the Central Claims Office, has access to the databank, and only by individual input of single names.
- 37 As soon as contact with a customer has been restored, the records are to be deleted by the relevant bank.
- 38 The report must contain the surname, first name, date of birth, nationality and address of the customer as well as any designated persons with power of attorney. The technical specification for the reports will be defined by the Central Claims Office and SAG.

b) Requirements to initiate an inquiry by the Central Claims Office

- 39 Whoever credibly claims to be a customer or heir of a deceased or missing customer or representative of such, without knowing the name of the bank, can request the Central Claims Office to make inquiries into dormant assets. Such a claimant must:
- 40 • substantiate that customer relations to a bank in Switzerland exist.
- 41 • make known the name of the person for whom the account, book, deposit, or safe-deposit was administered.

- 42 • substantiate his or her entitlement to the account, book, deposit or safe-deposit that may exist, in particular proving his or her identity and authenticating his or her right to inheritance.

c) Preliminary examination by the Central Claims Office

- 43 The Central Claims Office makes a preliminary examination of the submitted documents. If the request is deemed to be justified then the claim is to be entered into the databank administered by the SAG.

d) Forwarding the request to the relevant bank

- 44 If the data contained in the claim matches a name in the databank closely enough then the Central Claims Office shall forward the claim to the relevant bank.

e) Bank decision

- 45 The bank shall examine the forwarded claim with great care and shall decide according to the data present on the entitlement of the claimant. Should more information prove to be necessary, then the bank can make a request through the Central Claims Office.

- 46 In the case of a positive decision the bank shall report the findings of the inquiry either to the Central Claims Office or directly to the claimant in which case the Central Claims Office is to be informed at the same time.

- 47 In the case of a negative decision the bank shall report the findings to the Central Claims Office together with a short substantiation, at the same time informing the Central Claims Office whether the relevant assets amount to more than CHF 10'000 or not. In case of doubt the Central Claims Office has the right to examine the bank's records and if necessary to give recommendations together with the request that the bank contact the claimant in order that he or she can present his or her claim against the bank directly. Thereby the rules according to art. 3 of the Swiss Banking-Ombudsman Foundation (version from 2nd November 1992) apply.

f) Confidentiality

- 48 The Central Claims Office and SAG shall handle inquiries on behalf of the bank and potential customers and as such are subject to confidentiality law according to art. 47 of the Federal Act on Banks and Savings Banks (bank customer confidentiality).

g) Fees

- 49 In principle, the Central Claims Office shall charge fees for handling such claims, payable by the claimant. The Office can waive these charges under special circumstances, e.g. in cases of financial hardship. The fees are to be determined by the supervisory agency of the Central Claims Office as agreed by the Swiss Bankers Association. Furthermore, SAG can charge registration fees.

V. Implementation

- 50 These Guidelines enter into force on 1st July 2000 and replace those of 8th September 1995.
- 51 The initial report, containing details as laid down in no. 38 above, must be forwarded to SAG not later than 31st December 2000. The Central Claims Office and SAG shall deliver detailed explanations in good time. The data concerning customer relations that become dormant are to be sent to SAG one year after becoming dormant, at the latest.
- 52 This report applies also to assets, which within the framework of the directive from the Federal Banking Commission (EBK-RS from 25th July 1997) were reported to ATAG Ernst & Young, in Basle, for the purpose of publication and did not come to payment either directly or in a legal process (including the Claims Resolution Tribunal). The same applies for assets which were published and paid out due to inquiry results from the Independent Committee of Eminent Persons (ICEP).

Basle, February 2000