

AMLO-FINMA and the risk-based approach

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The FINMA Anti-Money Laundering Ordinance turns these statutory duties into a risk-based system. Banks must classify their relationships by risk, apply additional clarifications to relationships and transactions with higher risk and treat certain categories, such as foreign politically exposed persons, as higher risk by definition. The ordinance requires a global risk analysis at group level, sets out the criteria for high-risk relationships, such as the client's domicile, the type and place of business, the absence of personal contact, the type of services and the volume of assets, and lays down the content of the additional clarifications.¹ For the identification of the contracting party and the establishment of the beneficial owner, Article 35 AMLO-FINMA refers banks to the CDB. The result is a layered system. The statute states the principle, the FINMA ordinance sets the risk-based framework, and the CDB regulates the forms, documents and exceptions in the detail that daily practice requires.

For a bank in Lugano this means that the CDB governs the opening of the account, while the AMLO-FINMA governs the ongoing relationship. A client domiciled in Italy with a Swiss account opened decades ago is not, as such, a higher-risk client. He becomes one if the bank's criteria classify him so, for example because of his political functions, the volume of his assets, the use of domiciliary companies or a history of tax irregularities. The FINMA rules require that the bank's criteria be defined in advance and applied consistently, and they leave to the bank the choice of how to design them.

1 Beneficial ownership in practice: Forms A, K, S, T and R

The forms of the CDB 20 are the instruments that a relationship manager handles every day. Form A is the declaration of the beneficial owner of the assets, required whenever the contracting partner is not, or not certainly, the beneficial owner. The form must contain a reference to the criminal

consequences of a false declaration under Article 251 SCC (forgery of documents), and the Supervisory Board has held a Form A without that reference to be defective.² The bank may complete the form on the client's instructions, provided the client confirms its accuracy by signature, and it may use its own version if its content is equivalent to the model form.³

Form K documents the controlling person of an operating legal entity. Article 20 CDB 20 establishes a cascade. The controlling persons are first the natural persons who hold, directly or indirectly, alone or together with third parties, 25 per cent or more of the votes or capital. If there are none, they are the persons who control the entity by other discernible means. If neither can be determined, the bank records the highest managing director as a substitute.⁴ For foundations, the bank uses Form S. For trusts, it uses Form T, on which the trustee as contracting partner declares the settlor, the trustees, any protector and the beneficiaries or classes of beneficiaries, and confirms its authority to establish the relationship on behalf of the trust.⁵ Domiciliary companies require a declaration on the beneficial owner of the assets under Article 39, while operating companies require Form K. Holders of professional secrecy may use Form R under Article 36, limited to Swiss lawyers and notaries and to accounts that serve their professional activity.

The Supervisory Board's leading cases show the level of detail at which these rules are enforced. In its decisions for the second half of 2025, the Board held that a bank may omit renewed identification when it opens a new relationship with a client already correctly identified in an active relationship (Article 4(3) CDB 20), that foundations pursuing exclusively charitable or other ideal purposes may be treated by analogy with the exemption in Article 39(4)(a), and that for simple partnerships the bank must establish the beneficial owners at the level of the partnership and then identify the natural persons behind any corporate partners. It also held that identification documents obtained through external service providers must be transferred to the bank and retained.⁶

2 Notes

1. AMLO-FINMA (above), Art. 6 (global monitoring of legal and reputational risks), <https://www.droit-bilingue.ch/de-fr/9/95/955.033.0-6-9.html>; Art. 13 (criteria for higher-risk relationships, including domicile, type and place of business, absence of personal contact, type of services and volume of assets; foreign politically exposed persons "in jedem Fall"), <https://www.droit-bilingue.ch/de-fr/9/95/955.033.0-13-17.html>; Arts

14–16 (higher-risk transactions, additional clarifications and their means), <https://www.droit-bilingue.ch/de-fr/9/95/955.033.0-15-19.html>. ↩

2. SBA, Tätigkeitsbericht 2017–2021 (above), 22 (Form A without reference to Art. 251 SCC defective; Form K without the section on fiduciary holding defective). ↩
3. SBA, Commentary on the Agreement ... (CDB 20) (above) (completion by the bank on instruction, confirmation by the client's signature); CDB 20 (above), Art. 28 (own form with equivalent content). ↩
4. CDB 20 (above), Art. 20; SBA, Commentary on the Agreement ... (CDB 20) (above) (three-stage cascade). ↩
5. CDB 20 (above), Arts 40 and 41; SBA, Commentary on the Agreement ... (CDB 20) (above) (trustee as contracting partner confirming authority); CDB 20 (above), Form T (settlor, trustees, protectors, beneficiaries and defined classes of beneficiaries, persons entitled to revoke the trust). ↩
6. SBA, Aufsichtskommission VSB, Leading Cases II/2025, March 2026, https://www.swissbanking.ch/_Resources/Persistent/7/f/e/6/7fe6b596ca5c38d1e638737c93e8a2f5cf576296/20260323%20Leading%20Cases%20II_2025%20%28D%29.pdf.
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