

Identification of the client and the beneficial owner

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The first obligation of the agreement was the verification of the identity of the contracting partner. Banks had to identify their clients when opening accounts and passbooks, when accepting securities for safekeeping, when entering into fiduciary transactions, when renting safe-deposit boxes and when carrying out large cash transactions.¹ Identification meant the examination of an official document, usually a passport or identity card for a natural person and a register extract for a legal entity, and the recording of the relevant data. The rule applied equally to numbered and code-word accounts, whose holders had to be identified by the bank even though their names were known only to a small circle within it.

The second obligation concerned the beneficial owner (*wirtschaftlich Berechtigter*). If there was doubt whether the contracting partner was also the beneficial owner of the assets, the bank had to obtain from the contracting partner a written declaration identifying the beneficial owner. The standard form for this declaration became known as Form A. It was the direct answer to the Texon problem: a Liechtenstein establishment, a fiduciary company or a lawyer acting for an undisclosed client could no longer open an account without the bank knowing, at least on paper, who stood behind the money.² The agreement made one major exception. Swiss lawyers and notaries bound by professional secrecy could declare that they were not required to disclose the identity of their clients. The exception, later formalized in a separate form known as Form B, would become the subject of controversy and was abolished in the early 1990s.

1 The prohibitions: capital flight and tax evasion

The third and fourth obligations addressed the two practices that had made Chiasso possible. The banks undertook not to provide active assistance in the flight of capital from countries whose laws prohibited or restricted the transfer of funds abroad. They also undertook not to assist their clients in

acts aimed at deceiving authorities, in particular tax authorities, by means of incomplete or otherwise misleading attestations.³ The Federal Council summarized these duties in 1982 as a prohibition of "active assistance in capital flight, tax evasion and the like".⁴

The scope of these prohibitions requires precision. The agreement did not oblige Swiss banks to refuse flight capital. A client who brought money from Italy to Chiasso in breach of Italian currency law could still open an account, provided the bank identified him. What the agreement prohibited was active assistance: organizing the transfer, sending bank employees abroad to collect funds, arranging compensation transactions in which a client paid lire in Italy and received francs in Switzerland, or cooperating with persons who organized such transfers. The later versions of the agreement list these forms explicitly, among them "organised meetings with clients abroad" for the purpose of accepting funds and "active collaboration with individuals and companies" that arrange the flight of capital.⁵ The same distinction applied to tax evasion. A bank was not required to verify that its clients had declared their assets to the tax authorities of their country of residence. It was prohibited from issuing false or misleading attestations, for example a statement with false dates, false amounts or fictitious prices, which a client could use to deceive the tax authorities.

2 Notes

1. The list of transactions requiring identification in the CDB 77 follows the later versions; the CDB 20, Art. 4(2) (above), lists the opening of accounts or passbooks, securities accounts, fiduciary transactions, the renting of safe-deposit boxes and cash transactions above CHF 15,000.
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2. SBA, "Combating money laundering", <https://swissbanking.ch/en/topics/regulation-and-compliance/the-fight-against-money-laundering> (the CDB, introduced in 1977, "sets out banks' duties with regard to identifying the contracting partner and establishing the identity of the beneficial owner"). For the declaration "in cases of doubt" see SBA, Agreement on the Swiss banks' code of conduct with regard to the exercise of due diligence (CDB 98), 28 January 1998, preamble, English translation at <https://unodc.org/documents/archive/imolin/chbcoc.pdf>. The exception for holders of professional secrecy is attested for the CDB 82 (Art. 6) by BGE 109 Ib 146 (below), and Form B appears as a "new" form in the CDB 87, EBK, Jahresbericht 1987, 25–27,

<https://finma.ch/FinmaArchiv/ebk/d/publik/bericht/pdf/jb87.pdf>.



3. CDB 98 (above), preamble and Arts 7 and 8 ("Banks may not provide any active assistance whatsoever in transferring capital outside countries whose laws prohibit said transfers"; "Banks shall not provide any assistance to their customers in acts aimed at deceiving ... authorities, particularly tax authorities, by means of incomplete or otherwise misleading attestations"). ↩
4. Botschaft über die Banken-Initiative (above), 1221. ↩
5. CDB 08 (above), Art. 7, margin nos 48 and 50; CDB 20 (above), Arts 48 and 50; on misleading attestations CDB 20, Art. 57 ("false dates, false amounts or fictitious rates/prices", "fictitious claims or debts"). ↩

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