

The CDB 98 and the Anti-Money Laundering Act

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The next step was federal legislation. The Federal Act on Combating Money Laundering and Terrorist Financing of 10 October 1997 (Anti-Money Laundering Act, AMLA) extended due diligence duties to the whole financial sector, including the parabanking sector of asset managers, fiduciaries, money exchangers and payment service providers.¹ It took over the structure of the CDB: the verification of the identity of the contracting party, the establishment of the beneficial owner, the renewal of these steps in case of doubt, special duties of clarification for unusual transactions, documentation and organizational measures. It added a statutory duty to report suspicions to the Money Laundering Reporting Office (MROS) and to freeze the assets concerned. For banks, the AMLA left the CDB in place as the detailed implementation of the statutory duties.

The CDB 98, dated 28 January 1998 and in force from 1 July 1998, reflected this new environment. It retained the three commitments of the preamble, namely identification of the contracting partner and, in case of doubt, a declaration on the beneficial owner, no active assistance in capital flight and no assistance in tax evasion through misleading attestations. It added a separate article on numbered accounts. Its enforcement provisions entrusted the investigation of violations to investigators appointed by the Bankers Association and the decisions to a five-member Supervisory Board (*Aufsichtskommission*), with fines of up to CHF 10 million.² The National Bank had ceased to be a party in 1987, and the agreement had become a contract between the Swiss Bankers Association and each bank. The current text puts it in these terms: the bank "hereby contracts with the SBA in its capacity as the professional organisation charged with safeguarding the interests and reputation of the Swiss financial centre".³

Version Date or entry into Notable change force CDB 77 2 June / 1 July 1977 Identification, Form A, two prohibitions CDB 82 1 October 1982 Narrower secrecy exception (Art. 6) CDB 87 1 October 1987 National Bank

withdraws, new Form B CDB 92 1 October 1992 Form B abolished, Form R CDB 98 1 July 1998 Supervisory Board, numbered accounts CDB 03 1 July 2003 Alongside EBK ordinance CDB 08 1 July 2008 Penalty criteria, board CDB 16 2016 Fundamental revision, Form K CDB 20 1 January 2020 Cash threshold CHF 15,000

1 CDB 03, CDB 08 and CDB 16

The CDB 03 entered into force on 1 July 2003 and applied alongside the money laundering ordinance of the Federal Banking Commission (GwV EBK).⁴ The Supervisory Board's activity report for the years 2001 to 2005 gives an impression of enforcement in this period. The Board decided 82 cases, compared with 61 in the previous period. Seventy-one ended with a sanction and eleven were dismissed. In 58 cases the penalty exceeded CHF 10,000, and the highest single penalty was CHF 750,000. The penalties went to the International Committee of the Red Cross.⁵

The CDB 08, adopted on 7 April 2008 and in force from 1 July 2008, refined the rules on domiciliary companies and on professional secrecy holders. It defined a domiciliary company by the absence of its own business premises or employees and stated that such a company could not itself be the beneficial owner. It specified the criteria for penalties, namely the seriousness of the violation, the degree of fault and the financial situation of the bank, and provided for a Supervisory Board of at least five persons, the majority of them independent.⁶ With the CDB 16 the agreement was, in the words of the Supervisory Board, "fundamentally revised both formally and in substance". It introduced the identification of the controlling person of operating legal entities, documented on Form K, which implemented the beneficial ownership standard of the FATF Recommendations of 2012 as transposed into the AMLA.⁷

2 Notes

1. Federal Act on Combating Money Laundering and Terrorist Financing of 10 October 1997 (Anti-Money Laundering Act, AMLA), SR 955.0; the date of the Act is confirmed by the U.S. Internal Revenue Service, Attachment for Switzerland to the Qualified Intermediary agreement (rev. July 2020), <https://www.irs.gov/pub/irs-lbi/qiattachswitzerland.pdf>, and the scope by FINMA, "Combating money laundering", fact sheet of 1 January 2020, <https://www.finma.ch/en/~media/finma/dokumente/dokumentencenter/myfinma/faktenblaetter/faktenblatt->

geldwaeschereibekaempfung-finanzintermediaere-sorgfaltspflichten.pdf?sc_lang=en. The Act entered into force on 1 April 1998 (Art. 44 AMLA and Federal Council decision of 16 March 1998), <https://www.droit-bilingue.ch/en-de/9/95/955.0-44-61.html>.



2. CDB 98 (above), preamble, Arts 2–15, Forms A and R (five-member Supervisory Board; investigators; fine of up to CHF 10 million). ↩
3. CDB 20 (above), preamble; for the National Bank's withdrawal EBK, Jahresbericht 1987 , 25 (above). ↩
4. SBA, Tätigkeitsberichte der Aufsichtskommission zur VSB 2001–2005 (above), 2 (VSB 03 in force on 1 July 2003; original version of 1 July 1977 "seither fünfmal revidiert") and 5 (GwV EBK); EBK, Jahresbericht 1987 , 25 (above), and Jahresbericht 1992 , 35 (above), for the CDB 87 and CDB 92; SBA, Tätigkeitsbericht 2017–2021 (below), 4 –5, for the CDB 16. ↩
5. SBA, Tätigkeitsberichte der Aufsichtskommission zur VSB 2001–2005 (above), 1–7. ↩
6. CDB 08 (above), Arts 4, 11, 12 and 14. ↩
7. SBA, Tätigkeitsbericht der Aufsichtskommission zur VSB 2017–2021 , 3,
https://www.swissbanking.ch/_Resources/Persistent/1/e/8/e/1e8e2af28a025e4052ee2043adf0347992e0a045/T%C3%A4tigkeitsbericht%20der%20Aufsichtskommission%20zur%20VSB%202017-2021.pdf ("mit dem Wechsel von der VSB 08 zur VSB 16 sowohl formell als auch inhaltlich grundlegend überarbeitet"); ibid., 5 ("Gestützt auf die revidierten FATF-Empfehlungen von 2012 hatte die VSB 16 neu die Pflicht eingeführt, die Kontrollinhaber von operativ tätigen juristischen Personen und Personengesellschaften festzustellen") and 10 ("ein neues Formular K"); AMLA, Art. 4, as amended by the Federal Act of 12 December 2014 implementing the 2012 FATF Recommendations (in force since 1 January 2016), <https://www.droit-bilingue.ch/en-de/9/95/955.0-4-8.html>. ↩

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