

CDB Supervisory Commission

Publication of case law for the second half of 2020

Par Valentine Delaloye le 2 July 2021

The CDB Supervisory Commission recently published its traditional [overview of its decisions for the second half of 2020](#). After a restricted financial year due to Covid-19 at the beginning of the year, supervisory activities resumed their normal course in the summer of 2020.

While no notable reversal of case law has been reported, a few cases are worth mentioning.

Firstly, with regard to procedure, [Art. 60 para. 1 CDB](#) (investigation procedure) does not make the opening of an investigation for breach of due diligence obligations conditional on the existence of a prior decision by the Commission. On the contrary, [Article 4 of the ASB Investigation Regulations](#) provides that the investigators are authorised to open a procedure on their own initiative, which ‘corresponds to a constant practice and is not contestable’, according to the Commission.

In terms of casuistry, financial institutions are once again being told that only identification forms equivalent to the models provided in the CDB comply with due diligence obligations. Consequently, a bank form that does not mention [Art. 251 of the Swiss Criminal Code](#) or that omits the question of the fiduciary holding of assets (form K) is defective.

The Commission has also had occasion to clarify that, under [art. 45 CDB 16](#) (documentation for verification of the identity of the contracting party, the controlling holder or the EDA), the use of an account requires complete documentation **in its entirety and in the required form**. Furthermore, despite the sole mention of the aforementioned article when opening an account, common sense dictates that the rule ‘applies mutatis mutandis to all transactions referred to in art. 4 para. 2 CDB 16’. Therefore, the required verifications must have been carried out **at the latest** not only when opening an account or deposit but also when concluding a fiduciary transaction, renting a safe deposit box, concluding a management mandate, executing trading transactions or a cash transaction involving an amount exceeding 25,000.

Finally, as is regularly the case, the Commission reiterated that the prevailing rules regarding the repetition of the identification of the controlling shareholder or the CEO apply to **every significant change in the situation**. Thus, when in the case of a limited liability company with two partners each holding 50 % of the shares, the first buys the shares of the second, a new declaration must be made in accordance with Art. 46 para. 1, let. b CDB 16.

For once, the violations often relate to the same types of due diligence obligations, among

which failures in identification are always at the top of the list.

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