

Supervisory Board CDB

Case law for the first half of 2024

Par Valentine Delaloye le 7 October 2024

The overview of the “ [leading cases](#) ” of the Swiss Banking Supervisory Commission (hereinafter : the Commission) for the^{1st} half of 2024 is now available. Among the few decisions mentioned, we would like to highlight two.

In the first ([533/60]), it is recalled that under [art. 18 of the investigation regulations of December 16, 2019](#), the bank is obliged to cooperate in establishing the relevant facts when an investigation procedure is opened against it. In the case in point, the reporting entity was imposed a conventional fine (based on [art. 64 cum art. 61 al. 2 CDB](#)) for failing to submit a Form K to the investigating officer despite “two explicit requests” to produce the document. The CDB specifies that the amount of the fine is set on the basis of several criteria, such as the seriousness of the violation and the bank’s financial situation.

In a second decision ([532/54]), we learn that a bank was sanctioned for (yet another) incomplete Form K, as the document failed to mention the basis on which a natural person was designated as the controller. The supervisory authority stresses the need to systematically comply with the three-step clarification process stipulated in [art. 20 CDB](#) when identifying the control holder, i.e. : (1) to determine the existence of natural persons or legal entities with a stake of at least 25 % of the voting rights or capital of the contracting partner (2) failing this, to designate the persons exercising control in “another recognizable manner” over the contracting partner or (3) to indicate the managing person as a replacement. In this respect, it may also be useful to consult the [CDB commentary](#), which provides some interesting details. For example, with regard to the general notion of control of a company, it should be understood to mean the natural person who directs business policy and/or has the power to appoint legal representatives and organs. The threshold of 25 % of voting rights or capital can also be reached in concert, notably through a shareholders’ agreement. As for the exercise of control in some other recognizable way, the commentary cites several possible situations, including that of a person who secures a dominant influence over decisions taken by the management of a company by virtue of a loan granted.

It seems that the Commission has definitively decided to publish reports that are relatively poor in terms of content, which we regret. That said, the next full activity report, due in 2-3 years’ time at the latest, will perhaps be more substantial, and therefore more useful to practitioners.

Reproduction autorisée avec la référence suivante: Valentine Delaloye, Case law for the first half of 2024, publié le 7 October 2024 par le Centre de droit bancaire et financier, <https://cdbf.ch/en/1375/>