CENTRE DE DROIT
BANCAIRE ET FINANCIER

Banking Supervision Commission

Case law from the first half of 2025

Par Valentine Delaloye le 19 March 2026

Whilst we have repeatedly highlighted the lack of detail in the summaries of the Banking Supervision Commission's (hereinafter : the Commission) '*leading cases*', it must be acknowledged that the latest publication raises a number of interesting and rarely addressed issues.

Among these, we note first and foremost a clarification regarding the scope of application of the Bank Due Diligence Convention (hereinafter : the BDC or the Convention) in relation to credit card transactions. Recalling first of all that the CDB 20 applies in principle to *all commercial* activities of a bank as a financial intermediary within the meaning of the AMLA, the Commission makes two observations. On the one hand, where the CDB expressly refers to other provisions, these become an integral part of the due diligence obligations, meaning that they must also be subject to supervision (and, where applicable, sanctions) by the Commission. Secondly, it is noted that Art. 2(3) CDB 20 does not refer to a general application of the OBA-FINMA in place of the Convention when it comes to banks' credit card transactions, but only to certain provisions relating to regulatory relief (namely Art. 11, 12 and 28(4) of the OBA-FINMA, cf. SBA Circular No. 7888 of 4 May 2016 cited in footnote 16 of the report).

In another decision concerning the scope of application of the CDB, it is clarified that the reference to video or online identification 'in accordance with the applicable FINMA regulations' (Art. 9(2) and 10(2) CDB) refers to the provisions of FINMA Circular 2016/7. However, whilst the admissibility of delegating or sub-delegating the verification of the identity of the contracting party or beneficial owner is regulated slightly differently in the CDB 20 and in the aforementioned circular, the relaxations provided for in the circular take precedence over the Convention. It follows that the opening of a business relationship in person or via video or online identification may be delegated (para. 51 Circular 2016/7), *a contrario* to opening by correspondence (Art. 43 CDB 20). That said, the Commission has concluded that this prohibition on delegation in the case of opening a business relationship by correspondence is outdated. Pending a revision of the Convention on this point, the authority states that it will henceforth merely note any potential breach in this regard, without imposing sanctions.

On procedural aspects, the Commission confirms a long-standing practice allowing the opening of an investigation procedure on the basis of complaints from private individuals, although Article 4(1) *in fine* of the SBA Investigation Regulations excludes this. The Authority nevertheless emphasises that the opening of proceedings requires, in all cases, the existence of concrete evidence of a breach of the CDB (Article 4(2) of the Regulations). Vague indications

or mere assumptions are not sufficient.

In another decision, the Commission notes that Article 2(2) of its Rules of Procedure provides for the application of the Federal Act on Administrative Procedure (hereinafter : APA) by analogy. In the absence of any provision specifying the form and time limit for appealing against a decision by the Chairman of the Commission refusing summary proceedings to a bank following a self-report (Art. 62(1), (3) and (4) CDB 20), an appeal to the Commission must therefore be lodged within the time limit and in the form provided for in Art. 50 and 52 AP.

Finally, on the merits, we shall also mention the case of a bank sanctioned for breaching the obligation to identify the beneficial owner following the institution's failure to complete Form S in the context of a business relationship with a tax-exempt pension institution having its registered office in Switzerland. In this specific case, whilst the bank could validly rely on the exception set out in Article 33(1) of the CDB, the fact that it only clarified and documented the conditions for applying the provision 'a long time' after the relationship was established constitutes a breach of its due diligence obligations.

This summary of case law by the Commission for the first half of 2025 has the merit of containing slightly more detail than usual. Above all, practitioners will find cases here that are more interesting than the traditional 'gross breaches' regularly mentioned in recent years. Insofar as these aspects make the publication somewhat more relevant, we hope they signal a new trend that will take hold and even develop over time.

Reproduction autorisée avec la référence suivante: Valentine Delaloye, Case law from the first half of 2025, publié le 19 March 2026 par le Centre de droit bancaire et financier, https://cdbf.ch/en/1456/