

DIRECTIVE 3b

ON TRUSTS, ANSTALTEN, FOUNDATIONS AND SIMILAR ENTITIES

1. General

This Directive in no way amends or diminishes the instructions, rights and obligations contained in the other Directives, particularly Directives 2 and 3 on the verification of the identity of contracting parties and the identification of beneficial owners. It is intended to set out solutions for implementing the Anti-Money Laundering Act (hereinafter “MLA”) that are appropriate to situations involving trusts, foundations, Anstalten and, by analogy, to other entities whose contracting party and/or beneficial owner cannot always be determined in accordance with the usual rules.

A. SITUATIONS IN WHICH THE FINANCIAL INTERMEDIARY IS HIMSELF A TRUSTEE OR A BOARD MEMBER OF THE ANSTALT OR FOUNDATION2. Identifying the contracting party

A financial intermediary acting as a trustee or a board member of an Anstalt or foundation must endeavour, whenever possible, to proceed to verify the identity of the contracting party, in accordance with the procedures of Directive 2. This verification applies to the settlor of a trust, the founder of an Anstalt or foundation and to each of the persons who has transferred the ownership of assets to the trust, Anstalt or foundation.

When a financial intermediary takes office as a trustee or board member of an existing trust, foundation or Anstalt in replacement of, or in addition to a trustee or a board member of a foundation or Anstalt and in respect of a trust, a foundation or an Anstalt already in existence, he may consider the person who has appointed him to such office as being his contracting party.

3. Identification of the beneficial owner by a trustee or a board member of an Anstalt or foundation

After assets have been contributed to a trust, Anstalt or foundation, in principle the financial intermediary acting as a trustee or a board member of an Anstalt or a foundation shall consider as being beneficial owners, within the meaning of the MLA, all persons who, irrespective of their capacity or title, as a result of the founding deeds and the provisions permitting them to be amended, supplemented or revoked, have the right or the possibility of using or disposing, for their benefit, of the assets that are the object of the trust, Anstalt or foundation.

In particular, in the case of revocable structures, the financial intermediary shall consider as being beneficial owners the persons having authority to revoke the structure for their benefit (Art. 53, subs. 2, FINMA Ordinance on the Prevention of Money Laundering and Terrorism Financing [MLO-FINMA]) and, if they are different, the person(s) for whose actual benefit the structure may be revoked.

4. Identification measures where no contracting party or beneficial owner can be determined; T form

When a financial intermediary acting as a trustee or a board member of an Anstalt or foundation is confronted with one or both of the following situations:

- a) it is impossible for the financial intermediary to determine who his contracting party is, in particular when the establishment of the trust, Anstalt or foundation and/or the transfer of assets to such entities result from instruments that do not require an "exchange of concordant assent" between the financial intermediary and a third party, or result from death, or from non-consensual substitution of a previous trustee or board member of the Anstalt or foundation;
- b) it is impossible for the financial intermediary to determine who all the beneficial owners of the trust, Anstalt or foundation are, in particular when the designation of the persons who, regardless of their capacity or title, as a result of the founding deeds and the provisions permitting them to be amended or supplemented, benefit from the right or the possibility of using or disposing, for their benefit, of the assets that are the object of the trust, Anstalt or foundation, is left to the discretion of the trustee or the board of the Anstalt or foundation, or because it is not possible for some reason;

the financial intermediary acting as trustee or board member of the Anstalt or foundation shall then obtain the identity information provided for in Directive 2 in respect of the following individuals or corporate entities, to the extent that they exist:

- the settlor/founder or his actual principal if such settlor/founder is acting on a fiduciary basis
- the persons who, regardless of their capacity or title (e.g. protectors, trustees or similar officers), may as a result of the founding deeds, amend, supplement or revoke these instruments and, in particular, designate beneficiaries
- the designated beneficiaries and persons eligible to become beneficiaries

as well as information relating to any non-individualised categories of persons eligible to be designated as beneficiaries.

The financial intermediary acting as trustee or board member of the Anstalt or foundation shall record this information in a written statement (T form), which he shall complete by using all available sources of information, and which one (or more, depending on the signing procedure applicable to the entity) of the trustees or board members of the Anstalt or foundation shall sign himself.

The information contained in such written statement must be kept up-to-date and recorded in the MLA register.

5. Clarification of the origin of the funds by the trustee, Anstalt or foundation

The financial intermediary acting as a trustee or a board member of the Anstalt or foundation must, as far as possible, ensure that each of the persons who has transferred the ownership of assets (except for small amounts paid solely to cover the formalities of setting up the entity) to the trust, Anstalt or foundation shall clarify the economic origin and provenance of the assets thus transferred.

When this transfer of assets results from instruments not requiring any "exchange of concordant assent" between the financial intermediary and a third party or from instruments arising from death or prior to his taking office, the financial intermediary acting as trustee or board member of the Anstalt or foundation shall clarify as far as possible the origin and provenance of the assets prior to their transfer, by means of all available sources of information.

The search for this information and the relevant findings must be documented and the documents kept in the business relationship file.

6. Documents

Trustees and board members of Anstalten and foundations exercising their activities as financial intermediaries in Switzerland must keep the original or a copy of all the founding deeds and the provisions permitting them to be amended, supplemented or revoked. These documents must be kept in Switzerland.

B. SITUATIONS WHERE THE FINANCIAL INTERMEDIARY IS OUTSIDE THE TRUST, ANSTALT OR FOUNDATION BUT HAS A BUSINESS RELATIONSHIP WITH SUCH ENTITY

7. Verification of the identity of the contracting party for trusts or entities with or without legal personality by a financial intermediary outside such entities:

When a financial intermediary outside a trust establishes a business relationship pertaining to the trust's assets, he shall consider the trustee as being his contracting party and shall verify his identity in accordance with Directive 2. In the case of other entities with no legal personality, the financial intermediary may consider his contracting party as being any person having the capacity or power to act on behalf of the entity with which he establishes a business relationship. Entities endowed with legal personality, such as Anstalten and foundations, are themselves the contracting party of the financial intermediary who establishes a business relationship with them.

8. Identification of the beneficial owner in the case of trusts, Anstalten or foundations by a financial intermediary outside such entities

In the case of trusts, Anstalten and foundations, the financial intermediary outside these entities shall require the trustee or the board of the Anstalt or the foundation to proceed in accordance with the provisions of Directive 3, to identify the beneficial owners of the assets involved in the business relationship, as soon as it is possible to determine them, pursuant to Article 3 above.

If only a circle of beneficial owners is determined (for example "*all the settlor's descendants*"), then the identification must be carried out and if need be supplemented in relation to any person joining the circle.

However, when the number of beneficial owners is equal to or higher than twenty, the financial intermediary is required to identify only those whose rights or possibilities of use or disposal concern more than 5% of the assets being the object of the business relationship.

In all cases where all or part of the beneficial owners of the trust, Anstalt or foundation cannot, or cannot yet, be determined, the financial intermediary shall obtain from the trustee or the board of the Anstalt or the foundation a signed written statement in conformity with Article 4 of this Directive.