

Central securities deposit

Information in compliance with Article 38 CSDR and Article 73 FMIA

Recitals

1. Background

In its books, the Bank maintains individual client accounts to display the claims of its clients arising from financial instruments. As a “participant”, the Bank also maintains relationships with central securities depositories abroad and with these, maintains accounts in its name (or in the name of its nominee) in which it holds the securities of its clients.

In accordance with the Swiss Financial Market Infrastructure Act (FMIA) and the Central Securities Depositories Regulation (CSDR) applicable throughout the EEA, the Bank as “participant of a central securities depository” offers indirect participants and its other clients the choice of having their securities held in safekeeping with the central securities depository by means of omnibus client segregation or individual client segregation.

- Omnibus client segregation (standard)
The securities of a client are booked with the central securities depository separately from the holdings of the Bank but together with the holdings of all clients who chose this client segregation model.
- Individual client segregation
The securities of a client are booked with a central securities depository separately from the holdings of the Bank and also separately from the holdings of other clients.

Unless otherwise instructed by the client, the Bank uses omnibus client segregation as a standard.

2. Purpose of the document

The purpose of this document is to provide information about this choice, the differences in level of protection and the costs associated with the respective client segregation models. This includes the legal implications of the respective client segregation models and information about the insolvency law regulations applicable in Liechtenstein.

This document complies with the requirements under Article 38(6) CSDR (in relation to central securities depositories in the EEA) and Article 73 FMIA (in relation to central securities depositories in Switzerland).

Important

This document is meant to serve as a guide. It does not constitute legal advice. If you require assistance to choose the client segregation model suitable for you, we recommend that you obtain legal advice. We assume no liability for the accuracy and completeness of this information document.

Legal framework conditions

1. Legal position of clients

The Bank has the securities of clients held in safekeeping directly or indirectly with central securities depositories located in the EEA or in Switzerland. In the case of central safekeeping of securities abroad, the legal position of a client with respect to the securities held in safekeeping will be assessed based on the law of the country in which the central securities depository is located. The Bank chooses foreign central securities depositories with care and reviews them on a regular basis.

The Bank holds the existing omnibus client accounts and individual client accounts with central securities depositories in its own name, but for the account of the relevant clients. A client who has chosen individual client segregation has a contractual claim against the Bank for delivery of all securities that are booked in the individual client account assigned to that client. A client who has chosen omnibus client segregation has a contractual claim against the Bank for delivery of the share to which the client is entitled of the securities held collectively in safekeeping in the omnibus client account.

In its own books, the Bank books securities that it holds for clients separately from securities in its own holdings. In its books, the Bank is not permitted to mix client holdings with its own holdings.

2. Bank failure

In case the Bank fails, particularly in case of insolvency, the Liechtenstein courts and authorities are responsible and Liechtenstein law would apply to the corresponding proceedings.

On application by a person so entitled, a Liechtenstein court may institute insolvency proceedings against the Bank. Furthermore, under certain circumstances, the FMA may take measures to wind up a bank. These measures may involve a bail-in or the complete or partial sale, spin-off or transfer of assets and liabilities of the Bank to another legal entity.

The rights of clients to securities held by the Bank for their account in an omnibus client account or individual client account with a central securities depository are generally not affected by the failure of a bank, especially not by its insolvency. Regardless of the segregation model chosen, securities are segregated and transferred to another custodian bank designated by the client. The client needs therefore not assert his claim in insolvency proceedings for delivery of the securities held in safekeeping for the client by the Bank.

In the case that securities held in safekeeping with a central securities depository in the name of the insolvent bank cannot be clearly allocated to client holdings or holdings of the bank, it will be assumed that the securities are client holdings.

Even any winding up measure taken by the FMA does not affect the legal position of the client in relation to the securities held in safekeeping by the bank unless these securities were issued by the bank itself. This applies for both safekeeping in omnibus client accounts and individual client accounts.

Risks

This section describes the principal risks in connection with the safekeeping of securities and the respective degree of account segregation.

1. General risks of insolvency

For various reasons, there may be time delays and additional costs (such as costs for legal advice) in connection with the segregation of securities held in safekeeping for the account of the client. These risks exist for both omnibus client accounts and individual client accounts for the following reasons:

Segregation of securities takes place only after satisfaction of any counterclaims by the Bank under the custodian agreement (e.g. charges, fees). Delays in insolvency proceedings may furthermore occur due to applicable procedural rules. In the case of omnibus client accounts, a delay in segregation of the securities of an individual client may result in a delay in segregation of all client holdings held in safekeeping in this omnibus client account.

In a bank insolvency, clients generally do not have any direct claim against the central securities depository for delivery of the securities held for them in safekeeping. Such a claim may usually only be enforced by the bank liquidator arranging for transfer of the securities to another custodian bank. In a specific case, however, the participant agreement between the insolvent bank and the central securities depository may provide otherwise.

When client holdings are held in safekeeping with a central securities depository located abroad, the legal system of the country of location of the central securities depository will also apply to the insolvency of the Bank, in addition to the legal system of Liechtenstein. We therefore recommend that you include information made available by central securities depositories in your decision about the choice of client segregation model. In view of the complexity that arises as a result of the interplay of several legal systems, it may also be wise to obtain legal advice in this regard.

2. Limitation of the right of segregation

In the case of insolvency of the Bank, clients must expect that they will possibly not have their securities returned. Regardless of the segregation model chosen, this risk may exist for the following reasons:

Lien and rights of retention over securities of the client granted by the client in favour of the Bank will conflict in part or in full with segregation of the securities concerned in the insolvency of the Bank.

If the client transferred securities to the Bank as collateral by way of transfer of title or as part of securities lending or repurchase agreements (repo transactions), the Bank acquires ownership of the securities. In the case of insolvency of the Bank, the client may therefore not segregate the securities concerned but has only a contractual claim against the insolvency assets for the retransfer of similar securities. The client is thus exposed to the risk that their claim cannot be satisfied or cannot be satisfied in full.

The same applies if the client granted the Bank rights of use of the securities held for the client in safekeeping and authorised the Bank to use the securities for its own account. If the Bank exercises the right of use, ownership of the securities concerned passes to the Bank and the client has only a contractual claim for retransfer of the securities which may not be satisfied, or may not be satisfied in full, in the case of insolvency of the Bank.

3. Shortfall

If, in the case of insolvency of the Bank, the number of securities booked to client accounts is less than the number of securities to which the clients assert a total claim, there will be a shortfall. Such a shortfall may occur for various reasons. Conceivably, there may be loss or manipulation of data, accounting errors, external events and failure on the part of third parties.

Although the risk of a shortfall exists regardless of the type of client segregation model, there are different consequences depending on the segregation model.

In the case of insolvency of the Bank, securities of the same class will be segregated from the holdings of the Bank in favour of the clients to the extent of the shortfall in the case that there are not enough securities booked to the client accounts to fully satisfy the claims of the clients against the Bank.

If this is still not enough to fully satisfy the claims of the clients, the clients must be responsible for the final shortfall. In this situation, a client who chose individual client segregation needs only be responsible for the shortfall that exists in the individual client account assigned to the client. However, clients who had their securities held in safekeeping in omnibus client accounts are responsible for both the shortfall affecting their own securities and also that of other clients since the shortfall results in a proportionate reduction of the claims of all clients.

A client is entitled to a claim against the insolvency assets to the extent of the shortfall of the client that may not be satisfied or not satisfied in full.

Outside insolvency proceedings, any shortfall of securities will also be at the expense of the clients if the Bank acted on the account of the client and the Bank is not responsible for the shortfall. In the case of omnibus client accounts, there will also be communitisation in relation to the shortfall.

4. Insolvency of other parties involved

This document deals with insolvency of the Bank only. The failure of any other parties involved in the central safekeeping, such as the failure of a central securities depository, may also result in a negative impact on the rights of the clients in relation to their securities.

The rights of the Bank and the client in the case of the failure of a central securities depository are determined by the law of the country in which the central securities depository is located. Additional information on this may be found in the information documents published by the respective central securities depository.

Central securities depositories where we, as participant, have securities held in safekeeping, are required by law to publish their own information documents as to the level of protection of the client segregation models. These information documents are available upon request.

Costs

Omnibus client account (standard)	inclusive
Individual client account	CHF 5,000

The flat fee of CHF 5,000 will be charged once annually (on a pro rata basis in the first year for the months remaining and thereafter the entire flat fee annually at the beginning of the year) for each individual client account at the central securities depository regardless of the number of securities in question, and covers the fee-based service indicated above.

The entire flat fee will also be owed if you used our additional service in the year concerned, even if the financial instruments in question at the time the fee was charged are booked out again.

If we open several individual client accounts for a client with various central securities depositories, the flat fee is owed separately for each individual client account.

Central securities depositories may charge extra costs that will be invoiced to the client in addition to the flat fee.

The prices are deemed to be costs in addition to the regular custodian fees. The prices are net. If the services are subject to value added tax, the value added tax will be owed in addition.

The Bank expressly reserves the right to amend this document at any time.

Please contact your client advisor for any additional information you may require.

Glossary

Bail-In means a liquidation measure that may be used by a bank in a crisis situation in which the FMA may write down financial instruments and certain liabilities of the bank either in full or in part or convert to equity capital (shares) to stabilise the bank in this manner.

Central securities depository means a central location for the safekeeping of financial instruments within the meaning of the CSDR and the FMIA.

CSDR means Regulation (EU) No. 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories.

EEA means the European Economic Area.

FMA means the Financial Market Authority (FMA) Liechtenstein.

FMIA means the Federal Act of 19 June 2015 on Financial Market Infrastructures and Market Conduct in Securities and Derivatives Trading (Financial Market Infrastructure Act; Bundesgesetz vom 19. Juni 2015 über die Finanzmarktinfrastrukturen und das Marktverhalten im Effekten- und Derivatehandel, Finanzmarktinfrastrukturgesetz, FinfraG).

Participant means a bank that has entered into a participant agreement with a central securities depository.