

National Contact Point of Switzerland

Initial Assessment

Specific Instance regarding UBS AG and UBS Switzerland AG submitted by A.M. Trust

Berne, 24 January 2024

Executive summary

The Swiss National Contact Point (hereafter “NCP”) received a written submission by A.M. Trust (hereafter “A.M. Trust” or “submitting Party”) concerning UBS AG and UBS Switzerland AG (hereafter “UBS” or “responding Party”) on 10 August 2023 to consider a specific instance. The submission concerns alleged violations of the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct (hereafter “OECD Guidelines”) regarding human rights and consumer interests in relation with assets referred to as “Indonesian Legacy Assets” originated under the Sukarno and Suharto years (1945-1998). The submitting party accuses UBS of failing to return those assets to the depositors and victims of human rights violations.

This report on the initial assessment produced by the NCP concludes that the alleged breaches of the OECD Guidelines raised in the submission are neither sufficiently substantiated nor material within the scope of the OECD Guidelines to merit further consideration. In particular, the NCP notes, that the submission includes no information on a violation of human rights of the beneficiaries of A.M. trust. Furthermore, the NCP refers to numerous previous procedures in Switzerland and internationally, including court proceedings in the USA, on the same subject initiated by the submitting Party. As the allegations were not confirmed in any of these proceedings, the NCP sees no added value in conducting a mediation procedure. Therefore, the NCP concludes that a mediation would not contribute to the purpose and effectiveness of the OECD Guidelines.

Based on these considerations, the Swiss NCP decides not to accept the specific instance for further examination and to close the proceeding.

1 Submission and alleged violations of the OECD Guidelines

The Swiss NCP received a written submission on 10 August 2023 to consider a specific instance under the OECD Guidelines regarding UBS AG and UBS Switzerland AG headquartered in Switzerland. The specific instance was submitted by A.M. Trust established in 2013 under the Bahamas Trustee Act of 1998.

The submission concerns alleged violations by UBS of the OECD Guidelines on the Chapters IV (Human Rights) and VIII (Consumer Interests) in relation with assets held by politically exposed persons (hereafter “PEPs”). These assets are referred to as “Indonesian Legacy Assets” and originated under the Sukarno and Suharto years (1945-1998). The submitting Party accuses the responding Party of failing to return those assets to the depositors and victims of human rights violations.

According to A.M. Trust, its settlors, trustees and beneficiaries include the heirs, assignees, creditors and executors of the Estate of Adam Malik and the Estate of Salim Raharjo Soewarno and the beneficiaries and assignees of the claims by Seanox Oil P.T. and its successor in

interest Seanox Energi (Energy) Indonesia P.T. hereafter “Seanox.” Both Adam Malik, serving as Vice President of Indonesia from 1978 to 1983, and Raharjo Soewarno, serving as army officer, held governmental positions during the Sukarno and Suharto years. The submitting Party is represented by the lawyer Dr. Jonathan Levy.

According to the submitting Party, the “Indonesian Legacy Assets” were deposited with the UBS predecessors Union Bank, Swiss Bank Corporation and Credit Suisse. According to A.M. Trust, they have their origins in Indonesia under the Sukarno and Suharto years in the years of 1945-1998 and consist of bank accounts, certificates of deposit, safekeeping accounts, precious metals and other valuables and include deposits by PEPs. They cover the period of time wherein well documented human rights abuses occurred including the anti-Communist and anti-Chinese mass killings of 1965-1966, the subsequent purges by the Suharto regime 1967-1968 of leftists, religious minorities, socialists, and ethnic minorities and the invasion and military occupation of East Timor in 1975. According to the submitting Party, UBS or its predecessor banks before, during and after the time of human rights violations in Indonesia encouraged and actively sought deposits and the business of Indonesian elites including PEPs. Subsequently, many of these deposits were abandoned, lost or became dormant due to political turmoil, concealment and death. The submitting Party alleges UBS or its predecessor banks to have unjustly enriched itself as a result and has not attempted to return or account for these assets.

In its submission, A.M. Trust also documents earlier proceedings to enforce its claims. They include legal proceedings in the United States District Court for Northern California filed in 2014, a petition under Article 33 of the Swiss Federal Constitution with the Swiss Federal Department of Finance regarding the Swiss Financial Market Supervisory Authority (FINMA) in 2019, as well a petition with the Swiss Federal Parliament in 2020.

In conclusion, the submitting Party claims the violation of recommendations of the OECD Guidelines regarding Chapters IV (Human Rights) and VIII (Consumer Interests) by the responding Party.

A.M. Trust expects among other issues from UBS, to establish a commission of independent experts to study and access the archives in order to determine potential plans to return and reconstitute of funds and assets to their rightful owners, to provide an accounting of UBS’ archive of confiscated certificates, account indicia, and other financial instruments with Indonesian beneficiaries or provenance from the relevant time periods, to adjust its due diligence practice to retroactively address past and legacy human rights abuses, and to reimburse the submitting Party for its legal expenses since 2013.

2 Statement of the responding Party

On 20 October 2023, the responding Party submitted a detailed written statement to the Swiss NCP concerning the issues raised in this specific instance. In its statement, UBS rejects the allegations made in the submission by A.M. Trust. According to UBS, the NCP should not pursue the specific instance, for various reasons, including the following aspects: Nothing in UBS’s research conducted, responding to previous inquiries by A.M. Trust, suggests the hoarding of «Indonesian Legacy Assets» as defined by A.M. Trust or UBS’s alleged unjust enrichment in this respect. A.M. Trust’s claims have been dealt with in several proceedings and by several instances in and outside of Switzerland including court rulings in the USA and before the Swiss Banking Ombudsman without success for the submitting Party. According to UBS, an additional proceeding would not contribute to new findings. Furthermore, according to UBS, there is not sufficient evidence related to the alleged breaches of the OECD Guidelines as the submitting Party tries to sweep publicly reported matters into a single pattern of alleged anti-human rights banking by UBS.

Also, in response to an interpellation by the former Swiss National Council, Rudolf Strahm, in June 1998, the Federal Council stated in September 1998 that there were no specific indications of «Suharto assets» with Swiss banks. Furthermore, according to UBS, it's not bona fide to file a submission at the Swiss NCP that is to a large extent a copy of the Class Action Complaint filed against UBS by Thomas Eason on 12 September 2014 in the United States District Court for the Northern District of California trying to get a more favorable outcome.

Furthermore, UBS rejects the allegation of having violated the human rights provisions of the OECD Guidelines. According to UBS, A.M. Trust does not provide any evidence that UBS or its predecessor banks were involved in, caused or contributed to and did not address, or were directly linked by business relationships and did not prevent or mitigate, human rights violations in Indonesia during the time period from 1945 to 1998.

UBS also rejects the allegation of having breached Chapter VIII of the OECD Guidelines on consumer interests. According to UBS, a breach of this chapter could be argued, if, *inter alia*, the companies do not provide consumers with access to fair, easy to use, timely and effective non-judicial dispute resolution and redress mechanisms. UBS implemented a complaint handling process¹ and addresses feedback, complaints and reports on misconduct it receives. According to UBS, it is undisputed that it responded to all inquiries it received from A.M. Trust. Furthermore, Swiss laws on record keeping requirements do not «unfairly penalize consumers who are the victims of unforeseen political upheavals» and unjustly enrich Swiss banks, including UBS, as these assets deposited with Swiss banks would be treated as dormant assets and would follow Swiss laws and guidelines concerning dormant assets, including record keeping requirements. Furthermore, a previous request by A.M. Trust to the Swiss Banking Ombudsman came to the conclusion that «no dormant Adam Malik account had been reported» in Switzerland.

3 The proceedings of the Swiss NCP up to date

Since the receipt of the submission on 10 August 2023 the NCP took the following steps:

18.8.2023	Confirmation to acknowledge receipt of the submission to the submitting Party
13.9.2023	Forwarding the submission to the responding Party.
14.9.2023	Constitution of an ad hoc Working Group including representatives from the State Secretariat for Economic Affairs, the Federal Department of Foreign Affairs and the Federal Consumer Affairs Bureau according to the Specific Instances Procedure of the Swiss NCP ²
16.9.2023	Virtual exchange of the ad hoc Working Group with the UBS to exchange on the procedure of the specific instance.
20.10.2023	Receipt of a written statement of the responding Party with a request to seek a power of attorney from the submitting Party before sharing the written statement
7.11.2023	Virtual exchange of the ad hoc Working Group with the submitting Party to exchange on the procedure of the specific instance
27.11.23	Forwarding the written statement of the responding Party to the submitting Party after having received its power of attorney

¹ www.ubs.com/ch/en/contact.html

² www.seco.admin.ch/ncp

7.12.23	Consultation of the advisory body of the Swiss NCP after the ad hoc working group's decision of not accepting the submission
19.12.23	Draft report on Initial Assessment was sent to the submitting and responding Party for comments on possible misrepresentations of factual information.
15.01.24	Receipt of written comments by both Parties.

4 Considerations and decision of the Swiss NCP

Based on the Specific Instances Procedures of the Swiss NCP, it considers the following points in its initial assessment:

a) Identity of the party concerned and its interest in the matter

The Swiss NCP comes to the conclusion that the submitting Party has provided sufficient information regarding their interest in the issues raised. A.M. Trust has been conducting various proceedings in Switzerland and in the USA including legal procedures on the same issue. With regard to the information on the settlors, trustees and beneficiaries of the trust, the NCP relied on the information provided by the submitting Party without being able to verify it.

b) Responsibility of the Swiss NCP

As the Guidelines are addressed by Adherents to enterprises operating *"in or from"* their territory, NCPs may receive specific instances regarding issues taking place or concerning enterprises established in their country. As Indonesia, where the alleged human rights violations took place, is not an adherent country to the OECD Guidelines and UBS is headquartered in Switzerland, the Swiss NCP is competent for this submission.

c) Scope of application of the OECD Guidelines and materiality of the specific instance

UBS is a Swiss bank headquartered in Zurich, Switzerland. Besides private banking, UBS offers international wealth and asset management as well as investment banking services for private, corporate, and institutional clients. The bank has a presence in all major financial centers with offices in over 50 countries³. Accordingly, UBS is a multinational enterprise within the meaning of the OECD Guidelines.

The OECD Guidelines distinguish between impacts on matters covered by Guidelines, including human rights, through own activities of the concerned enterprise and adverse impacts directly linked to the operations, products or services of the enterprise by a business relationship. The term 'business relationship' includes relationships with business partners, entities in the supply chain and any other non-State or State entities directly linked to its business operations, products or services.

The submitting Party argues, that UBS before, during and after aforementioned period of the time of human rights violations in Indonesia, encouraged and actively sought deposits and the business of Indonesian elites including PEPs. However, UBS's connection to the "Indonesian Legacy Assets" and a possible direct link to human rights violations is not further substantiated. In its assessment, the NCP considers, that the submission includes no information on a violation of human rights of the original owners or the beneficiaries of A.M. Trust. Furthermore, there is no evidence of the alleged connection of UBS with the "Indonesian Legacy Assets". Also, the numerous previous proceedings, including court proceedings, showed no evidence of a connection between UBS or its predecessor banks and "Indonesian Legacy Assets".

³ www.ubs.com/global/en/our-firm/locations.html

Regarding the alleged breach of Chapter VIII (Consumer Interests), the submitting Party refers in its claims, among others, to the complaint mechanism of UBS. However, in the view of the NCP, those claims are not further substantiated. In its consideration, the NCP also took into account a previous request by A.M. Trust to the Swiss Banking Ombudsman, which came to the conclusion, that «no dormant Adam Malik account had been reported» in Switzerland.

The NCP concludes, that the allegations regarding alleged violations of Chapters IV (Human Rights) and VIII (Consumer Interests) are neither sufficiently substantiated nor in the scope of application of the OECD Guidelines.

d) Legal context and parallel proceedings

A.M. Trust has been carrying out several proceedings in Switzerland and internationally on the same subject of the NCP submission. They include legal proceedings in the United States District Court for Northern California filed in 2014, a proceeding with the Swiss Banking Ombudsman, a petition under Article 33 of the Swiss Federal Constitution with the Swiss Federal Department of Financing regarding the Swiss Financial Market Supervisory Authority (FINMA) in 2019, as well a petition with the Swiss Federal Parliament in 2020. According to the information available to the NCP, none of those proceedings have led to the allegations made in the submission being substantiated. The NCP assumes that these procedures were carried out in accordance with the relevant legal requirements and that extensive in-depth analyses were performed. As none of those procedures lead to any findings of a connection between UBS and the “Indonesian Legacy Assets”, the NCP sees no added value in conducting a mediation procedure.

e) Contribution to the purpose and effectiveness of the OECD Guidelines

The alleged breaches of the OECD Guidelines raised in the submission are in the NCP’s view neither sufficiently substantiated nor material within the scope of the OECD Guidelines. Furthermore, as the allegations were not confirmed in any of the numerous previous proceedings (see 4.d), the NCP sees no added value in conducting a mediation procedure. Therefore, a mediation would not contribute to the purpose and effectiveness of the OECD Guidelines.

d) Conclusion

The initial assessment of the Swiss NCP results in the conclusion that the issues raised in this submission do not fulfill the requirement for pursuing the specific instance according to the Specific Instance Procedures of the Swiss NCP. Therefore, the Swiss NCP will not give further consideration to the issues raised.

Next steps

The Swiss NCP will publish its report on the initial assessment on the Swiss NCP website.