

# ASSOCIATION OF GLOBAL CUSTODIANS

## Communication of the Association of Global Custodian's Asia Focus Committee <sup>1</sup>

15 October 2018

The Hon. Mr. Tariq Bajwa,  
Governor,  
State Bank of Pakistan,  
1.1 Chundrigar Road,  
PO Box 4896,  
Karachi,  
Pakistan

Dear Mr. Bajwa,

Re: Prudential Regulations for Corporate/Commercial Banking Regulation - M-1-Know You Customer (Prudential Regulations)

The Association of Global Custodians<sup>2</sup> (AGC), through its Asia Focus Committee, wishes to convey member banks' concerns regarding requirements to provide their Pakistan sub-custodians with copy identification documents of all directors of foreign investors holding accounts in Pakistan.

We note that the Prudential Regulations issued by the State Bank Of Pakistan (SBP) give detailed requirements for opening accounts by banks in Pakistan, including the need to collect identification documents of company directors. However, in December 2004 the SBP recognised the major difficulties associated with this specific requirement, particularly in respect of international banks. The SBP issued a waiver for Global Custodians that are international banks and which opened accounts with a sub-custodian bank in Pakistan. This waiver also applied to any ID documents of the underlying clients<sup>2</sup> of the Global Custodians.

<sup>1</sup>Ms. Karin Quek, Chairman, The Association of Global Custodians, Asia Focus Committee, c/o BNY Mellon Bank, One Temasek Avenue, #04-01 Millenia Tower Singapore 039192

<sup>2</sup> The Association of Global Custodians is an informal group of 12 financial institutions that provide securities safekeeping services and asset-servicing functions to primarily institutional cross-border investors worldwide. As a non-partisan advocacy organization, the Association represents members' common interests on regulatory and market structure matters through comment letters, white papers and interaction with legislative and regulatory authorities and financial industry organizations around the globe. The members of the Association of Global Custodians are: BNP Paribas; BNY Mellon; Brown Brothers Harriman & Co; Citibank, N.A.; Deutsche Bank; HSBC Securities Services; JP Morgan; Northern Trust; RBC Investor & Treasury Services; Skandinaviska Enskilda Banken; Standard Chartered Bank; and State Street Bank and Trust Company. For more information visit [www.theagc.com](http://www.theagc.com)

However, earlier this year, the SBP withdrew the waiver and now request that ID documents be submitted for Global Custodian bank directors and the directors of foreign institutional investors, before account opening. Furthermore, for all existing accounts, sub-custodian banks in Pakistan are required to undertake a remediation exercise to obtain directors' identification documents.

We understand that the reason for the removal of the waiver relates to the Financial Action Task Force (FATF) guidelines concerning AML/CFT and the commitment to address any strategic counter-terrorist financing-related deficiencies.

However, those difficulties that banks faced in December 2004, which we remain grateful for the SBP's understanding at the time, have not changed. Indeed because of greatly increased and enhanced privacy laws globally in regard to personal data, they have increased exponentially.

If the SBP now enforces the requirement for ID documents of directors of Global Custodian banks to be held by their sub-custodian banks in Pakistan, the requirement will pose practical implications that will result in major delays in foreign investors accessing Pakistan markets and will also impose additional costs.

In many circumstances it is simply not legally possible to pass information on bank directors identification documents, both within their countries of incorporation and with other jurisdictions. Data protection laws may prohibit and prevent the sharing of such information. Consequently in most jurisdictions, listed and/or regulated entities are exempted from providing such information. Many foreign financial institutions invest in, or provide access to their clients in multiple markets. It will become more difficult to implement additional KYC requirements required for each market. There is, therefore, a conscious effort from all parties to try and harmonise KYC processes across all markets.

The AGC readily understands the importance of complying with required AML and KYC regimes in all countries that its member banks operate and fully supports efforts by regulators globally to ensure such requirements are met by all financial institutions and their clients. However, if data privacy regulations in foreign investors' countries of incorporation prohibit the sharing of certain personal data, there is little member banks can do about it.

As highly regulated entities, members are subject to strict and substantial oversight and audit reviews on an ongoing basis by their home jurisdiction banking and market regulators; these regulatory regimes encompass regular reviews of the operation and adequacy of custodians' AML and KYC due diligence programmes as well as compliance with data privacy and disclosure of private information. Accordingly many foreign investors are

unable to provide such personal data and have to provide alternative documentation such as a Certificate of Incumbency (CoI).

A CoI identifies directors and shareholders in an organization. It also confirms their identity and ensures that they are authorized to sign legally binding documents for the company and enact important legal transactions. We have attached a sample version for the SBP's reference.

The document is in common usage in the USA and the UK, increasingly so, in order that companies comply with strict regulations prohibiting the sharing of the personal data of company officers and directors.

Would the SBP be willing to accept a CoI, or a like document for those jurisdictions where standard CoI's are not in use, in lieu of copies of directors' identification documents?

In consideration of the challenges we have outlined above in banks meeting the requirement to supply copies of directors' ID documents, the AGC would be most grateful if the SBP would reconsider its recent reversal of its waiver to our member banks to supply copies of director ID documents to its sub-custodian banks in Pakistan.

Your anticipated consideration of the AGC's request is very much appreciated. Should the SBP require any further information, please do not hesitate to contact the undersigned.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Robert Edwards', written over a horizontal line.

Robert Edwards, (as attorney in fact)  
For and on behalf of Karin Quek,  
Chairman, Asia Focus Committee,  
The Association of Global Custodians

Mr. Sajjad Ali,  
Joint Director, Securities Market Division,  
Securities and Exchange Commission of Pakistan

Mr. Aftab Ahmed Diwan,  
Chief Executive Officer,  
Central Depository Company of Pakistan

Mr. Lukman Muhammad,  
Chief Executive Officer,  
National Clearing Company of Pakistan Limited

**CERTIFICATE OF INCUMBENCY**

I, \_\_\_\_\_, the undersigned \_\_\_\_\_ of \_\_\_\_\_, a(n) \_\_\_\_\_ Corporation (the "Corporation"), do hereby certify that the following persons were designated and appointed to the offices indicated below, and that said persons do continue to hold such offices at this time, and the signatures set forth opposite the names are genuine signatures:

<u>Name</u>	<u>Title</u>	<u>Signature</u>
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IN WITNESS WHEREOF, I have hereunto subscribed my name this \_\_\_\_\_ day of \_\_\_\_\_.

\_\_\_\_\_  
Name: \_\_\_\_\_  
\_\_\_\_\_

