B Lab Controversial Issues Statement -
Banking in Switzerland

B Lab's Approach to Controversial Issues and B Corp Certification

As for-profit companies that meet the most rigorous standards of overall social and environmental performance, accountability, and transparency, Certified B Corporations are leaders in the movement to use business as a force for good.

Whether through information a company provides in its Disclosure Questionnaire, an issue raised by a third-party through B Lab's formal Complaints Process, or public discourse on B Corp certification requirements and standards, difficult and complex questions regularly arise as to how controversial issues in the world of business should affect a company's eligibility for B Corp certification. Judgments on these issues are then determined by B Lab's independent Standards Advisory Council as part of a disclosure review process.

B Lab's Disclosure Questionnaire forms the basis of the disclosure review process, which covers sensitive industries, practices, outcomes, and penalties and is based on third party screenings and standards like the IFC Excluded Industries List and International Labor Organization Conventions. Recognizing that any list of sensitive issues may be incomplete, however, B Lab also reserves the right to conduct similar reviews on issues that are not currently featured in the Disclosure Questionnaire but are deemed subject to material stakeholder concern and a potential violation of the B Corp movement's Declaration of Interdependence.

When new industries or issues where a decision making model has not already been developed arise, B Lab conducts research into the issue in order to guide the Standards Advisory Council's decision. Research is based on secondary sources compiled by B Lab staff, with the overall intent of identifying and understanding the different concerns related to the industry or issue and the different perspectives of stakeholders. This includes a review of press related to the industry and its impact, how the issue is covered by other standards, existing public policy and public policy recommendations from non-profit organizations and other topical experts, examples - potentially both good and bad - of actors within the industry, and other public commentary and perspectives. This content is in turn used to develop the framework for Standards Advisory Council review, and determines the types of questions that individual companies are required to answer as part of their review.

Particularly when it comes to industries that are controversial, there is a natural and healthy tension between the inclination to exclude all companies in those industries from eligibility for B Corp Certification, and *the need for leadership* that has the potential to transform the culture, behavior, and impact of those industries. While B Lab and its Standards Advisory Council may determine that an industry as a whole is ineligible for certification because of its negative

impacts or practices, they also recognize that in controversial industries it may be possible for companies to be meaningfully managing those potential negative impacts or controversies. In these circumstances, the need may be greatest to distinguish between good and bad actors, as well as good, better, and best performance by using rigorous standards of verified social and environmental performance, legal accountability, and public transparency. All stakeholders are best served by the existence of credible and transparent standards that facilitate improved policy, investment, purchasing, and employment decisions.

Along with the recognition that there are many diverse and reasonable perspectives as to what contributes to a shared and durable prosperity for all, B Lab and its Standards Advisory Council will make determinations regarding eligibility for B Corp Certification and, if eligible, will require companies in controversial industries, with controversial policies, or engaged in controversial practices to be transparent about their practices and how they work to manage and mitigate concerns. B Lab will also document and share these positions publicly in order to enable all stakeholders, including citizens and policymakers, to make their own judgments about a company's performance, as well as further thoughtful, constructive public discussion about important issues. Existing B Lab statements and frameworks on controversial issues are available here.

These frameworks, like B Lab's standards generally, are works in progress, and we look forward to improving upon them in the future. B Lab invites other perspectives as it continues to refine its views and, hopefully, contribute to a constructive conversation about the role of business in society.

Independent of eligibility for B Corp Certification, all companies in any industry are able to use the B Impact Assessment as an internal impact management tool to assess and improve their overall practices, and/or adopt a stakeholder governance legal structure (such as benefit corporation) appropriate to the company's current corporate structure and jurisdiction.

If you have questions or comments about B Lab's approach to the below issues, please email B Lab's Director of Standards Dan Osusky at dosusky@bcorporation.net.

Banking in Switzerland and B Corp Certification

Private banking particularly in the context of Switzerland is controversial because of its ongoing and historic tradition of “bank secrecy” that protects the identities of individual clients, and has created a lack of transparency that has at times enabled the avoidance of taxes, fraud or money laundering activities, and use by and enrichment of individuals with potentially ill-gotten wealth (such as dictators and potential criminals).

In response to interest in B Corp Certification from companies involved in Private Banking in Switzerland, B Lab’s independent Standards Advisory Council has rendered the following decision regarding eligibility:

> *Companies involved in private banking in Switzerland are eligible for B Corp Certification if they are able to demonstrate sufficient management practices in place to screen clients for criminal activities and compliance with relevant local and international regulations.*
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> *In order to assess those management practices, companies will be asked to do the following:*
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> - *Describe all relevant regulations, domestic and international, that are relevant to client confidentiality and potential criminal activities (including potential tax evasion by clients)*
> - *Describe company practices to comply with the above regulations (and copies of any relevant policies or documentation of those practices),*
> - *Share whether the company has received any fines or sanctions related to compliance with them (including descriptions of the cases, the amount of any fines, and remediation actions),*
> - *Describe company practices regarding client identification and screening practices beyond regulatory requirements, including copies of relevant policies or documentation of those practices, and whether the company is able to claim that criminal activities are not being undertaken through their practices,*
> - *Describe oversight over policies and practices for all of the above, including who oversees compliance to them and how they are reviewed / updated.*
>
> *If approved, a company is required to disclose their management practices regarding the above on their B Corp public profile.*[1]

[1] All B Corps are also subject to B Lab’s public complaint procedure. B Lab will investigate all material credible and specific claims against a B Corp that could constitute a violation of the B Corp Declaration of Interdependence, including misrepresentations to B Lab in the review process and in disclosure statements.

Overview of Issues Related to Banking in Switzerland

Swiss private banking has been historically controversial because of its tradition of "bank secrecy" that protects the identities of individual clients, and has created a lack of transparency that has at times enabled the avoidance of taxes, fraud or money laundering activities, and use by and enrichment of individuals with potentially ill-gotten wealth (such as dictators and potential criminals).

The concept of bank secrecy has been codified not only in Swiss banking culture but in law as well. While historically dating back to at least the 18th century, it took its most formal form in the Swiss Banking Act of 1934 introduced laws that made it a legal requirement to grant privacy to those opening bank accounts.[2] This law effectively made it illegal to disclose information about their clients unless they suspect a client of criminal activity.[3] While this law restricted banks from sharing their clients' information with third parties, the accounts were not anonymous, and it is therefore possible to trace an account back to a particular individual when necessary.[4]

The results of bank secrecy legislation, combined with the political stability offered by Switzerland and its political neutrality, enabled the growth of the banking industry from "offshore" clients (clients who themselves are not Swiss), and enabled clients to avoid taxes in their home jurisdictions and potentially engage in other illicit activities. As a result of this growth in the market, banking became one of the foundations of the Swiss economy, which has further served to enshire bank secrecy into Swiss culture, politics, and values despite criticism and challenges internationally. While secrecy may have enabled such activities, at least one article acknowledges that "the Swiss Bankers Association insists that anonymity does not absolve account-holders from their obligation to respect what the Swiss Bankers Association refers to as "the legal provisions of the home country with regard to cross-border business."[5]

In recent years, foreign governments, multilateral organizations, and the Swiss government have worked to decrease the level of bank secrecy in Switzerland, increase the level of transparency, and facilitate more information sharing to prevent tax avoidance. This has included pressure from Europe for Switzerland to adopt the OECD standard on administrative assistance in fiscal matters in 2009,[6] as well as voluntary non-prosecution agreements between Swiss banks and the United States Department of Justice beginning in 2013.

The US Department of Justice initiated a Swiss Bank Program to allow Swiss Banks who were not currently under criminal investigation to voluntarily disclose their potential involvement in

[2] http://www.financialsecrecyindex.com/PDF/Switzerland.pdf
[3]https://www.reuters.com/article/us-swiss-banks-specialreport/special-report-the-battle-for-the-swiss-soul-idUSBRE93H07620130418
[4] https://www.usatoday.com/story/news/world/2014/01/22/swiss-banking-secrecy/4390231/
[5] https://www.usatoday.com/story/news/world/2014/01/22/swiss-banking-secrecy/4390231/
[6]https://web.archive.org/web/20090316205240/http://www.efd.admin.ch/00468/index.html?lang=en&msg-id=25863

activities (regarding tax evasion) that might qualify as criminal offenses under U.S. law. This voluntary reporting program permitted eligible Swiss banking institutions to enter into a non-prosecution agreement (NPA) with the US government in order to remedy those cases that otherwise might be prosecutable offenses. Under the program, participating companies were required to:

- Make a complete disclosure of their cross-border activities;
- Provide detailed information on an account-by-account basis for accounts in which U.S. taxpayers have a direct or indirect interest;
- Cooperate in treaty requests for account information;
- Provide detailed information as to other banks that transferred funds into secret accounts or that accepted funds when secret accounts were closed;
- Agree to close accounts of account-holders who fail to come into compliance with U.S. reporting obligations; and
- Pay appropriate penalties

Under the program, 78 companies executed non-prosecution agreements, with total fines of $1.3B and the largest penalty being $210m.

While there are indications that the collective efforts to improve transparency and collaboration within the Swiss banking sector have contributed meaningfully towards greater transparency, it has been noted that a fair amount of secrecy and confidentiality remain within the Swiss banking industry, particularly as the programs identified above tend to be unilateral and are not necessarily applied more broadly, particularly in emerging markets. According to the Tax Justice Network, Switzerland is still ranked the highest of all countries in its Financial Secrecy Index, as a result both of its financial secrecy practices and the overall size of its "offshore financial services" which represents approximately five percent of the overall market.[7] The Financial Secrecy Index also provides a key perspective on both the history and current status of bank secrecy in Switzerland, available for review here.

Rationale:

While the norms and laws of the Swiss Banking industry were recognized, for the above described reasons, as controversial, the Standards Advisory Council determined that banking companies in Switzerland could nonetheless be eligible for B Corp Certification because of the following:

Bank secrecy is enshrined not only in the practices of Swiss banks, but as a matter of law - making it required for companies in the industry to comply. While in some circumstances B Lab's Standards Advisory Council may determine company's ineligible for certain practices

[7]Note that when evaluating Switzerland just for its "secrecy score" and not adjusted for the size of its offshore financial market, it still ranks in the upper quartile.

whether it is required by law in their jurisdiction, it is nonetheless appropriate to take legal requirements into consideration when determining eligibility. Relatedly, while B Lab and its Standards Advisory Council aim to develop universal and globally relevant standards of performance and eligibility, it is necessary to take into account local context as well.

Nonetheless, the Standards Advisory Council acknowledges that companies ought to be accountable and responsible for ensuring that their products and services are not complicit in committing, or preventing the investigation of criminal acts. While there are reasonable concerns about bank secrecy laws and how they are, and have, enabled criminal activities, it is also acknowledged that those laws nonetheless do allow meaningful actions on the part of individual companies to ensure compliance with international laws and beyond. For that reason, all Swiss banks are required to demonstrate their practices with regard to those laws and how they are proactively screening and monitoring their service offerings, and when approved, disclose those practices publicly to allow interested stakeholders to analyze them and arrive at their own judgment separate from the judgment of the Standards Advisory Council.

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The decision of the Standards Advisory Council has been informed by independent research conducted by B Lab and stakeholder consultations including industry experts and practitioners.

This statement, and subsequent disclosure requirements for companies deemed eligible for the certification, is intended to recognize that reasonable people may disagree with the position outlined by the Standards Advisory Council and should have the relevant information to make their own judgment regarding the company's social and environmental performance.

This statement is effective as of March 2019 until further judgment from the Standards Advisory Council.

Please send your feedback or questions to B Lab's Director of Standards Dan Osusky at dosusky@bcorporation.net.