



COUR D'APPEL DE PARIS

TRIBUNAL DE GRANDE INSTANCE DE
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PARQUET NATIONAL FINANCIER

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Convention judiciaire d'intérêt public

between

the National Financial Prosecutor of the Paris first instance court

and

HSBC PRIVATE BANK (SUISSE) SA, "PBR"

Federal registration number: CH-660.0.074.001-4

Represented by Mr. Francesco MORRA, *Chief executive officer*
and Ms. Rachel MATTATIA, *Head of legal department*,
9-17 Quai des Bergues, 1201, Geneva, Switzerland.

Pursuant to Article 180-2 of the Code of Criminal Procedure ;
Pursuant to Decree n°2017-660 of 27 April 2017, dealing with the *convention judiciaire d'intérêt public* and judicial bail ;

Pursuant to the Order issued by Ms Charlotte BILGER and Mr Clément HERBO and, vice-presidents in charge of investigations, dated 09th October 2017 and to the Prosecutor's requisitions dated 09th October 2017 aiming at implementing the settlement procedure provided by Article 41-1-2 of the Code of Criminal Procedure;

I – PBRS and the HSBC group

A – PBRS

1. PBRS is a *société anonyme* governed by Swiss law, with headquarters at 9-17 Quai des Bergues, in Geneva (Switzerland).
2. PBRS was incorporated in January 2001, when the HSBC group restructured its private banking activities. It is the result, principally, of the acquisition by the HSBC group, in 1999, of Republic New York Corporation and Safra Republic Holdings, which were the parent companies of RNB Republic National Bank of New York (Suisse) SA.

In 2009, PBRS merged with HSBC Guyerzeller Bank Ltd. ("HSBC GUYERZELLER"), another Swiss subsidiary of the HSBC group which also conducted private banking activities.

3. In 2006, PBRS had 2,180 employees and up to 2,469 employees in 2007. At that time, in addition to its headquarters in Geneva, PBRS also maintained branches in Zurich, Lugano, Guernsey, Hong Kong, Singapore and Nassau (Bahamas).
4. PBRS carries out all the ordinary banking and securities' dealers operations for the account of its clients and its own account. Its principal activities are asset management for private and institutional clients, to whom it provides customized services with a view to developing their assets, and providing credit facilities.
5. In 2006, the assets under management at PBRS amounted to €104,79 billion.¹ Its profit before tax and exceptional results amounted to €352,73 million.² In 2007, the assets under management at PBRS amounted to €112 billion.³ Its profit after tax amounted to €401,9 million.⁴

¹ CHF 168,6 billion as at 31 December 2006.

² CHF 567,5 million as at 31 December 2006.

³ CHF 186,5 billion as at 31 December 2007.

⁴ CHF 665,143,000 as at 31 December 2007.

In 2006 and 2007, PBRS had its own Board of Directors and its own CEO, as well as its own legal, compliance and anti-money laundering functions. At this time, employees of PBRS involved in banking activities and support functions had reporting lines to PBRS's executive management (*direction générale*). The heads of the supporting departments of PBRS (legal, compliance, IT, finance, audit, marketing and human resources) also had reporting lines, at regional level or at group level.

B – The HSBC group

6. PBRS is part of the HSBC group, one of the largest banking and financial institutions in the world.

In 2007, the international network of the HSBC group included around 10,000 locations, in 83 countries in Europe, Asia-Pacific, North and South America, Middle-East and Africa.

In 2006, the HSBC group comprised 312,000 employees worldwide and up to 330,000 in 2007. It currently comprises 235,000 employees.

In 2007, the consolidated profit before tax of the HSBC group was over USD \$24 billion.

7. The ultimate holding company of the group is HSBC Holdings Plc ("HOLDINGS"). HOLDINGS is a company incorporated under British laws with headquarters in London (United Kingdom) which employed approximately 505 individuals in 2006.
8. HOLDINGS owns shares directly or indirectly in the subsidiaries of the HSBC group, worldwide.
9. In 2006 and 2007, HOLDINGS indirectly held the equity of PBRS, through its English subsidiary HSBC BANK PLC and via the Swiss holding company, HSBC PRIVATE BANKING HOLDINGS SA SUISSE, which itself held 94.56 % of PBRS.
10. HOLDINGS is not a bank and does not itself engage in the business of banking. Its role is to define the strategic goals for the group's entities to achieve. In 2006 and 2007, the HSBC group managed its business through two customer groups, Personal Financial Services and Commercial Banking, and two global businesses, Global Banking and Markets and Global Private Banking, of which PBRS was part.

HOLDINGS also has the primary function of providing its subsidiaries with funding, either through equity or debt.

11. Between 2006 and 2008, the private banking business line (called Global Private Banking, "GPB") comprised up to 6,800 employees worldwide, out of whom around 2,500 were employed by PBRS.
12. In 2006, the GPB business line generated a profit before tax in the amount of USD 1.2 billion (with USD 333 billion of assets under management). The HSBC group was one of the top five providers in the private banking industry, worldwide.

II – STATEMENT OF FACTS

13. On 23 April 2013, an investigation was opened upon request of the Paris Public Prosecutor, who then withdrew from the case in favour of the National Financial Prosecutor, in relation to allegations regarding 2006 and 2007, characterized as:

- Unlawful financial or banking solicitation of French prospects or of prospects residing on national territory (committed by unauthorised persons) and aiding and abetting the same offence;
- Organised money-laundering of the funds received through illicit financial or banking solicitation; and
- Organised money-laundering of the proceeds of tax evasion.

The present *Convention Judiciaire d'Interêt Public* pertains to activities of PBRs's Swiss operations.

14. Following the seizure of electronic documents on 20 January 2009, found within the French domicile of a former IT employee of PBRs, investigations revealed that numerous French tax payers had not declared to the French tax authorities the assets they owned through accounts held in the books of PBRs.

15. The investigations also revealed that, for several years and in any event in 2006 and 2007, PBRs had knowingly aided and abetted these French tax payers, who wished to avoid paying taxes (income tax and wealth tax), either partially or totally, including by holding in its books bank accounts of which they were the ultimate beneficial owners, and through which these French tax payers were able to invest and conceal their assets from the French tax authorities.

16. PBRs provided its French customers with standard client services, common in the Swiss banking industry at that time, that could be used by these clients in order to conceal their assets. These services included:

- the opening of non-nominative bank accounts, encoded via an alphanumeric formula in order to keep the account holder's name confidential,
- a "holdmail" service whereby all mail was kept at the bank for clients to avoid receiving letters at their domestic address with the bank's letter-head relating to bank accounts of which they were the beneficial owners,
- as well as services allowing those clients to have their funds deposited in Switzerland or to use those funds.

17. PBRs, through certain of its relationship managers, offered these services while it had access to information enabling it to know or to suspect that certain French clients used the bank's services in order to conceal their assets from the French tax authorities.

18. In particular, certain employees of PBRs knowingly assisted clients, who were French tax payers, in concealing their assets and/or income from the French tax authorities by offering these French

tax payers a holdmail service, the opening and use of non-nominative bank accounts, as well as the ability to manage their account through in-person visits to Switzerland or through visits of their relationship manager to France, or through advice given to these French tax payers to use one or several of the services described above. Several French tax payer clients have also stated that employees of PBRs (in the context of the European Savings Directive as referenced below) also deterred them from regularising their tax situation and offered to strengthen the concealment of their assets in order to reduce the risk of being detected.

19. PBRs, through several of its employees, relationship managers and asset management companies, also advised numerous French tax payer clients to transfer their assets to accounts held in the name of offshore entities, many of which were registered in the British Virgin Islands or Panama, and offered them services to set-up these offshore entities, and open related bank accounts in addition to associated management services. The purpose of this particular service was in many cases to allow clients to avoid, from 1 July 2005, the effects of an agreement entered into between Switzerland and the European Union on the implementation of the European Savings Directive, which provided for a withholding tax for clients.
20. Furthermore, several of PBRs's relationship managers travelled from Switzerland to France, in order to prospect new clients or to offer new financial products to clients of PBRs or to encourage those holding bank accounts at various competing banks to consolidate their assets with PBRs. The objective of this solicitation strategy was to increase the amount of assets held by French tax payers under PBRs's management.
21. Based on the analysis performed by the investigators, the prosecution considers that the list of bank accounts found in the IT files seized at the domicile of PBRs's former employee included more than 8,900 names of French tax payers. During the 2006 to 2007 period alone, the amount of assets held by French tax payers with PBRs's operations in Geneva, Lugano and Zürich, has been valued to be at least €1,638,723,980.
22. Although it cannot be ruled out that a small proportion of these assets were held in accounts which had been declared to the French tax authorities prior to the opening of this investigation, it has been found that most of the concerned French clients did not declare their accounts or the accounts of which they were the beneficial owners in the books of PBRs to the French tax authorities.
23. It also stems from the investigation that, at the same time, HSBC GUYERZELLER also allegedly aided and abetted numerous French tax payers in concealing assets from the French tax authorities.
24. After the merger of PBRs and HSBC GUYERZELLER which took place in April 2009, all assets held by French tax payers in the books of these two entities were combined in the sole books of PBRs.

25. Based on the evidence gathered in the investigation, the prosecution assesses the combined amount of the French assets under management in the Swiss operations of PBRS (Geneva, Zurich and Lugano) and HSBC GUYERZELLER to be at least €6 billion.
26. PBRS was placed under investigation on grounds of:
- Unlawful financial and banking solicitation of French prospects or prospects residing on national territory committed by unauthorised persons, which is prohibited and punished by Articles L353-2, L353-3, L341-3, L341-4, L341-1, L341-2 of the Monetary and Financial Code, and Article 121-2 of the Criminal Code ; and
 - Aggravated money-laundering of tax evasion proceeds, which is prohibited and punished by Articles 121-2, 324-1, 324-2 (1°) of the Criminal Code.
27. Pursuant to article 180-2 of the Code of criminal procedure, PBRS acknowledges these facts and accepts their legal characterization.
28. As the parent holding company of the HSBC group, HOLDINGS had established general rules and principles as well as mandatory general guidelines applicable to all of the group's subsidiaries and activities.
29. These policies prohibited in particular the provision of any affirmative assistance in tax fraud, provided for anti-money-laundering rules, and rules regarding cross-border activities. At the time, in the HSBC group, these overarching rules provided that it was the primary responsibility of the customer groups, business lines and operational subsidiaries to implement the principles established by HOLDINGS and to ensure that the standards set at the group level were being met.
30. The HSBC group has put forward that it was run in a federated way with many decisions taken at the level of each operating entity. In addition, HOLDINGS indicated that historically and up until 2010, the compliance culture and standards of due diligence at PBRS were less developed than they are today.
31. Like other activities of the HSBC group, the GPB business line was coordinated at the global level by an executive committee which included entity CEOs and certain executives of functions who operated in the private banking business line. In 2006 and 2007, the CEO of PBRS was a member of this executive committee, which was chaired by a Chairman, appointed by an internal committee of HOLDINGS.
32. The role of the GPB executive committee ("GPB exco") was to follow at a high level the strategic activities of all private banks in the HSBC group and to touch upon and coordinate the main lines of their operational strategy and the principles which the HSBC group's private banks were meant to implement, including with regard to the applicable legal and compliance rules.
33. The HSBC group has acknowledged past control failures vis-à-vis its Swiss subsidiaries.

34. The HSBC group has indicated that since 2011, it has initiated a complete overhaul of its structure, controls and procedures aimed at adapting its risk profile. In this context, the HSBC group declares that it has:

- increased its control over the activities of its operating subsidiaries, in particular through the strengthening of business and functional reporting lines towards HOLDINGS,
- established a tighter central control around its customers,
- withdrawn from a number of markets, and
- been putting in place strict financial crime, regulatory compliance and tax transparency standards, and reinforced the enforcement of these rules through global compliance teams.

35. PBRs also indicates that, from the late 2000s, the company implemented reforms to ensure greater transparency which resulted in a complete overhaul of PBRs's business and management. In particular, PBRs indicates that:

- the senior management of PBRs has changed substantially with, for example, new CEOs, a new Head of Regulatory Compliance and a new Head of Financial Crime Compliance,
- it ceased providing certain services to its clients, such as holdmail,
- numerous clients were exited, and a tax transparency policy was established and implemented with respect to existing clients, under which PBRs has reviewed the account file of every open account for a set of potential indicators of non-compliance with tax obligations.

36. In addition, PBRs indicates that in 2014, the total number of accounts serviced was reduced by more than 70% compared to 2007.

III – PUBLIC INTEREST FINE (AMENDE D'INTERET PUBLIC)

37. Pursuant to Article 41-1-2 of the Code of Criminal Procedure, the amount of the public interest fine must be established in proportion to the advantages drawn from the offences, up to 30% of the company's average yearly turnover which must be calculated on the basis of the three yearly turnovers available at the time the offences are found.

38. The gross turnovers – excluding exceptional results – disclosed by PBRs for 2014, 2015 and 2016 amount to:

Year	Gross turnover (CHF) - excluding exceptional results	Exchange rate CHF/EUR as at 31/12	Gross turnover (EUR) - excluding exceptional results
2014	720,304,000	1 CHF = 0.83174	599,105,649
2015	582,028,000	1 CHF = 0.91954	535,198,027
2016	477,613,000	1 CHF = 0.93266	445,450,541

This amounts to **an average gross turnover of € 526,584,739** over the 2014-2016 time period.

The maximum amount of the public interest fine incurred, without prejudice to the damages to be paid to the victim, is therefore €157,975,422.

39. Pursuant to the evidence gathered, the overall amount of assets under PBRs's management in 2007 was €112 billion. During the same year, PBRs made a profit of €401.9 million.
40. The investigation led to an assessment of concealed assets held by French tax payers via PBRs bank accounts, of which they were the direct or beneficial owners, of approximately €1,638,723,980.
41. In total, the amount of the French assets in the books of both the Swiss operations of PBRs and HSBC GUYERZELLER, prior to 2009, has been valued by the prosecution to be at least €6 billion.
42. Considering the above, the profit resulting from the management of the overall assets of French tax payers is valued for the purposes of the present *Convention judiciaire d'intérêt public* at **€86,400,000** for the years 2006 to 2009.

This amount is the one which PBRs shall pay as a disgorgement of the profits derived from the offences.

43. The particular seriousness of the facts ascribed to PBRs, as well as their continuing nature given that they were committed during several years, call for an additional penalty.
44. PBRs, which neither voluntarily disclosed the facts to the French criminal authorities, nor acknowledged its criminal liability during the course of the investigation, only offered minimal cooperation in the investigation. However, one must recognise that when the investigation started and until December 2016, the French legal system did not provide for a legal mechanism encouraging full cooperation.

Therefore, it is justified to set the amount of the additional penalty at **€71,575,422**, such that the total amount of the penalty that PBRs shall pay shall be equal to the maximum fine incurred pursuant to article 41-1-2 of the Code of Criminal Procedure.

IV – COMPENSATION OF THE DAMAGE SUFFERED BY THE VICTIM

45. On 2 May 2013, the French State registered as a victim in the investigation, as regards the allegations of aggravated money-laundering of tax evasion proceeds.

46. In the letter sent by its counsel Me Normand-Bodard, the State valued its loss by reference to the relevant amount of assets under management, to which it applied a specific tax rate resulting from the observations of the service in charge of processing the regularised tax statements (*Sservice des traitements des déclarations rectificatives (STDR)*).
47. Taking into account both the amount of assets already regularised with the French tax authorities and the potential regularisations to come as a result of the criminal and administrative proceedings currently pending, the amount of the State's loss that shall be borne by PBRS is valued for the purposes of the present *Convention judiciaire d'intérêt public* at **€ 142,024,578**.

V – ACCEPTANCE OF THE SETTLEMENT AGREEMENT

48. PBRS will notify the National Financial Prosecutor of its acceptance of this settlement agreement by registered letter with acknowledgment of receipt or express declaration to the clerk of the National Financial Prosecutor within **FIFTEEN DAYS** from receipt of the present.

VI – EXECUTION OF THE SETTLEMENT AGREEMENT

49. Pursuant to the present settlement agreement, PBRS undertakes to pay the following amounts:

	Public interest fine (€)	Damages (€)	TOTAL (€)
Disgorgement of profits	86,400,000	142,024,578	300,000,000
Penalty	71,575,422		
TOTAL	157,975,422		

50. PBRS undertakes to proceed with the payment of the public interest fine set out above by certified bank check as prescribed by Article R.15-33-60-6 of the Code of Criminal Procedure and of the damages owed to the State within **TEN DAYS** following the date on which the present *Convention Judiciaire d'Intérêt Public* will become final pursuant to paragraph 10 of article 41-1-2 of the Code of Criminal Procedure.
51. As the parent company of the HSBC group, HOLDINGS hereby warrants that PBRS has sufficient capital to ensure the payment of the public interest fine and the damages to the French State as stated in this agreement.

52. Further to the third paragraph of article 180-2 of the Code of Criminal Procedure, the judicial control measures ordered will be maintained for PBRS until the approval of the *Convention Judiciaire d'Intérêt Public*.

In Geneva, on

Francesco MORRA

Rachel MATTATIA

In Paris, on

Eliane HOULETTE
Financial Prosecutor

Eric RUSSO
First Deputy Financial Prosecutor