

Federal Act on Financial Institutions

(Financial Institutions Act, FinIA)

of ...

The Federal Assembly of the Swiss Confederation,
based on Articles 95 and 98 paragraphs 1 and 2 of the Federal Constitution ¹,
and having considered the Federal Council Dispatch of ...
decrees:

Chapter 1: General Provisions

Section 1: Subject Matter, Purpose and Scope of Application

Article 1 Subject matter and purpose

¹ This Act governs the requirements for acting as a financial institution.

² Its purpose is to protect the investors and clients of financial institutions and ensure the proper functioning of the financial market.

Article 2 Scope of application

¹ Financial institutions within the meaning of this Act are as follows, irrespective of their legal form:

- a. portfolio managers (Art. 16 para. 1);
- b. trustees (Art. 16 para. 2);
- c. managers of collective assets (Art. 20);
- d. fund management companies (Art. 28);
- e. securities firms (Art. 37).

² The provisions of this Act do not apply to:

- a. persons who manage solely the assets of persons with whom they have business or family ties;
- b. persons who manage assets solely within the context of employee participation schemes;

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¹ SR 101

- c. lawyers, notaries and their auxiliaries insofar as their activity is subject to professional confidentiality in accordance with Article 321 of the Swiss Criminal Code² or Article 13 of the Lawyers Act of 23 June 2000³, as well as the legal entities in which these persons are organised;
- d. persons who manage assets within the framework of a legally regulated mandate;
- e. the Swiss National Bank (SNB) and the Bank for International Settlements (BIS);
- f. occupational pension schemes and other institutions whose purpose is to serve occupational pensions (occupational pension schemes);
- g. social security institutions and compensation funds;
- h. insurance companies as defined in the Insurance Supervision Act of 17 December 2004⁴;
- i. banks pursuant to the Banking Act of 8 November 1934⁵.

Article 3 Group parent companies and significant group companies

¹ The following are subject to the insolvency law measures under Article 63 paragraph 1 provided they are not subject to the bankruptcy jurisdiction of the Swiss Financial Market Supervisory Authority (FINMA) within the scope of the supervision of the individual institution:

- a. group parent companies of a financial group or financial conglomerate which have their registered office in Switzerland;
- b. those group companies which have their registered office in Switzerland and perform significant functions for activities which require authorisation (significant group companies).

² The Federal Council shall set the criteria for assessing significance.

³ FINMA shall identify significant group companies and keep a publicly accessible list of said companies.

Section 2: Common Provisions

Article 4 Duty to obtain authorisation

¹ Financial institutions under Article 2 paragraph 1 require authorisation from the competent supervisory authority.

² SR 311.0
³ SR 935.61
⁴ SR 961.01
⁵ SR 952.0

² They may be entered in the commercial register only after authorisation has been issued.

³ Financial institutions in accordance with Article 2 paragraph 1 letter c that are already subject to other equivalent official supervision in Switzerland are exempt from the duty to obtain authorisation.

Article 5 Authorisation chain

¹ Authorisation to operate as a bank within the meaning of the Banking Act of 8 November 1934⁶ also authorises an entity to operate as a securities firm, a manager of collective assets, a portfolio manager and a trustee.

² Authorisation to operate as a securities firm also authorises an entity to operate as a manager of collective assets, a portfolio manager and a trustee.

³ Authorisation to operate as a fund management company also authorises an entity to operate as a manager of collective assets and a portfolio manager.

⁴ Authorisation to operate as a manager of collective assets also authorises an entity to operate as a portfolio manager.

Article 6 Authorisation conditions

¹ Any party that meets the conditions set out in this section and the specific conditions that apply to individual financial institutions is entitled to authorisation.

² The Federal Council may define additional authorisation conditions if this is necessary for implementing recognised international standards.

Article 7 Change in facts

¹ The financial institution shall notify the supervisory authority of any changes in the facts on which its authorisation is based.

² If the changes are of material significance, the financial institution must obtain prior authorisation from the supervisory authority in order to pursue its activity.

Article 8 Organisation

¹ The financial institution must establish appropriate corporate management rules and be organised in such a way that it can fulfil its statutory duties.

² It shall identify, measure, control and monitor its risks, including legal and reputational risks, and organise an effective internal control system.

³ The Federal Council shall set the minimum organisational requirements of financial institutions, taking account of their different business activities and risks in the process.

⁶ SR 952.0

Article 9 Place of management

¹ The financial institution must effectively be managed from Switzerland. General directives and decisions within the context of group supervision are excluded if the financial institution forms part of a financial group that is subject to appropriate consolidated supervision by foreign supervisory authorities.

² The persons entrusted with managing the financial institution must be resident in a place from which they may effectively exercise such management.

Article 10 Guarantee of irreproachable business conduct

¹ The financial institution and the persons responsible for its administration and management must provide the guarantee of irreproachable business conduct.

² Moreover, the persons responsible for the administration and management of the financial institution must enjoy a good reputation and have the specialist qualifications required for their functions.

³ Qualified participants in a financial institution must also enjoy a good reputation and ensure that their influence is not detrimental to prudent and sound business activity.

⁴ Persons who directly or indirectly hold at least 10% of the share capital or votes or who can significantly influence its business activity in another manner are deemed to be qualified participants in a financial institution.

⁵ Each person must notify the supervisory authority before directly or indirectly acquiring or disposing of a qualified participation in accordance with paragraph 4 in a financial institution. This notification duty also applies if a qualified participation is increased or reduced in such a way as to reach, exceed or fall below the thresholds of 20%, 33% or 50% of the share capital or votes.

⁶ The financial institution shall notify the supervisory authority of the persons who meet the conditions of paragraph 4 as soon as it becomes aware of the same.

Article 11 Public offer of securities on the primary market

Persons operating primarily in the financial sector may perform the following activities only if they have authorisation as a securities firm as defined in this Act or as a bank in accordance with the Banking Act of 8 November 1934⁷:

- a. underwriting securities issued by third parties and offering these to the public on a primary market on a commercial basis;
- b. creating derivatives in the form of securities and offering these to the public on the primary market on a commercial basis.

⁷ SR 952.0

Article 12 Protection against confusion and deception

¹ The name of the financial institution must not lead to confusion or deception.

² The terms "portfolio manager", "trustee", "manager of collective assets", "fund management company" or "securities firm" may be used, alone or in compound terms, in the company name, the description of its business purpose or commercial documents only if the corresponding authorisation has been obtained. Article 48 paragraph 3 and Article 54 paragraph 3 are reserved.

Article 13 Delegation of tasks

¹ Financial institutions may delegate a task solely to third parties that possess the necessary skills, knowledge and experience and that have the required authorisations. They shall carefully instruct and supervise the appointed third parties.

² The supervisory authority may make the delegation of investment decisions to a person located abroad subject to an agreement on cooperation and information exchange between FINMA and the competent foreign supervisory authority, in particular if such an agreement is required under the other country's legislation.

Article 14 International business

A financial institution must notify the supervisory authority before:

- a. establishing, acquiring or closing a foreign subsidiary, branch or representation;
- b. acquiring or surrendering a qualified participation in a foreign company.

Article 15 Ombudsman

¹ Financial institutions must affiliate to an ombudsman at the latest on assuming their activity.

² The provisions of Title 5 of the Financial Services Act of ...⁸ on ombudsmen apply by analogy.

Chapter 2: Financial Institutions**Section 1: Portfolio Managers and Trustees****Article 16** Definitions

¹ A portfolio manager is a person mandated to manage assets on a commercial basis in the name of and on behalf of clients or who may dispose of clients' assets in any other manner.

⁸ SR ...

² A trustee is a person who on a commercial basis manages or disposes of a separate fund for the benefit of a beneficiary or for a specified purpose based on a restricted grant given namely in the instrument creating a trust within the meaning of the Hague Convention of 1 July 1985⁹ on the Law Applicable to Trusts and on Their Recognition.

Article 17 Legal form

¹ Portfolio managers and trustees which have their registered office or place of residence in Switzerland must have one of the following legal forms:

- a. sole proprietorship;
- b. commercial enterprise;
- c. cooperative.

² Portfolio managers and trustees must be listed in the commercial register.

Article 18 Tasks

¹ The portfolio manager manages individual portfolios.

² The trustee manages the separate fund, ensures its value is maintained and employs it in a restricted manner.

³ Portfolio managers and trustees may also provide the following services in particular:

- a. investment advice;
- b. portfolio analysis;
- c. offering of financial instruments.

Article 19 Collateral

¹ Portfolio managers and trustees must have adequate collateral or take out professional liability insurance.

² The Federal Council shall set the minimum amounts for the collateral and the sum to be insured under professional liability insurance.

Section 2: Managers of Collective Assets

Article 20 Definition

¹ A manager of collective assets is a person who manages assets on a commercial basis in the name and on behalf of:

⁹ SR 0.221.371

- a. collective investment schemes;
- b. occupational pension schemes.

² Portfolio managers within the meaning of Article 16 paragraph 1 are:

- a. managers of collective assets in accordance with paragraph 1 letter a whose investors are qualified within the meaning of Article 10 paragraphs 3 or 3^{ter} of the Collective Investment Schemes Act of 23 June 2006¹⁰ and fulfil one of the following conditions:
 - 1. The assets of collective investment schemes under their management, including the assets acquired through the use of leveraged finance, amount in total to no more than CHF 100 million.
 - 2. The assets of collective investment schemes under their management do not exceed CHF 500 million in total and do not include leveraged financial instruments. The collective investment schemes give no right to redemption in the first five years after making the first investment.
- b. managers of collective assets in accordance with paragraph 1 letter b who manage the assets of occupational pension schemes totalling no more than CHF 100 million and manage no more than 20% of the assets of an individual occupational pension scheme.

³ Portfolio managers in accordance with paragraph 2 may request authorisation as managers of collective assets provided this is required by the state where the collective investment scheme is established or offered or where the occupational pension scheme is managed. The Federal Council shall regulate the details.

Article 21 Legal form

Managers of collective assets who have their registered office in Switzerland must have the legal form of a commercial enterprise.

Article 22 Tasks

¹ Managers of collective assets are responsible for the portfolio and risk management of the assets entrusted to them.

² In addition, managers of collective assets may conduct the fund business, in particular, for foreign collective investment schemes. If the foreign country's law requires an agreement on cooperation and information exchange between the supervisory authority and the foreign supervisory authorities of relevance for the fund business, they may perform this business only where such an agreement exists.

³ They may also perform administrative activities within the scope of these tasks.

¹⁰ SR 951.31

Article 23 Delegation of tasks

¹ Managers of collective assets may delegate tasks to third parties, provided this is in the interests of efficient management.

² Any person who delegates the management of the assets of an occupational pension scheme or collective investment scheme to a manager of collective assets remains responsible for adhering to the relevant investment guidelines.

Article 24 Minimum capital and collateral

¹ Managers of collective assets must possess the required minimum capital. This must be fully paid up.

² The supervisory authority may permit managers of collective assets in the form of partnerships to provide appropriate collateral instead of minimum capital.

³ The Federal Council shall regulate the amount of the minimum capital and of the collateral. It may furthermore make the granting of authorisation contingent upon possession of professional liability insurance.

Article 25 Own funds

¹ Managers of collective assets must possess an appropriate level of own funds.

² The Federal Council shall set the amount of own funds based on the business activity and the risks.

Article 26 Group and conglomerate supervision

¹ Where a financial group is dominated by a manager of collective assets or a financial conglomerate is dominated by a manager of collective assets, the supervisory authority may make these subject to group or conglomerate supervision in accordance with recognised international standards.

² Two or more companies are deemed to be a financial group if:

- a. at least one of them operates as a manager of collective assets;
- b. they operate primarily in the financial sector; and
- c. they form an economic unit or other circumstances suggest that one or more of the companies under individual supervision is *de jure* or *de facto* obliged to provide assistance to group companies.

³ A financial conglomerate is a financial group operating primarily in the field of the management of collective assets and comprising at least one insurance company of considerable economic significance.

⁴ The provisions of the Banking Act of 8 November 1934¹¹ on financial groups and financial conglomerates apply by analogy.

¹¹ SR 952.0

Article 27 Change of manager of collective assets

A manager of collective assets shall give advance notice of the transfer of its rights and obligations to another manager of collective assets to the relevant supervisory authority for the collective investment scheme or occupational pension scheme.

Section 3: Fund Management Companies**Article 28** Definition

A fund management company is an entity that manages investment funds independently in its own name and for the account of investors.

Article 29 Legal form and organisation

¹ The fund management company must be a company limited by shares that has its registered office and head office in Switzerland.

² The share capital shall be divided into registered shares.

³ The persons managing the fund management company and the custodian bank must be independent of each other's company.

⁴ The main purpose of the fund management company is to conduct the fund business; this consists of the offering of units in the investment fund and its management and administration.

Article 30 Tasks

In addition to conducting the fund business in accordance with the provisions of the Collective Investment Schemes Act of 23 June 2006¹², the fund management company may perform the following other services, in particular:

- a. the safekeeping and technical management of collective investment schemes;
- b. the administration of an investment company with variable capital (SICAV).

Article 31 Delegation of tasks

¹ The fund management company may not delegate the management of the investment fund to third parties. However, it may delegate investment decisions as well as specific tasks to third parties, provided this is in the interests of efficient management.

² In the case of collective investment schemes for which the facilitated offering of shares exists in the European Union based on a treaty, investment decisions may not be delegated to either the custodian bank or any other companies whose interests

¹² SR 952.31

may conflict with those of the manager of collective assets or the fund management company or the investors.

Article 32 Minimum capital

¹ The fund management company must possess the required minimum capital. This must be fully paid up.

² The Federal Council shall regulate the amount of the minimum capital.

Article 33 Own funds

¹ There must be an appropriate ratio between the fund management company's own funds and the overall assets of the collective investment schemes under its management. The Federal Council shall specify this ratio.

² The supervisory authority may in certain cases ease or tighten the provisions.

³ The fund management company may not invest the prescribed level of its own funds in fund units that it has issued itself or lend its own funds to its shareholders or any natural or legal person with whom they have business or family ties. The holding of liquid funds with the custodian bank shall not constitute a loan.

Article 34 Rights

¹ The fund management company is entitled to:

- a. receive the fees stipulated in the fund contract;
- b. be exempt from any liabilities which may have arisen in the course of the proper execution of its tasks;
- c. receive reimbursement of the expenses incurred in connection with such liabilities.

² These payments are made from the assets of the investment fund. Investors are not held personally liable.

Article 35 Change of fund management company

¹ The rights and duties of the fund management company may be transferred to another fund management company.

² In order to be effective, the transfer agreement between the outgoing and incoming fund management company must be made in writing or in another form demonstrable via text and must the consent of the custodian bank and the approval of the supervisory authority.

³ Prior to approval by the supervisory authority, the outgoing fund management company shall publish the proposed transfer in the publication media.

⁴ The investors must be informed in these publications of their right to lodge objections with the supervisory authority within 30 days of publication. The procedure is based on the Administrative Procedure Act of 20 December 1968¹³.

⁵ The supervisory authority shall approve the change of fund management company if the legal requirements are met and the continuation of the investment fund is in the interest of the investors.

⁶ It shall publish the decision in the publication media.

Article 36 Segregation of the fund assets

¹ In the event of the bankruptcy of the fund management company, assets and rights belonging to the investment fund shall be segregated in favour of the investors. The fund management company's claims under Article 34 are reserved.

² Debts incurred by the fund management company that do not result from the fund contract may not be set off against claims belonging to the investment fund.

Section 4: Securities Firms

Article 37 Definition

A securities firm is an entity that, on a commercial basis:

- a. trades in securities in its own name for the account of clients;
- b. trades in securities for its own account on a short-term basis, operates primarily on the financial market and:
 1. could thereby jeopardise the proper functioning of the financial market;
or
 2. is a member of a trading venue; or
- c. trades in securities for its own account on a short-term basis and publicly quotes prices for individual securities upon request or on an ongoing basis (market maker).

Article 38 Legal form

A securities firm that has its registered office in Switzerland must have the legal form of a commercial enterprise.

Article 39 Foreign-controlled securities firms

The provisions of the Banking Act of 8 November 1934¹⁴ on foreign-controlled banks apply by analogy.

¹³ SR 171.021

¹⁴ SR 952.0

Article 40 Tasks

¹ In particular, the securities firm may:

- a. hold accounts for settling securities trade within the context of its activity under Article 37 for clients, either itself or with third parties;
- b. act as custodian of clients' securities, either itself or in its own name with third parties;
- c. underwrite securities issued by third parties as a firm commitment or on commission and offer these to the public on the primary market on a commercial basis;
- d. create derivatives itself on a commercial basis, which it offers to the public on the primary market on its own behalf or that of another party.

² It may accept deposits from the public on a commercial basis within the context of its activity under paragraph 1 letter a.

³ It is prohibited from:

- a. accepting deposits from the public on a commercial basis or publicly soliciting such deposits in order to finance for its own account in any manner whatsoever an unspecified number of persons or companies with which it does not form an economic unit;
- b. refinancing itself substantially through two or more securities firms that have no controlling participation in it in order to finance for its own account in any manner whatsoever an unspecified number of persons or companies with which it does not form an economic unit;

⁴ The Federal Council may regulate the use of deposits from the public.

Article 41 Minimum capital and collateral

¹ Securities firms must possess the required minimum capital. This must be fully paid up.

² The supervisory authority may permit securities firms in the form of partnerships to post appropriate collateral instead of the minimum capital.

³ The Federal Council shall regulate the amount of the minimum capital and of the collateral.

Article 42 Own funds, liquidity and risk diversification

¹ Securities firms must have sufficient own funds and liquidity individually and on a consolidated basis.

² They must diversify their risks appropriately.

³ The Federal Council shall regulate the risk diversification requirements. It shall set the amount of own funds and liquidity based on the business activity and the risks. The supervisory authority may issue implementing regulations.

⁴ Where there are legitimate grounds for so doing, the supervisory authority may ease the requirements, provided this does not adversely affect the protective purpose of the law, or order more stringent requirements.

Article 43 Additional capital

The provisions of the Banking Act of 8 November 1934¹⁵ on additional capital apply by analogy.

Article 44 Accounting

The provisions of the Banking Act of 8 November 1934¹⁶ on accounting apply by analogy.

Article 45 Group and conglomerate supervision

¹ Two or more companies are deemed to be a financial group dominated by a securities firm if:

- a. at least one of them operates as a securities firm;
- b. they operate primarily in the financial sector; and
- c. they form an economic unit or other circumstances suggest that one or more of the companies under individual supervision is *de jure* or *de facto* obliged to provide assistance to group companies.

² A financial conglomerate dominated by a securities firm is a financial group as defined in paragraph 1 operating primarily in the field of securities trading and comprising at least one insurance company of considerable economic significance.

³ The provisions of the Banking Act of 8 November 1934¹⁷ on financial groups and financial conglomerates apply by analogy.

Article 46 Record-keeping duty

The securities firm must keep a record of the orders and transactions it conducts together with all the details necessary for their traceability and for the supervision of its activity.

Article 47 Reporting duty

¹ The securities firm must report all of the information necessary for transparent securities trading.

² FINMA shall regulate which information is to be reported to whom and in what form.

¹⁵ SR 952.0

¹⁶ SR 952.0

¹⁷ SR 952.0

³ Provided this is required for the purposes of the Act, the Federal Council may also impose the reporting duty in accordance with paragraph 1 on persons and companies that buy and sell securities on a commercial basis but without the involvement of a securities firm. Any such company must instruct an audit firm licensed by the Federal Audit Oversight Authority in accordance with Article 9a paragraph 1 of the Auditor Oversight Act of 16 December 2005¹⁸ to audit compliance with this reporting duty and must inform FINMA.

Section 5: Branches

Article 48 Duty to obtain authorisation

¹ Authorisation from the supervisory authority is required by financial institutions that have their registered office abroad (foreign financial institutions) and that wish to establish a branch in Switzerland that employs persons who perform any of the following activities in the name of the foreign financial institution on a permanent commercial basis in Switzerland or from Switzerland:

- a. portfolio management;
- b. portfolio management for collective investment schemes or occupational pension schemes;
- c. securities trading;
- d. conclusion of transactions; or
- e. client account management.

² Foreign fund management companies may not establish branches in Switzerland.

³ The Federal Council may sign international treaties allowing financial institutions from the treaty states to open a branch without requiring authorisation from the supervisory authority if both sides recognise the equivalent nature of the respective regulation of financial institutions' activity and the supervisory measures.

Article 49 Authorisation conditions

The supervisory authority shall grant the foreign financial institution authorisation to establish a branch if:

- a. the foreign financial institution:
 1. is sufficiently organised and has adequate financial resources and qualified personnel to operate a branch in Switzerland,
 2. is subject to appropriate supervision that includes the branch, and
 3. proves that the business name of the branch can be entered in the commercial register;

¹⁸ SR 221.302

- b. the competent foreign supervisory authorities:
 - 1. do not raise any objections to the establishment of a branch,
 - 2. undertake to notify the competent supervisory authority immediately if any circumstances arise that could seriously prejudice the interests of the investors or clients, and
 - 3. provide FINMA with administrative assistance;
- c. the branch:
 - 1. fulfils the conditions set out in Articles 8 to 10 and has a set of regulations that accurately describes the scope of business and defines an administrative or operational organisation corresponding to its business activity, and
 - 2. fulfils the additional authorisation conditions under Articles 50 to 53.

Article 50 Requirement of reciprocity

The supervisory authority may make the granting of authorisation to establish a branch of a foreign financial institution additionally contingent upon a guarantee of reciprocity with the states in which the foreign financial institution or the foreigners with qualified participations have their place of residence or registered office.

Article 51 Financial groups

Where a foreign financial institution is part of a financial group or financial conglomerate, the supervisory authority may make the granting of authorisation contingent upon it being subject to appropriate consolidated supervision by foreign supervisory authorities.

Article 52 Collateral

The supervisory authority may make the granting of authorisation to establish a branch of a foreign portfolio manager, a foreign trustee or a foreign manager of collective assets additionally contingent upon the posting of collateral if so required for the protection of investors or clients.

Article 53 Exemptions

The Federal Council may make provision for exempting branches of foreign financial institutions from certain provisions of this Act.

Section 6: Representations

Article 54 Duty to obtain authorisation

¹ Foreign financial institutions require authorisation from the supervisory authority if they employ persons in Switzerland who work for them on a permanent and commercial basis in Switzerland or from Switzerland in another manner than as per

Article 48 paragraph 1, specifically where these persons forward client orders to them or represent them for marketing or other purposes.

² Foreign fund management companies may not establish representations in Switzerland.

³ The Federal Council may sign international treaties allowing financial institutions from the treaty states to open a representation without requiring authorisation from the supervisory authority if both sides recognise the equivalent nature of the respective regulation of financial institutions' activity and the supervisory measures.

Article 55 Authorisation conditions

¹ The supervisory authority shall grant the foreign financial institution authorisation to establish a representation if:

- a. the foreign financial institution is subject to appropriate supervision;
- b. the competent foreign supervisory authorities do not raise any objections to the establishment of the representation;
- c. the persons entrusted with its management provide the guarantee of irreproachable business conduct.

² The supervisory authority may make authorisation additionally contingent upon the granting of reciprocity by the state in which the foreign financial institution has its registered office.

Article 56 Exemptions

The Federal Council may make provision for exempting representations of foreign financial institutions from certain provisions of this Act.

Chapter 3: Supervision

Article 57 Competent supervisory authority

¹ Portfolio managers and trustees are supervised by a supervisory organisation under the Financial Market Supervision Act of 22 June 2007¹⁹.

² Managers of collective assets, fund management companies and securities firms are supervised by FINMA.

³ Where no supervisory organisation exists in accordance with paragraph 1, supervision is performed by FINMA.

¹⁹ SR 956.1

Article 58 Auditing of portfolio managers and trustees

¹ Portfolio managers and trustees must appoint an audit firm licensed by the supervisory organisation in accordance with Article 43^o of the Financial Market Supervision Act of 22 June 2007²⁰ (FINMASA) to perform an annual audit.

² The supervisory organisation can increase the audit frequency to a maximum of four years taking account of the activity of those supervised and the associated risks.

³ In the years without a periodic audit, portfolio managers and trustees shall submit to the supervisory organisation a report on their business activity's compliance with the legislative provisions. This report may be delivered in a standardised format.

Article 59 Auditing of managers of collective assets, fund management companies, securities firms, financial groups and financial conglomerates

¹ The managers of collective assets, fund management companies, securities firms, financial groups and financial conglomerates must:

- a. appoint an audit firm licensed by the Federal Audit Oversight Authority under Article 9a paragraph 1 of the Auditor Oversight Act of 16 December 2005²¹ to carry out an annual audit under Article 24 of the FINMASA;
- b. have their annual accounts, and if applicable their consolidated accounts, audited by an audit firm subject to state oversight in accordance with the ordinary auditing principles set out in the Swiss Code of Obligations²².

² FINMA can establish an audit frequency of several years for the audit in accordance with paragraph 1 letter a taking account of the activity of those supervised and the associated risks.

³ In the years without a periodic audit, financial institutions in accordance with paragraph 1 shall submit a report to FINMA on their business activity's compliance with the legislative provisions. This report may be delivered in a standardised format.

⁴ The fund management company shall appoint the same audit firm for itself and for the investment funds it manages.

⁵ FINMA may itself conduct audits directly.

Article 60 Duty to provide information and to report in the case of delegation of significant functions

¹ If a financial institution delegates significant functions to other persons, these shall be subject to the duty to provide information and to report in accordance with Article 29 of the Financial Market Supervision Act of 22 June 2007²³.

²⁰ SR 956.1

²¹ SR 221.302

²² SR 220

²³ SR 956.1

² The supervisory authority may conduct audits of these persons at any time.

Article 61 Suspension of voting rights

In order to enforce Article 10 paragraphs 3 and 5, the supervisory authority may suspend the voting rights attached to equities or shares held by qualified participants.

Article 62 Liquidation

¹ If the supervisory authority withdraws authorisation from a financial institution, this shall result in liquidation in the case of legal entities and general and limited partnerships and in deletion from the commercial register in the case of sole proprietorships.

² The supervisory authority shall designate the liquidator and oversee its activity.

³ The provisions under insolvency law are reserved.

Article 63 Measures under insolvency law

¹ The provisions of the Banking Act of 8 November 1934²⁴ on measures in case of the risk of insolvency and bankruptcy apply by analogy to fund management companies and securities firms.

² The provisions of the Banking Act on the protection of deposits and dormant assets apply by analogy to securities firms.

Chapter 4: Liability and Criminal Law Provisions

Section 1: Liability

Article 64

¹ The liability of the financial institutions and their bodies is based on the provisions of the Swiss Code of Obligations²⁵.

² Where a financial institution delegates performance of a task to a third party, it shall remain liable for any losses caused by the latter unless it proves that it took the due care required in that party's selection, instruction and monitoring. The Federal Council may set out the requirements for such monitoring.

³ The fund management company remains liable for the actions of persons to whom it has delegated tasks as if it had performed those tasks itself.

²⁴ SR 952.0

²⁵ SR 220

Section 2: Criminal Provisions

Article 65 Violation of professional confidentiality

¹ A custodial sentence not exceeding three years or a monetary penalty shall be imposed on any person who wilfully:

- a. discloses a secret entrusted to them in their capacity as a director or officer, employee, agent or liquidator of a financial institution or of which they have become aware in said capacity;
- b. attempts to induce a violation of professional secrecy;
- c. discloses to other persons a secret disclosed to them in violation of letter a or exploits such a secret for their own benefit or for the benefit of others.

² A custodial sentence not exceeding five years or a monetary penalty shall be imposed on any person who obtains a pecuniary advantage for themselves or another person through an action as detailed in paragraph 1 letter a or c .

³ A fine not exceeding CHF 250,000 shall be imposed on persons who commit the foregoing acts through negligence.

⁴ Any person who violates professional confidentiality remains liable to prosecution after termination of the official or employment relationship or exercise of the profession.

⁵ The federal and cantonal provisions relating to the duty to testify and the duty to provide information to the authorities are reserved.

⁶ The cantons are responsible for the prosecution and adjudication of acts under this provision.

Article 66 Violation of the provisions on protection against confusion and deception and notification duties

A fine not exceeding CHF 500,000 shall be imposed on any person who wilfully:

- a. violates the provision on protection against confusion and deception (Art. 12);
- b. fails to provide the supervisory authorities with the prescribed notifications in accordance with Articles 10 and 14, or does so incorrectly or too late.

Article 67 Violation of the record-keeping and reporting duties

A fine not exceeding CHF 500,000 shall be imposed on any person who wilfully:

- a. violates the record-keeping duty set out in Article 46;
- b. violates the reporting duty in accordance with Article 47.

Chapter 5: Final Provisions

Article 68 Implementing provisions

The Federal Council shall issue the implementing provisions.

Article 69 Repeal and amendment of other legislative instruments

The repeal and amendment of other legislative instruments are set out in the Annex.

Article 70 Transitional provisions

¹ Financial institutions that already possess authorisation by virtue of a financial market act pursuant to Article 1 paragraph 1 of the Financial Market Supervision Act of 22 June 2007²⁶ for the corresponding activity at the time of this Act coming into force are not required to obtain new authorisation. They must fulfil the requirements of this Act within one year of its entry into force.

² Financial institutions that are newly subject to an authorisation requirement at the time of this Act coming into force shall report to the supervisory authority within six months of this Act coming into force. They must satisfy the requirements of this Act and submit an authorisation application within two years of this Act coming into force. They may continue to perform their activity until a decision has been made concerning authorisation.

³ Portfolio managers who have performed their activity for at least 15 years at the time of this Act coming into force and do not fall under Article 20 paragraph 2 shall not be required to obtain authorisation for the activity of portfolio manager provided that they do not accept new clients.

⁴ In special cases, the supervisory authority may extend the deadlines under paragraphs 1 and 2.

Article 71 Referendum and entry into force

¹ This Act is subject to an optional referendum.

² The Federal Council will determine the commencement date.

²⁶ SR 956.1

Repeal and amendment of other legislative instruments

I

The Stock Exchange Act of 24 March 1995²⁷ is repealed.

II

The legislative instruments below are amended as follows:

1. Freedom of Information Act of 17 December 2004²⁸

Article 2 paragraph 2

² This Act does not apply to the Swiss National Bank and financial market supervisory authorities in accordance with the Financial Market Supervision Act of 22 June 2007²⁹.

2. Swiss Code of Obligations³⁰

Article 689d paragraph 3

³ Institutions subject to the Banking Act of 8 November 1934³¹ and financial institutions in accordance with the Financial Institutions Act of ...³² are deemed to be custodians acting as representatives.

3. Auditor Oversight Act of 16 December 2005³³

Article 7 paragraph 3

³ A licence shall be granted for an unlimited period of time.

²⁷ SR 954.1

²⁸ SR 152.3

²⁹ SR 956.1

³⁰ SR 220

³¹ SR 952.0

³² SR ...

³³ SR 221.302

*Article 9a paragraphs 4 and 5**Repealed**Article 16 paragraphs 1^{bis} and 1^{ter}**1^{bis} Repealed*

1^{ter} In the case of suspected violations of legal duties, the supervisory authority shall perform a corresponding review irrespective of the audit cycle under paragraph 1.

Article 24 paragraph 4 letter c and paragraph 5

⁴ The prosecution authorities shall inform the supervisory authority of all proceedings related to an auditing service provided by an audit firm under state supervision; they shall provide it with the judgments and termination decisions. In particular, they must report proceedings concerning the following provisions:

c. Article 65 of the Financial Institutions Act of ...³⁴ (FinIA).

⁵ They shall also notify the supervisory organisation in accordance with Article 57 paragraph 1 of the FinIA of all proceedings related to an audit firm under the supervision of the supervisory organisation in accordance with Article 43^o of the Financial Market Supervision Act of 22 June 2007³⁵.

Article 25a Self-regulatory organisations

The self-regulatory organisations (SROs) pursuant to the Anti-Money Laundering Act of 10 October 1997³⁶ shall notify the supervisory authority of all occurrences and send it all information and documents associated with an audit firm or lead auditor that the supervisory authority requires to fulfil its tasks.

4. Civil Procedure Code³⁷*Article 5 paragraph 1 letter h*

¹ Cantonal law designates the court that has jurisdiction as sole cantonal instance for:

h. disputes under the Collective Investment Schemes Act of 23 June 2006³⁸, the Financial Market Infrastructure Act of 19 June 2015³⁹ and the Financial Institutions Act of ...⁴⁰.

³⁴ SR ...

³⁵ SR **956.1**

³⁶ SR **955.0**

³⁷ SR **272**

³⁸ SR **951.31**

³⁹ SR **958.1**

⁴⁰ SR ...

5. Federal Act of 11 April 1889⁴¹ on Debt Enforcement and Bankruptcy

Article 173b

Where the bankruptcy petition concerns a debtor subject to the bankruptcy jurisdiction of the Swiss Financial Market Supervisory Authority (FINMA) by virtue of the financial market acts pursuant to Article 1 of the Financial Market Supervision Act of 22 June 2007⁴², the bankruptcy court shall forward the files to FINMA, which shall proceed in accordance with the regulations set forth in specific legislation.

6. Federal Act of 22 March 1974 on Administrative Criminal Law⁴³

Article 10 paragraph 2

² The judge can rule out the conversion if the convicted person proves that he is unable to pay the fine through no fault of his own. However, the judge is not permitted to rule out the conversion if the convicted person committed the offence wilfully and if at the time of the offence five years had not yet passed from when he was convicted of an offence against the same administrative law that was not a mere administrative offence.

7. Federal Audit Office Act of 28 June 1967⁴⁴

Article 8 paragraph 2

² The federal courts, supervisory authorities in accordance with the Financial Market Supervision Act of 22 June 2007⁴⁵, the Federal Audit Oversight Authority, the supervisory authority for the Office of the Attorney General of Switzerland and the Office of the Attorney General of Switzerland are subject to financial supervision by the Swiss Federal Audit Office insofar as this serves the purpose of supreme supervision by the Federal Assembly.

41 SR 281.1
42 SR 956.1
43 SR 313.0
44 SR 614.0
45 SR 956.1

8. Federal Act of 27 June 1973 on Stamp Duties⁴⁶

Article 1 paragraph 1 letter a number 2^{bis} and letter b number 3^{bis}

¹ The Confederation levies stamp duties:

- a. on the issuance of the following domestic instruments:
 - 2^{bis}. participation certificates and participation notes of cooperative credit banks,
- b. on trading in the following domestic and foreign instruments:
 - 3^{bis}. participation certificates and participation notes of cooperative credit banks,

Article 5 paragraph 1 letter a indent six

¹ The object of the duty includes:

- a. the creation and increase in the nominal value, either free of charge or against payment, of participation rights in the form of:
 - participation notes of cooperative credit banks.

Article 6 paragraph 1 letter g

¹ The following are exempt from the duty:

- g. participation rights that are created or increased using the participation capital or equity capital of a cooperative credit bank, provided that the company or cooperative proves that it paid the duty on said participation capital or equity capital;

Article 7 paragraph 1 letter a

¹ The duty liability is incurred:

- a. for shares, participation certificates, capital contributions to limited liability companies and participation notes of cooperative credit banks: at the time of the creation or increase in the participation rights being entered in the commercial register;

Article 13 paragraph 2 letter a number 2

² Taxable instruments are:

- a. the following issued by a domestic issuer:
 - 2. shares, capital contributions to limited liability companies, unit certificates and participation notes of cooperatives, participation certificates, profit-sharing certificates,

⁴⁶ SR 641.10

Article 14 paragraph 1 letters a and b

¹ The following are exempt from the duty:

- a. the issuance of domestic shares, capital contributions to limited liability companies and cooperatives, participation notes of cooperative credit banks, participation certificates, profit-sharing certificates, units in collective investment schemes in accordance with the CISA⁴⁷, bonds and money market paper, including firm underwriting by a bank or holding company and allocation during a subsequent issue;
- b. the contribution in kind of instruments for paying up foreign or domestic shares, capital contributions to limited liability companies, cooperative shares, participation notes of cooperative credit banks, participation certificates and units in collective investment schemes in accordance with the CISA;

9. Value Added Tax Act of 12 June 2009⁴⁸

Article 21 paragraph 2 number 19 letter f

² Exempt from the tax without credit are:

19. the following turnovers in the field of money and capital transactions:
 - f. the offering of units in collective investment schemes under the Collective Investment Schemes Act of 23 June 2006⁴⁹ (CISA) and the management of collective investment schemes in accordance with the CISA by persons who manage or hold them in safekeeping, fund management companies, depositary banks and their agents; agents are all individuals or legal entities to whom the collective investments may delegate tasks under the CISA or the Financial Institutions Act of ...⁵⁰; the offering of units in and the management of investment companies with fixed capital under Article 110 of the CISA are governed by letter e;

Article 78 paragraphs 6 and 7

⁶ Findings relating to the following entities made during an audit under paragraphs 1 to 4 may be used exclusively for the enforcement of value added tax:

- a. the Swiss National Bank;
- b. a central mortgage bond institution;

⁴⁷ SR 951.31

⁴⁸ SR 641.20

⁴⁹ SR 951.31

⁵⁰ SR ...

- c. a bank or savings institution as defined in the Banking Act of 8 November 1934⁵¹;
- d. a securities firm as defined in the Financial Institutions Act of ...⁵²;
- e. a financial market infrastructure as defined in the Financial Market Infrastructure Act of 19 June 2015⁵³.

⁷ Professional confidentiality under the Banking Act, the Financial Institutions Act and the Financial Market Infrastructure Act must be preserved.

10. Federal Act of 17 December 2004⁵⁴ on the Taxation of Savings Agreement with the European Community

Article 3 paragraph 3

³ Banks as defined in the Banking Act of 8 November 1934⁵⁵ and securities firms as defined in the Financial Institutions Act of ... are deemed to be registered if they commenced their business activity prior to 1 July 2005⁵⁶.

11. Withholding Tax Act of 13 October 1965⁵⁷

Article 4 paragraph 1 letter b

¹ Withholding tax on the revenue from moveable capital targets interest, annuities, profit shares and other revenue:

- b. from shares, capital contributions to limited liability companies, cooperative shares, participation notes of cooperative credit banks, participation certificates and profit-sharing certificates issued by a domestic issuer.

Article 4a paragraph 1 first sentence

¹ If a company or cooperative acquires own participation rights (shares, capital contributions to limited liability companies, unit certificates, participation notes of cooperative credit banks, participation certificates or profit-sharing certificates) based on a decision to reduce the capital or with a view to reducing its capital, the difference between the acquisition price and the paid-up nominal value of the participation rights shall be subject to withholding tax.

- 51 SR 952.0
- 52 SR ...
- 53 SR 958.1
- 54 SR 641.91
- 55 SR 952.0
- 56 SR ...
- 57 SR 642.21

12. Precious Metals Control Act of 20 June 1933⁵⁸

Article 42^{bis} Additional authorisation for trading in banking precious metals

¹ Trade assayers who themselves or through a group company trade on a commercial basis in banking precious metals require authorisation from a financial market supervisory authority in accordance with Article 57 paragraphs 1 and 3 of the Financial Institutions Act of ...⁵⁹ (FinIA).

² If a company trades in banking precious metals of a trade assayer belonging to its group company, it also requires authorisation in accordance with paragraph 1.

³ The provisions on the authorisation conditions for portfolio managers as defined in Article 16 paragraph 1 of the FinIA apply by analogy.

Final provision to the amendment of ...

Trade assayers who are newly subject to an authorisation requirement at the time of the amendment to this Act coming into force shall report to the supervisory authority within six months of the amendment of ... coming into force. They must satisfy the requirements and submit an authorisation application within two years of the amendment coming into force. They may continue to perform their activity until a decision has been made concerning authorisation.

13. National Bank Act of 3 October 2003⁶⁰

Article 15 paragraph 1

¹ Banks, financial market infrastructures, financial institutions as defined in Article 2 paragraph 1 of the Financial Institutions Act of ...⁶¹ and authorised parties in accordance with Article 13 paragraph 2 of the Collective Investment Schemes Act of 23 June 2006⁶² must provide the National Bank with statistical data relating to their activities.

Article 22 paragraph 1

¹ Audit firms shall examine compliance with the duty to provide information and, in the case of banks, the duty to hold minimum reserves, and shall report their findings to the National Bank. They shall notify the National Bank and the competent supervisory authority whenever they ascertain any violation, in particular if incorrect information has been provided or if the duty to hold minimum reserves has been breached.

58 SR 941.31

59 SR ...

60 SR 951.11

61 SR ...

62 SR 951.31

14. Collective Investment Schemes Act of 23 June 2006⁶³

Article 2 paragraph 1 letters a to e, paragraph 2 letter h and paragraph 2^{bis}

¹ This Act governs the following, irrespective of their legal status:

- a. collective investment schemes and persons who are responsible for the safekeeping of assets held in them;
- b. foreign collective investment schemes which are offered in Switzerland;
- c-e. *Repealed*

² The following are not governed by this Act:

- h. *Repealed*.

^{2bis} *Repealed*.

Article 13 paragraph 1, paragraph 2 letters a, e, f and g, and paragraphs 3 and 5

¹ Any party who establishes or operates a collective investment scheme or is responsible for the safekeeping of the assets held in it requires authorisation from FINMA.

² The following are required to obtain authorisation:

- a. *Repealed*;
- e. the custodian bank.
- f. *Repealed*
- g. *Repealed*

³ Representatives who are already subject to other equivalent official supervision may be granted exemption from the duty to obtain authorisation by the Federal Council.

⁵ The persons cited in paragraph 2 letters b to d may only be entered in the Commercial Register once authorisation has been granted by FINMA.

Article 14 paragraph 1 letters a and a^{bis} and paragraphs 1^{ter} and 2

¹ Authorisation is granted if:

- a. the persons under Article 13 paragraph 2 and the persons responsible for management and the business operations provide the guarantee of irreproachable business conduct;
- a^{bis}. the persons responsible for management and the business operations enjoy a good reputation and possess the specialist qualifications required for the function;

⁶³ SR 951.31

^{1ter} The Federal Council may define additional authorisation conditions if this is consistent with recognised international standards.

² *Repealed*

Article 15 paragraph 1 letter e

¹ The following documents are required for obtaining the approval of FINMA:

- e. the relevant documents of foreign collective investment schemes which are offered to non-qualified investors.

Chapter 3 Sections 2 and 3

Repealed

Title 2 Chapter 1 Section 3 (Art. 28-35)

Repealed

Article 36 paragraph 3

³ The SICAV may delegate investment decisions only to persons who hold the authorisation required for this activity. Articles 13 and 31 of the Financial Institutions Act of ...⁶⁴ apply by analogy.

Article 51 paragraph 5

⁵ The administration of a SICAV may be delegated only to a fund management company in accordance with Article 28 of the Financial Institutions Act of ...⁶⁵ that has authorisation.

Article 74 paragraph 2

² In the case of a SICAV, a change of custodian bank requires a contract in writing or in another form demonstrable via text, and must be approved in advance by FINMA.

Article 94 paragraph 2

² Each subfund under paragraph 1 is liable only for its own liabilities.

⁶⁴ SR ...

⁶⁵ SR ...

Article 120 paragraph 1, paragraph 2 letters d and e, paragraphs 4 and 5

¹ Foreign collective investment schemes must be approved by FINMA before they can be offered in or from Switzerland to non-qualified investors. The representative shall submit the documents requiring approval to FINMA.

² Approval is granted if:

- d. a representative and a paying agent are appointed for the offering of units in Switzerland;
- e. there is an agreement on cooperation and the exchange of information between FINMA and the relevant foreign supervisory authorities for offering.

⁴ Foreign collective investment schemes which are offered in Switzerland to qualified investors in accordance with Article 5 paragraph 1 of the Financial Services Act of ...⁶⁶ do not require approval but must meet the conditions pursuant to paragraph 2 letters c and d at all times.

⁵ Employee share participation schemes in the form of foreign collective investment schemes that are offered exclusively to employees do not require approval.

Article 123 paragraph 1

¹ Foreign collective investment schemes may be offered in or from Switzerland to non-qualified investors and to qualified investors in Switzerland in accordance with Article 5 paragraph 1 of the Financial Services Act of ...⁶⁷ only if the fund management company or the company has first appointed a representative to undertake the duties specified in Article 124, subject to the provisions of Article 122.

*Article 125 heading, paragraphs 1 and 3**Place of performance and place of jurisdiction*

¹ The place of performance for units of the foreign collective investment schemes offered in Switzerland is the registered office of the representative.

³ The place of jurisdiction is:

- a. the registered office of the representative; or
- b. the registered office or place of residence of the investor.

Article 126 paragraph 1 letters a and e, paragraphs 3 and 4

- a. fund management companies for the investment funds they manage;
- e. *Repealed*

⁶⁶ SR ...

⁶⁷ SR ...

³ The same audit firm must audit the SICAV and any fund management company that it appoints pursuant to Article 51 paragraph 5. FINMA may grant exemptions.

⁴ *Repealed*

Article 137 paragraph 1

¹ Where there is justified concern that authorised parties as defined in Article 13 paragraph 2 letters b to d is excessively indebted or has serious liquidity problems and there is no prospect of restructuring or restructuring has failed, the supervisory authority shall withdraw authorisation from the financial institution, initiate bankruptcy proceedings and make this public.

Article 138b paragraphs 1 and 2

¹ If all assets have been realised and all processes relating to the calculation of assets and liabilities have been completed, the bankruptcy liquidators shall draw up the final distribution list as well as the final accounts and forward these to FINMA for approval. Processes arising from the assignment of legal claims under Article 260 of the DEBA⁶⁸ shall be disregarded.

² The approval decision, together with the distribution list and final accounts, will be made available for inspection for 30 days. This availability for inspection will be published in the Swiss Official Gazette of Commerce and on FINMA's website; advance notification will be given to each of the creditors, stating their share, as well as to the owners if need be.

Article 138d Appeals

¹ In bankruptcy proceedings, creditors and owners of an authorised party covered by Article 137 paragraph 1 may appeal only against realisation actions and against approval of the distribution list and the final accounts. Appeals pursuant to Article 17 of the DEBA⁶⁹ shall be excluded.

² The timeframe for filing an appeal against approval of the distribution list and the final accounts commences the day after they have been made available for inspection.

³ Appeals in bankruptcy proceedings shall have no suspensive effect. The instructing judge can grant the suspensive effect upon request.

Article 140

Repealed

⁶⁸ SR 281.1

⁶⁹ SR 281.1

Article 145 paragraph 1 second sentence letter f

¹ ... Any person involved in the establishment, management, portfolio management, auditing or liquidation of the financial institution may be held liable.

- f. the manager of collective assets;

Article 148 paragraph 1 letters k and l, paragraph 1^{bis}

Repealed

Title 7 Chapters 2 and 3

Repealed

15. Banking Act of 8 November 1934⁷⁰*Numbering change*

In the headings, the Latin terms have been replaced with the corresponding ordinal numbers.

*Heading preceding Article 1***Section 1: General Provisions***Article 1* Subject matter and purpose

¹ This Act governs the requirements for acting as a bank, private banker and savings bank (bank).

² Its purpose is to protect the clients of a bank, and ensure the proper functioning of the financial market and the stability of the financial system.

Article 1a Scope of application

¹ A bank is an entity that operates principally in the financial sector and:

- a. takes deposits from the public on a commercial basis or solicits such deposits; or
- b. refinances itself substantially through several banks that have no significant participation in it in order to finance on its own behalf in any manner whatsoever an unspecified number of persons or companies with which it does not form an economic unit.

² The Swiss National Bank and central mortgage bond institutions are not deemed to be banks.

⁷⁰ SR 952.0

³ A cantonal bank is a bank that is established as an institution or company limited by shares on the basis of a cantonal legal decree in which the canton holds a participation of more than one third of the capital and possesses more than one third of the votes. Cantonal law may make the canton liable for the cantonal bank's obligations, in full or in part.

Article 1b Acceptance of deposits from the public

¹ Natural persons and legal entities that are not subject to this Act may accept deposits from the public on a commercial basis only insofar as this is expressly provided for in a law.

² The Federal Council may provide for exemptions as long as the protection of depositors is guaranteed.

³ Offering for sale debt instruments for which a prospectus or key information document was produced as financial instruments in accordance with Title 3 of the Financial Services Act of ...⁷¹ does not constitute the acceptance of deposits from the public.

⁴ Anyone who is not permitted to accept deposits from the public on a commercial basis may not advertise this in any way whatsoever.

Article 1c Legal form

¹ Banks, excluding private bankers, which have their registered office in Switzerland must have one of the following legal forms:

- a. company limited by shares;
- b. partnership limited by shares;
- c. limited liability company; or
- d. cooperative.

² Private bankers that have their registered office in Switzerland must have the legal form of a general partnership or limited partnership.

Article 1d Protection against confusion and deception

The term "bank" or "banker", alone or in combination with other words, may be used in the company name, the designation of the business purpose and in business advertising only in the case of institutions that have been authorised as a bank by the Swiss Financial Market Supervisory Authority (FINMA).

⁷¹ SR ...

Article 2 Branches and representations

The provisions of the Financial Institutions Act of ...⁷² on branches and representations apply by analogy (Art. 48-56).

Article 2^{bis} numbering, heading and paragraph 1 introductory sentence

Article 2a Group parent companies and significant group companies

¹ Provided they are not subject to the bankruptcy competence of FINMA within the scope of the supervision of the individual institution, the following are subject to the provisions of this Act on measures in case of the risk of insolvency and bankruptcy:

Article 3 heading, paragraph 2 letters a^{bis}, c-c^{ter}, d, paragraphs 4 to 7

Authorisation conditions

² Authorisation is granted if:

- a^{bis}. the bank has an effective internal control system that it uses to identify, measure, manage and monitor its risks, including reputational risks;
- c. the bank and the persons responsible for its administration and management provide the guarantee of irreproachable business conduct;
- c^{bis}. the persons responsible for the administration and management of the bank enjoy a good reputation and have the specialist qualifications required for their functions;
- c^{ter}. the natural persons and legal entities which directly or indirectly hold at least 10% of the bank's share capital or votes or which can otherwise influence the bank's business activity in a significant manner (qualified participation) guarantee that their influence will not have a negative impact on prudent and sound business activity;
- d. the persons entrusted with managing the bank are resident in a place from which they may effectively exercise such management.

⁴⁻⁷ *Repealed*

Article 3a Changes in facts

¹ The bank shall notify FINMA of any changes in the facts on which its authorisation is based.

² If the changes are of material significance, the bank must obtain prior authorisation from the supervisory authority in order to pursue its activity.

⁷² SR ...

Article 3b Reporting of qualified participations

¹ Each natural person or legal entity must notify FINMA before directly or indirectly acquiring or disposing of a qualified participation in accordance with Article 3 paragraph 2 letter c^{ter} in a bank organised under Swiss law.

² This notification duty also applies if a qualified participation is increased or reduced in such a way as to reach, exceed or fall below the thresholds of 20%, 33% or 50% of the share capital or votes.

³ The bank shall notify FINMA of the persons who meet the conditions of paragraphs 1 and 2 as soon as it becomes aware of the same. It must submit a list of its qualified participants to FINMA at least once a year.

Article 3b^{bis} International business

A bank organised under Swiss law must notify FINMA before:

- a. establishing a foreign subsidiary, branch, agency or representation;
- b. acquiring or surrendering a qualified participation in a foreign company.

Article 3b^{ter} Ombudsman

¹ Banks must affiliate to an ombudsman at the latest on assuming their activity.

² The provisions of Title 5 of the Financial Services Act of ...⁷³ on ombudsmen apply by analogy.

Heading preceding Article 3c**Section 2a: Bank-Dominated Financial Groups and Conglomerates****Article 3c** Definitions

¹ Two or more companies are deemed to be a bank-dominated financial group if:

- a. at least one of them operates as a bank;
- b. they operate primarily in the financial sector; and
- c. they form an economic unit or other circumstances suggest that one or more of the companies under individual supervision is *de jure* or *de facto* obliged to provide assistance to group companies.

² A financial conglomerate dominated by a bank is a financial group as defined in paragraph 1 operating primarily in the field of banking and comprising at least one insurance company of considerable economic significance.

⁷³ SR ...

Article 3c^{bis}

Consolidated supervision

If a bank is part of a financial group or financial conglomerate, FINMA may make its authorisation contingent upon the existence of appropriate consolidated supervision by a financial market supervisory authority.

Article 3d heading, paragraph 1 letter a

Group or conglomerate supervision

¹ FINMA may subject a bank-dominated financial group or a bank-dominated financial conglomerate to group or conglomerate supervision if the group or conglomerate:

- a. controls a bank in Switzerland organised under Swiss law; or

Article 3e heading

Supplement to individual institution supervision

Article 3f heading, paragraph 2

Guarantee of irreproachable business conduct

² The financial group or the financial conglomerate must also provide a guarantee of irreproachable business conduct and be organised such that it can identify, measure manage and monitor all material risks.

Article 3g heading, paragraph 2

FINMA competency

² It may issue provisions or, in specific cases, impose requirements regarding capital, liquidity, risk diversification, intra-group risk positions and accounting for bank-dominated financial conglomerates. In regard to the required capital, it shall take into consideration the prevailing rules of the financial and insurance industries, as well as the relative significance of both industries in the financial conglomerate and the associated risks.

*Heading preceding Article 3^{bis}***Section 2b: Foreign-Controlled Banks***Article 3^{bis} heading, paragraph 1 introductory sentence and paragraph 4 introductory sentence*

Additional authorisation conditions

¹ FINMA may additionally impose the following conditions for authorisation to establish a bank that is to be organised under Swiss law but with a controlling foreign influence:

⁴ The following are deemed to be foreigners:

Article 3^{ter} heading

Additional authorisation in the case of foreign control

Article 3^{quater} heading

Treaties

Article 4 heading

Capital and liquidity

Article 4^{bis} heading

Risk diversification

Article 4^{ter} heading

Loans to related persons and legal entities

Article 4^{quater}

Repealed

Article 4^{quinquies} heading

Transfer of non-public information and documents

Article 11 paragraphs 2^{bis} and 3

^{2bis} Cooperative credit banks can make provision for the raising of equity capital in their articles of association.

³ The additional capital in accordance with paragraphs 1 to 2^{bis} may be created solely to strengthen the capital base and prevent or deal with a crisis at the bank.

Article 14 Equity capital of cooperative credit banks

¹ The equity capital (Art. 11 para. 2^{bis}) is to be broken down into partial amounts (participation notes). The participation notes must be designated as such. They are issued against a capital contribution, have a nominal value and do not create any membership.

² Whenever a general meeting is convened, the holders of participation notes are to be notified in the same ways as the members, providing them with the agenda items and the motions tabled, the resolutions as well as the annual report and audit report.

³ Amendments to the articles of association and other general meeting resolutions that adversely affect the position of participation note holders are permitted only if they also adversely affect the position of share certificate holders to the same extent.

⁴ The holders of participation notes are to be placed at least on the same footing as the members of the cooperative in respect of the distribution of the net profit and the proceeds of any liquidation.

⁵ They may challenge general meeting resolutions in the same way as members.

⁶ They may submit a motion for a special audit to the general meeting if this is necessary to exercise their rights. If the general meeting rejects the motion, they may petition the court within three months to appoint a special auditor if together they hold at least 10% of the equity capital or equity capital with a nominal value of CHF 2 million. Articles 697a to 697g of the Swiss Code of Obligations (CO)⁷⁴ apply by analogy to the proceedings.

Article 14a Reserves, dividends and acquisition of own participation notes of cooperative credit banks

¹ The cooperative credit bank shall allocate 5% of the annual profit to general reserves until these reach 20% of the capital base.

It shall allocate the following to general reserves irrespective of their level:

- a. any proceeds from the issuance of participation notes in excess of the nominal value remaining after the issue costs have been met, provided they are not used for write-downs or staff welfare purposes;
- b. the difference between the sums paid in on forfeited participation notes and any shortfall in the proceeds from the participation notes issued in their place,
- c. 10% of the amounts distributed as a profit share following payment of a dividend of 5% on the equity capital.

² Provided the general reserves do not exceed 50% of the capital base, it shall use them to cover losses or for measures designed to enable the bank to continue to exist during difficult times, to prevent job cuts or to mitigate their repercussions.

³ It shall fund any dividends on participation notes only from the net profit and reserves created for that purpose.

⁴ The cooperative credit bank can acquire own participation notes if the following conditions are met:

⁷⁴ SR 220

- a. it has a freely disposable net profit corresponding to the sum needed and the total nominal value of the participation notes to be acquired does not exceed 10% of the equity capital;
- b. the rights associated with the acquisition of participation notes must be suspended.

⁵ The percentage set out in paragraph 4 letter a can amount to a maximum of 20%, provided the own participation notes acquired over and above the 10% threshold are sold or cancelled by means of a capital reduction within two years.

Article 14b Reporting duty and register regarding cooperative credit banks

¹ The duties to report, prove and identify vis-à-vis the cooperative credit bank for the acquisition of unlisted participation notes apply by analogy in the same way as vis-à-vis the company limited by shares for the acquisition of unlisted bearer shares (Art. 697i-697k, 697m CO).

² The cooperative credit bank shall enter the holders of participation notes and the beneficial owners notified to the cooperative credit bank in the register of members.

³ Aside from the provisions for the register of members, the company law provision on the register of holders of bearer shares and beneficial owners notified to the company shall apply by analogy for the register (Art. 697l CO).

Article 15 heading

Savings deposits

Article 16 heading

Custody assets

Article 23 heading

Direct auditing

Article 23^{bis} heading

Duty to provide information and to report in the case of outsourcing of significant functions

Article 23^{ter} heading

Suspension of voting rights

Article 23^{quinqies} heading

Liquidation

Article 24 heading, paragraphs 2 and 2^{bis}

Position of creditors and owners in the event of insolvency measures

² In the proceedings detailed in Sections 11 and 12 of this Act, the creditors and the owners of a bank, a group parent company or a significant group company in accordance with Article 2a may appeal only against approval of the restructuring plan, against realisation actions and against approval of the distribution list and the final accounts. Appeals pursuant to Article 17 of the Federal Act of 11 April 1889⁷⁵ on Debt Enforcement and Bankruptcy (DEBA) shall be excluded in these proceedings.

^{2bis} The timeframe for filing an appeal against approval of the distribution list and the final accounts commences the day after they have been made available for inspection.

Article 26 paragraph 2 second sentence

² ... It may refrain from publishing the measure if the purpose of the measures ordered would be compromised as a result.

Article 28 paragraph 2

² It shall issue the necessary rulings and orders for the implementation of the restructuring procedure and regulate the procedure.

Article 30b Conversion and reduction of claims

¹ The restructuring plan may make provision for the reduction of the existing capital and the creation of new capital, the conversion of debt capital into equity capital, as well as the reduction of claims.

² The following shall be excluded from the conversion and the reduction of claims:

- a. privileged, secured and offsettable claims;
- b. claims arising from liabilities into which the bank was permitted to enter during the duration of the measures in accordance with Article 26 paragraph 1 letters e to h.

³ The conversion of debt into equity capital or the reduction of claims is possible only if:

- a. the share capital is completely written down;
- b. the convertible capital in accordance with Article 11 paragraph 1 letter b is converted into equity capital and the write-down bonds issued in accordance with Article 11 paragraph 2 are reduced;

⁴ The conversion of debt into equity capital and the reduction of claims are to be carried out in the following order:

⁷⁵ SR 281.1

- a. subordinated claims;
- b. claims that were issued for bearing losses in the event of insolvency measures;
- c. other claims, with the exception of deposits;
- d. deposits.

⁵ If a qualified participation in accordance with Article 3 paragraph 2 letter c^{ter} exists after the conversion, the share of votes exceeding 10% shall be suspended until FINMA has assessed the qualified participation.

Article 31 paragraph 1 letters a and b, paragraph 3

¹ FINMA shall approve the restructuring plan if, in particular, it:

- a. is based on a prudent valuation of the bank's assets and liabilities;
- b. is likely to place the creditors in a position that is no worse than in the case of immediate initiation of bankruptcy proceedings concerning the bank;

³ The restructuring plan of systemically important banks can be approved even if it places the creditors in a worse position, provided they are appropriately indemnified in another manner.

Article 31b Compensation of outstanding amounts

If assets, liabilities and contractual relationships are transferred only in part to another legal entity or a bridge bank, FINMA shall regulate compensation among the legal entities concerned.

Article 32 paragraphs 3, 3^{bis} and 4

³ The date of approval of the restructuring plan, rather than the initiation of bankruptcy proceedings, determines the deadlines under Articles 286 to 288 of the DEBA⁷⁶. If FINMA has imposed protective measures prior to this as set out in Article 26 paragraph 1 letters e to h, the date on which these measures were imposed is decisive.

^{3bis} The right to appeal is subject to a prescriptive period of two years after approval of the restructuring plan.

⁴ Paragraphs 1 to 2^{bis} apply by analogy to the assertion of liability claims under Article 39.

Article 34 Consequences and procedure

¹ Ordering bankruptcy liquidation has the effect of initiating bankruptcy proceedings pursuant to Articles 197 to 220 of the DEBA⁷⁷.

⁷⁶ SR 281.1

⁷⁷ SR 281.1

² The bankruptcy liquidation is conducted in accordance with Articles 221 to 270 of the DEBA. The provisions set forth below and any deviating rulings and rules of procedure by FINMA are reserved.

Article 37e paragraphs 1 and 2

¹ If all assets have been realised and all processes relating to the calculation of assets and liabilities have been completed, the bankruptcy liquidators shall draw up the final distribution list as well as the final accounts and forward these to FINMA for approval. Processes arising from the assignment of legal claims under Article 260 of the DEBA⁷⁸ shall be disregarded.

² The approval decision, together with the distribution list and final accounts, will be made available for inspection for 30 days. This availability for inspection will be published in the Swiss Official Gazette of Commerce and on FINMA's website; advance notification will be given to each of the creditors, stating their share, as well as to the owners.

Heading preceding Article 37l

Section 13a: Dormant Assets

Article 38 heading

Liability of private bankers

Article 39 heading

Liability of bodies

Article 46 heading

Unauthorised acceptance of deposits from the public and violation of the accounting rules

Article 47 heading

Breach of professional confidentiality

Article 49 heading

Violation of the provisions on protection against confusion and deception, the notification duty and the ban on advertising

⁷⁸ SR 281.1

Article 52 heading and first sentence

Reporting

The Federal Council has to review the provisions with regard to comparability and the extent to which the corresponding international standards are implemented abroad no later than three years after entry into force of Section 5 and 6 of the amendment of 30 September 2011 and every two years thereafter. ...

Article 53 heading

Repeal of other legislative instruments

Article 56 heading

Entry into force

Article 57 Transitional provision to the amendment of ...

If systemically important functions of a bank are transferred to another legal entity in implementation of the bank's emergency plan, FINMA can deviate in the restructuring plan from the order set out in Article 30*b* paragraph 4 to the detriment of solidary claims towards the other legal entity that arose within the framework of the transfer for up to five years following the granting of that entity's authorisation, provided the continuation of systemically important functions would otherwise be jeopardised.

The following final and transitional provisions are repealed:

Final provision of the amendment of 11 March 1971;

Final provision of the amendment of 18 March 1994;

Final provision of the amendment of 3 October 2003;

Final provision of the amendment of 17 December 2004;

Transitional provision to the amendment of 30 September 2011.

16. Anti-Money Laundering Act of 10 October 1997⁷⁹*Article 2 paragraph 2 letters a^{bis}, b, b^{bis} and d, paragraph 3 letter e*

² Financial intermediaries are:

a^{bis}. portfolio managers and trustees as defined in Article 2 paragraph 1 letters a and b of the Financial Institutions Act of ...⁸⁰, as well as trade assayers as

⁷⁹ SR 955.0

⁸⁰ SR ...

defined in Article 42^{bis} of the Precious Metals Control Act of 20 June 1933⁸¹;

- b. fund management companies as defined in Article 2 paragraph 1 letter d of the Financial Institutions Act;
- b^{bis}. investment companies with variable capital, limited partnerships for collective investment and investment companies with fixed capital in accordance with the Collective Investment Schemes Act of 23 June 2006⁸², as well as the managers of collective assets in accordance with Article 2 paragraph 1 letter c of the Financial Institutions Act;
- d. securities firms as defined in Article 2 paragraph 1 letter e of the Financial Institutions Act.

³ Financial intermediaries are also persons who on a professional basis accept or hold on deposit assets belonging to others or who assist in the investment or transfer of such assets; they include in particular persons who:

- e. *Repealed*

Article 3 paragraph 5

⁵ The Swiss Financial Market Supervisory Authority (FINMA), the supervisory organisation in accordance with Article 43a of the Financial Market Supervision Act of 22 June 2007⁸³ (FINMASA), the Federal Gaming Board and the self-regulatory organisations shall determine what constitutes a considerable financial value within the meaning of paragraphs 2 and 3 in their respective fields and adjust such values as required.

Article 12 letters a, a^{bis} and c

The following bodies shall supervise compliance by financial intermediaries with the duties set out in Chapter 2:

- a. for financial intermediaries under Article 2 paragraph 2 letters a and b to d^{ter}, FINMA;
- a^{bis}. for financial intermediaries under Article 2 paragraph 2 letter a^{bis}, the competent supervisory authority pursuant to the FINMASA;
- c. for financial intermediaries under Article 2 paragraph 3, to the recognised self-regulatory organisations (Art. 24).

Article 14 Affiliation with a self-regulatory organisation

¹ Financial intermediaries within the meaning of Article 2 paragraph 3 must be affiliated with a self-regulatory organisation.

81 SR 941.31

82 SR 951.31

83 SR 956.1

- ² A self-regulatory organisation shall accept a financial intermediary as a member if:
- a. the financial intermediary guarantees compliance with its duties in accordance with this Act by means of its internal rules and organisation;
 - b. the financial intermediary enjoys a good reputation and guarantees compliance with its duties in accordance with this Act;
 - c. the persons responsible for its administration and management also fulfil the requirements set forth under letter b; and
 - d. its qualified participants enjoy a good reputation and ensure that their influence is not detrimental to prudent and sound business activity.

³ Self-regulatory organisations may make membership conditional on the activity carried out in certain areas.

Article 16 paragraph 1 introductory sentence

¹ FINMA, the Federal Gaming Board and the supervisory organisation shall immediately submit a report to the Reporting Office if they have reasonable grounds to suspect that:

Article 17

In the absence of recognised self-regulation, the duties of due diligence defined in Chapter 2 and their fulfilment shall be regulated by:

- a. FINMA for financial intermediaries under Article 2 paragraph 2 letters a and b to d^{ter};
- b. the competent supervisory authority in accordance with the FINMASA for financial intermediaries under Article 2 paragraph 2 letter a^{bis};
- c. the Federal Gaming Board for financial intermediaries under Article 2 paragraph 2 letter e.

Article 18 paragraph 1 letters b, e and f and paragraph 3

¹ FINMA shall have the following duties in terms of its supervision of the financial intermediaries under Article 2 paragraph 3:

- b. it supervises the self-regulatory organisations.
- e. *Repealed*
- f. *Repealed*

³ In order to preserve professional secrecy, self-regulatory organisations shall arrange for inspections under this Act (AMLA inspections) to be carried out on lawyers and notaries by lawyers and notaries respectively.

Articles 19a and 20

Repealed

Article 24 paragraph 1 letter c introductory sentence and d

¹ Organisations are recognised as self-regulatory organisations if they:

- c. provide the guarantee of irreproachable business conduct and ensure that the persons and audit firms they instruct to carry out inspections:
- d. ensure that the audit firms they instruct to carry out inspections and lead auditors fulfil the requirements under Article 24a.

Article 24a Licensing of audit firms and lead auditors

¹ The self-regulatory organisation shall grant the audit firms and lead auditors the necessary licence and supervise their activity.

² The audit firm shall be licensed if it:

- a. is licensed as an auditor by the Federal Audit Oversight Authority in accordance with Article 6 of the Auditor Oversight Act of 16 December 2005⁸⁴;
- b. is adequately organised for this audit; and
- c. does not perform any other activity requiring authorisation under the financial market acts in accordance with Article 1 paragraph 1 of the FINMASA.

³ The lead auditor shall be licensed to lead audits in accordance with paragraph 1 if he or she:

- a. is licensed as an auditor by the Federal Audit Oversight Authority in accordance with Article 5 of the Auditor Oversight Act;
- b. has the necessary specialist knowledge and the necessary practical experience for performing audits in accordance with paragraph 1.

⁴ Article 17 of the Auditor Oversight Act applies by analogy for the self-regulatory organisation's withdrawal of the licence granted to audit firms and lead auditors in accordance with paragraph 1, as well as for its issuing of a reprimand.

Article 28 paragraphs 2 to 4

² If a self-regulatory organisation has its recognition withdrawn, its affiliated financial intermediaries must submit a request for affiliation with another self-regulatory organisation within two months.

³ and ⁴ *Repealed*

⁸⁴ SR 221.302

Article 29 paragraphs 1 and 3

¹ FINMA, the Federal Gaming Board, the supervisory organisation and the Reporting Office may provide each other with any information or documents required for the enforcement of this Act.

³ The Reporting Office shall inform FINMA, the Federal Gaming Board and the supervisory organisation of the decisions of the cantonal prosecution authorities.

Article 29a paragraphs 3 and 4

³ They may provide FINMA, the Federal Gaming Board and the supervisory organisation with any information and documents that they require in order to fulfil their tasks, provided that this is not prejudicial to the criminal proceedings.

⁴ FINMA, the Federal Gaming Board and the supervisory organisation shall coordinate any intervention in relation to a financial intermediary with the competent prosecution authorities. They shall consult with the competent prosecution authorities before passing on any information or documents received.

Article 34 paragraph 2

² Data from these data collections may be passed on only to FINMA, the Federal Gaming Board, the supervisory organisation, self-regulatory organisations, the Reporting Office and the prosecution authorities.

Article 35 paragraph 2

² The exchange of information between the Reporting Office and FINMA, the Federal Gaming Board, the supervisory organisation and the prosecution authorities may be carried out by means of a computerised access procedure (online).

Article 42 Transitional provisions

Financial intermediaries as defined in Article 2 paragraph 3 which at the time of the entry into force of the amendment to this Act of ... have FINMA authorisation in accordance with Article 14 must join a recognised self-regulatory organisation. They must submit their request within one year. They may continue to perform their activity until a decision has been made concerning their request.

17. Financial Market Supervision Act of 22 June 2007⁸⁵*Replacement of an expression*

In Article 45 paragraph 1, Article 46 paragraph 1 letter b and Article 47 paragraph 1 letter a, "FINMA" is replaced by "competent supervisory authority".

⁸⁵ SR 956.1

*Heading preceding Article 1***Title 1: General Provisions***Article 1 paragraph 1 introductory sentence and letter e, and paragraph 2*

¹ This Act sets forth the supervision of the financial markets in accordance with the following acts (financial market acts):

- e. Financial Institutions Act of ...⁸⁶.

² It establishes the organisation and the supervisory instruments of the supervisory authorities.

Article 3 Supervised persons and entities

The following are subject to financial market supervision:

- a. persons and entities that under the financial market acts require to be authorised, recognised or licensed by the supervisory authority; and
- b. collective investment schemes.

Article 4

Former Article 5

*Heading before the new Article 5***Title 2: Financial Market Supervisory Authority (FINMA)****Chapter 1: General Provisions***Article 5*

Former Article 4

Article 13a Data processing

¹ FINMA shall process, in hard copy or in one or more information systems, the data on its employees necessary for performing the tasks in accordance with this Act, particularly for:

- a. creating, executing and terminating an employment relationship;
- b. personnel and wage management;
- c. personnel development;
- d. performance appraisal;
- e. reintegration measures in the event of illness and accident.

⁸⁶ SR ...

² It can process the following data of its employees necessary for performing the tasks set out in paragraph 1, including particularly sensitive personal data and personality profiles:

- a. personal details;
- b. state of health details with regard to working ability;
- c. performance and potential information, as well as data on personal and professional development;
- d. data required within the framework of participation in the implementation of social security law;
- e. case files and authorities' decisions associated with work.

³ It shall issue implementing regulations with regard to:

- a. the architecture, organisation and operation of the information system(s);
- b. the processing of data, particularly gathering, storage, archiving and destruction;
- c. data processing authorisations;
- d. the data categories under paragraph 2;
- e. data protection and security.

Article 15 paragraph 2 letters a, d and e

² The supervision charge is assessed according to the following criteria:

- a. for supervised persons and entities under the Banking Act of 8 November 1934⁸⁷, the Financial Institutions Act of ...⁸⁸ and the Mortgage Bond Act of 25 June 1930⁸⁹, on the basis of the balance sheet total and securities turnover;
- d. for self-regulatory organisations under the Anti-Money Laundering Act of 10 October 1997⁹⁰, on the basis of the gross earnings and number of members;
- e. for a supervisory organisation in accordance with Title 3, the share accounted for by its supervised persons and entities with regard to the total number of supervised persons and entities of all supervisory organisations is decisive.

Article 31 paragraph 2

² Where the rights of clients appear to be jeopardised, FINMA may oblige the supervised persons or entities to provide collateral.

⁸⁷ SR 952.0

⁸⁸ SR ...

⁸⁹ SR 211.423.4

⁹⁰ SR 955.0

Article 32 heading and paragraph 2

Declaratory ruling and substitute performance

² If an enforceable ruling from FINMA is not observed within the set deadline after a prior warning, FINMA may perform it itself or have it performed at the expense of the defaulting party.

Article 33a Prohibition from performing an activity

¹ FINMA may prohibit the following persons from trading in financial instruments or acting as a client adviser for a fixed period or permanently in the case of repeated offences if they seriously violate the provisions of the financial market acts, the implementing provisions or in-house directives:

- a. employees of a supervised entity responsible for trading in financial instruments;
- b. employees of a supervised entity acting as client advisers.

² If the prohibited activity also covers an activity in an area under the supervision of another supervisory authority, this authority is to be consulted and informed of the decision.

Article 37 heading and paragraph 1

Revocation of authorisation, recognition or licence

¹ FINMA shall revoke the authorisation, recognition or licence of a supervised person or entity if it no longer fulfils the requirements for its activity or seriously violates the supervisory provisions.

Article 41a Communication of judgments

¹ The cantonal civil courts and the federal court shall provide FINMA free of charge with a full copy of their judgment in relation to disputes between a supervised person or entity and creditors, investors or insured parties.

² FINMA shall forward to the supervisory organisation the judgments concerning the supervisory organisation's supervised persons and entities.

Heading after Article 43

Title 3: Supervision of Portfolio Managers, Trustees and Trade Assayers

Chapter 1: General Provisions

Article 43a Supervisory organisation

¹ The supervision of portfolio managers and trustees under Article 16 of the Financial Institutions Act of ...⁹¹ and of trade assayers under Article 42^{bis} of the Precious Metals Control Act of 20 June 1933⁹² is performed by a supervisory organisation with its registered office in Switzerland.

² The supervisory organisation shall require authorisation from FINMA before commencing its supervisory activity and shall be supervised by FINMA.

Article 43b Tasks

¹ The supervisory organisation shall grant portfolio managers and trustees under Article 16 of the Financial Institutions Act of ...⁹³ and trade assayers under Article 42^{bis} of the Precious Metals Control Act of 20 June 1933⁹⁴ the required authorisation and supervise their activity.

² It may issue circulars in its field of supervision on the application of the financial markets legislation. These shall require FINMA approval, which will be granted provided the circular does not lead to a conflicting supervisory practice.

³ It issues rulings in accordance with the organisational rules.

Chapter 2: Authorisation

Article 43c Principle

¹ FINMA shall grant the supervisory organisation authorisation if the provisions of this chapter are complied with.

² It shall approve the supervisory organisation's articles of association and organisational regulations, as well as the selection of the persons charged with its administration and management.

³ Prior authorisation or approval from FINMA must be obtained in the case of changes to facts requiring authorisation and documents requiring approval.

⁹¹ SR ...

⁹² SR **941.31**

⁹³ SR ...

⁹⁴ SR **941.33**

⁴ If several supervisory organisations are established, the Federal Council may issue rules for the coordination of their activities and the subjection of the supervised persons and entities to a given supervisory organisation.

Article 43d Organisation

- ¹ The supervisory organisation must effectively be managed from Switzerland.
- ² It must have appropriate management rules and be organised in such a manner that it can fulfil its duties in accordance with this Act.
- ³ It must have the financial and personnel resources necessary to perform its tasks.
- ⁴ It must have a Management Board as the operational body.

Article 43e Guarantee of irreproachable business conduct and independence

- ¹ The supervisory organisation and the persons responsible for its management must provide the guarantee of irreproachable business conduct.
- ² Moreover, the persons responsible for administration and management must enjoy a good reputation and have the specialist qualifications required for their functions.
- ³ Most of the persons charged with administration must be independent of the supervised persons and entities.
- ⁴ The members of the Management Board must be independent of the persons and entities supervised by the supervisory organisation.
- ⁵ The persons charged with supervision must be independent of the persons and entities they supervise.

Article 43f Funding and reserves

- ¹ The supervisory organisation levies fees for supervisory proceedings in individual cases and for services. In addition, it levies an annual supervision charge on supervised persons and entities to cover its costs that are not covered by the fees.
- ² The supervisory charge shall be based on the amount of assets under management, the gross earnings and the size of the undertaking of the supervised persons and entities.
- ³ The Federal Council shall regulate the specifics of the supervisory charge, particularly the assessment basis.
- ⁴ The supervisory organisation shall form reserves within a reasonable time for the exercise of its supervisory activity in an amount equivalent to one annual budget.

Article 43g Auditor

The Swiss Federal Audit Office is the external auditor of the supervisory organisation and shall provide the supervisory organisation and FINMA with a report on the result of its audit.

Article 43h Official secrecy

Official secrecy in accordance with Article 14 applies by analogy to the supervisory organisation's staff and its governing bodies, as well as to all of those mandated by the supervisory organisation.

Article 43i Accounting, liability and tax exemption

Articles 18 to 20 shall also apply by analogy to the supervisory organisation.

Chapter 3: Independence and Supervision*Article 43j* Independence

The supervisory organisation shall supervise the financial institutions subject to its supervision autonomously and independently.

Article 43k Supervision

¹ The supervisory organisation shall periodically inform FINMA about its supervisory activity.

² FINMA shall verify whether the supervisory organisation meets the requirements under Chapter 2 of this title and whether it performs its supervisory tasks.

³ The supervisory organisation must furnish FINMA with all information and documents that FINMA requires to perform its supervision of the supervisory organisation.

Article 43l Supervisory measures

¹ FINMA shall take the necessary measures if the supervisory organisation does not meet the requirements under Chapter 2 of this title or does not perform its supervisory tasks.

² FINMA may dismiss persons who no longer fulfil the guarantee of irreproachable business conduct.

³ FINMA may liquidate the supervisory organisation and transfer the supervisory activity to another supervisory organisation as a measure of last resort.

Chapter 4: Information for the Public and Data Processing*Article 43m*

Articles 22 and 23 apply by analogy.

Chapter 5: Supervisory Instruments of the Supervisory Organisation

Article 43n Auditing

¹ The supervisory organisation may carry out the audit of its supervised persons and entities itself or arrange for it to be carried out by its licensed audit firms and lead auditors.

² Article 24 paragraphs 2 to 5 and Articles 24a to 28a apply by analogy.

³ If so ordered by the supervisory organisation, the supervised persons and entities must make an advance payment to cover costs.

Article 43o Licensing of audit firms and lead auditors

¹ The supervisory organisation shall grant the audit firms and lead auditors in accordance with Article 58 paragraph 1 of the Financial Institutions Act of ...⁹⁵ the necessary licence and supervise their activity.

² The audit firm shall be licensed if it:

- a. is licensed as an auditor by the Federal Audit Oversight Authority in accordance with Article 6 of the Auditor Oversight Act of 16 December 2005⁹⁶;
- b. is adequately organised for this audit; and
- c. does not perform any other activity requiring authorisation under the financial market acts.

³ The lead auditor shall be licensed to lead audits in accordance with paragraph 1 if he or she:

- a. is licensed as an auditor by the Federal Audit Oversight Authority in accordance with Article 5 of the Auditor Oversight Act;
- b. has the necessary specialist knowledge and the necessary practical experience for performing audits in accordance with paragraph 1.

⁴ Article 17 of the Auditor Oversight Act applies by analogy for the supervisory organisation's withdrawal of the licence granted to audit firms and lead auditors in accordance with paragraph 1, as well as for its issuing of a reprimand.

⁵ The supervisory organisation shall notify the Federal Audit Oversight Authority of all occurrences and send it all information and documents associated with an audit firm or lead auditor that the Federal Audit Oversight Authority requires to fulfil its tasks.

⁶ If the supervision under Article 57 paragraph 3 of the Financial Institutions Act of ...⁹⁷ is performed by FINMA, the Federal Council shall regulate the responsibility for licensing audit firms and lead auditors.

⁹⁵ SR ...

⁹⁶ SR 221.302

Article 43p Further supervisory instruments

The supervisory instruments detailed in Articles 29 to 32, 33a, 34, 35 and 37 are available to the supervisory organisation.

Article 43q Cooperation

Articles 38 to 42a and Articles 42c and 43 apply for the supervisory organisation's cooperation with domestic authorities and foreign bodies.

*Heading preceding Article 44***Title 4: Criminal Provisions***Article 44 heading and paragraph 1*

Activity without authorisation, recognition, a licence, registration or affiliation with a self-regulatory organisation

¹ Any person who wilfully without authorisation, recognition, a licence, registration or affiliation with a self-regulatory organisation in accordance with Article 24 paragraph 1 of the Anti-Money Laundering Act of 10 October 1997⁹⁸ carries out an activity that requires authorisation, recognition, a licence, registration or affiliation with a self-regulatory organisation under the financial market acts is liable to a custodial sentence of up to three years or to a monetary penalty.

Article 48 heading

Non-compliance with rulings

*Heading preceding Article 53***Title 5: Procedure and Right of Appeal***Article 54* Right of appeal

¹ The contesting of rulings by FINMA and the supervisory organisation is governed by the provisions on the administration of federal justice.

² Where rulings by the supervisory organisation are to be judged before the Federal Administrative Court or the Federal Supreme Court, the relevant court shall invite FINMA to make a statement and submit the decisions to it.

³ The ruling authority is entitled to appeal to the Federal Supreme Court.

⁹⁷ SR ...

⁹⁸ SR 955.0

Heading preceding Article 55

Title 6: Final Provisions

Chapter 1: Enforcement

Heading preceding Article 57

Chapter 2: Amendment of Other Legislative Instruments

Heading preceding Article 58

Chapter 3: Transitional Provisions

Article 58

Repealed

Heading preceding Article 61

Chapter 4: Referendum and Commencement

18. Intermediated Securities Act of 3 October 2008⁹⁹

Article 4 paragraph 2 letters b and c and paragraph 3

² The following are deemed to be custodians:

- b. securities firms within the meaning of the Financial Institutions Act of ...¹⁰⁰;
- c. fund management companies within the meaning of the Financial Institutions Act, insofar as they maintain unit accounts;

³ Foreign banks, foreign securities firms and other foreign financial institutions as well as foreign central securities depositories that maintain securities accounts in the course of their business activity are also deemed custodians.

19. Financial Market Infrastructure Act of 19 June 2015¹⁰¹

Replacement of an expression

Throughout the entire Act, the term "securities dealer" is replaced by "securities firm".

⁹⁹ SR 957.1

¹⁰⁰ SR ...

¹⁰¹ SR 958.1

Article 9 paragraph 1

Concerns solely the German text.

Article 34 paragraph 2 letter a

² The following may be admitted as participants in a stock exchange or a multilateral trading facility:

- a. securities firms in accordance with Article 37 of the Financial Institutions Act of ...¹⁰²;

Article 93 paragraph 2 letters b and e

² The term financial counterparties means:

- b. securities firms in accordance with Article 37 of the Financial Institutions Act of ...¹⁰³;
- e. managers of collective assets and fund management companies in accordance with Article 2 paragraph 1 letters c and d of the Financial Institutions Act;

Article 107 paragraph 2 letter b

² These duties do not apply to:

- b. currency swaps and forward transactions, provided they are settled on a payment versus payment basis;

Article 147 paragraph 3

³ A fine not exceeding CHF 250,000 shall be imposed on persons who commit the foregoing acts through negligence.

20. Insurance Supervision Act of 17 December 2004¹⁰⁴

Article 14 paragraphs 1 and 1^{bis}

¹ Insurance companies and the following persons shall provide the guarantee of irreproachable business conduct:

- a. persons responsible for governance, supervision, control and management;
- b. for foreign insurance companies, the person(s) with a general power of attorney.

¹⁰² SR ...

¹⁰³ SR ...

¹⁰⁴ SR 961.01

^{1bis} The persons under paragraph 1 letters a and b must also enjoy a good reputation.

Article 51 paragraph 2 letter g

Repealed

Article 54c paragraphs 1 and 2

¹ If all assets have been realised and all processes relating to the calculation of assets and liabilities have been completed, the bankruptcy liquidators shall draw up the final distribution list as well as the final accounts and forward these to FINMA for approval. Processes arising from the assignment of legal claims under Article 260 of the DEBA¹⁰⁵ shall be disregarded.

² The approval decision, together with the distribution list and final accounts, will be made available for inspection for 30 days. This availability for inspection will be published in the Swiss Official Gazette of Commerce and on FINMA's website; advance notification will be given to each of the creditors, stating their share, as well as to the owners.

Article 54e Appeals

¹ In bankruptcy proceedings, creditors and owners of an insurance company or a significant group company or conglomerate may appeal only against realisation actions and against approval of the distribution list and the final accounts. Appeals pursuant to Article 17 of the DEBA¹⁰⁶ are excluded.

² The timeframe for filing an appeal against approval of the distribution list and the final accounts commences the day after they have been made available for inspection.

³ Appeals in bankruptcy proceedings shall have no suspensive effect. The instructing judge can grant the suspensive effect upon request.

Article 67 Guarantee of irreproachable business conduct

Articles 14 and 22 apply by analogy for insurance groups and persons responsible for the governance, supervision, control and management of the insurance group and for the risk management of the insurance group.

Article 72 letter b

Two or more companies form an insurance conglomerate if:

- b. at least one is a bank or a securities firm of considerable economic importance;

¹⁰⁵ SR 281.1

¹⁰⁶ SR 281.1

Article 75 Guarantee of irreproachable business conduct

Articles 14 and 22 apply by analogy for the insurance conglomerate and persons responsible for the governance, supervision, control and management of the insurance conglomerate and for the risk management of the insurance conglomerate.