



Swiss Federal Act on Banks and Savings Banks

(Banking Act, BA)

SR 952.0
dated 1 January 2016

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1 Other Languages

DE: Bundesgesetz über die Banken und Sparkassen	(Bankengesetz, BankG)
FR: Loi fédérale sur les banques et les caisses d'épargne	(Loi sur les banques, LB)
IT: Legge federale sulle banche e le casse di risparmio	(Legge sulle banche, LBCR)

Swiss Federal Act on Banks and Savings Banks 952.0

(Banking Act; BA)¹

dated 8 November 1934 (version as at 1 January 2016)

The Swiss Federal Assembly of the Swiss Confederation, based on Articles 34^{ter}, 64 and 64^{bis} of the Swiss Federal Constitution², after having examined the Dispatch of the Swiss Federal Council of 2 February 1934³, decrees:

Section I: Scope of the Act

ARTICLE 1⁴

- 1 Banks, private banks (individual proprietorships⁵, general and limited partnerships) and savings banks, hereinafter referred to as banks, are subject to this Act.
- 2 Natural persons and legal entities that are not subject to this law may not accept deposits from the public on a professional basis. The Swiss Federal Council may provide for exceptions as long as the protection of the depositors is ensured. Issuing bonds is not deemed to be the acceptance of deposits on a professional basis.^{6 7}
- 3 The present Act specifically does not apply to:
 - a. stockbrokers and trading houses dealing only in securities and transactions which are directly related thereto, provided they do not engage in the banking business;
 - b. asset managers, notaries and business agents who simply manage their customers' funds and who do not engage in regular banking business.
- 4 The term "bank" or "banker", alone or in combination with other words, may only be used in a company name, in the designation of the business purpose and in business advertising for institutes that have obtained a license from the Swiss Financial Market Supervisory Authority (FINMA) subject to the provisions of Article 2(3).⁸
- 5 This Act only applies to the Swiss National Bank and central mortgage institutions if this is explicitly stated.

¹ Version of the Title according to Sect. I of the Act of 22 April 1999, in force since 1 October 1999 (AS **1999** 2405; BBl **1998** 3847).

² [BS **1** 3; AS **1976** 2001]

³ BBl **1934** I 171

⁴ Version according to Section I of the Act of 11 March 1971, in force since 1 July 1971 (AS **1971** 808 824 Article 1; BBl **1970** I 1144).

⁵ Now: Sole proprietorships.

⁶ Version according to Section I of the Act of 18 March 1994, in force since 1 Feb.1995 (AS **1995** 246; BBl **1993** I 805).

⁷ See also the final provisions and amendments dated 18 March 1994 at the end of this Act.

⁸ Version according to Appendix Section 15 of the Financial Markets Supervision Act of 22 June 2007, in force since 1 January 2009 (AS **2008** 5207 5205; BBl **2006** 2829).

ARTICLE 1^{bis 9}**ARTICLE 2¹⁰**

- 1 The provisions of this Act shall also apply to the:
 - a. established branches of foreign banks in Switzerland;
 - b. representatives of foreign banks in Switzerland.¹¹
- 2 The FINMA¹² shall issue directives for such entities and may, in particular, require that these entities are adequately capitalized and that securities are provided.
- 3 In view of reciprocal recognition of equivalent rules regarding banking activities and of an equivalence in banking supervision, the Swiss Federal Council is empowered to sign treaties with states which stipulate that banks of the treaty state in question may open a branch, agency or representation without the FINMA's authorization.¹³

ARTICLE 2^{bis14}

- 1 As far as they are not subject to the FINMA's responsibility in bankruptcies in the context of single-entity supervision, the following are subject to Sections XI and XII of this Act:
 - a. group parent companies of a financial group or financial conglomerate domiciled in Switzerland;
 - b. group companies domiciled in Switzerland that fulfill functions significant for the activities subject to licensing (significant group companies).
- 2 The Swiss Federal Council defines the criteria to assess significance.
- 3 The FINMA then names the significant group companies and maintains a list of these. This list is accessible to the public.

⁹ Inserted with Appendix Section II 5 of the Swiss National Bank Act of 3 October 2003 (AS **2004** 1985; BBI **2002** 6097). Repealed with Appendix Section 10 of the Financial Markets Infrastructure Act of 19 June 2015, with effect from 1 January 2016 (AS **2015** 5339; BBI **2014** 7483).

¹⁰ Version according to Section I of the Act of 11 March 1971, in force since 1 July 1971 (AS **1971** 808 824 Article 1; BBI **1970** I 1144).

¹¹ Version according to Appendix Section 15 of the Financial Markets Supervision Act of 22 June 2007, in force since 1 January 2009 (AS **2008** 5207 5205; BBI **2006** 2829).

¹² Term according to Appendix Section 15 of the Financial Markets Supervision Act of 22 June 2007, in force since 1 January 2009 (AS **2008** 5207 5205; BBI **2006** 2829). This change has been taken into account in the entire enactment.

¹³ Inserted with Section I of the Act of 18 March 1994 (AS **1995** 246; BBI **1993** I 805). Version according to Appendix Section 15 of the Financial Markets Supervision Act of 22 June 2007, in force since 1 January 2009 (AS **2008** 5207 5205; BBI **2006** 2829).

¹⁴ Inserted with Appendix Section 10 of the Financial Markets Infrastructure Act of 19 June 2015, in force since 1 January 2016 (AS **2015** 5339; BBI **2014** 7483).

Section II: License to Operate a Bank¹⁵

ARTICLE 3¹⁶

- 1 Banks are required to obtain a license from the FINMA prior to engaging in business operations; they may not be entered into the Commercial Register before such a license has been granted.
- 2 A license shall be granted if:
 - a. a bank's articles of incorporation, partnership agreements and business regulations provide a clear definition of the scope of its business and establish an adequate organization in view of the proposed business activities. Where the scope or the importance of the business activities is significant, the bank must create separate bodies for its management on the one hand and for its direction, supervision and control on the other. These bodies must be adequately segregated in order to ensure the effective supervision of the bank's management;
 - b. ¹⁷ the bank demonstrates that it has fully paid in its minimum capital as defined by the Swiss Federal Council;
 - c. the persons in charge of the bank's administration and management enjoy a good reputation and thereby assure an irreproachable conduct of business operations;
 - c. ^{bis 18 19} natural persons or legal entities that directly or indirectly hold equity interest in the bank of at least 10 percent of the capital or voting rights or whose business activities are otherwise such that they may influence the bank in a significant manner (qualified participation), guarantee that their influence will not have a negative impact on the bank's prudent and solid business activity;
 - d. ^{20 21} the persons entrusted with the bank's management have their domicile in a place where they may exercise the management in a factual and responsible manner.
- 3 The bank is to file its articles of incorporation, partnership agreements and business regulations with the FINMA and notify it of all subsequent amendments concerning the purpose and scope of its business, its capital or its internal organization. Such amendments may not be entered into the Commercial Registry unless they have been approved by the FINMA.
- 4 ...²²

¹⁵ Version according to Section I of the Act of 11 March 1971, in force since 1 July 1971 (AS **1971** 808 824 Article 1; BBl **1970** I 1144).

¹⁶ Version according to Section I of the Act of 11 March 1971, in force since 1 July 1971 (AS **1971** 808 824 Article 1; BBl **1970** I 1144). See also the final provisions and amendments dated 22.4.1999 at the end of this text.

¹⁷ Version according to Section I of the Act of 18 March 1994, in force since 1 Feb.1995 (AS **1995** 246; BBl **1993** I 805).

¹⁸ Inserted with Section I of the Act of 18 March 1994, in force since 1 February 1995 (AS **1995** 246; BBl **1993** I 805).

¹⁹ See also the final provisions and amendments dated 18 March 1994 at the end of this Act.

²⁰ Version according to Section I of the Act of 18 March 1994, in force since 1 Feb.1995 (AS **1995** 246; BBl **1993** I 805).

²¹ See also the final provisions and amendments dated 18 March 1994 at the end of this Act.

²² Repealed with Section I of the Act of 18 March 1994, with effect from 1 February 1995 (AS **1995** 246; BBl **1993** I 805).

- 5 All natural persons or legal entities shall notify the FINMA prior to directly or indirectly acquiring or selling qualified equity interests as defined in (2)(c^{bis}) in a bank organized pursuant to Swiss law. This Bank shall also notify the FINMA whenever qualified equity interests are increased or decreased and thus reach, exceed or fall below the threshold of 20, 33 or 50 percent of the capital or voting rights, respectively.²³
- 6 The bank shall notify the FINMA of any persons subject to the requirements of (5) as soon as it has knowledge thereof, at least however once a year.^{24 25}
- 7 Banks organized pursuant to Swiss law shall notify the FINMA before they establish a subsidiary, branch, agency or representation abroad.²⁶

ARTICLE 3a²⁷

A bank constituted in the form of an establishment or public limited company on the basis of a Cantonal legal directive is deemed to be a Cantonal bank. The Canton's equity holdings shall amount to more than one third of the capital and it shall possess more than one third of the voting rights. The Canton may assume full or partial liability for the bank's obligations.

ARTICLE 3b²⁸

Prior to issuing a banking license, the FINMA may require a bank that is part of a financial group or conglomerate to be subject to an adequate consolidated supervision by a financial market supervisory authority.

ARTICLE 3c²⁹

- 1 Two or more companies are deemed to be a financial group if:
 - a. at least one acts as a bank or securities dealer;
 - b. they are active primarily in the financial sector; and
 - c. they form an economic unit and, due to circumstances on hand, it is to be assumed that one or more individual companies are legally obliged and factually forced to assist other group companies.

²³ Inserted with Section I of the Act of 18 March 1994, in force since 1 February 1995 (AS **1995** 246; BBl **1993** I 805).

²⁴ Inserted with Section I of the Act of 18 March 1994, in force since 1 February 1995 (AS **1995** 246; BBl **1993** I 805).

²⁵ See also the final provisions and amendments dated 18 March 1994 at the end of this Act.

²⁶ Inserted with Section I of the Act of 18 March 1994, in force since 1 February 1995 (AS **1995** 246; BBl **1993** I 805).

²⁷ Inserted with Section I of the Act of 18 March 1994 (AS **1995** 246; BBl **1993** I 805). Version according to Section I of the Act of 22 April 1999, in force since 1 October 1999 (AS **1999** 2405; BBl **1998** 3847). See also the final provisions of these amendments at the end of this text.

²⁸ Inserted with Appendix Section II 6 of the Swiss Insurance Supervision Act of 17 December 2004, in force since 1 January 2006 (AS **2005** 5269; BBl **2003** 3789).

²⁹ Inserted with Appendix Section II 6 of the Swiss Insurance Supervision Act of 17 December 2004, in force since 1 January 2006 (AS **2005** 5269; BBl **2003** 3789).

- 2 A financial group pursuant to (1) is deemed to be a financial conglomerate predominantly involved in banking or securities trading if it is primarily active in banking or securities trading and if an insurance company of considerable economic significance is part of it.

ARTICLE 3d³⁰

- 1 The FINMA may subject a financial group or banking or securities trading dominated financial conglomerate to group or conglomerate supervision if the group or conglomerate:
 - a. controls a bank or a securities trader in Switzerland organized pursuant to Swiss law; or
 - b. is effectively managed from Switzerland.
- 2 If other foreign authorities concurrently claim the full or partial supervision of the financial group or the financial conglomerate, the FINMA, under observance of its competencies, shall agree with the foreign authority on responsibilities, modalities and extent of the group or conglomerate supervision. Before finalizing its decision, it shall consult those companies of the financial group or conglomerate that are incorporated in Switzerland.³¹

ARTICLE 3e³²

- 1 The FINMA's group supervision shall be carried out in addition to the individual supervision of a bank.
- 2 The FINMA's conglomerate supervision shall be carried out in addition to the individual supervision of a bank or insurance company and to the group supervision of a financial or insurance group by the respective regulators.

ARTICLE 3f³³

- 1 The financial group's or conglomerate's persons entrusted with the executive management on the one hand and the direction, supervision and control on the other hand must have a good reputation and guarantee proper business conduct.
- 2 The financial group or conglomerate must be organized in such a manner to be able to specifically detect, mitigate and monitor all material risks.

³⁰ Inserted with Appendix Section II 6 of the Swiss Insurance Supervision Act of 17 December 2004, in force since 1 January 2006 (AS **2005** 5269; BBI **2003** 3789).

³¹ Version according to Appendix Section 15 of the Financial Markets Supervision Act of 22 June 2007, in force since 1 January 2009 (AS **2008** 5207 5205; BBI **2006** 2829).

³² Inserted with Appendix Section II 6 of the Swiss Insurance Supervision Act of 17 December 2004, in force since 1 January 2006 (AS **2005** 5269; BBI **2003** 3789).

³³ Inserted with Appendix Section II 6 of the Swiss Insurance Supervision Act of 17 December 2004, in force since 1 January 2006 (AS **2005** 5269; BBI **2003** 3789).

ARTICLE 3g³⁴

- 1 The FINMA shall be authorized to issue provisions on capital adequacy, liquidity, risk distribution, intra-group risk positions and accounting for financial groups.
- 2 The FINMA shall be authorized to issue or establish entity-specific provisions on capital adequacy, liquidity, risk distribution, intra-group risk positions and accounting for financial conglomerates dominated by their banking or securities trading business. 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 these two industries within the financial conglomerate and the associated risks.

ARTICLE 3h³⁵

ARTICLE 3^{bis} 36

- 1 The FINMA may also make the license to establish a bank to be organized in accordance with Swiss law but which is controlled by a foreign influence, the license to establish an office, a branch or an agency of a foreign or foreign-controlled bank or the license for a foreign bank to appoint a permanent representative, dependent on the following conditions:³⁷
 - a. a.³⁸ the country where the foreign bank or of the controlling corporation or shareholder is domiciled must guarantee reciprocity of supervision, provided no contradictory international obligations exist;
 - b. b. the corporate name of the foreign-controlled Swiss bank must in no way imply or suggest that the bank is of Swiss origin;
 - c. c.³⁹ ...
- 1 ^{bis} If a bank is part of a financial group or financial conglomerate, the FINMA may make the license dependent on the agreement of the relevant foreign supervisory authority.⁴⁰
- 2 A bank must inform the Swiss National Bank of the scope of its business activities and its relationships to foreign countries.

³⁴ Inserted with Appendix Section II 6 of the Swiss Insurance Supervision Act of 17 December 2004, in force since 1 January 2006 (AS **2005** 5269; BBI **2003** 3789).

³⁵ Inserted with Appendix Section II 6 of the Swiss Insurance Supervision Act of 17 December 2004 (AS **2005** 5269; BBI **2003** 3789). Repealed with Appendix Section 15 of the Financial Markets Supervision Act of 22 June 2007, with effect from 1 January 2009 (AS **2008** 5207 5205; BBI **2006** 2829).

³⁶ Inserted by Section I of the Act of 11 March 1971, in force since 1 July 1971 (AS **1971** 808 824 Article 1; BBI **1970** I 1144).

³⁷ Version according to Appendix Section 15 of the Financial Markets Supervision Act of 22 June 2007, in force since 1 January 2009 (AS **2008** 5207 5205; BBI **2006** 2829).

³⁸ Version according to Section I of the Act of 16 December 1994, in force since 1 July 1995 (AS **1995** 2109; BBI **1994** I 950).

³⁹ Repealed with Section I of the Act of 18 March 1994, with effect from 1 February 1995 (AS **1995** 246; BBI **1993** I 805).

⁴⁰ Inserted with Section I of the Act of 16 December 1994 (AS **1995** 2109; BBI **1994** IV 950). Version according to Appendix Section II 6 of the Swiss Insurance Supervision Act of 17 December 2004, in force since 1 January 2006 (AS **2005** 5269; BBI **2003** 3789).

- 3 A bank organized pursuant to Swiss law shall fall under the provisions of (1) whenever foreigners with qualified equity holdings directly or indirectly hold more than half of the voting rights or in any other way exercise a controlling influence.⁴¹

A foreigner is deemed to be:

- a. natural persons who possess neither Swiss citizenship nor a residency permit in Switzerland;
- b. legal entities and partnerships which are domiciled abroad or, if they are domiciled in Switzerland, are controlled by persons defined in (a).

ARTICLE 3^{ter} 42

- 1 After their inception, banks controlled by foreigners as described above must obtain an additional license in accordance with Article 3^{bis}.
- 2 If there is a change in foreign shareholders with qualified equity interests, a new additional license must be obtained.⁴³
- 3 The bank's Board members and management must notify the FINMA of all matters which could imply that the bank is foreign-controlled or if there has been a change in foreign-held qualified equity interests.⁴⁴

ARTICLE 3^{quater} 45

- 1 The Swiss Federal Council shall be empowered by way of a treaty to fully or partially revoke the particular requirements of Articles 3^{bis} and 3^{ter} if citizens of a treaty state or legal entities domiciled in a treaty state establish or take over a bank organized pursuant to Swiss law or acquire qualified interests therein. Provided there are no international treaties to the contrary, the Swiss Federal Council can make this dependent on the granting of reciprocity by the treaty state.
- 2 Should the legal entity on its part be directly or indirectly controlled by citizens of another country or by legal entities domiciled in another country, the afore-mentioned provisions remain applicable.

⁴¹ Version according to Section I of the Act of 18 March 1994, in force since 1 Feb.1995 (AS **1995** 246; BBl **1993** I 805).

⁴² Inserted by Section I of the Act of 11 March 1971, in force since 1 July 1971 (AS **1971** 808 824 Article 1; BBl **1970** I 1144).

⁴³ Version according to Section I of the Act of 16 December 1994, in force since 1 July 1995 (AS **1995** 2109; BBl **1994** I 950).

⁴⁴ Version according to Section I of the Act of 16 December 1994, in force since 1 July 1995 (AS **1995** 2109; BBl **1994** I 950).

⁴⁵ Inserted with Section I of the Act of 18 March 1994, in force since 1 February 1995 (AS 1995 246; BBl 1993 I 805).

Section III:

Capital, Liquidity and Other Requirements Relating to Business Operations⁴⁶

ARTICLE 4⁴⁷

- 1 Banks must adhere to capital adequacy and liquidity rules both at the level of the single-entity bank and at group level.
- 2 The Swiss Federal Council shall determine the elements of adequate capital and liquidity. It shall establish the minimum requirements in accordance with a bank's business activities and its risks. The FINMA shall be authorized to issue implementing provisions.
- 3 In special cases, the FINMA may grant alleviations to the minimum requirements or define more stringent provisions.
- 4 A bank's qualified equity interests in a company outside the financial or insurance sectors may not exceed 15 percent of its capital. The total of such equity interests may not exceed 60 percent of the bank's capital. Any exceptions to this rule are defined by the Swiss Federal Council.

ARTICLE 4^{bis} 48 49

- 1 A bank's loans to any single customer, as well as its equity interests in any single company, must be in adequate proportion to the bank's own capital.
- 2 The Implementing Ordinance shall define the lending limits, with special consideration given to loans to public-law entities and to the type of security furnished.
- 3 ...⁵⁰

ARTICLE 4^{ter} 51 52

- 1 Loans may only be granted to the bank's governing bodies and significant shareholders as well as to related persons and affiliated companies in application of generally accepted principles of the banking industry.
- 2 ...⁵³

⁴⁶ Version according to Section I of the Act of 11 March 1971, in force since 1 July 1971 (AS **1971** 808 824 Article 1; BBI **1970** | 1144).

⁴⁷ Repealed with Section I of the Act of 18 March 1994, with effect from 1 February 1995 (AS **1995** 246; BBI **1993** | 805).
(AS **2004** 1985; BBI **2002** 6097).

⁴⁸ Inserted by Section I of the Act of 11 March 1971, in force since 1 July 1971 (AS **1971** 808 824 Article 1; BBI **1970** | 1144).

⁴⁹ See also the final provisions and amendments dated 18 March 1994 at the end of this Act.

⁵⁰ Repealed with Section I of the Act of 18 March 1994, with effect from 1 February 1995 (AS **1995** 246; BBI **1993** | 805).

⁵¹ Inserted by Section I of the Act of 11 March 1971, in force since 1 July 1971 (AS **1971** 808 824 Article 1; BBI **1970** | 1144).

⁵² See also the final provisions and amendments dated 18 March 1994 at the end of this Act.

⁵³ Repealed with Section I of the Act of 18 March 1994, with effect from 1 February 1995 (AS **1995** 246; BBI **1993** | 805).

ARTICLE 4 ^{quater} 54

Banks must abstain from misleading or obtrusive use of their Swiss domicile or their association to Swiss institutions both domestically or abroad.

ARTICLE 4 ^{quinquies} 55

- 1 Banks with a parent company that is supervised by a banking or financial market supervisory authority may transmit information or documents not publicly available to their respective parent company if these are necessary for the purpose of consolidated supervision, provided that:
 - a. such information is used exclusively for internal control or direct supervision of banks or other financial intermediaries subject to license;
 - b. both the parent company and the supervisory authority responsible for consolidated supervision are bound by official secrecy or professional confidentiality;
 - c. this information is not transmitted to third parties without the prior permission of the bank or based on the blanket permission previously defined in a state treaty.
- 2 If in doubt regarding the transmission of data pursuant to (1), banks may demand a formal decision by the FINMA to allow or forbid the transmission of information.

ARTICLE 5⁵⁶**Section IV:**⁵⁷ **Accounting****ARTICLE 6** Preparation of financial statements

- 1 Banks shall prepare an annual report for every business year, consisting of:
 - a. the annual financial statements;
 - b. the management report;
 - c. the consolidated financial statements.
- 2 Banks shall prepare at least semi-annual interim financial statements.
- 3 The annual report and the interim financial statements shall be prepared according to the provisions of

⁵⁴ Inserted by Section I of the Act of 11 March 1971, in force since 1 July 1971 (AS **1971** 808 824 Article 1; BBl **1970** I 1144).

⁵⁵ Inserted with Section I of the Act of 18 March 1994, in force since 1 February 1995 (AS 1995 246; BBl 1993 I 805).

⁵⁶ Repealed with Appendix Section 15 of the Financial Markets Supervision Act of 22 June 2007, with effect from 1 January 2009 (AS **2008** 5207 5205; BBl **2006** 2829).

⁵⁷ Version according to Appendix Section 7 of the Act of 23 December 2011 (Accounting Act), in force since 1 January 2013 (AS **2012** 6679; BBl **2008** 1589).

the 32nd Title of the Code of Obligations⁵⁸ and this Act as well as any applicable implementing provisions.

4 In exceptional cases, the Swiss Federal Council may decide to diverge from (3).

ARTICLE 6a Publication

- 1 Annual reports shall be made accessible to the public.
- 2 Interim financial statements shall be made accessible to the public if the implementing provisions to this Act require an institution to do so.
- 3 (1) and (2) do not apply to private banks that do not publicly solicit customer deposits. Article 958e(2) of the Swiss Code of Obligations⁵⁹ shall remain applicable.

ARTICLE 6b Implementing regulations

- 1 The Swiss Federal Council shall issue implementing provisions in regard to the form, content and publication of annual reports and interim financial statements.
- 2 The Swiss Federal Council may deviate from the provisions of the Swiss Code of Obligations⁶⁰ on accounting and financial reporting if specific aspects of an institute's operations or the protection of creditors justify this and the institute's economic situation is presented in an equivalent manner.
- 3 The Swiss Federal Council may authorize the FINMA to issue implementing provisions for matters of limited effect, usually in regard to mainly technical aspects.
- 4 If the conditions in (2) are given, the FINMA may limit the accounting standards applicable to banks recognized by the Swiss Federal Council.

Section V:⁶¹ Systemically Important Banks

ARTICLE 7 DEFINITION AND PURPOSE

- 1 Systemically important banks are banks, financial groups and bank-dominated financial conglomerates, the failure of which would cause considerable damage to the Swiss economy and the Swiss financial system.
- 2 The provisions of this section, in conjunction with the generally applicable Banking Act provisions, shall aim at further mitigating the risks presented by systemically important banks to the stability of the Swiss financial system, thus ensuring the continuation of these banks' economically important functions and avoiding recourse to state aid.

⁵⁸ SR 220

⁵⁹ SR 220

⁶⁰ SR 220

⁶¹ Version according to Section I of the Act of 30 September 2011 (Strengthening the stability in the financial sector), in force since 1 March 2012 (AS 2012 811; BBl 2011 4717).

ARTICLE 8 Criteria and determination of systemic importance

- 1 Functions shall be deemed systemically important if they are indispensable to the Swiss economy and cannot be substituted at short notice. Systemically important functions are, in particular, the domestic deposit and lending business as well as payment transactions.
- 2 A bank's systemic importance is determined by its size, its interconnectedness with the financial system and the economy as well as the speed at which the bank's services can be substituted. Specifically, the following criteria shall apply:
 - a. the market share of systemically important functions as per (1);
 - b. the amount of secured deposits as per Article 37h(1) that exceeds the maximum amount defined in Article 37h(3)(b);
 - c. the ratio of the bank's total assets to Switzerland's annual Gross Domestic Product;
 - d. the bank's risk profile as determined by its business model, balance sheet structure, asset quality, liquidity and debt/equity ratio.
- 3 After consulting the FINMA, the Swiss National Bank (SNB) shall issue a formal decision designating the systemically important banks and their systemically important functions.

ARTICLE 9 Special requirements

- 1 Systemically important banks must meet special requirements. The scope and structure of these shall be based on the degree of systemic importance of the bank concerned. The requirements must be proportionate to their benefit, make allowance for their impact on the banks concerned and on their competitiveness, and must also take into account internationally recognized standards.
- 2 In particular, systemically important banks shall:
 - a. dispose of capital that in particular:
 1. shows a higher loss absorbency than that of not systemically important banks, as measured by legal requirements,
 2. significantly contributes to ensuring the continuation of systemically important functions in the event of impending insolvency (PONV),
 3. is of a quality that sets incentives for the banks to limit their degree of systemic importance as well as to improve their capacity to be restructured or liquidated in Switzerland and abroad,
 4. is measured for its risk-weighted assets on the one hand and for its non-risk-weighted assets (that may also contain off-balance sheet transactions) on the other hand;

- b. dispose of liquidity that ensures a better absorbency of liquidity shocks compared to banks that are not systemically important and that can also service its outstanding payment commitments even in times of unusual stress;
- c. diversify risks so as to limit counterparty risk and large exposures;
- d. design its contingency planning with respect to structure, infrastructure, management and control as well as intra-group liquidity and capital flows in a way that it can be implemented immediately and ensures the continuation of the bank's systemically important functions in the event of impending insolvency.

ARTICLE 10 Application to specific banks

- 1 After consulting the Swiss National Bank, the FINMA shall issue a formal decision stipulating the special requirements as defined in Article 9(2)(a) - (c) that systemically important banks must meet. It shall inform the general public of the basic content of this formal decision, and the bank's compliance with it.
- 2 The systemically important bank must prove that it meets the special requirements of Article 9(2) (d) and that it is able to continue providing the systemically important functions in the event of an impending insolvency. Should the bank fail to provide this proof, the FINMA shall impose any necessary measures.
- 3 When defining capital requirements under Article 9(2)(a), the FINMA may grant alleviations once the bank has improved its recovery or liquidation capacities in Switzerland and abroad exceeding the requirements defined in Article 9(2)(d).
- 4 After consulting the Swiss National Bank and the FINMA, the Swiss Federal Council shall regulate:
 - a. the special requirements as per Article 9(2);
 - b. the criteria for assessing the proof pursuant to (2);
 - c. and the measures that the FINMA may impose if the bank fails to supply the proof as per (2).⁶²

ARTICLE 10a Measures in regard to remuneration packages

- 1 If a systemically important bank or its group parent company directly or indirectly receives state aid from federal funds despite implementing the special requirements, the Swiss Federal Council shall also impose measures in regard to the bank's remuneration packages for the bank's employees for the duration of the support.
- 2 In particular, after considering the bank's financial situation and the support provided, the Swiss Federal Council can:

⁶² See also the transitional provisions and amendments dated 30.9.2011 at the end of this text.

- a. entirely or partially prohibit the payment of variable remunerations;
 - b. prescribe adjustments to the bank's remuneration system.
- 3 A systemically important bank and its group parent company must include a caveat in their remuneration system to the effect that in the case of state aid the legal entitlement to variable remuneration may be curtailed as per this article.

Section VI:⁶³ Additional capital

ARTICLE 11 Principles

- 1 If their legal form allows for the issuance of shares or participation capital (share capital without voting rights), banks and the group parent companies of financial groups and bank-dominated financial conglomerates may in their articles of incorporation:
 - a. authorize the Board of Directors to increase the share capital or the participation capital (buffer capital);
 - b. allow for an increase in the share capital or participation capital that is carried out with the conversion of mandatory convertible bonds (conversion capital) if a trigger event occurs.
- 2 Banks and the group parent company of financial groups and bank-dominated financial conglomerates may, irrespective of their legal form, provide in the issuing conditions of bonds that creditors must waive their claims if a specific event occurs (bonds with debt waiver clause).
- 3 The additional capital as defined in (1) and (2) may be created solely for reinforcing the bank's equity base, thus allowing the bank to prevent a crisis or to cope with it.
- 4 The capital raised with the issue of mandatory convertible bonds or bonds with a debt waiver clause as per the provisions of this section may be included in the required capital to the extent that this is admissible as per this Act and its implementing provisions. Its eligibility is contingent on the FINMA's prior approval of the respective issue conditions.

ARTICLE 12 Buffer capital

- 1 The General Assembly may authorize the Board of Directors to increase the share capital or the participation capital by amending the articles of incorporation. The articles of incorporation shall indicate the nominal amount by which the Board of Directors may increase the capital.
- 2 For important reasons, the Board of Directors may revoke the subscription rights of the shareholders or participation certificate holders, in particular if this serves the rapid and smooth placement of the shares or participation certificates. In this case, the new shares or participation certificates

⁶³ Version according to Section I of the Act of 30 September 2011 (Strengthening the stability in the financial sector), in force since 1 March 2012 (AS **2012** 811; BBl **2011** 4717).

must be issued at market conditions. If it is in the bank's interest, a discount shall be granted if this enables a rapid and complete placement of the shares or participation certificates.

- 3 In all other respects, the provisions of the Swiss Code of Obligations⁶⁴ on the authorized capital increase shall apply, with the exception of the following:
 - a. Article 651(1) and (2) (time limits and restrictions in regard to the amount of authorized capital increases);
 - b. Article 652b(2) (important reasons for revoking subscription rights);
 - c. Article 652d (capital increase using equity);
 - d. Article 656b(1) and (4) (limitation of amount of an approved increase in participation capital).

ARTICLE 13 Conversion Capital

- 1 The annual general meeting may decide a contingent increase of the share capital or participation capital by defining in the articles of incorporation that the debt securities arising from mandatory convertible bonds are converted into shares or participation certificates once the triggering event occurs.
- 2 It may limit the nominal value of the contingent capital increase in its articles of incorporation. In the articles of incorporation, the annual general meeting shall define:
 - a. the number, type and nominal value of the shares and participation certificates;
 - b. the basis on which the issue price shall be calculated;
 - c. revocation of the subscription rights of the shareholders and participation certificate holders;
 - d. restricted fungibility for new registered shares and participation certificates.
- 3 The Board of Directors shall be authorized to issue mandatory convertible bonds within the scope of the articles of incorporation's provisions. Unless the articles of incorporation specify otherwise, the Board of Directors shall determine:
 - a. a possible split into several bonds or into several tranches;
 - b. the triggering event or, in the case of tranches, the triggering events;
 - c. the issue price or the rules by which it is determined;
 - d. the conversion ratio or the rules by which it is determined.

⁶⁴ SR 220

- 4 The mandatory convertible bonds shall be offered for subscription to the shareholders and participation certificate holders in proportion to their equity interest. If the mandatory convertible bonds are issued at market conditions or with a discount to ensure a rapid and complete placement, the annual general meeting may revoke the advance subscription rights of the shareholders and participation certificate holders.
- 5 Once the triggering event for the conversion occurs, the Board of Directors shall immediately issue a public document. This document must contain the number, the nominal value and type of the issued shares and participation certificates, the new amount of the share capital and the participation capital as well as the necessary amendments to the articles of incorporation.
- 6 The Board of Directors' resolution is to be submitted to the Commercial Register without delay. The Commercial Register entry cannot be blocked.
- 7 The share capital and the participation capital shall be increased upon the Board of Directors' resolution to do so. Simultaneously, all claims arising from the mandatory convertible bonds shall expire.
- 8 None of the provisions of the Swiss Code of Obligations⁶⁵ on contingent capital increases shall apply, with the exception of the following provisions:
 - a. Article 653a(2) (minimum capital contribution);
 - b. Article 653d(2) (protection of beneficiaries of conversion or option rights);
 - c. Article 653i (expiry).

ARTICLE 14⁶⁶

Section VII: Savings and Deposits⁶⁷

ARTICLE 15

- 1 Deposits referred to as "savings" in any combination of words may be accepted only by banks publishing annual financial statements. No other companies are authorized to accept savings deposits and may not use the term "savings" with regard to the money deposited with them in either their company name, or in the designation of their business purpose or in their advertising.⁶⁸

2–3 ...⁶⁹

⁶⁵ SR 220

⁶⁶ Repealed with Appendix Section 11 of the Merger Act of 3 October 2003, with effect from 1 July 2004 (AS 2004 2617; BBl 2000 4337).

⁶⁷ Version according to Appendix Section 17 of the Act of 16 December 1994, in force since 1 January 1997 (AS 1995 1227; BBl 1991 III 1).

⁶⁸ Version according to Section I of the Act of 18 March 1994, in force since 1 Feb.1995 (AS 1995 246; BBl 1993 I 805).

⁶⁹ Repealed with Appendix Section 17 of the Act of 16 December 1994, with effect from 1 January 1997 (AS 1995 1227; BBl 1991 III 1).

ARTICLE 16⁷⁰

The following assets shall be considered to be deposits as per Article 37d of this Act:⁷¹

- 1 tangible assets and securities belonging to the depositor;
- 2 tangible assets, securities and claims which the bank safekeeps on behalf of the depositor;
- 3 freely available delivery claims of the bank against third parties arising from spot transactions, completed forward transactions, collateral transactions or issues for the account of depositors.

Section VIII: ...

ARTICLE 17⁷²

Section IX: Supervision and Audit⁷³

ARTICLE 18⁷⁴

- 1 Financial intermediaries must arrange for an audit firm licensed by the Federal Audit Oversight Authority under Article 9a(1) of the Auditor Oversight Act of 16 December 2005⁷⁵ to carry out an audit in accordance with Article 24 of the Financial Market Supervision Act of 22 June 2007.⁷⁶
- 2 Banks, financial groups and financial conglomerates must have their annual financial statements, and if applicable, the consolidated financial statements, audited in accordance with the principles of an ordinary audit (as per Code of Obligations⁷⁷) by an audit firm subject to state supervision.

ARTICLE 19–22⁷⁸

⁷⁰ Version according to Appendix Section 17 of the Act of 16 December 1994, in force since 1 January 1997 (AS **1995** 1227; BBI **1991** III 1).

⁷¹ Version according to Section I of the Act of 3 October 2003, in force since 1 July 2004 (AS **2004** 2767; BBI **2002** 8060).

⁷² Repealed with Appendix Section 5 of the Federal Intermediated Securities Act of 3 October 2008, with effect from 1 January 2010 (AS **2009** 3577; BBI **2006** 9315).

⁷³ Term according to Appendix Section 15 of the Financial Markets Supervision Act of 22 June 2007, in force since 1 January 2009 (AS **2008** 5207 5205; BBI **2006** 2829). This amendment has been taken into account in the entire enactment.

⁷⁴ Version according to Appendix Section 5 of the Act of 20 June 2014 (Bundling of Supervision over Auditing Firms), in force since 1 January 2015 (AS **2014** 4073; BBI **2013** 6857).

⁷⁵ SR **221.302**

⁷⁶ SR **956.1**

⁷⁷ SR **220**

⁷⁸ Repealed with Appendix Section 15 of the Financial Markets Supervision Act of 22 June 2007, with effect from 1 January 2009 (AS **2008** 5207 5205; BBI **2006** 2829).

Section X: Supervision⁷⁹

ARTICLE 23⁸⁰

- 1 The FINMA may itself carry out audits at banks, banking groups and financial conglomerates if this is necessary in view of the bank's economic significance, the complexity of the factors to be addressed or its approval of internal models.

ARTICLE 23^{bis} 81

- 1 If a bank outsources significant functions to another natural or legal person, these shall be subject to the information and notification requirements as per Article 29 of the Financial Markets Supervision Act of 22 June 2007^{82, 83}
- 2 The FINMA may audit such persons at any time.⁸⁴
- 3 The FINMA shall be authorized to transmit information not accessible to the public and documents to other Swiss financial-market supervisory authorities as well the to Swiss National Bank if they require these to fulfill their duties.⁸⁵
- 4 The FINMA shall cooperate with the Swiss National Bank to supervise operators of payment and securities settlement systems subject to this Act. It shall coordinate its activity with the Swiss National Bank and consult with it prior to issuing a supervisory order.⁸⁶

ARTICLE 23^{ter} 87

When implementing Article 3(2)(cbis) and 5 of this Act, the FINMA may, in particular, suspend the voting rights connected to shares or stock held by shareholders or partners with qualified equity interests.

ARTICLE 23^{quater} 88

⁷⁹ Version according to Appendix Section 15 of the Financial Markets Supervision Act of 22 June 2007, in force since 1 January 2009 (AS **2008** 5207 5205; BBI **2006** 2829).

⁸⁰ Version according to Appendix Section 15 of the Financial Markets Supervision Act of 22 June 2007, in force since 1 January 2009 (AS **2008** 5207 5205; BBI **2006** 2829).

⁸¹ Inserted by Section I of the Act of 11 March 1971, in force since 1 July 1971 (AS **1971** 808 824 Article 1; BBI **1970** I 1144).

⁸² SR **956.1**

⁸³ Inserted with Appendix Section 10 of the Financial Markets Infrastructure Act of 19 June 2015, in force since 1 January 2016 (AS **2015** 5339; BBI **2014** 7483).

⁸⁴ Inserted with Appendix Section 10 of the Financial Markets Infrastructure Act of 19 June 2015, in force since 1 January 2016 (AS **2015** 5339; BBI **2014** 7483).

⁸⁵ Inserted with Appendix Section II 5 of the National Bank Act of 3 October 2003, in force since 1 May 2004 (AS **2004** 1985; BBI **2002** 6097).

⁸⁶ Inserted with Appendix Section II 5 of the National Bank Act of 3 October 2003, in force since 1 May 2004 (AS **2004** 1985; BBI **2002** 6097).

⁸⁷ Inserted with Section I of the Act of 11 March 1971 (AS **1971** 808; BBI **1970** I 1144). Version according to Appendix Section 15 of the Financial Markets Supervision Act of 22 June 2007, in force since 1 January 2009 (AS **2008** 5207 5205; BBI **2006** 2829).

⁸⁸ Inserted with Section I of the Act of 11 March 1971 (AS 1971 808; BBI 1970 I 1144). Repealed with Appendix Section 15 of the Financial Markets Supervision Act of 22 June 2007, with effect from 1 January 2009 (AS **2008** 5207 5205; BBI **2006** 2829).

ARTICLE 23^{quinquies} 89

- 1 Should the FINMA revoke a bank's license, this would cause the dissolution of legal persons, general and limited partnerships and the deletion from the Commercial Register for sole proprietorships⁹⁰. The FINMA shall appoint the liquidator and monitor its activities.
- 2 The above is subject to the measures defined in Section XI.

ARTICLE 23^{sexies} 91

ARTICLE 23^{septies} 92

ARTICLE 23^{octies} 93

ARTICLE 24⁹⁴

- 1 ...⁹⁵
- 2 In the procedures foreseen in Sections XI and XII of this Act, creditors and owners of a bank, a group parent company or a significant group company may, as per Article 2^{bis}, appeal only against the approval of a restructuring plan or plans to divest operations. Appeals pursuant to Article 17 of the Swiss Federal Act on Debt Collection and Bankruptcy of 11 April 1889⁹⁶ are excluded from these procedures.⁹⁷
- 3 Appeals pursuant to Sections XI and XII do not have a suspensive effect. The judge presiding over the proceedings may order a suspension if requested to do so. However, no suspensive effect may be granted for appeals against the approval of a restructuring plan.⁹⁸
- 4 Should a creditor's or owner's appeal against the approval of a restructuring plan be accepted, the court can only award it a compensation.⁹⁹

⁸⁹ Inserted with Section I of the Act of 11 March 1971 (AS **1971** 808; BBI **1970** I 1144). Version according to Appendix Section 15 of the Financial Markets Supervision Act of 22 June 2007, in force since 1 January 2009 (AS **2008** 5207 5205; BBI **2006** 2829).

⁹⁰ Now: sole proprietorships

⁹¹ Inserted with Section I of the Act of 18 March 1994 (AS **1995** 246; BBI **1993** I 805). Repealed with Appendix Section 15 of the Financial Markets Supervision Act of 22 June 2007, with effect from 1 January 2009 (AS **2008** 5207 5205; BBI **2006** 2829).

⁹² Inserted with Section I of the Act of 22 April 1999 (AS **1999** 2405; BBI **1998** I 3847). Repealed with Appendix Section 10 of the Financial Markets Infrastructure Act of 19 June 2015, with effect from 1 January 2016 (AS **2015** 5339; BBI **2014** 7483).

⁹³ Inserted with Section I of the Act of 3 October 2003 (AS **2004** 2767; BBI **2002** 8060). Repealed with Appendix Section 15 of the Financial Markets Supervision Act of 22 June 2007, with effect from 1 January 2009 (AS **2008** 5207 5205; BBI **2006** 2829).

⁹⁴ Version according to Section I of the Act of 11 March 1971, in force since 1 July 1971 (AS **1971** 808 824 Article 1; BBI **1970** I 1144).

⁹⁵ Repealed with Appendix Section 15 of the Financial Markets Supervision Act of 22 June 2007, with effect from 1 January 2009 (AS **2008** 5207 5205; BBI **2006** 2829).

⁹⁶ SR **281.1**

⁹⁷ Inserted with Section I of the Act of 3 October 2003 (AS **2004** 2767; BBI **2002** 8060). Inserted with Appendix Section 10 of the Financial Markets Infrastructure Act of 19 June 2015, in force since 1 January 2016 (AS **2015** 5339; BBI **2014** 7483).

⁹⁸ Inserted with Section I 16 of the Ordinance of the Federal Assembly of 20 December 2006 on the adaptation of enactments to the provisions of the Federal Supreme Court Act and the Administrative Court Act (AS **2006** 5599; BBI **2006** 7759). Version according to Section I of the Act of 30 September 2011 (Strengthening the stability in the financial sector), in force since 1 March 2012 (AS **2012** 811; BBI **2011** 4717).

⁹⁹ Inserted with Section I of the Act of 30 September 2011 (Strengthening the stability in the financial sector), in force since 1 March 2012 (AS **2012** 811; BBI **2011** 4717).

Section XI:¹⁰⁰ Measures in Case of impending Insolvency

ARTICLE 25 Requirements

- 1 Should there be a justified concern that a bank is over-indebted or has serious liquidity problems or that the bank no longer fulfills the capital adequacy provisions after the expiry of a deadline set by the FINMA, the FINMA can order the following:
 - a. protective measures pursuant to Article 26;
 - b. restructuring procedures pursuant to Articles 28–32;
 - c. the bank's liquidation due to bankruptcy¹⁰¹ (bankruptcy of the bank) pursuant to Articles 33–37g.
- 2 The protective measures may be ordered as stand-alone measures or in conjunction with a restructuring or liquidation.
- 3 The provisions concerning debt remission (Articles 293–336 DCBA¹⁰² [Swiss Federal Act on Debt Collection and Bankruptcy]), the moratoria under company law (Articles 725 and 725a of the Swiss Code of Obligations¹⁰³) and the duty to inform the judge (Article 729b(2)¹⁰⁴ of the Swiss Code of Obligations) do not apply to banks.
- 4 The FINMA's orders shall pertain to all of the bank's assets, including assets and liabilities as well as contractual relationships, whether they are in Switzerland or abroad.¹⁰⁵

ARTICLE 26 Protective Measures

- 1 FINMA may order protective measures as follows:¹⁰⁶
 - a. issue instructions to the governing bodies of the bank;
 - b. ¹⁰⁷ appoint an investigator;
 - c. strip governing bodies of their power to legally represent the bank or remove them from office;
 - d. remove the banking-act or statutory audit firm from office;

¹⁰⁰ Version according to Section I of the Act of 3 October 2003, in force since 1 July 2004 (AS **2004** 2767; BBI **2002** 8060).

¹⁰¹ Terminology as per Section I of the Act of 18 March 2011 (Protection of bank deposits), in force since 1 September 2011 (AS **2011** 3919; BBI **2010** 3993). This amendment has been taken into account throughout the entire enactment.

¹⁰² SR **281.1**

¹⁰³ SR **220**

¹⁰⁴ Now: Article 728c(3)

¹⁰⁵ Inserted with Section I of the Act of 18 March 2011 (Protection of bank deposits), in force since 1 September 2011 (AS **2011** 3919; BBI **2010** 3993).

¹⁰⁶ Version according to Appendix Section 15 of the Financial Markets Supervision Act of 22 June 2007, in force since 1 January 2009 (AS **2008** 5207 5205; BBI **2006** 2829).

¹⁰⁷ Version according to Appendix Section 15 of the Financial Markets Supervision Act of 22 June 2007, in force since 1 January 2009 (AS **2008** 5207 5205; BBI **2006** 2829).

- e. limit the bank's business activities;
 - f. forbid the bank to make or accept payments or undertake securities transactions;
 - g. close down the bank;
 - h. order deferment of payments or payment extension, except for mortgage-secured receivables of central mortgage bond institutions.
- 2 It ensures that the measures are made public appropriately if this is necessary for their enforcement or for the protection of third parties.
 - 3 Provided the FINMA does not order anything else regarding accrued interests, payment deferrals shall have the effect as per Article 297 DCBA¹⁰⁸.

ARTICLE 27¹⁰⁹ Precedence of netting, liquidation or transfer agreements

- 1 Memorandums of understanding concluded in advance pertaining to the following shall remain unaffected by measures foreseen as per Sections XI and XII:
 - a. netting of accounts receivable, including the agreed-upon method and the value assessment;
 - b. discretionary utilization of collateral in the form of securities or other financial instruments whose value is objectively ascertainable;
 - c. transfer of accounts receivable and accounts payable as well as of collateral in the form of securities or other financial instruments whose value is objectively ascertainable;
- 2 Article 30a remains applicable.

ARTICLE 28¹¹⁰ Restructuring Procedures

- 1 If it appears likely that the bank can recover or can continue to provide individual banking services, the FINMA may initiate its restructuring.
- 2 It shall issue the necessary provisions and orders for such a restructuring.
- 3 It may entrust a person to prepare a restructuring plan (restructuring agent: Sanierungsbeauftragter).

¹⁰⁸ SR **281.1**

¹⁰⁹ Inserted with Appendix Section 10 of the Financial Markets Infrastructure Act of 19 June 2015, in force since 1 January 2016 (AS **2015** 5339; BBl **2014** 7483).

¹¹⁰ Version as per Section I of the Act of 18 March 2011 (Protection of bank deposits), in force since 1 September 2011 (AS **2011** 3919; BBl **2010** 3993).

ARTICLE 29¹¹¹ Restructuring of the Bank

In case of a bank restructuring, a restructuring plan must ensure that the bank fulfills the licensing requirements and complies with statutory regulations after it has been restructured.

ARTICLE 30¹¹² Continuation of Banking Services

- 1 The restructuring plan may foresee the continuation of selected banking services, regardless of the continued existence of the bank concerned.
- 2 It may, in particular, transfer the bank's assets or parts thereof, including assets and liabilities as well as contractual relationships, to other entities or to a temporary "bridge bank".
- 3 If contractual relationships or the bank's assets or parts thereof are transferred, the transferee will take the place of the bank, provided the restructuring plan foresees this. The Mergers Act of 3 October 2003¹¹³ is not applicable.¹¹⁴

ARTICLE 30a¹¹⁵ Suspension of the Termination of Agreements

- 1 With the ordering or approval of measures as per this section, the FINMA may postpone the following:
 - a. the termination of agreements and the exercising of rights aimed at their termination;
 - b. the exercising of netting, liquidation or transfer rights as per Article 27.
- 2 The postponement may only be ordered if the termination or the exercising of rights as per (1) is due to the ordered measures.
- 3 It can be ordered for a maximum of two working days. The FINMA shall specify the beginning and the end of the postponement.
- 4 The postponement shall be excluded or becomes void if the termination or the exercising of a right as per (1):
 - a. is not linked to the ordered measures; and
 - b. is due to the behavior of the bank in an insolvency proceeding or the legal entity that takes over the agreements in part or in full.

¹¹¹ Version as per Section I of the Act of 18 March 2011 (Protection of bank deposits), in force since 1 September 2011 (AS **2011** 3919; BBl **2010** 3993).

¹¹² Version as per Section I of the Act of 18 March 2011 (Protection of bank deposits), in force since 1 September 2011 (AS **2011** 3919; BBl **2010** 3993).

¹¹³ SR **221.301**

¹¹⁴ Version according to Section I of the Act of 30 September 2011 (Strengthening the stability in the financial sector), in force since 1 March 2012 (AS **2012** 811; BBl **2011** 4717).

¹¹⁵ Inserted with Appendix Section 10 of the Financial Markets Infrastructure Act of 19 June 2015, in force since 1 January 2016 (AS **2015** 5339; BBl **2014** 7483).

- 5 If, after the postponement has elapsed, the licensing requirements and the remaining statutory provisions have been complied with, the agreement shall continue to be force and the rights as per (1) in connection with the ordered measures can no longer be exercised.

ARTICLE 31¹¹⁶ Approval of Restructuring Plan

- 1 FINMA shall approve the restructuring plan if it:
- a. is based upon a prudent valuation of the bank's assets;
 - b. anticipates the creditors' position more favorably than they would be in the case of a liquidation of the bank;
 - c. takes into consideration the precedence of the creditors' interests over those of the shareholders and takes into account of the ranking of the creditors;
 - d. ¹¹⁷ considers the legal and economic interconnection between assets, liabilities and contractual relationships.
- 2 No approval of the bank's annual general meeting is necessary.
- 3 As a last resort to preventing the bank's insolvency, the restructuring plan may, while preserving the creditors' rights as per (1), call for a reduction of the existing equity and the creation of new equity, the conversion of borrowed capital into equity as well as the reduction of accounts receivable.¹¹⁸
- 4 The FINMA must inform the public of the basics of this restructuring plan.¹¹⁹

ARTICLE 31a¹²⁰ Rejection of Restructuring Plan

- 1 Should the restructuring plan foresee a curtailment of the creditors' rights, the FINMA shall inform these at the latest when it approves the plan and sets a deadline within which the creditors can reject this restructuring plan.
- 2 Should creditors representing more than half, according to the books of account, of the third-class claims pursuant to Article 219(4) DCBA¹²¹ [Swiss Federal Act on Debt Collection and Bankruptcy] reject the restructuring plan, the FINMA must define the bank's liquidation pursuant to Articles 33-37g.

¹¹⁶ Version as per Section I of the Act of 18 March 2011 (Protection of bank deposits), in force since 1 September 2011 (AS **2011** 3919; BBl **2010** 3993).

¹¹⁷ Inserted with Section I of the Act of 30 September 2011 (Strengthening the stability in the financial sector), in force since 1 March 2012 (AS **2012** 811; BBl **2011** 4717).

¹¹⁸ Inserted with Appendix Section 10 of the Financial Markets Infrastructure Act of 19 June 2015, in force since 1 January 2016 (AS **2015** 5339; BBl **2014** 7483).

¹¹⁹ Inserted with Section I of the Act of 30 September 2011 (Strengthening the stability in the financial sector), in force since 1 March 2012 (AS **2012** 811; BBl **2011** 4717).

¹²⁰ Inserted with Section I of the Act of 18 March 2011 (Protection of bank deposits), in force since 1 September 2011 (AS **2011** 3919; BBl **2010** 3993).

¹²¹ SR **281.1**

- 3 This article does not apply to the restructuring of a systemically important bank.¹²²

ARTICLE 31b¹²³ Rebalancing

- 1 If assets, liabilities and contractual relationships are only partially transferred to another entity or to a bridge bank, the FINMA shall order an independent valuation of these.
- 2 The FINMA shall regulate how to handle the rebalancing among the entities affected and accordingly complement the restructuring plan with an addendum.

ARTICLE 32 Assertion of Claims

- 1 Once the FINMA has approved a restructuring plan, the bank shall be entitled to contest legal transactions in accordance with Articles 285-292 DCBA¹²⁴.
- 2 Should the restructuring plan exclude the bank's contesting of legal transactions as per (1), each creditor shall be entitled to do so up to the limit that the restructuring plan encroaches on his/her rights.
- 2 ^{bis} Legal transactions arising during the fulfillment of the restructuring plan approved by the FINMA as per Articles 285-292 DCBA cannot be contested.¹²⁵
- 3 The date on which the restructuring plan is approved is relevant for determining the deadlines foreseen under Articles 286-288 DCBA. If the FINMA has ordered protective measures as set out in Article 26(1)(e)-(h) beforehand, then the date of that order shall be relevant.
- 3 ^{bis} The right to appeal shall expire two years after the restructuring plan has been approved.¹²⁶
- 4 In the assertion of liability claims regarding corporate responsibility pursuant to Article 39, (1) and (2) shall apply correspondingly.

¹²² Inserted with Section I of the Act of 30 September 2011 (Strengthening the stability in the financial sector), in force since 1 March 2012 (AS **2012** 811; BBl **2011** 4717).

¹²³ Inserted with Section I of the Act of 30 September 2011 (Strengthening the stability in the financial sector), in force since 1 March 2012 (AS **2012** 811; BBl **2011** 4717).

¹²⁴ SR **281.1**

¹²⁵ Inserted with Section I of the Act of 30 September 2011 (Strengthening the stability in the financial sector), in force since 1 March 2012 (AS **2012** 811; BBl **2011** 4717).

¹²⁶ Inserted with Section I of the Act of 18 March 2011 (Protection of bank deposits), in force since 1 September 2011 (AS **2011** 3919; BBl **2010** 3993).

Section XII:¹²⁷

Liquidation of Insolvent Banks (Bank Bankruptcy)

ARTICLE 33 Order of Insolvency Proceedings and Appointment of Liquidators¹²⁸

- 1 Should there be no prospect of restructuring or if a restructuring were to fail, the FINMA shall revoke the bank's license, order its liquidation due to bankruptcy and make this public.
- 2 The FINMA shall appoint one or several liquidators. These shall be under FINMA supervision and shall provide FINMA with a report if requested.
- 3 The liquidators shall inform the creditors at least annually as to the status of the liquidation proceedings.

ARTICLE 34 Consequences and Procedure

- 1 Ordering a bank's liquidation shall have the effect of opening bankruptcy proceedings pursuant to Articles 197–220 DCBA129.
- 2 The liquidation shall be conducted in accordance with Articles 221-270 DCBA, subject to the provisions following below.
- 3 The FINMA may issue orders and injunctions differing from those of the DCBA.

ARTICLE 35¹³⁰ Creditors' Meetings and Creditor's Committee

- 1 The official liquidator may request that the FINMA:
 - a. constitute a creditors' meeting and determine its powers as well as the necessary attendance and voting quorums necessary to pass resolutions;
 - b. designate a creditors' committee and determine its composition and powers.
- 2 The FINMA shall not be bound to the liquidator's requests.

ARTICLE 36 Treatment of Claims; Schedule of Creditors

- 1 When preparing the schedule of creditors, any claims on the books are deemed to be lodged automatically.

¹²⁷ Originally before Article 29. Version according to Section I of the Act of 3 October 2003, in force since 1 July 2004 (AS **2004** 2767; BBI **2002** 8060).

¹²⁸ Terminology as per Section I of the Act of 18 March 2011 (Protection of bank deposits), in force since 1 September 2011 (AS **2011** 3919; BBI **2010** 3993). This amendment has been taken into account throughout the entire enactment.

¹²⁹ SR **281.1**

¹³⁰ Version as per Section I of the Act of 18 March 2011 (Protection of bank deposits), in force since 1 September 2011 (AS **2011** 3919; BBI **2010** 3993).

- 2 Creditors can consult the schedule of creditors to the extent that it is necessary for the protection of their creditor rights; in doing so, professional secrecy pursuant to Article 47 shall be maintained to the extent possible.

ARTICLE 37 Obligations entered into during Protective Measures

In the case of a liquidation, the bank shall satisfy any obligations that it was allowed to enter into during the protective measures pursuant to Article 26(1)(e)-(h) before all others.

ARTICLE 37a¹³¹ Privileged Deposits

- 1 Deposits in the name of the depositor, including medium-term bonds that are deposited with the bank in the name of the depositor, are assigned to the second class of creditors for up to CHF 100,000 for each creditor, pursuant to Article 219(4) DCBA¹³².
- 2 The Swiss Federal Council may adjust the maximum amount referred to in (1) for inflation.
- 3 Deposits with enterprises which act as banks but without a FINMA license are not privileged.
- 4 Should a claim belong to several persons, the privileged status may be asserted only once.
- 5 Receivables of bank foundations acting as pension schemes pursuant to Article 82 of the Swiss Federal Act on Old-Age and Survivors' Insurance of 25 June 1982¹³³ and of vested benefit foundations acting as vested benefits institutions subject to the Vested Benefits Act of 17 December 1993¹³⁴ are deemed to be deposits of the individual pension holders and policy holders. Regardless of other deposits belonging to these pension and policy holders, they are privileged for a maximum of up to what was stated in (1).
- 6 Banks must hold domestic receivables or other assets sourced in Switzerland in the amount of 125 percent of their privileged deposits. The FINMA may increase this amount and in justified cases allow for exceptions, in particular for those institutions that maintain equivalent coverage due to the structure of their business activities.

ARTICLE 37b¹³⁵ Immediate Payments

- 1 Deposits described in Article 37a(1) shall be paid out immediately from a bank's available liquid assets beyond the claims schedule; they are excluded from any netting.
- 2 The FINMA shall determine the maximum amount of the deposits payable immediately. It thereby

¹³¹ Version as per Section I of the Act of 18 March 2011 (Protection of bank deposits), in force since 1 September 2011 (AS **2011** 3919; BBl **2010** 3993).

¹³² SR **281.1**

¹³³ SR **831.40**

¹³⁴ SR **831.42**

¹³⁵ Version as per Section I of the Act of 18 March 2011 (Protection of bank deposits), in force since 1 September 2011 (AS **2011** 3919; BBl **2010** 3993).

takes account of the ranking of the remaining creditors pursuant to Article 219 DCBA¹³⁶.

ARTICLE 37c¹³⁷

ARTICLE 37d¹³⁸ Segregation of Deposit Items

Deposit items as defined in Article 16 shall be segregated in accordance with the provisions of Articles 17 and 18 of the Federal Intermediated Securities Act (FISA) dated 3 October 2008¹³⁹. In case of a shortfall, Article 19 FISA (of 3 October 2008) shall apply.

ARTICLE 37e Distribution and Wind-down Procedures

- 1 The distribution table shall not be made public.
- 2 Following distribution, the liquidators must submit a final report to the FINMA.
- 3 The FINMA shall issue the necessary orders for the wind-down procedures. It shall announce the wind-down publicly.

ARTICLE 37f Coordination with Foreign Procedures

- 1 Should the bank also be subject to foreclosure procedures abroad, the FINMA is to coordinate the bank's bankruptcy proceedings with the competent foreign authorities to the maximum extent possible.
- 2 Should a creditor have been partially paid in a procedure abroad related to the bank's bankruptcy, then the creditor's bankruptcy dividend from the Swiss procedure (after deduction of costs incurred by the creditor) shall be lessened by the amount already received abroad.

ARTICLE 37g¹⁴⁰ Recognition of Foreign Injunctions regarding Bankruptcy and Liquidation and Restructuring Measures

- 1 It shall be in the FINMA's discretion to recognize bankruptcy injunctions or insolvency measures pronounced abroad against banks.
- 2 The FINMA may put assets located in Switzerland at the disposal of a foreign bankruptcy estate without any previous domestic legal procedure, if the foreign insolvency proceedings:
 - a. treat the claims of creditors domiciled in Switzerland that are collateralized and privileged as per Article 219 DCBA equally; and¹⁴¹

¹³⁶ SR **281.1**

¹³⁷ Repealed with Section I of the Act of 18 March 2011 (Protection of bank deposits), in effect from 1 September 2011 (AS 2011 3919; BBI 2010 3993).

¹³⁸ Version according to Appendix Section 5 of the Swiss Federal Intermediated Securities Act of 3 October 2008, in force since 1 January 2010 (AS **2009** 3577; BBI **2006** 9315).

¹³⁹ SR **957.1**

¹⁴⁰ Version as per Section I of the Act of 18 March 2011 (Protection of bank deposits), in force since 1 September 2011 (AS **2011** 3919; BBI **2010** 3993).

¹⁴¹ SR **281.1**

- b. adequately take into account the other claims of creditors domiciled in Switzerland.
- 3 It shall be in the FINMA's discretion to recognize bankruptcy injunctions or measures pronounced against banks in the country where their headquarters are domiciled.
- 4 Should legal procedures take place domestically for the assets located in Switzerland, third-class creditors and creditors domiciled abroad may also be included in the schedule of creditors in accordance with Article 219(4) DBCA.
- 5 In all other respects, Articles 166-175 of the Federal Act on International Private Law dated 18 December 1987¹⁴² shall apply.

Section XIII:¹⁴³ Depositor protection scheme

ARTICLE 37h Principle

- 1 Banks must ensure that privileged deposits with Swiss branches are secured pursuant to Article 37a(1). For this purpose, banks holding such deposits shall be required to join a self-regulation organization for banks.¹⁴⁴
- 2 The principles of the self-regulation organization shall be subject to the FINMA's approval.
- 3 The self-regulation shall be approved if it:
 - a. ¹⁴⁵ ensures the repayment of secured deposits within 20 working days of the introduction of measures pursuant to Article 26(1)(e)-(h) or of the liquidation procedures pursuant to Articles 33-37g;
 - b. ¹⁴⁶ foresees a maximum amount of CHF 6 billion for the total of outstanding contributions due;
 - c. ensures that each bank disposes of liquid funds for half of its contributions due in addition to its statutory liquidity at all times.
- 4 The Swiss Federal Council may adapt the amount foreseen under (3)(b) provided special circumstances warrant it.
- 5 Should the self-regulation not satisfy the requirements of (1)-(3), the Swiss Federal Council shall regulate the deposit protection in an ordinance. In particular, it shall designate the entities which protect deposits and defines the banks' contributions to these.

¹⁴² SR 291

¹⁴³ Originally before Article 36. Version according to Section I of the Act of 3 October 2003, in force since 1 July 2004 (AS 2004 2767; BBl 2002 8060).

¹⁴⁴ Version as per Section I of the Act of 18 March 2011 (Protection of bank deposits), in force since 1 September 2011 (AS 2011 3919; BBl 2010 3993).

¹⁴⁵ Version as per Section I of the Act of 18 March 2011 (Deposit Protection), in force since 1 September 2011 (AS 2011 3919; BBl 2010 3993).

¹⁴⁶ Version as per Section I of the Act of 18 March 2011 (Protection of bank deposits), in force since 1 September 2011 (AS 2011 3919; BBl 2010 3993).

ARTICLE 37i¹⁴⁷ Trigger of the Deposit Protection

- 1 If the FINMA has ordered protective measures as per Article 26(1)(e)-(h) or bankruptcy as per Article 33, it shall inform the provider of the Deposit Protection Scheme of this and the needed amount of contributions to pay out the protected deposits.
- 2 The provider of the Deposit Protection Scheme makes available the corresponding amount within 20 working days after being informed by the investigator, recovery agent or liquidator appointed by the FINMA.
- 3 In case protective measures are in place, the FINMA may defer notification as long as:
 - a. it seems likely that the protective measures will be lifted within a short period of time; or
 - b. the protected deposits are not affected by the protective measures.
- 4 The time limit referred to in (2) shall be interrupted if and as long as the order of the protective measures or bankruptcy is not enforceable.

ARTICLE 37j¹⁴⁸ Settlement and Legal Cession

- 1 The investigator, restructuring agent or liquidator appointed by the FINMA shall pay out the secured deposits to the depositors.
- 2 The secured deposits shall be paid out under exclusion of any netting.
- 3 The depositors shall not be entitled to any direct compensation from the provider of the Deposit Protection Scheme.
- 4 Depositors' rights shall be transferred to the provider of the Deposit Protection Scheme in the amount of disbursements made.

ARTICLE 37k¹⁴⁹ Data Exchange

- 1 The FINMA shall provide the provider of the Deposit Protection Scheme with the information necessary to fulfill its duties.
- 2 The provider of the Deposit Protection Scheme shall make available to the FINMA and the investigator, restructuring agent or liquidator appointed by the FINMA any information and all documents they require to enforce the protection of the deposits.

¹⁴⁷ Version as per Section I of the Act of 18 March 2011 (Protection of bank deposits), in force since 1 September 2011 (AS 2011 3919; BBI 2010 3993).

¹⁴⁸ Inserted with Section I of the Act of 18 March 2011 (Protection of bank deposits), in force since 1 September 2011 (AS 2011 3919; BBI 2010 3993).

¹⁴⁹ Inserted with Section I of the Act of 18 March 2011 (Protection of bank deposits), in force since 1 September 2011 (AS 2011 3919; BBI 2010 3993).

Section XIIIa:¹⁵⁰ Dormant assets

ARTICLE 37I Transfer of Assets¹⁵¹

- 1 A bank may transfer dormant assets to another bank without the creditors' consent.
- 2 Such a transfer requires a written agreement between the transferring bank and the receiving bank.
- 3 In case of a bank's bankruptcy, the liquidators shall act on behalf and in the interest of the creditors of dormant assets towards third parties.
- 4 The Swiss Federal Council shall determine when assets are considered to be dormant.

ARTICLE 37m¹⁵² Liquidation

- 1 Banks shall liquidate dormant assets after 50 years, provided the rightful owner has not answered to any prior publication of such account. Accounts containing CHF 500 or less may be liquidated without prior publication.
- 2 Any beneficiary claims expire with the completion of the liquidation.
- 3 The proceeds of such a liquidation shall be credited to the Swiss Confederation.
- 4 The Swiss Federal Council shall regulate the publication and liquidation of dormant assets.

Section XIV: Liability and Penal Provisions

ARTICLE 38¹⁵³

- 1 Private bankers shall be subject to the provisions of the Swiss Code of Obligations¹⁵⁴ in regard to responsibilities under civil law.
- 2 Article 39 shall apply to all other banks.

¹⁵⁰ Inserted with Section I of the Act of 18 March 2011 (Protection of bank deposits), in force since 1 September 2011 (AS **2011** 3919; BBI **2010** 3993).

¹⁵¹ Inserted with Section I of the Act of 22 March 2013 (Dormant Assets), in force since 1 January 2015 (AS **2014** 1267; BBI **2010** 7495)

¹⁵² Inserted with Section I of the Act of 22 March 2013 (Dormant Assets), in force since 1 January 2015 (AS **2014** 1267; BBI **2010** 7495)

¹⁵³ Version according to Appendix Section 15 of the Financial Markets Supervision Act of 22 June 2007, in force since 1 January 2009 (AS **2008** 5207 5205; BBI **2006** 2829).

¹⁵⁴ SR **220**

ARTICLE 39¹⁵⁵

The responsibility of the founders of a bank, of the bodies responsible for a bank's management, its direction, supervision and control as well as the liquidators and audit firms appointed by the bank shall be subject to the provisions of company law (Articles 752-760 of the Swiss Code of Obligations¹⁵⁶).

ARTICLES 40-45¹⁵⁷

ARTICLE 46¹⁵⁸

- 1 Whoever intentionally does the following shall be imprisoned up to three years or fined accordingly:
 - a. unlawfully accepts public or savings deposits;
 - b. fails to maintain the accounting in an orderly manner or does not archive company books of account, records and documents as prescribed;
 - c. does not establish and make public the annual or interim financial statements in accordance with Article 6.
- 2 Whoever acts in negligence shall be penalized with a fine of up to CHF 250,000.
- 3 ...¹⁵⁹

ARTICLE 47¹⁶⁰

- 1 Whoever intentionally does the following shall be imprisoned up to three years or fined accordingly:
 - a. discloses confidential information entrusted to them in their capacity as a member of an executive or supervisory body, employee, representative or liquidator of a bank, as member of a body or employee of an audit firm or that they have observed in this capacity;
 - b. attempts to induce such infraction of the professional secrecy;
 - c. ¹⁶¹ discloses confidential information to third parties or uses this information for own benefits or the benefit of others.

¹⁵⁵ Version according to Appendix Section 5 of the Act of 20 June 2014 (Bundling of Supervision over Auditing Firms), in force since 1 January 2015 (AS **2014** 4073; BBI **2013** 6857).

¹⁵⁶ SR **220**

¹⁵⁷ Repealed with Section I of the Act of 3 October 2003, with effect from 1 July 2004 (AS **2004** 2767; BBI **2002** 8060).

¹⁵⁸ Version as per Appendix Section 15 of the Financial Markets Supervision Act of 22 June 2007, in force since 1 January 2009 (AS **2008** 5207 5205; BBI **2006** 2829).

¹⁵⁹ Repealed with Appendix Section 10 of the Financial Markets Infrastructure Act of 19 June 2015, with effect from 1 January 2016 (AS **2015** 5339; BBI **2014** 7483).

¹⁶⁰ Version according to Appendix Section 15 of the Financial Markets Supervision Act of 22 June 2007, in force since 1 January 2009 (AS **2008** 5207 5205; BBI **2006** 2829).

¹⁶¹ Inserted with Section I 2 of the Act of 12 December 2014 on the Expansion of the Prosecution of the Violation of the Professional Confidentiality, in force since 1 July 2015 (AS **2015** 1535; BBI **2014** 6231 6241).

- 1 ^{bis} Whoever enriches themselves or others with an action in accordance with (1)(a) or (c) shall be punished with imprisonment for up to five years or fined accordingly.¹⁶²
- 2 Whoever acts in negligence shall be penalized with a fine of up to CHF 250,000.
- 3 ...¹⁶³
- 4 The violation of the professional confidentiality shall remain punishable even after a bank license has been revoked or a person has ceased his/her official responsibilities.
- 5 The federal and cantonal provisions on the duty to provide evidence or on the duty to provide information to an authority shall be exempted from this provision.
- 6 Prosecution and judgment of offenses pursuant to these provisions shall be incumbent upon the cantons. The general provisions of the Swiss Penal Code¹⁶⁴ shall be applicable.

ARTICLE 48¹⁶⁵

ARTICLE 49¹⁶⁶

- 1 Whoever intentionally does the following shall be fined up to CHF 500,000:
 - a. unlawfully using the term "bank", "banker" or "savings" in their company name, the description of their business purpose or in their business advertising;
 - b. not forwarding to the FINMA the mandatory reports;
 - c. publicly advertising their acceptance of savings and public deposits without possessing the legally required license to do so.
- 2 Whoever acts in negligence shall be fined up to CHF 150,000.
- 3 ...¹⁶⁷

ARTICLE 50¹⁶⁸

¹⁶² Inserted with Section I 2 of the Act of 12 December 2014 on the Expansion of the Prosecution of the Violation of the Professional Confidentiality, in force since 1 July 2015 (AS **2015** 1535; BBI **2014** 6231 6241).

¹⁶³ Repealed with Appendix Section 10 of the Financial Markets Infrastructure Act of 19 June 2015, with effect from 1 January 2016 (AS **2015** 5339; BBI **2014** 7483).

¹⁶⁴ SR **311.0**

¹⁶⁵ Repealed with Appendix Section 15 of the Financial Markets Supervision Act of 22 June 2007, with effect from 1 January 2009 (AS **2008** 5207 5205; BBI **2006** 2829).

¹⁶⁶ Version according to Appendix Section 15 of the Financial Markets Supervision Act of 22 June 2007, in force since 1 January 2009 (AS **2008** 5207 5205; BBI **2006** 2829).

¹⁶⁷ Repealed with Appendix Section 10 of the Financial Markets Infrastructure Act of 19 June 2015, with effect from 1 January 2016 (AS **2015** 5339; BBI **2014** 7483).

¹⁶⁸ Repealed with Appendix Section 15 of the Financial Markets Supervision Act of 22 June 2007, with effect from 1 January 2009 (AS **2008** 5207 5205; BBI **2006** 2829).

ARTICLE 50^{bis} 169

ARTICLE 51¹⁷⁰

ARTICLE 51^{bis} 171

Section XV: Transitional and final provisions

ARTICLE 52¹⁷²

The Swiss Federal Council must review the provisions in regard to their comparability with the corresponding international standards and their degree of implementation abroad no later than 3 years after the entry into force of Sections V and VI of the amendment dated 30 September 2011, and after this, at an interval of 2 years. It shall report its findings to the Swiss Federal Assembly and highlight the possible need for amending laws and ordinances.

ARTICLE 53

- 1 The entry into force of this law shall repeal the following provisions:
 - a. ¹⁷³ the cantonal provisions on banks; with the exception of the provisions on cantonal banks, the provisions concerning professional trading in securities as well as the provisions on the monitoring of compliance with cantonal laws against the abuse of interest rates;
 - b. Article 57 of the Final Title of the Civil Code.¹⁷⁴
- 2 The cantonal provisions for a statutory lien in favor of savings deposits shall become void if they are not replaced by new regulations according to Articles 15 and 16 within three years of the coming into force of the present Act.

ARTICLE 54¹⁷⁵

ARTICLE 55¹⁷⁶

¹⁶⁹ Inserted with Section 22 of the Appendix to the Act on administrative criminal law (AS **1974** 1857; BBI **1971** I 993). Repealed with Appendix Section 15 of the Financial Markets Supervision Act of 22 June 2007, with effect from 1 January 2009 (AS **2008** 5207 5205; BBI **2006** 2829).

¹⁷⁰ Repealed with Appendix Section 15 of the Financial Markets Supervision Act of 22 June 2007, with effect from 1 January 2009 (AS **2008** 5207 5205; BBI **2006** 2829).

¹⁷¹ Inserted with Section I of the Act of 11 March 1971 (AS **1971** 808; BBI **1970** I 1144). Repealed with Appendix Section 15 of the Financial Markets Supervision Act of 22 June 2007, with effect from 1 January 2009 (AS **2008** 5207 5205; BBI **2006** 2829).

¹⁷² Version according to Section I of the Act of 30 September 2011 (Strengthening the stability in the financial sector), in force since 1 March 2012 (AS **2012** 811; BBI **2011** 4717).

¹⁷³ Version according to Appendix Section 17 of the Act of 16 December 1994, in force since 1 January 1997 (AS **1995** 1227; BBI **1991** III 1).

¹⁷⁴ SR **210**

¹⁷⁵ Repealed with Appendix Section 17 of the Act of 16 December 1994, with effect from 1 January 1997 (AS 1995 1227; BBI **1991** III 1).

¹⁷⁶ Repealed with Section I of the Act of 11 March 1971, with effect from 1 July 1971 (AS **1971** 808 824 Art. 1 BBI **1970** I 1144).

ARTICLE 56

The Swiss Federal Council shall define the entry into force of this Act and legislate the necessary provisions for its enforcement.

Date of entry into force: 1 March 1935¹⁷⁷

¹⁷⁷ Swiss Federal Council Decision of 26 February 1935

Final Provisions to the Amendments of 11 March 1971¹⁷⁸

- 1 Banks and financial companies formed prior to the effective date of the Act¹⁷⁹ are not required to obtain a new license in order to remain operative.
- 2 Financial companies that are now subject to the Act must register with the Swiss Federal Banking Commission within three months of its effective date¹⁸⁰.
- 3 Banks and financial companies must adapt to comply with the provisions of Article 3(2)(a), (c) and (d) as well as of Article 3^{bis}(1)(c)¹⁸¹ within two years of the effective date of the Act¹⁸². Their license may be revoked if their adaptation does not occur on a timely basis.
- 4 In order to allow taking into consideration the particular circumstances of financial companies and credit offices that have a waiting period, the Swiss Federal Council shall be permitted to issue special provisions.

Final Provisions to the Amendments of 18 March 1994¹⁸³

- 1 Natural persons and legal entities holding deposits from the public at the time the amendment to this Act of 18 March 1994 takes effect, that fall into the scope of the prohibition set out in Article 1(2), have to repay these within two years of the effective date of entry into force of the new Act. The Swiss Federal Banking Commission may extend or shorten this deadline on a case-by-case basis, whenever particular conditions exist.
- 2 Bank-like financial companies, which had been authorized by the Swiss Federal Banking Commission to publicly solicit the acceptance of third-party funds prior to the implementation of the Act, do not require a new license to operate as a bank. They must adopt Articles 4^{bis} and 4^{ter} within one year from the date these amendments to the Act have taken effect.
- 3 Banks must adopt the provisions of Articles 3(2)(c^{bis}) and (d) as well as 4(2^{bis}) within one year of the entry into force of this amendment.
- 4 The cantons must ensure compliance with the provisions of Articles 3a¹⁸⁴(1) and 18(1) within three years of the entry into force of this amendment. Should responsibility for supervision as per Article 3a(2) be transferred to the Swiss Federal Banking Commission prior to expiry of this deadline, the provisions of Article 18(1) must be complied with already at the time of the transfer.

¹⁷⁸ AS 1971 808; BBl 1970 I 1144

¹⁷⁹ The Act entered into force on 1 July 1971 (Article 1 of the Swiss Federal Council Decision of 24 June 1971 – AS 1971 824 Article 1).

¹⁸⁰ The Act entered into force on 1 July 1971 (Article 1 of the Swiss Federal Council Decision of 24 June 1971 – AS 1971 824 Article 1).

¹⁸¹ This provision has been repealed.

¹⁸² The Act entered into force on 1 July 1971 (Article 1 of the Swiss Federal Council Decision of 24 June 1971 – AS 1971 824 Article 1).

¹⁸³ AS 1995 246; BBl 1993 I 805

¹⁸⁴ This provision has been reworded.

- 5 All natural persons and legal entities who at the date on which these amendments to the Act take effect, hold qualified equity interests in a bank according to Article 3(2)(c^{bis}), must notify the Swiss Federal Banking Commission to this effect within one year of the date when these amendments to the Act take effect.
- 6 Banks must inform the Swiss Federal Banking Commission as per Article 3(6) for the first time one year after the date when these amendments to the Act take effect.
- 7 Banks organized according to Swiss law must inform the Swiss Federal Banking Commission of all subsidiaries, branches, agencies and representations abroad within three months following the date when these amendments to the Act take effect.

Final Provisions to the Amendment of 22 April 1999¹⁸⁵

- 1 In the case of cantonal banks which are subject in full to the supervision of the Swiss Federal Banking Commission at the time this Act takes effect, the license foreseen under Article 3 is deemed to have been granted.
- 2 For the cantonal bank of the Canton of Zug, the requirement of the Canton to hold more than one third of the voting rights in accordance with Article 3a does not apply, provided that the cantonal guarantee and the exercise of the voting right by the Canton of Zug is not modified and that it remains ensured that important resolutions cannot be adopted without the consent of the Canton of Zug.
- 3 In the case of the Cantonal Bank of the Canton of Geneva, the equity interests held by the municipalities shall be deemed to be equivalent to the shares held by the Canton as foreseen under Article 3a, provided the canton does not reduce its current equity holdings.

Final Provisions to the Amendment of 3 October 2003¹⁸⁶

- 1 The self-regulation shall be submitted to the Swiss Federal Banking Commission for approval within one year of the entry into force of this amendment.
- 2 Should the Swiss Federal Banking Commission issue an injunction regarding the liquidation of a bank prior to the entry into force of this amendment, the previous law will apply for the liquidation as well as for a banking moratorium or a deferment of payments related to the bankruptcy.

¹⁸⁵ AS 1999 2405; BBI 1998 3847

¹⁸⁶ AS 2004 2767; BBI 2002 8060

Final Provisions to the Amendment of 17 December 2004¹⁸⁷

- 1 Persons who de facto manage a financial group or financial conglomerate from Switzerland without managing a bank in Switzerland, must register with the Swiss Federal Banking Commission within three months of the effective date of these amendments.
- 2 Existing financial groups and financial conglomerates must adopt the new provision within two years of the effective date of these amendments.
- 3 The Swiss Federal Banking Commission may extend these deadlines upon timely and justified petition.

Transitional provision in regard to the amendment of 30 September 2011¹⁸⁸

The first-time adoption of the provisions as per Article 10(4) must be submitted to the Swiss Federal Assembly for approval.

Transitional provision in regard to the amendment of 22 March 2013¹⁸⁹

For assets deemed to be dormant assets for more than 50 years as at 22 March 2013, the duration of publication shall be 5 years.

¹⁸⁷ AS **2005** 5269; BBI **2003** 3789

¹⁸⁸ AS **2012** 811; BBI **2011** 4717

¹⁸⁹ AS **2014** 1267; BBI **2010** 7495

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