



Ordinance of the Swiss Financial Market Supervisory Authority on Foreign Banks in Switzerland

(Foreign Banks Ordinance-FINMA, FBO-FINMA)

SR 952.111

dated 21 October 1996 (status as at 1 January 2015)

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1. Other Languages

DE: Verordnung der Eidgenössischen Finanzmarktaufsicht über die ausländischen Banken in der Schweiz (ABV-FINMA)

FR: Ordonnance de l'Autorité fédérale de surveillance des marchés financiers sur les banques étrangères en Suisse (OBE-FINMA)

IT: Ordinanza dell'Autorità federale di vigilanza sui mercati finanziari sulle banche estere in Svizzera (OBE-FINMA)

Ordinance of the Swiss Financial Market Supervisory Authority on Foreign Banks in Switzerland

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(Foreign Banks Ordinance-FINMA, FBO-FINMA)¹

dated 21 October 1996 (status as at 1 January 2015)

*The Swiss Financial Market Supervisory Authority (FINMA),²
based on Article 2(2) of the Banking Act of 8 November 1934³ (BA)⁴
decrees:*

1. Section: General Provisions

ARTICLE 1 Foreign bank

- 1 Any corporation organized according to foreign law is deemed to be a foreign bank if it
 - a. holds a license as a bank abroad;
 - b. uses the term “bank” or “banker” in its company name, in the description of its business purpose or in business documents; or
 - c. performs banking activities as per Article 2a of the Banking Ordinance of 17 May 1972⁵ (BO).
- 2 If a foreign bank is factually managed in Switzerland, or if it carries out the majority of its business activities exclusively or predominantly in or from Switzerland, it must organize itself according to Swiss law and is subject to the provisions also applicable to domestic banks.

¹ Version according to Sect. I 2 of the FINMA ordinance dated 20 Nov 2008 on the adjustments of Government Agency Ordinances to the Financial Market Supervision Act, in force since 1 Jan 2009 (AS **2008** 5613).

² Version according to Sect. I 2 of the FINMA ordinance dated 20 Nov 2008 on the adjustments of Government Agency Ordinances to the Financial Market Supervision Act, in force since 1 Jan 2009 (AS **2008** 5613).

³ SR **952.0**

⁴ Version according to Sect. I 2 of the FINMA ordinance dated 20 Nov 2008 on the adjustments of Government Agency Ordinances to the Financial Market Supervision Act, in force since 1 Jan 2009 (AS **2009** 5613).

⁵ [AS **1972** 821, **1989** 1772, **1995** 253, **1996** 45 3094, **1997** 85 Article 57(1), **1998** 16, **2003** 4077, **2004** 2777 2875, **2005** 4849, **2006** 4307 Annex 7 Sect. 1, **2008** 1199 5363 Annex Sect. 7, **2009** 5279, **2011** 3931, **2012** 5435 5441 Annex 6 Sect. 2 7251 Article 32. AS **2014** 1269 Article 67]. Now: Article 2 of the Banking Ordinance of 30 April 2014 (SR **952.02**).

ARTICLE 2 Licensing Obligation

- 1 A foreign bank shall require a FINMA⁶-issued banking license if it employs staff in Switzerland, who on a permanent and commercial basis and in Switzerland:
 - a. enters into transactions, maintains client accounts or enters into legal obligations (branch office);
 - b. operates in another way than pursuant to (a), specifically by passing on client orders to the foreign bank or representing it for advertising or other purposes (representative office).
- 2 ...⁷
- 3 If the FINMA becomes aware of other cross-border activities, it may inform the relevant foreign supervisory authorities under the conditions set forth in Article 23^{sexies} of the Banking Act⁸.

ARTICLE 3 Applicable law

- 1 Unless this Ordinance states otherwise, the BA shall apply, with the exception of the provisions on capital adequacy (Article 4) and risk diversification (Article 4^{bis}), as well as the BO⁹.
- 2 The FINMA may fully subject foreign banks to the provisions governing domestic banks if the law of the country where the foreign bank is registered does not grant Swiss securities dealers equivalent facilities and such action does not conflict with any international treaty.
- 3 Concerning the measures applicable in case of impending insolvency or bankruptcy (Articles 25–37g), the provisions of the BA shall not apply to representative offices of foreign banks. However, the FINMA may make these applicable if this is in the interest of the general public.¹⁰

2. Section: Branch offices

ARTICLE 4 Licensing requirements

- 1 The FINMA shall grant foreign banks a license to set up a branch office, if:
 - a. the foreign bank is adequately organized, has sufficient financial resources and qualified staff to operate a branch office in Switzerland;
 - b. the foreign bank is subject to adequate supervision which also includes the branch office;

⁶ Version according to Sect. I 2 of the FINMA ordinance dated 20 Nov 2008 on the adjustments of Government Agency Ordinances to the Financial Market Supervision Act, in force since 1 Jan 2009 (AS **2008** 5613). This amendment has been taken into account in the entire enactment.

⁷ Repealed by Section I of the FINMA ordinance of 28 November 2014, with effect from 1 January 2015 (AS **2014** 4561).

⁸ This article has been repealed. Now: Article 42 of the Financial Market Supervision Act of 22 June 2007 (SR **956.1**).

⁹ SR **952.02**

¹⁰ Inserted with Article 60(2) of the FINMA Ordinance on the Insolvency of Banks and Securities Dealers (BIO-FINMA) of 30 August 2012, in force since 1 November 2012 (AS **2012** 5573).

- c. the responsible foreign supervisory authorities do not object to the establishment of the branch office;
 - d. the responsible foreign supervisory authorities agree to immediately notify the FINMA if circumstances arise which could seriously jeopardize bank creditors at the branch office;
 - e. the relevant foreign supervisory authorities are in a position to offer the FINMA administrative assistance;
 - f. it fulfills the licensing requirements set out in Article 3^{bis}(1) BA;
 - g. the branch office meets the licensing requirements set out in Article 3(2)(c) and (d) BA and disposes of regulations that precisely define its business area and a governance structure which is adequate in view of its business activities; and
 - h. the foreign bank proves that its branch office qualifies for entry in the commercial register.
- 2 If the foreign bank is part of a group operating in the financial sector, the FINMA may make the license contingent on the requirement that it is subject to appropriate consolidated supervision by foreign supervisory authorities.

ARTICLE 5 Registration in the commercial register

The foreign bank may apply to register the branch office in the commercial register only once the FINMA has authorized the establishment of said branch office.

ARTICLE 6 Multiple branch offices

- 1 If a foreign bank sets up multiple branch offices in Switzerland, it must:
- a. obtain a license for every branch office;
 - b. designate one of them to be in charge of relations with the FINMA.
- 2 These branch offices must meet the requirements of the Banking Act, the Banking Ordinance¹¹ and the present Ordinance as a group. One audit report is sufficient.¹²

ARTICLE 7 Security deposits

The FINMA may require the branch office to deposit a security, if this is necessary for the protection of investors.

¹¹ SR **952.02**

¹² Term according to Sect. I 2 of the FINMA ordinance dated 20 November 2008 on the adjustments of Government Agency Ordinances to the Financial Market Supervision Act, in force since 1 January 2009 (AS **2009** 5613). This amendment has been taken into account in the entire enactment.

ARTICLE 8 Branch office's preparation of annual and interim accounts

- 1 The branch may prepare its annual and interim accounts in accordance with the provisions applicable to the foreign bank, provided these satisfy international accounting standards.
- 2 Separate statements must be drawn up for receivables and payables from/to:
 - a. the foreign bank;
 - b. companies active in the financial or real estate sectors, if:
 1. the foreign bank forms an economic unit with them; or
 2. it must be assumed that the foreign bank is legally required or factually forced to assist such companies.
- 3 (2) also applies to off-balance sheet transactions.
- 4 Branch offices shall submit their annual and interim financial statements to the FINMA in triplicate. No publication is necessary.

ARTICLE 9 Publication of the annual report of foreign banks

- 1 Branch offices shall make the annual report of the foreign bank available to the press and anyone else requesting it within four months of the closing of the financial year. It must also forward a copy to the FINMA.
- 2 The foreign bank's annual report shall be published in one of Switzerland's official languages or in English.

ARTICLE 10¹³ Audit report

- 1 The audit firm shall provide its report in one of Switzerland's official languages. It shall forward it to the FINMA and make a copy available to the head of the branch office.
- 2 The branch office shall forward a copy of the audit report to the unit in charge of the branch office's business activities at the foreign bank.

ARTICLE 11 Closure of a branch

The foreign bank shall obtain the FINMA's approval before closing a branch office.

¹³ Version according to Section I of the FINMA Ordinance of 28 November 2014, in force since 1 January 2015 (AS **2014** 4561).

3. Section: ...

ARTICLES 12 and 13¹⁴

4. Section: Representative Offices

ARTICLE 14 Licensing requirements

The FINMA grants foreign banks a license to set up a representative office, if:

- a. the foreign bank is subject to adequate supervision;
- b. the relevant foreign supervisory authorities do not object to the establishment of the representative office;
- c. reciprocity pursuant to Article 5(2) BO¹⁵ is guaranteed; international commitments to the contrary remain applicable; and
- d. the persons entrusted with the management of the representative office offer the guarantee of proper business conduct.

ARTICLE 15 Multiple representative offices

If a foreign bank sets up multiple representative offices in Switzerland, it shall:

- a. obtain a license for every representative office;
- b. designate one of them to be in charge of relations with the FINMA.

ARTICLE 16 Annual report

The representative office must forward to the FINMA the annual report of the foreign bank it represents within four months of the close of the financial year.

ARTICLE 17 Closure of a representative office

Foreign banks must notify the FINMA of the closure of a representative office.

¹⁴ Repealed by Section I of the FINMA ordinance of 28 November 2014, with effect from 1 January 2015 (AS **2014** 4561).

¹⁵ SR **952.02**. Now Article 19(2).

5. Section: Final provisions

ARTICLE 18 Repeal of the Previous Law

The Foreign Banks Ordinance of 22 March 1984¹⁶ shall be repealed.

ARTICLE 19 Entry into force

- 1 This Ordinance enters into force on 1 January 1997.
- 2 The first time the annual financial statements may be presented in accordance with this Ordinance is on 31 December 1996.

¹⁶ [AS 1984 604]

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