

Federal Act on Financial Institutions

(Financial Institutions Act, FinIA)

of ...

The Federal Assembly of the Swiss Confederation,

based on Articles 95 and 98 paragraphs 1 and 2 of the Federal Constitution¹,
and having considered the Federal Council Dispatch of

decrees:

Title 1: General Provisions

Chapter 1: Subject Matter, Purpose and Scope of Application

Article 1 Subject matter and purpose

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

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

Article 2 Scope of application

¹ For the purposes of this Act, the following are deemed to be financial institutions irrespective of their legal form:

- a. portfolio managers (Art. 17);
- b. qualified portfolio managers (Art. 21);
- c. fund management companies (Art. 28);
- d. securities firms (Art. 38);
- e. banks (Art. 42).

² The provisions of this Act do not apply to:

- a. persons who manage solely the assets of persons with whom they have business or family ties;
- b. persons who manage assets solely within the context of employee participation schemes;
- c. the Swiss National Bank (SNB);
- d. occupational pension schemes and ancillary institutions;

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¹ SR 101

- e. social security institutions and compensation funds;
- f. central mortgage bond institutions;
- g. insurance companies as defined in the Insurance Supervision Act of 17 December 2004².

Article 3 Group parent companies and significant group companies

¹ The following are also subject to Articles 87 to 111 as individual institutions provided they are not subject to the bankruptcy jurisdiction of the Swiss Financial Market Supervisory Authority (FINMA):

- a. group parent companies of a financial group or financial conglomerate which have their registered office in Switzerland;
- b. group companies which have their registered office in Switzerland and perform significant functions within the group or conglomerate (significant group companies).

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

³ The supervisory authority shall identify significant group companies and keep a publicly accessible list of said companies.

Chapter 2: Common Provisions

Article 4 Authorisation requirement

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

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

Article 5 Authorisation chain

¹ The authorisation to operate as a bank also authorises an entity to operate as a securities firm, a qualified portfolio manager and a portfolio manager.

² The authorisation to operate as a securities firm or as a fund management company also authorises an entity to operate as a portfolio manager and a qualified portfolio manager.

³ The authorisation to operate as a qualified portfolio manager also authorises an entity to operate as a portfolio manager.

⁴ The authorisation to operate as a financial institution also authorises an entity to operate as the representative of foreign investment schemes.

Article 6 Authorisation conditions

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

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

Article 7 Change in facts

¹ Financial institutions shall notify the supervisory authority of any changes in the facts on which their authorisation is based.

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

Article 8 Organisation

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

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

³ The Federal Council shall set the organisational requirements of individual financial institutions.

Article 9 Place of management

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

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

Article 10 Guarantee of irreproachable business conduct

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

² Moreover, the persons responsible for the administration and management of the financial institution must:

- a. enjoy a good reputation; and
- b. have the specialist qualifications required for their functions.

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

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

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

⁶ Financial institutions shall notify the supervisory authority of the persons who meet the conditions of paragraph 5 as soon as they become aware of the same. .

Article 11 Tax compliance

¹ The financial institution shall verify on acceptance of assets if there is an increased risk that these assets, in violation of tax regulations, have not been taxed or will not be taxed. Assets of low value are not subject to such verification.

² It must seek additional clarification where there are any indications of increased risk. The extent of such clarification depends on the risk posed by the client in relation to fulfilling their tax obligations.

³ Verification of compliance with tax obligations may be omitted if the client is liable to taxation in a country with which Switzerland has signed an agreement on the automatic exchange of information in tax matters in accordance with the internationally recognised standard.

⁴ Where a financial institution has to assume that assets offered to it or invested with it have, in violation of tax obligations, not been taxed or will not be taxed, it must:

- a. refuse to accept the assets and reject a new business relationship;
- b. terminate the business relationship with existing clients if:
 1. they are unable to prove that the assets already invested with the financial institution have been duly taxed, and
 2. regularisation of their tax situation would not expose them to any unreasonable disadvantage.

⁵ The duty to report under Article 9 of the Anti-Money Laundering Act of 10 October 1997³ is reserved.

Article 12 Public offer of securities on the primary market

Persons operating primarily in the financial sector may perform the following activities only if they are operating as a securities firm or bank:

- a. underwriting securities issued by third parties and offering these to the public on a primary market on a commercial basis;

³ SR 955.0

- b. creating derivatives in the form of securities and offering these to the public on the primary market on a commercial basis.

Article 13 Commercial acceptance of deposits from the public

¹ The commercial acceptance of deposits from the public is permissible only insofar as this Act provides.

² Offering for sale debt instruments for which a prospectus or key information document was produced in accordance with title three of the Financial Services Act of ...⁴ does not constitute a commercial acceptance of deposits from the public.

³ The Federal Council may provide for exemptions as long as the protection of depositors is guaranteed.

Article 14 Protection against confusion and deception

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

² The terms “portfolio manager”, “qualified portfolio manager”, “portfolio manager of collective investment schemes”, “fund management company”, “securities firm”, “bank” or “banker” may be used, alone or in compound terms, in the company name, the description of its business purpose or commercial documents only if the corresponding authorisation has been obtained. Article 73 paragraph 2 and Article 79 paragraph 2 are reserved.

³ Deposits designated as “savings” in combination with other words, may be accepted only by banks that disclose their accounts publicly. All other companies are ineligible to accept savings deposits and may not use the term “savings” in their company name, the description of their commercial purpose or in commercial advertising in respect of the monetary deposits made with them.

Article 15 Delegation of tasks

¹ Financial institutions may delegate tasks to third parties provided that this is in the interests of investors, clients and proper business activities.

² They shall mandate only persons who are qualified to perform the task correctly and shall ensure instruction, supervision and monitoring are provided for the execution of the task.

³ Investment decisions may be delegated only to persons who hold the authorisation required for this activity.

⁴ The supervisory authority may make the delegation of investment decisions to a person located abroad subject to an agreement on cooperation and information exchange between FINMA and the competent foreign supervisory authority if such an agreement is required under the other country’s legislation.

⁴ SR ...

Article 16 International business

A financial institution organised under Swiss law must notify the supervisory authority before:

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

Title 2: Financial Institutions**Chapter 1: Portfolio Managers****Article 17** Definition

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

Article 18 Legal form

¹ A portfolio manager which has its registered office or residence in Switzerland may be:

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

² It must be listed in the commercial register.

Article 19 Tasks

The portfolio manager may provide the following services, in particular:

- a. individual portfolio management;
- b. investment advice;
- c. portfolio analysis;
- d. distribution of financial instruments.

Article 20 Financial guarantees

¹ The portfolio manager must have adequate financial guarantees or take out professional liability insurance.

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

Chapter 2: Qualified Portfolio Managers

Article 21 Definition

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

- a. collective investment schemes (portfolio managers of collective investment schemes);
- b. Swiss occupational pension schemes.

² Portfolio managers of collective investment schemes whose investors are qualified within the meaning of Article 10 paragraph 3 or 3^{ter} of the Collective Investment Schemes Act of 23 June 2006⁵ and fulfil one of the following conditions are “portfolio managers” and not “qualified portfolio managers”:

- a. The assets under management of collective investment schemes, including the assets acquired through the use of leveraged finance, amount in total to no more than CHF 100 million.
- b. The assets under management of collective investment schemes do not in total exceed CHF 500 million and do not include either leveraged financial instruments or assets with a guaranteed right to redemption in the first five years after making the first investment in each of these collective investment schemes.

Article 22 Legal form

A qualified portfolio manager which has its registered office in Switzerland may be a commercial enterprise.

Article 23 Tasks

¹ Qualified portfolio managers are responsible for the portfolio and risk management of the assets entrusted to them.

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

³ In addition, qualified portfolio managers may conduct the fund business, in particular, for foreign collective investment schemes. If the foreign country’s law requires an agreement on cooperation and information exchange between the supervisory authority and the foreign supervisory authorities of relevance for the fund business, they may perform this business only where such an agreement exists.

⁴ They may also perform administrative activities within the scope of these tasks.

⁵ SR 951.31

Article 24 Minimum capital and financial guarantees

¹ Qualified portfolio managers must possess the required fully paid-up minimum capital.

² The supervisory authority may permit qualified portfolio managers in the form of partnerships to provide appropriate financial guarantees instead of minimum capital.

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

Article 25 Own funds

¹ Qualified portfolio managers must possess an appropriate level of own funds.

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

Article 26 Consolidation

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

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

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

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

⁴ The provisions of Article 63 to 69 on financial groups apply by analogy.

Article 27 Transfer

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

Chapter 3: Fund Management Companies

Article 28 Definition

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

Article 29 Legal form and organisation

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

² The share capital shall be divided into registered shares.

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

⁴ The main purpose of the fund management company shall be to conduct the fund business.

Article 30 Tasks

In addition to conducting the fund business, the fund management company may perform the following other services, in particular:

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

Article 31 Delegation of tasks

In the case of collective investment schemes for which facilitated distribution of shares exists in the European Union based on a treaty, investment decisions may not be delegated to either the custodian bank or any other companies whose interests may conflict with those of the qualified portfolio manager or the fund management company or the investors.

Article 32 Minimum capital

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

² The Federal Council shall set the amount of the minimum capital. It may furthermore make the granting of the authorisation contingent upon possession of professional liability insurance.

Article 33 Own funds

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

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

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

Article 34 Rights

¹ The fund management company is entitled to:

- a. the remuneration provided for in the fund contract;
- b. discharge of liabilities incurred in due fulfilment of its tasks;
- c. reimbursement of expenses incurred in settlement of said liabilities.

² These rights shall be met using the resources of the investment fund. The investors' personal liability is excluded.

Article 35 Liability in the case of delegation

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

Article 36 Transfer

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

² The transfer contract between the former and the new fund management company is valid only if made in writing and if it has received the custodian bank's consent and the approval of the supervisory authority.

³ The former fund management company shall communicate the envisaged transfer in the official publication journals prior to approval by the supervisory authority.

⁴ The publications must inform investors of the possibility of filing opposition with the supervisory authority within 30 days of publication. The procedure is governed by the Administrative Procedure Act of 20 December 1968⁶.

⁵ The supervisory authority shall approve the change of fund management company provided that the legal requirements are met and that it is in the investors' interest to continue the investment fund.

⁶ It shall publish the decision in the publication journals.

Article 37 Segregation of the fund assets

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

⁶ SR 172.021

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

Chapter 4: Securities Firms

Article 38 Definition

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

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

Article 39 Legal form

A securities firm that has its registered office in Switzerland must be a commercial enterprise.

Article 40 Tasks

¹ In particular, the securities firm may:

- a. hold accounts for settling securities trade within the context of its activity under Article 38 for clients, either itself or with third parties;
- b. act as custodian of clients' securities, either itself or in its own name with third parties;
- c. underwrite securities issued by third parties as a firm commitment or on commission and offer these to the public on the primary market on a commercial basis;
- d. create derivatives itself on a commercial basis, which it offers to the public on the primary market on its own behalf or that of another party.

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

³ It is prohibited from:

- a. accepting deposits from the public on a commercial basis or publicly solicit such deposits in order to finance on its own account in any manner whatsoever an unspecified number of persons or companies with which it does not form an economic unit;

- b. refinancing itself substantially through two or more securities firms that have no controlling participation in it in order to finance on its own account in any manner whatsoever an unspecified number of persons or companies with which it does not form an economic unit;

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

Article 41 Record-keeping obligation

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

Chapter 5: Banks

Section 1: General Provisions

Article 42 Definition

¹ A bank, savings bank or private banker (bank) is an entity that operates principally in the financial sector and:

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

² A cantonal bank is a bank that is established as an institution or company limited by shares on the basis of a cantonal legal decree. The canton must hold a participation in the bank of more than one third of the capital and possess more than one third of the votes. Cantonal law may make the canton liable for the cantonal bank's obligations, in full or in part.

Article 43 Legal form

¹ A bank or savings bank that has its registered office in Switzerland must be:

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

² Private bankers that have their registered office in Switzerland must be a general partnership or a limited partnership.

Article 44 Organisation

Where required by the business purpose or the scope of business activities, the bank must designate specific bodies responsible for its business management, on the one hand, and for its overall management, supervision and control on the other, and define the scope of these bodies' respective powers in such a way as to ensure proper and independent supervision of business management. The tasks and competences must be set out in the articles of association or in the partnership agreement and the organisational regulations.

Article 45 Qualified participations

The qualified participation of a bank in a company outside of the financial and insurance sector must not exceed 15 percent of its own funds. Such participations as a whole must not exceed 60 percent of own funds. The Federal Council shall regulate any exemptions.

Article 46 Loans to associated persons

Loans to members of the bank's governing bodies and to significant shareholders and persons and companies associated with these may be granted only in accordance with the generally recognised principles of the banking industry.

Section 2: Special Provisions for Systemically Important Banks**Article 47** Definition and purpose

¹ Systemically important banks are banks, financial groups and bank-dominated financial conglomerates in accordance with Article 63 whose failure would do considerable harm to the Swiss economy and the Swiss financial system.

² The purpose of the provisions of this section, in concert with the generally applicable statutory banking regulations, is to reduce further the risks posed by systemically important banks to the stability of the Swiss financial system, to ensure the continuation of economically vital functions and to avoid state aid.

Article 48 Criteria and determination of systemic importance

¹ Functions are systemically important if they are indispensable for the Swiss economy and cannot be substituted in the short term. Systemically important functions include the domestic deposit and lending business, and payment transactions.

² The systemic importance of a bank is determined by its size, its interconnectedness with the financial system and the economy, and the short-term substitutability of the services provided by the bank. In particular, the following criteria apply:

- a. market share of systemically important functions in accordance with paragraph 1;

- b. amount of secured deposits in accordance with Article 112 paragraph 1 that exceeds the maximum amount in accordance with Article 112 paragraph 3 letter b;
- c. the relationship between the bank's total assets and Switzerland's annual gross domestic product;
- d. the bank's risk profile as determined by the business model, the balance sheet structure, the quality of assets, liquidity and leverage.

³ After consulting the supervisory authority, the SNB shall determine in a ruling which banks are systemically important and which functions provided by these banks are systemically important.

Article 49 Special requirements

¹ Systemically important banks must fulfil special requirements. The scope and structure of these are determined by the level of systemic importance of the bank concerned. The requirements must be proportionate and must take into account the impact on the banks concerned and on competition, and reflect internationally recognised standards.

² In particular, systemically important banks must:

- a. have own funds that:
 1. ensure they have a greater loss-absorbing capacity than banks that are not systemically important as measured by the legal requirements,
 2. contribute significantly to the maintenance of systemically important functions in the event of threatened insolvency,
 3. give them an incentive to limit their systemic importance and improve their resolvability in Switzerland and abroad,
 4. are measured against risk-weighted assets on the one hand, and non-risk-weighted assets, which can include off-balance-sheet transactions, on the other;
- b. have liquidity that ensures they can absorb liquidity shocks better than banks that are not systemically important and thus fulfil their payment obligations even in an exceptionally stressful situation;
- c. diversify risks so that counterparty and cluster risks are limited;
- d. devise a contingency plan in respect of structure, infrastructure, management and control, as well as intra-group liquidity and capital flows such that it may be implemented immediately assuring the maintenance of systemically important functions in the event of threatened insolvency.

Article 50 Application at individual bank level

¹ After consulting the SNB, the supervisory authority shall set out in a ruling the special requirements in accordance with Article 49 paragraph 2 letters a to c that the systemically important bank must fulfil. It shall inform the general public of the basic content of this ruling and the bank's compliance with it.

² The systemically important bank must prove that it fulfils the special requirements in accordance with Article 49 paragraph 2 letter d and can maintain the systemically important functions in the event of threatened insolvency. If the bank fails to provide this proof, the supervisory authority shall impose the required measures.

³ When establishing the own funds requirements in accordance with Article 49 paragraph 2 letter a, the supervisory authority shall impose less stringent requirements provided the bank improves its resolvability in Switzerland and abroad beyond the requirements set out in Article 49 paragraph 2 letter d.

⁴ After consulting with the SNB and the supervisory authority, the Federal Council shall regulate:

- a. the special requirements in accordance with Article 49 paragraph 2;
- b. the criteria for assessing the proof in accordance with paragraph 2;
- c. the measures the supervisory authority may prescribe if proof in accordance with paragraph 2 is not provided.

Article 51 Remuneration-related measures

¹ If a systemically important bank or its group parent company is directly or indirectly granted state aid using federal funds despite implementation of the special requirements, the Federal Council shall at the same time impose remuneration-related measures for the duration of the support claimed.

² In particular, taking into account the bank's financial situation and the support claimed, it can:

- a. ban the payment of variable remuneration in whole or in part;
- b. prescribe changes to the remuneration system.

³ Systemically important banks and their group parent companies are obliged to include a caveat in their remuneration system stating that the legal right to variable remuneration may be restricted in the event of state support in accordance with this article.

Chapter 6: Common Provisions for Securities Firms and Banks

Section 1: Minimum Capital, Own Funds and Liquidity

Article 52 Minimum capital and financial guarantees

¹ Securities firms and banks must possess the required fully paid-up minimum capital.

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

³ The Federal Council shall set the amount of the minimum capital and the financial guarantees.

Article 53 Own funds, liquidity and risk diversification

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

² They must diversify their risks appropriately.

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

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

Section 2: Additional Capital**Article 54** Principles

¹ Securities firms and banks as well as the group parent companies of financial groups and of bank- or securities trading-dominated financial conglomerates (Art. 63) whose legal form permits the creation of share capital or participation capital may use their articles of association to:

- a. authorise the board of directors to increase the share capital or participation capital (reserve capital);
- b. provide for an increase in the share capital or participation capital that is to be carried out by converting mandatory convertible bonds if a certain event occurs (convertible capital).

² Irrespective of their legal form, securities firms, banks and the group parent companies of financial groups and of bank- or securities trading-dominated financial conglomerates may stipulate in bond issuing conditions that creditors waive their claims if a specific event occurs (bonds with a waiver of claims).

³ The additional capital may be created solely to strengthen the capital base and prevent or deal with a crisis at the securities firm or bank.

⁴ Capital raised by issuing mandatory convertible bonds or bonds with a waiver of claims in accordance with the provisions of this section may be counted towards the own funds requirements, insofar as this is permitted by this Act and its implementing regulations. Eligibility depends on the approval of the relevant issuing conditions by the supervisory authority.

Article 55 Reserve capital

¹ The General Meeting may authorise the board of directors, by means of an amendment to the articles of association, to increase the share capital or the participation capital. The articles of association stipulate the nominal amount by which the capital may be increased by the board of directors.

² The board of directors may cancel the subscription rights of shareholders or participation certificate holders for good cause, particularly if this helps with the rapid and smooth placement of shares or participation certificates. The new shares or participation certificates must be issued at market conditions in this case. A discount is permissible if this is in the interests of the company in terms of the rapid and complete placement of the shares or participation certificates.

³ In all other respects, the provisions of the Swiss Code of Obligations⁷ on authorised capital increases apply, with the exception of the following provisions:

- a. Article 651 paragraphs 1 and 2 (restrictions on the timing and size of an authorised capital increase);
- b. Article 652*b* paragraph 2 (good cause for cancelling subscription rights);
- c. Article 652*d* (increase from equity capital);
- d. Article 656*b* paragraphs 1 and 4 (restriction on the size of an authorised participation capital increase).

Article 56 Convertible capital: Determination

¹ The General Meeting may decide on a contingent increase in the share capital or participation capital by stipulating in the articles of association that the debt securities arising from mandatory convertible bonds are converted into shares or participation certificates if the trigger event occurs.

² It may restrict the nominal amount of the contingent capital increase in its articles of association. It sets out in the articles of association:

- a. the number, type and nominal value of the shares and participation certificates;
- b. the calculation basis for the issue amount;
- c. the cancellation of the subscription rights of shareholders and participation certificate holders;
- d. the limitation regarding the transferability of the new registered shares and participation certificates.

Article 57 Issue of mandatory convertible bonds

¹ The board of directors is authorised to issue mandatory convertible bonds within the scope of the provisions of the articles of association. Unless otherwise stipulated in the articles of association, it defines:

- a. any breakdown into different bonds or separate tranches;
- b. the trigger event or, in the case of tranches, the trigger events;
- c. the issue amount or the rules according to which this is determined;
- d. the conversion ratio or the rules according to which this is determined.

⁷ SR 220

² The mandatory convertible bonds are to be offered for subscription to shareholders and participation certificate holders in proportion to their holdings.

³ If the mandatory convertible bonds are issued at market conditions or at a discount in order to ensure a rapid and complete placement, the General Meeting may exclude the priority subscription rights of the shareholders and participation certificate holders.

Article 58 Mandatory convertible bonds: Occurrence of the trigger event

¹ If the conversion-triggering event occurs, the board of directors must immediately state this in a public document.

² This document must include the number, nominal value and type of the shares and participation certificates issued, the new amount of the share capital and the participation capital, and the necessary amendments to the articles of association.

³ An application for the resolution of the board of directors to be entered in the commercial register must be filed immediately. Commercial register entry may not be blocked.

⁴ The share capital and the participation capital are increased without further formalities by resolution of the board of directors. At the same time, the debt securities arising from the mandatory convertible bonds become extinct.

Article 59 Relation to contingent capital increases under the Swiss Code of Obligations⁸

The provisions of the Swiss Code of Obligations on contingent capital increases do not apply to convertible capital, with the exception of the following provisions:

- a. Article 653a paragraph 2 (minimum capital contribution);
- b. Article 653d paragraph 2 (protection of beneficiaries of conversion and option rights);
- c. Article 653i (deletion).

Section 3: Financial Reporting

Article 60 Preparation of annual financial statements

¹ Securities firms and banks shall prepare an annual report for each business year. This shall comprise:

- a. the annual accounts;
- b. the management report;
- c. the consolidated accounts.

⁸ SR 220

² They shall prepare interim accounts at least half-yearly.

³ The annual report and the interim accounts are to be drafted pursuant to the provisions of title thirty-two of the Swiss Code of Obligations⁹ and the provisions of this Act as well as the relevant implementing regulations.

⁴ In extraordinary situations, the Federal Council may decide to permit deviations from paragraph 3.

Article 61 Publication

¹ The annual report must be accessible to the general public.

² Interim accounts shall be made available to the public if so provided by the implementing regulations for this Act.

³ Paragraphs 1 and 2 do not apply to private bankers that do not publicly solicit funds from third parties. Article 958e paragraph 2 of the Swiss Code of Obligations¹⁰ is reserved.

Article 62 Implementing regulations

¹ The Federal Council shall issue implementing regulations with regard to the form, content and publication of annual reports and interim accounts.

² It may deviate from the provisions of the Swiss Code of Obligations on keeping accounts and filing financial reports if specific aspects of the banking operations or the protection of creditors justify this and the presentation of the economic position of the undertaking is equivalent.

³ It may authorise the supervisory authority to issue implementing regulations for matters of limited effect, specifically aspects that are primarily technical in nature.

⁴ The supervisory authority may, subject to the conditions of paragraph 2, limit the use of the accounting standards recognised by the Federal Council applicable to banks.

Section 4: Financial Groups and Conglomerates

Article 63 Definition

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

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

⁹ SR 220

¹⁰ SR 220

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

Article 64 Consolidated supervision

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

Article 65 Group or conglomerate supervision

¹ The supervisory authority may subject a financial group or a bank- or securities trading-dominated financial conglomerate to group or conglomerate supervision if the group or conglomerate:

- a. controls a bank or securities firm in Switzerland organised under Swiss law;
or
- b. is effectively managed from Switzerland.

² If other foreign authorities concurrently call for the complete or partial supervision of the financial group or the financial conglomerate, the supervisory authority, within the scope of its remit, shall agree with these on the responsibilities, modalities and object of group or conglomerate supervision. Before its decision, it shall consult those companies of the financial group or financial conglomerate that are incorporated in Switzerland

Article 66 Supplement to individual institution supervision

¹ Group supervision is carried out in addition to the individual institution supervision of the companies belonging to a financial group.

² Conglomerate supervision is carried out in addition to the individual institution supervision and the group supervision.

Article 67 Guarantee of irreproachable business conduct

¹ The persons of the financial group or financial conglomerate entrusted with executive management on the one hand and governance, supervision and control on the other must enjoy a good reputation and provide the guarantee of irreproachable business conduct.

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

Article 68 Competency of the supervisory authority

¹ The supervisory authority may issue provisions on capital, liquidity, risk diversification, intra-group risk positions and accounting for financial groups.

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

Article 69 Transfer of non-public information and documents

¹ Securities firms and banks may transfer non-public information and documents required for consolidated supervision to their parent companies, which in turn are supervised by a financial market supervisory authority, provided that:

- a. such information is used exclusively for the purposes of internal control or direct supervision of securities firms, banks or other financial intermediaries requiring an authorisation;
- b. the parent company and the supervisory authority entrusted with consolidated supervision are bound by official or professional secrecy;
- c. this information is forwarded to third parties only with the consent of the securities firm or the bank or on a basis of a general authorisation in an international treaty.

² If it seems doubtful that the conditions for such transfer have been fulfilled, the securities firms and banks may call upon the supervisory authority to rule on whether such information transfer is permitted or prohibited.

Section 5: Foreign-Controlled Securities Firms and Banks**Article 70** Additional authorisation conditions

¹ The supervisory authority may additionally impose the following conditions for an authorisation to establish a securities firm or a bank that is to be organised under Swiss law but with a controlling foreign influence:

- a. The country of residence or registered office of the foreigners with qualified participations must guarantee reciprocity, provided that no deviating international commitments exist;
- b. The business name of the securities firm or bank must in no way imply or suggest that it is Swiss.

² If a securities firm or a bank is part of a financial group or financial conglomerate, the supervisory authority may make the authorisation contingent upon the approval of the competent foreign supervisory authorities.

³ A securities firm or bank organised under Swiss law falls under the provisions of paragraph 1 whenever a foreigner with a qualified participation directly or indirectly holds more than half of the votes or exercises a controlling influence in another manner.

⁴ Foreigners are:

- a. natural persons who neither hold Swiss citizenship nor a permanent residence permit in Switzerland;
- b. legal entities and partnerships which have their registered office abroad or, if they have their registered office in Switzerland, are controlled by persons defined under letter a.

Article 71 Additional authorisation

¹ Securities firms and banks that fall under foreign control after their formation require an additional authorisation in accordance with Article 70.

² A new additional authorisation must be obtained if a foreign controlled securities firm or bank undergoes a change in the foreigners holding qualified participations.

³ The members of the board of directors and executive management of the securities firm or bank must notify the supervisory authority of all matters that could imply that the bank is foreign-controlled or that there has been a change in the foreigners holding qualified participations.

Article 72 International treaties

¹ The Federal Council may declare the additional authorisation conditions of Articles 70 and 71 totally or partially inapplicable in international treaties if citizens of a treaty state or legal entities that have their registered office in a treaty state establish or take over a securities firm or a bank organised under Swiss law or acquire a qualified participation therein. Provided there are no deviating international commitments, the Federal Council may make this contingent upon the existence of reciprocity in the treaty state.

² If the legal entity is controlled directly or indirectly by citizens of a third state or by legal entities having their registered office in a third state, the aforementioned provisions apply.

Chapter 7: Branches

Article 73 Authorisation requirement

¹ Portfolio managers, qualified portfolio managers, securities firms and banks that have their registered office abroad (foreign financial institutions) require authorisation from the supervisory authority if they employ persons in Switzerland who perform any of the following activities in the name of the foreign financial institution on a permanent, commercial basis in Switzerland or from Switzerland:

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

² Based on mutual recognition of equivalent regulations for the activity of financial institutions and equivalent measures in the supervision of financial institutions, the Federal Council may sign international treaties allowing financial institutions from the treaty states to open a branch office without requiring authorisation from the supervisory authority.

Article 74 Authorisation conditions

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

- a. the foreign financial institution:
 1. is sufficiently organised and has adequate financial guarantees and qualified personnel to operate a branch in Switzerland,
 2. is subject to appropriate supervision that includes the branch,
 3. proves that the business name of the branch may be registered in the commercial register;
- b. the competent foreign supervisory authorities:
 1. do not raise any objections to the establishment of a branch,
 2. agree to notify FINMA immediately if any circumstances arise that could seriously prejudice the interests of the clients or creditors,
 3. grant administrative assistance to FINMA;
- c. the branch:
 1. fulfils the conditions set out in Articles 8 and 10 and has a set of regulations that accurately describes the scope of business and defines an administrative or operational organisation corresponding to its business activity; and
 2. fulfils the additional authorisation conditions under Articles 75 to 78.

Article 75 Requirement of reciprocity

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

Article 76 Financial groups

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

Article 77 Financial guarantees

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

Article 78 Exemptions

The Federal Council may exempt branches of foreign financial institutions from certain provisions of this Act.

Chapter 8: Representations**Article 79** Authorising duty

¹ Foreign portfolio managers, foreign qualified portfolio managers, foreign securities firms and foreign banks require authorisation from the supervisory authority if they employ persons in Switzerland who work for them on a permanent and commercial basis in Switzerland or from Switzerland in another manner than as per Article 73 paragraph 1, specifically where these persons forward client orders to them or represent them for marketing or other purposes.

² Based on mutual recognition of equivalent regulations for the activity of financial institutions and equivalent measures in the supervision of financial institutions, the Federal Council may sign international treaties allowing financial institutions from the treaty states to open a representation without requiring authorisation from the supervisory authority.

³ Foreign fund management companies must not establish representations in Switzerland.

Article 80 Authorisation conditions

¹ The supervisory authority shall grant the foreign securities firm and the foreign bank authorisation to establish a representation if:

- a. the foreign securities firm or the foreign bank is subject to appropriate supervision;
- b. the competent foreign supervisory authorities do not raise any objections to the establishment of the representation;

- c. the persons entrusted with its management provide the guarantee of irreproachable business conduct.

² The supervisory authority may make the authorisation additionally contingent upon the granting of reciprocity by the state in which the foreign bank or the foreign securities firm has its registered office. Any deviating international commitments are reserved.

Article 81 Exemptions

The Federal Council may exempt representations of foreign financial institutions from certain provisions of this Act.

Title 3: Supervision

Article 82 Competent supervisory authority

¹ Portfolio managers are supervised by the Supervisory Organisation (SO) under the Financial Market Supervision Act of 22 June 2007¹¹ (FINMASA).

² Qualified portfolio managers, fund management companies, securities firms and banks are supervised by FINMA.

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

FINMA variant:

Article 82 *Supervisory authority*

Financial institutions under this Act are supervised by FINMA.

Article 83 Auditing

¹ Qualified portfolio managers, fund management companies, securities firms, banks, financial groups and financial conglomerates shall appoint an audit firm licensed by the Federal Audit Oversight Authority in accordance with Article 9a paragraph 1 of the Auditor Oversight Act of 16 December 2005¹².

² They shall have their annual accounts and, if applicable, their consolidated accounts audited by an audit firm subject to state supervision in accordance with the ordinary auditing principles under the Swiss Code of Obligations¹³ (Art. 727–728c).

³ Portfolio managers shall appoint an audit firm licensed as an auditor by the Federal Audit Oversight Authority under Article 6 in association with Article 9a paragraphs 1 and 4 of the Auditor Oversight Act¹⁴ to conduct a periodic audit.

¹¹ SR 956.1

¹² SR 221.302

¹³ SR 220

Article 84 Duty to provide information and to report in the case of outsourcing of significant functions

¹ If a financial institution outsources significant functions to other persons, these shall be subject to the duty to provide information and to report in accordance with Article 29 of the FINMASA¹⁵.

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

Article 85 Suspension of voting rights

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

Article 86 Liquidation

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

² The supervisory authority shall designate the liquidator and supervise their activity. The Federal Council shall regulate the liquidation.

³ The provisions under insolvency law are reserved.

Title 4: Measures under Insolvency Law**Chapter 1: Measures in Case of the Risk of Insolvency****Section 1: General Provisions****Article 87** Scope of application

The provisions of this chapter (Art. 88-111) apply only to fund management companies (Art. 28 ff.), securities firms (Art. 38 ff.) and banks (Art. 42 ff.).

Article 88 Conditions

¹ Should there be a justified concern that a financial institution is over-indebted or has serious liquidity problems or if it no longer fulfils the capital provisions after expiry of a deadline set by the supervisory authority, FINMA may order the following:

- a. protective measures (Art. 92);
- b. restructuring procedures (Art. 93–100);
- c. bankruptcy liquidation (Art. 101–109).

¹⁴ SR 221.302

¹⁵ SR 956.1

² The protective measures may be imposed on an isolated basis or in conjunction with restructuring or bankruptcy liquidation procedures.

³ The provisions concerning composition proceedings (Art. 293–336 of DEBA¹⁶), the moratorium under company law (Art. 725 and 725a of the Swiss Code of Obligations¹⁷) and the duty to notify the court (Art. 728c para. 3 of the Swiss Code of Obligations) do not apply.

⁴ The orders by FINMA cover all assets of the financial institution, including assets and liabilities and contractual relationships, whether located in Switzerland or abroad.

Article 89 Position of creditors and of owners

¹ In the procedures under this chapter, the creditors and the owners of a financial institution, a group parent company or a significant group company may appeal only against approval of a restructuring plan or realisation actions.

² Appeals pursuant to Article 17 of the Federal Act of 11 April 1889¹⁸ on Debt Enforcement and Bankruptcy (DEBA) shall be excluded in these procedures.

³ If an appeal lodged by a creditor or an owner against approval of the restructuring plan is accepted, the court may only award it compensation.

Article 90 Suspensive effect

¹ Appeals in the procedures under this section do not have suspensive effect.

² The instructing judge may order a suspension if so requested. No suspensive effect may be granted for appeals against the approval of a restructuring plan.

Article 91 Primacy of agreements on offsetting and realisation

Measures foreseen in all of the orders as per sections 2 to 4 of this chapter do not affect agreements concluded in advance on the:

- a. offsetting of claims, including the agreed method and valuation;
- b. direct realisation of collateral in the form of securities or other financial instruments whose value can be determined objectively.

Section 2: Protective Measures and Restructuring Procedure

Article 92 Protective measures

¹ FINMA may impose protective measures. In particular, it may:

- a. issue instructions to the governing bodies of the financial institution;

¹⁶ SR 281.1

¹⁷ SR 220

¹⁸ SR 281.1

- b. appoint an investigator;
- c. strip governing bodies of their power to represent the financial institution or dismiss them;
- d. dismiss the audit firm or the auditor appointed under the Swiss Code of Obligations¹⁹;
- e. restrict the financial institution's business activities;
- f. forbid the financial institution to make or accept payments or to conduct transactions with financial instruments;
- g. close down the financial institution;
- h. impose deferment of payments or payment extension, except for mortgage-backed receivables of central mortgage bond institutions.

² It shall ensure appropriate publication of the measures if this is necessary for their enforcement or for the protection of third parties.

³ Unless otherwise ordered by FINMA with regard to accrued interests, payment deferrals have the effects of Article 297 of DEBA²⁰.

Article 93 Restructuring procedures

¹ If it appears likely that the financial institution can recover or can continue to provide some services, FINMA may initiate the restructuring procedures.

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

³ It may appoint a person to draw up a restructuring plan (restructuring officer).

Article 94 Restructuring of the financial institution

In the case of restructuring, the restructuring plan must ensure that the financial institution still fulfils the authorisation conditions and the other statutory requirements after it has been restructured.

Article 95 Continuation of services

¹ The restructuring plan may provide for the continuation of selected services regardless of the continued existence of the financial institution concerned.

² In particular, the restructuring plan may transfer the financial institution's assets or parts thereof, including assets, liabilities and contractual relationships, to other entities provided that these possess the required authorisation.

³ If contractual relationships or the financial institution's assets or parts thereof are transferred, the transferee shall take the place of the financial institution at the time

¹⁹ SR 220

²⁰ SR 281.1

of the approval of the restructuring plan. The Mergers Act of 3 October 2003²¹ does not apply.

Article 96 Postponement of termination of financial contracts

¹ If financial contracts are transferred to another entity in the transfer of banking services, FINMA may postpone termination of said contracts and the exercise of the rights to terminate them.

² Such postponement may be imposed only in respect of contracts that link termination or the right to terminate with officially imposed restructuring or protective measures.

³ It may be imposed for a maximum of 48 hours. FINMA shall designate the start and end of the postponement period.

⁴ Postponement shall be excluded or must be withdrawn if, as a result of such action:

- a. another reason arises for the bank undergoing restructuring that results in termination or a right to terminate; or
- b. a reason unrelated to the transfer arises after the transfer for the entity accepting the contracts in whole or in part that results in termination or a right to terminate.

Article 97 Approval of the restructuring plan

¹ FINMA shall approve the restructuring plan if it:

- a. is based on a prudent valuation of the financial institution's assets;
- b. is likely to place the creditors in a more favourable position than they would be in the case of immediate bankruptcy;
- c. takes account of the precedence of the creditors' interests over those of the owners and of the ranking of creditors;
- d. takes appropriate account of the legal or financial connection between assets, liabilities and contractual relationships.

² The approval of the financial institution's General Meeting shall not be necessary.

³ As a last resort for preventing the insolvency of the financial institution, the restructuring plan may call for a reduction of the existing equity capital and the creation of new equity capital, as well as the conversion of borrowed capital into equity capital.

⁴ FINMA shall inform the public of the fundamentals of the restructuring plan.

Article 98 Rejection of the restructuring plan

¹ If the restructuring plan provides for a curtailment of the creditors' rights, FINMA shall set a deadline for the creditors to reject the restructuring plan at the latest when it approves the plan.

² If creditors representing more than half of the amount of the claims on the books of the third class pursuant to Article 219 paragraph 4 of DEBA²² reject the restructuring plan, FINMA shall order liquidation bankruptcy as set forth in Articles 101 to 111.

³ This article shall not apply to the restructuring of systemically important banks.

Article 99 Compensation of outstanding amounts

¹ If assets, liabilities and contractual relationships are only partially transferred to another entity, FINMA shall order an independent valuation of these.

² FINMA shall regulate compensation among the entities affected and supplement the restructuring plan accordingly with an addendum.

Article 100 Assertion of claims

¹ Once FINMA has approved the restructuring plan, the financial institution is empowered to contest legal transactions in accordance with Articles 285 to 292 of DEBA²³.

² If the restructuring plan excludes the possibility for the financial institution to contest legal transactions as stipulated in paragraph 1, each creditor shall be entitled to act to the extent that the restructuring plan infringes their rights.

³ No appeals against legal transactions under Articles 285 to 292 of DEBA are permitted in execution of a restructuring plan approved by FINMA.

⁴ The date of approval of the restructuring plan determines the deadlines under Articles 286 to 288 of DEBA. If FINMA has imposed protective measures prior to this as set out in Article 92 paragraph 1 letters e to h, the date on which these measures were imposed is decisive.

⁵ The right to appeal lapses two years after approval of the restructuring plan.

⁶ Paragraphs 1 and 2 apply by analogy to the assertion of liability claims.

²² SR 281.1

²³ SR 281.1

Section 3: Bankruptcy Liquidation of Insolvent Financial Institutions

Article 101 Order

¹ If there is no prospect of restructuring or if restructuring has failed, FINMA shall revoke the financial institution's authorisation, order its bankruptcy liquidation and make this public.

² FINMA shall appoint one or more persons to conduct the bankruptcy liquidation (official bankruptcy liquidators). They are subject to the supervision of FINMA, to whom they must report upon request.

³ They shall inform the creditors at least once a year on the status of the procedure.

Article 102 Consequences and procedure

¹ Ordering bankruptcy liquidation has the effect of opening bankruptcy proceedings pursuant to Articles 197 to 220 of DEBA²⁴.

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

Article 103 Creditors' meeting and creditors' committee

¹ The official bankruptcy liquidator may request that FINMA:

- a. constitute a creditors' meeting and specify its powers and the quorums for attendance and votes required to pass resolutions;
- b. designate a creditors' committee and specify its composition and powers.

² FINMA is not bound to the official bankruptcy liquidator's requests.

Article 104 Handling of claims; schedule of claims

¹ In preparing the schedule of claims, the claims on the books are deemed to be automatically filed.

² The creditors may consult the schedule of claims to the extent that and insofar as this is necessary for the protection of their creditor rights.

³ Professional secrecy shall be preserved as far as possible when granting the right to consult the schedule of claims.

Article 105 Obligations entered into during protective measures

Obligations that the financial institution was permitted to enter into during the protective measures pursuant to Article 92 paragraph 1 letters e to h must be fulfilled before all others in the case of bankruptcy liquidation.

²⁴ SR 281.1

Article 106 Preferential deposits

¹ Deposits with a securities firm or bank that are in the name of the depositor shall be assigned to second class up to a maximum of CHF 100,000 per creditor in accordance with Article 219 paragraph 4 of DEBA²⁵. Medium-term notes deposited with the bank in the depositor's name are also deemed deposits.

² The Federal Council may adjust the maximum amount under paragraph 1 for inflation.

³ Deposits with firms operating without a FINMA authorisation are not privileged.

⁴ Where a claim belongs to several persons, the privilege may be asserted only once.

⁵ Claims from bank foundations as occupational pension schemes under Article 82 of the Federal Act of 25 June 1982²⁶ on Occupational Old-Age, Survivors' and Invalidity Pension Provision and from vested benefits foundations as vested benefits mechanisms under the Vested Benefits Act of 17 December 1993²⁷ are deemed to be deposits of the individual pension and policy holders. Regardless of other deposits belonging to these pension and policy holders, they are privileged up to the maximum amount set out in paragraph 1.

⁶ Privileged deposits of securities firms and banks must at all times be covered to 125 percent with domestic secured claims or domestically held assets. FINMA may increase this amount and in justified cases allow for exemptions, particularly for those institutions that maintain equivalent coverage due to the structure of their business activities.

Article 107 Immediate payment

¹ Privileged deposits as per Article 106 paragraph 1 shall be paid out immediately from the available liquid assets beyond the claims schedule and are not subject to any netting.

² FINMA shall determine the maximum amount of immediately payable deposits in each individual case. In doing so, it shall take account of the ranking of the remaining creditors pursuant to Article 219 of DEBA²⁸.

Article 108 Segregation of custody assets

¹ Custody assets are segregated pursuant to Articles 17 and 18 of the Federal Act of 3 October 2008 on Intermediated Securities (FISA)²⁹. In the event of a shortfall, Article 19 of FISA shall apply.

² The following are deemed to be custody assets:

- a. tangible assets and securities of custody account clients;

²⁵ SR 281.1

²⁶ SR 831.40

²⁷ SR 831.42

²⁸ SR 281.1

²⁹ SR 957.1

- b. tangible assets, securities and claims that the financial institution holds in a fiduciary capacity for the account of custody account clients;
- c. freely available delivery claims of the financial institution from third parties from spot transactions, completed forward transactions, hedging transactions or issues for the account of custody account clients.

Article 109 Distribution and termination of the procedure

¹ The distribution plan is not published.

² Following distribution, the official bankruptcy liquidators shall submit a final report to FINMA.

³ FINMA shall take the decisions required to finalise the procedure. It shall announce the completion of proceedings to the public.

Section 4: Foreign Procedures

Article 110 Coordination with foreign proceedings

¹ If the financial institution is also subject to foreclosure proceedings abroad, FINMA shall coordinate the financial institution's insolvency proceedings as far as possible with the competent foreign bodies there.

² If a creditor has been partly paid in proceedings abroad related to the financial institution's insolvency, then the creditor's bankruptcy dividend from the Swiss proceedings (after deduction of costs incurred by the creditor) shall be reduced by the amount already received abroad.

Article 111 Recognition of foreign insolvency measures

¹ FINMA shall decide on the recognition of bankruptcy decrees and insolvency measures pronounced against financial institutions abroad.

² It may put assets located in Switzerland at the disposal of the foreign insolvency estate without any previous domestic legal proceedings if the foreign insolvency proceedings:

- a. treat the claims of creditors domiciled in Switzerland that are collateralised and privileged in accordance with Article 219 of DEBA³⁰ equally; and
- b. adequately take into account other claims of creditors domiciled in Switzerland.

³ It may also decide to recognise bankruptcy decrees and measures pronounced in the country in which the financial institution is effectively registered.

⁴ If legal proceedings are conducted domestically for the assets located in Switzerland, third-class creditors in accordance with Article 219 paragraph 4 of

³⁰ SR 281.1

DEBA and creditors domiciled abroad may also be included in the schedule of claims.

⁵ In all other respects, Articles 166 to 175 of the Federal Act of 18 December 1987³¹ on International Private Law apply.

Chapter 2: Protection of Deposits

Article 112 General

¹ Securities firms and banks shall ensure that privileged deposits pursuant to Article 106 paragraph 1 at Swiss branches are secured. Securities firms and banks holding such deposits are required to adhere to the self-regulatory system of banks and securities firms.

² The principles of self-regulation are subject to FINMA approval.

³ Self-regulation shall be approved if it:

- a. ensures the payment of secured deposits within 20 working days of receiving notification of the imposition of measures pursuant to Article 92 paragraph 1 letters e to h or of the bankruptcy pursuant to Articles 101 to 111;
- b. allocates a maximum amount of CHF 6 billion for the total of outstanding contributions due;
- c. ensures that each securities firm and each bank has at its disposal at all times liquid funds for half of its contributions due which exceed statutory liquidity.

⁴ The Federal Council may adapt the amount provided for under paragraph 3 letter b whenever special circumstances warrant this.

⁵ Should the principles of self-regulation not satisfy the requirements of paragraphs 1 to 3, the Federal Council may regulate the securing of deposits by way of ordinance. In particular, it shall designate the deposit protection entity and define the contributions to be made by the securities firms and banks.

Article 113 Trigger of deposit protection

¹ If FINMA has ordered protective measures under Article 92 paragraph 1 letters e to h or bankruptcy under Article 101, it shall inform the deposit protection entity of this and of the amount expected to be needed to pay out the secured deposits.

² The deposit protection entity shall make the corresponding amount available to the investigator, recovery agent or official bankruptcy liquidator within 20 working days of receiving notification.

³ Where a protective measure is in place, FINMA may defer notification if:

³¹ SR 291

- a. it seems likely that the protective measure will be lifted within a short period of time; or
- b. the secured deposits are not affected by the protective measures.

⁴ The time limit referred to in paragraph 2 shall be interrupted if and for as long as the order for a protective measure or bankruptcy is not enforceable.

Article 114 Settlement and legal cession

¹ The investigator, recovery agent or official bankruptcy liquidator shall pay the secured deposits to the depositors.

² The secured deposits shall be paid without any netting taking place.

³ The depositors shall not have a direct claim on the deposit protection entity.

⁴ Depositor's rights shall be transferred to the deposit protection entity to the extent of the disbursements made by said entity.

Article 115 Data exchange

¹ FINMA shall provide the deposit protection entity with the information it needs to perform its duties.

² The deposit protection entity shall provide FINMA and also the investigator, recovery agent or official bankruptcy liquidator with all the information and documents they need to enforce deposit protection.

Chapter 3: Dormant Assets

Article 116 Transfer

¹ Securities firms and banks may transfer dormant assets to another securities firm or bank without the creditors' consent.

² This transfer requires a written agreement between the transferring securities firm or bank and the receiving securities firm or bank.

³ In the case of bankruptcy of a securities firm or bank, the official bankruptcy liquidators shall represent the interests of the creditors of dormant assets vis-à-vis third parties.

⁴ The Federal Council shall set out the conditions for defining assets as dormant.

Article 117 Liquidation

¹ Securities firms and banks shall liquidate dormant assets after 50 years if the authorised person fails to appear after notification has been published. Dormant assets not exceeding CHF 500 may be liquidated without prior notification.

² The claims of the authorised person expire upon liquidation.

³ The proceeds of liquidation are payable to the Confederation.

⁴ The Federal Council shall set out the details concerning publication of notification and the liquidation of dormant assets.

Title 5: Liability and Criminal Law Provisions

Chapter 1: Liability

Article 118

¹ A financial institution that violates its duties shall be liable to the company, the individual investors and the company's creditors for the resulting losses, unless it proves that it is not at fault. Any person involved in the establishment, management, portfolio management, distribution, auditing or liquidation of the financial institution may be held liable.

² Where a financial institution delegates performance of its mandate tasks to a third party, it shall remain liable for any losses caused by the latter unless it proves that it took the due care required in their selection, instruction and monitoring. The Federal Council may set out the requirements for such monitoring, subject to the provisions of Article 35.

³ The liability of the governing bodies of a financial institution is based on the provisions of the Swiss Code of Obligations³² (Art. 752–760).

Chapter 2: Criminal Law Provisions

Article 119 Violation of professional secrecy

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

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

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

³ A monetary penalty not exceeding 180 daily penalty units shall be imposed on persons who commit the foregoing acts through negligence.

³² SR 220

⁴ The violation of professional secrecy shall remain punishable after termination of the official or employment relationship or exercise of the profession.

⁵ The following shall be reserved:

- a. granting the right to consult under Article 104 paragraph 2;
- b. the federal and cantonal provisions relating to the duty to testify and the duty to provide information to an authority.

⁶ Prosecution and adjudication of the actions under this provision are subject to federal jurisdiction.

Article 120 Unauthorised acceptance of deposits from the public

¹ A custodial sentence not exceeding three years or a monetary penalty shall be imposed on persons who wilfully accept deposits from the public without having the required authorisation.

² A monetary penalty not exceeding CHF 250,000 shall be imposed on persons who commit the foregoing act through negligence.

Article 121 Violation of record-keeping and accounting rules

¹ A custodial sentence not exceeding three years or a monetary penalty shall be imposed on persons who intentionally:

- a. violate the record-keeping obligation under Article 41;
- b. fail to keep proper business records or to store business records, receipts and documents as prescribed;
- c. fail to prepare and publish the annual accounts or an interim account in accordance with Article 60.

² A monetary penalty not exceeding 180 daily penalty units shall be imposed on persons who commit the foregoing acts through negligence.

Article 122 Violation of the provisions on protection against confusion and deception and notification obligations

¹ A fine not exceeding CHF 500,000 shall be imposed on persons who intentionally:

- a. violate the provision on the protection against confusion and deception (Art. 14);
- b. fail to provide the supervisory authorities with the prescribed notifications or do so incorrectly or too late.

² A fine not exceeding CHF 150,000 shall be imposed on persons who commit the foregoing acts through negligence.

Title 6: Final Provisions**Article 123** Implementation

The Federal Council shall issue the implementing regulations.

Article 124 Repeal and amendment of other legislation

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

Article 125 Transitional provisions

¹ Financial institutions that already possess authorisation for the corresponding activity at the time of this Act coming into force are not required to obtain new authorisation. They must fulfil the requirements of this Act within one year of its entry into force.

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

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

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

Article 126 Referendum and entry into force

¹ This Act is subject to an optional referendum.

² The commencement date shall be determined by the Federal Council.

...

On behalf of the Swiss Federal Council

The Federal President: Didier Burkhalter
The Federal Chancellor: Corina Casanova

Repeal and amendment of other legislation

I

The legislation below is repealed:

1. The Banking Act of 8 November 1934³³;
2. The Stock Exchange Act of 24 March 1995³⁴;

II.

The legislation below is amended as follows:

1. Mortgage Bond Act of 25 June 1930³⁵

Article 3

Each cantonal bank within the meaning of Article 42 paragraph 2 of the Financial Institutions Act of ...³⁶ shall be entitled to be a member of the central mortgage bond institution of the cantonal banks.

Article 42

Articles 88 to 111 of the Financial Institutions Act³⁷ shall apply by analogy.

2. Swiss Code of Obligations³⁸

Article 227b paragraph 1

¹ In the case of a contract concluded for more than a year or for an undetermined duration, the buyer shall make advance payments to a bank subject to the Financial Institutions Act of ...³⁹. They shall be credited to a savings or deposit account held in his name and shall bear interest at the usual rate.

³³ SR 952.0

³⁴ SR 954.1

³⁵ SR 211.423.4

³⁶ SR ...

³⁷ SR ...

³⁸ SR 220

³⁹ SR ...

Article 633 paragraphs 1 and 2

¹ Money contributions must be deposited with a bank as defined in the Financial Institutions Act of ...⁴⁰ for the exclusive use of the company.

² The bank may release the money only when the company has been entered in the commercial register.

Article 651 paragraph 5

⁵ The regulations of the Financial Institutions Act of ...⁴¹ on reserve capital are reserved.

Article 653 paragraph 3

³ The regulations of the Financial Institutions Act of ...⁴² on convertible capital are reserved.

Article 653e paragraph 2

² A capital contribution in money or by set-off must be made through a bank in accordance with Article 2 paragraph 1 letter e of the Financial Institutions Act of ...⁴³.

Article 689d paragraph 3

³ Financial institutions as defined in the Financial Institutions Act of ...⁴⁴ are deemed to be custodians acting as representatives.

Article 704 paragraph 1 no. 4

¹ A resolution by the general meeting requires at least two-thirds of the votes represented and an absolute majority of the nominal value of shares represented for:

4. an authorised or contingent capital increase or the creation of reserve capital in accordance with Article 55 of the Financial Institutions Act of ...⁴⁵;

Article 1126 paragraph 2

² The same applies in the event that the bearer cannot obtain the account credit from the drawee as a result of measures taken pursuant to the Financial Institutions Act of ...⁴⁶.

40 SR ...

41 SR ...

42 SR ...

43 SR ...

44 SR ...

45 SR ...

46 SR ...

Article 1135

For the purposes of this Section, the term “banker” is understood to mean banks subject to the Financial Institutions Act of ...⁴⁷.

Article 16

Final provisions

The provisions of the Financial Institutions Act⁴⁸ are reserved.

3. Federal Act of 23 March 2001⁴⁹ on Consumer Credit*Article 39 paragraph 3 letter a*

³ No authorisation under paragraph 2 shall be required if the lender or the lending agent:

- a. is governed by the Financial Institutions Act of ...⁵⁰;

4. Auditor Oversight Act of 16 December 2005⁵¹*Article 7 paragraph 3*

³ Licence shall be granted for an unlimited period of time.

Article 9a paragraph 4

⁴ The Federal Council may make provisions for easing of the requirements for the licence of audit firms and of lead auditors for the auditing of:

- a. financial intermediaries under Article 2 paragraph 3 of the Anti-Money Laundering Act of 10 October 1997⁵²;
- b. portfolio managers as defined in Article 2 paragraph 1 letter a of the Financial Institutions Act of ...⁵³;

Article 16 paragraph 1^{bis}

^{1bis} State-regulated auditors that provide audit services solely for companies under Article 9a paragraph 4 letter b shall be audited by the supervisory authority every five years. The supervisory authority may extend the audit cycle in justified cases.

47 SR ...

48 SR ...

49 SR **221.214.1**

50 SR ...

51 SR **221.302**

52 SR **955.0**

53 SR ...

Article 24 paragraph 4 letters b and c

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

- b. Article 119 of the Financial Institutions Act of ...⁵⁴.
- c. *Repealed*

Article 25a Self-regulatory organisations

The self-regulatory organisations pursuant to the Anti-Money Laundering Act of 10 October 1997⁵⁵ shall notify the supervisory authority of all occurrences and send it all documents associated with an audit firm that the supervisory authority requires to fulfil its tasks.

5. Cartel Act of 6 October 1995⁵⁶*Article 9 paragraph 3*

³ In the case of insurance companies, “turnover” is replaced by “annual gross insurance premium income”, and in the case of banks and other financial institutions that are subject to the financial reporting regulations set out in the Financial Institutions Act of ...⁵⁷ by “gross income”.

6. Civil Procedure Code of 19 December 2008⁵⁸*Article 5 paragraph 1 letter h*

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

- h. disputes under the Federal Act of 23 June 2006⁵⁹ on Collective Capital Investment Schemes, the Financial Market Infrastructure Act of ...⁶⁰ and the Financial Institutions Act of ...⁶¹.

⁵⁴ SR ...

⁵⁵ SR **955.0**

⁵⁶ SR **251**

⁵⁷ SR ...

⁵⁸ SR **272**

⁵⁹ SR **951.31**

⁶⁰ SR ...

⁶¹ SR ...

7. Federal Act of 11 April 1889⁶² on Debt Enforcement and Bankruptcy

Article 173b

Where the bankruptcy petition concerns a bank, a securities firm, a fund management company, an insurance company, a central mortgage bond institution, an investment company with variable capital (SICAV), a limited partnership for collective investment schemes or an investment company with fixed capital (SICAF), the bankruptcy court shall forward the files to the Federal Financial Market Supervisory Organisation (FINMA). The latter shall proceed in accordance with the regulations set forth in specific legislation.

Article 219 paragraph 4 second class letter f

⁴ The unsecured claims and the uncovered amount of secured claims shall be covered in the following order with the proceeds from the remaining bankruptcy estate:

Second class

- f. Deposits as per Article 106 of the Financial Institutions Act of ...⁶³.

8. Federal Act of 27 June 1973⁶⁴ on Stamp Duties

Article 6 paragraph 1 letter l

¹ The following shall be exempt from the duty:

1. participation rights of banks that are founded or raised using the convertible capital as per Articles 56 to 59 of the Financial Institutions Act of ...⁶⁵.

Article 13 paragraph 3

³ Securities dealers are:

- a. banks as defined in Article 2 paragraph 1 letter e of the Financial Institutions Act of ...⁶⁶ and the Swiss National Bank;

Article 37 paragraph 5

⁵ The findings determined in an audit as per paragraph 1 or 2 at a bank or savings bank as defined in Article 42 of the Financial Institutions Act of ...⁶⁷, at the Swiss National Bank or a central mortgage bond institution may be used solely for the enforcement of stamp duty. Banking secrecy must be observed.

⁶² SR 281.1

⁶³ SR ...

⁶⁴ SR 641.10

⁶⁵ SR ...

⁶⁶ SR ...

⁶⁷ SR ...

9. Value Added Tax Act of 12 June 2009⁶⁸

Article 78 paragraph 6

⁶ The findings relating to third parties made during an audit under paragraphs 1 to 4 of the Swiss National Bank or a central mortgage bond institution, of a bank or savings institution or a securities firm as defined in the Financial Institutions Act of ...⁶⁹ or of a financial market infrastructure as defined in the Financial Market Infrastructure Act of ...⁷⁰ may be used exclusively for the enforcement of value added tax. Professional secrecy under the Financial Institutions Act and the Financial Market Infrastructure Act must be preserved.

10. Withholding Tax Act of 13 October 1995⁷¹

Article 5 paragraph 1 letter g

¹ The following are exempt from the tax:

- g. the interest from mandatory convertible bonds and bonds with a waiver of claims as per Articles 55 to 59 of the Financial Institutions Act of ⁷² provided that:
 - 1. the Federal Financial Market Supervisory Authority, based on Article 54 paragraph 4 of the Financial Institutions Act of ...⁷³, has approved the inclusion of mandatory convertible bonds or bonds with a waiver of claims in the required own funds, and
 - 2. the mandatory convertible bond or the bond with a waiver of claims is issued within four years after this Act as amended on 15 June 2012 has come into force.

Article 40 paragraph 5

⁵ The findings determined in an audit as per paragraph 1 or 2 at a bank or savings bank as defined in the Financial Institutions Act of ...⁷⁴, at the Swiss National Bank or a central mortgage bond institution may be used solely for enforcement of the withholding tax. Professional secrecy as provided for in the financial market legislation shall be preserved.

⁶⁸ SR 641.20

⁶⁹ SR ...

⁷⁰ SR ...

⁷¹ SR 642.21

⁷² SR ...

⁷³ SR ...

⁷⁴ SR ...

11. Federal Act of 17 December 2004⁷⁵ on the Taxation of Savings Agreement with the European Community

Article 3 paragraph 3

³ Banks and securities firms within the meaning of the Financial Institutions Act of ...⁷⁶ are deemed to be registered if they commenced their business activity prior to 1 July 2005.

12. National Bank Act of 3 October 2003⁷⁷

Article 15 paragraph 1

¹ Financial institutions as defined in Article 2 paragraph 1 of the Financial Institutions Act of ...⁷⁸, financial market infrastructures and authorised parties as per Article 13 paragraph 2 of the Collective Investment Schemes Act of 23 June 2006⁷⁹ must provide the National Bank with statistical data relating to their activities.

Article 22 paragraph 1

¹ When auditing financial institutions as defined in Article 2 paragraph 1 of the Financial Institutions Act of ...⁸⁰, financial market infrastructures and authorised parties as per Article 13 paragraph 2 letters b to d and h of the Collective Investment Schemes Act of 23 June 2006⁸¹, the audit firms shall examine compliance with the duty to provide information and, in the case of banks, the duty to hold minimum reserves. They shall set out their findings in the audit report. They shall notify the National Bank and the competent supervisory authority whenever they ascertain any violation, in particular if incorrect information has been provided or if the duty to hold minimum reserves has been breached.

Article 26 paragraph 2

A shareholder's registration is limited to a maximum of 100 shares. This limitation shall not apply to Swiss public-law corporations and institutions or to cantonal banks pursuant to Article 42 paragraph 2 of the Financial Institutions Act of ...⁸².

75 SR **641.91**

76 SR ...

77 SR **951.11**

78 SR ...

79 SR **951.31**

80 SR ...

81 SR **951.31**

82 SR ...

Article 52 paragraph 1

¹ The National Bank shall issue its decisions pursuant to Articles 15, 16a, 18, 20, 22 and 23 of this Act, Article 48 of the Financial Institutions Act of ...⁸³ and Articles 5 and 23 of the Financial Market Infrastructure Act of ...⁸⁴ in the form of an order.

13. Collective Investment Schemes Act of 23 June 2006⁸⁵*Article 2 paragraph 2 letter h and paragraph 2bis*

Repealed

Article 3 paragraph 2 letters b and c

² The following are not deemed to be distribution:

- b. the provision of information and the subscription of collective investment schemes based on a written discretionary management agreement with financial intermediaries as defined in Article 4 paragraph 2 letters a and d of the Financial Services Act of ...⁸⁶.
- c. *Repealed*

Article 13 paragraph 2 letters a, f and g

Repealed

Article 13 paragraphs 3 and 5

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

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

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

¹ Authorisation is granted if:

- a. the persons under Article 13 paragraph 2 and the persons responsible for management and the business operations provide the guarantee of irrevocable business conduct;

⁸³ SR ...

⁸⁴ SR ...

⁸⁵ SR **951.31**

⁸⁶ SR ...

- a^{bis}. the persons responsible for management and the business operations enjoy a good reputation and possess the specialist qualifications required for the function;

² *Repealed*

Chapter 3 Section 2 (Art. 18-18c)

Repealed

Chapter 3 Section 3 (Art. 19)

Repealed

Chapter 4 Section 3 (Art. 28-35)

Repealed

Article 36 paragraph 3

The SICAV may only delegate investment decisions to portfolio managers of collective investment schemes subject to recognised supervision. Articles 30 and 31 of the Financial Institutions Act⁸⁷ apply by analogy.

Article 45

The provisions concerning public takeover offers (Art. ... Financial Market Infrastructure Act⁸⁸) do not apply to SICAVs.

Article 51 paragraph 5

⁵ The administration of a SICAV may only be delegated to an authorised fund management company in accordance with Article 28 of the Financial Institutions Act of ...⁸⁹.

Article 72 paragraph 1

¹ The custodian bank must be a bank pursuant to the Financial Institutions Act of ...⁹⁰ and have an appropriate organisational structure to act as custodian bank to collective investment schemes.

⁸⁷ SR ...

⁸⁸ SR ...

⁸⁹ SR ...

⁹⁰ SR ...

Article 94 paragraph 2

² Each subfund under paragraph 1 is liable only for its own liabilities. The subfund of the company shareholders is additionally liable on a subsidiary basis for the liabilities of the subfunds under paragraph 1.

Article 121 paragraph 1

¹ The paying agent must be a bank pursuant to the Financial Institutions Act of ...⁹¹.

Article 126 paragraph 1 Introductory sentence and letters a and e

¹ The following persons must appoint an audit company licensed by the Federal Audit Oversight Authority as per Article 9a paragraph 1 of the Auditor Oversight Act of 16 December 2005⁹² to perform an audit as per Article 24 of the Financial Market Supervision Act of 22 June 2007⁹³:

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

Article 137 paragraph 1

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

Article 138c

Articles 110 and 111 of the Financial Institutions Act of...⁹⁴ apply by analogy to recognising foreign insolvency measures, as well as for coordination with foreign insolvency proceedings.

Article 145 paragraph 1 letters a and f, paragraph 4

¹ Any person who violates their duties is liable to the company, the individual investors and the company's creditors for the losses resulting therefrom, unless they prove that they are not at fault. Any person involved in the establishment, management, portfolio management, auditing or liquidation of any of the following entities may be held liable:

- a. *Repealed*
- f. *Repealed*

⁹¹ SR ...

⁹² SR **221.302**

⁹³ SR **956.1**

⁹⁴ SR ...

⁴ The liability of the executive and governing bodies of the SICAV and SICAF is based on the provisions of the Swiss Code of Obligations⁹⁵ governing companies limited by shares.

Article 148 paragraph 1 letters d and k

- d. *Repealed*
- k. *Repealed*

14. Anti-Money Laundering Act of 10 October 1997⁹⁶

FINMA variant

In the FINMA variant, only the following provisions are amended/repealed:

- a. *Article 2*
- b. *Article 12*
- c. *Article 14*
- d. *Article 18*
- e. *Articles 19a to 20*

Article 2 paragraph 2 letters a, a^{bis}, b^{bis}, d and paragraph 3 letter e

² Financial intermediaries are:

- a. banks as defined in Article 2 paragraph 1 letter e of the Financial Institutions Act of ...⁹⁷;
- a^{bis}. portfolio managers and qualified portfolio managers as defined in Article 2 paragraph 1 letters a and b of the Financial Institutions Act⁹⁸;
- bbis. investment companies with variable capital, limited partnerships for collective investment and investment companies with fixed capital within the meaning of the Collective Investment Schemes Act of 23 June 2006⁹⁹, provided they themselves distribute shares in collective investment schemes;
- d. securities firms as defined in Article 2 paragraph 1 letter d of the Financial Institutions Act¹⁰⁰.

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

⁹⁵ SR 220
⁹⁶ SR 955.0
⁹⁷ SR ...
⁹⁸ SR ...
⁹⁹ SR 951.31
¹⁰⁰ SR ...

e. Repealed

Article 12 Responsibility

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

- a. for financial intermediaries under Article 2 paragraph 2 letters a and b–d, FINMA;
- a^{bis}. for financial intermediaries under Article 2 paragraph 2 letter a^{bis}, the competent supervisory authority pursuant to the Financial Market Supervision Act of 22 June 2007¹⁰¹ (the supervisory authority);
- c. for financial intermediaries under Article 2 paragraph 3, the recognised self-regulatory organisations (Art. 24).

Article 14

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

² A self-regulatory organisation shall accept a financial intermediary as a member if:

- a. the financial intermediary guarantees compliance with its duties in accordance with this Act by means of its internal regulations and organisation;
- b. the financial intermediary enjoys a good reputation and guarantees compliance with its duties in accordance with this Act; and
- c. the persons responsible for its administration and management also fulfil the requirements set forth under letter b.

³ Self-regulatory organisations may define further membership requirements in their regulations.

Article 16 paragraph 1 Introductory sentence

¹ FINMA, the Federal Gaming Board and the Supervisory Organisation under Article 43a of the Financial Market Supervision Act of 22 June 2007¹⁰² shall immediately submit a report to the Reporting Office if they have reasonable grounds to suspect that:

Article 17

Unless a recognised self-regulatory organisation regulates the duties of due diligence and their fulfilment, these duties of due diligence defined in Chapter 2 shall be specified in an ordinance, and the manner in which these duties are to be fulfilled shall be defined by

¹⁰¹ SR 956.1

¹⁰² SR 956.1

- a. FINMA for financial intermediaries under Article 2 paragraph 2 letters a to d;
- b. the Federal Gaming Board for financial intermediaries under Article 2 paragraph 2 letter e.

Article 18 paragraph 1 letters b, e and f

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

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

Article 19a paragraph 1 and Article 20

Repealed

Article 24 paragraph 1 letter c Introductory sentence and d

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

- c. provide the guarantee of irreproachable business conduct and ensure that the persons and audit companies they instruct to carry out inspections:
- d. ensure that the audit companies they instruct to carry out inspections are licensed by the Federal Audit Oversight Authority as audit companies under Article 9a of the Auditor Oversight Act of 16 December 2005¹⁰³.

Article 28 paragraph 2 to 4

² If a self-regulatory organisation has its recognition withdrawn, its affiliated financial intermediaries must join another self-regulatory organisation within two months.

³ and ⁴ *Repealed*

Article 29

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

² The Reporting Office shall inform FINMA, the Federal Gaming Board and the Supervisory Organisation of the decisions of the cantonal prosecution authorities.

¹⁰³ SR 221.302

Article 29a paragraphs 3 and 4

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

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

Article 34 paragraph 2

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

Article 35 paragraph 2

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

15. Financial Market Supervision Act of 22 June 2007¹⁰⁴*FINMA variant*

In the FINMA variant, only the following provisions are amended/repealed:

- a. *Article 1 paragraph 1 letters d and e*
- b. *Article 15 paragraph 2 letter a and letter d*
- c. *Article 31*
- d. *Article 32*
- e. *Article 41a*

Replacement of an expression

Throughout the entire Act, the word “Chapter” is replaced by “Title”, and “Section” is replaced by “Chapter”.

Article 1 paragraph 1 letters d and e and paragraph 2

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

- d. Financial Institutions Act of ...¹⁰⁵;

¹⁰⁴ SR 956.1

e. Repealed

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

Article 3 Supervised persons and entities

The following are subject to financial market supervision:

- a. persons and entities that under the financial market acts require to be authorised, recognised or licensed by the Financial Market Supervisory Authority; and
- b. collective capital investments.

Article 4

Previously Article 5

Heading before the new Article 5

Title 2: Financial Market Supervisory Authority (FINMA)

Article 5

Previously Article 4

Article 15 paragraph 2 letters a and d

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

- a. for supervised persons and entities under the Financial Market Infrastructure Act of ...¹⁰⁶, the Financial Institutions Act of ...¹⁰⁷ and the Mortgage Bond Act of 25 June 1930¹⁰⁸, on the basis of the balance sheet total and securities turnover.
- d. for self-regulatory organisations under the Anti-Money Laundering Act of 10 October 1997¹⁰⁹, on the basis of the gross earnings and number of members.

Article 31

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

¹⁰⁵ SR ...

¹⁰⁶ SR ...

¹⁰⁷ SR ...

¹⁰⁸ SR 221.423.4

¹⁰⁹ SR 955.0

Article 32 Heading and paragraph 2

Declaratory ruling and substitute performance

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

Article 33a Prohibition from performing an activity

The supervisory authority may prohibit the following persons from trading in financial instruments or acting as a client adviser temporarily or permanently in the case of repeated offences if they seriously violate the relevant provisions of the financial market laws, the implementing provisions or in-house directives:

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

Article 37 Heading and paragraph 1

Revocation of authorisation, recognition or licence

¹ FINMA shall revoke the authorisation, recognition or licence of a supervised person or entity if they no longer fulfil the requirements for their activity or seriously violate the supervisory provisions.

Article 41a Communication of judgements

¹ The cantonal civil courts and the federal court shall communicate to FINMA free of charge a full copy of their judgement in relation to disputes between a supervised person or entity and investors.

² FINMA shall forward to the Supervisory Organisation judgements concerning the persons and entities under its supervision.

*Heading after Article 43***Title 3: Supervisory Organisation****Chapter 1: General Provisions***Article 43a* Tasks

¹ The Supervisory Organisation shall grant portfolio managers under Article 17 of the Financial Institutions Act of ...¹¹⁰ the required authorisation and supervise their activity.

² It may issue circulars in its field of supervision on the application of the financial markets legislation. These require approval from FINMA.

¹¹⁰ SR ...

³ The Federal Council may provide for the creation of several Supervisory Organisations and shall specify the scope of their fields of supervision in this case.

Article 43b Information for FINMA

The Supervisory Organisation shall inform FINMA periodically about its supervision activities and shall notify it whenever it issues a prohibition from performing an activity.

Article 43c Information for the public and data processing

Articles 22 and 23 shall apply by analogy.

Chapter 2: Organisation

Article 43d Legal form and organisation

¹ The Supervisory Organisation must be a company limited by shares having its registered office and head office in Switzerland.

² The share capital of the Supervisory Organisation shall be divided into registered shares. The shares shall be fully paid up.

³ The ownership structure shall appropriately reflect the sectors of the supervised persons and entities.

⁴ The Supervisory Organisation must define appropriate management rules and be organised in such a manner that it can fulfil its duties under this Act.

Article 43e Governing bodies

The governing bodies of the Supervisory Organisation are:

- a. the General Meeting;
- b. the Board of Directors;
- c. the Management Board;
- d. the Auditor.

Article 43f General Meeting

¹ The General Meeting elects the members of the Board of Directors and its Chair.

² The Federal Council ratifies the elected Board of Directors and its Chair.

Article 43g Board of Directors

¹ The Board of Directors is the strategic body of the Supervisory Organisation.

² The members must adequately represent the financial institutions supervised by the Supervisory Organisation as well as the academic community.

³ The Board of Directors has the following tasks:

- a. It elects the members of the Management Board and its Chief Executive Officer;
- b. It decides on the circulars as per Article 43a paragraph 2;
- c. It issues the organisational regulations and the guidelines on information activities.

⁴ The elections and decisions set out in paragraph 3 must be validated by FINMA.

Article 43h Management Board

¹ The Management Board is the operational body. It is headed by the Chief Executive Officer.

² Its members must be independent of the financial institutions supervised by the Supervisory Organisation and in fulfilling its tasks.

³ The persons entrusted with management, administration and leading functions must also:

- a. provide the guarantee of irreproachable business conduct;
- b. enjoy a good reputation; and
- c. have the specialist qualifications required for their function.

⁴ The Management Board issues rulings in accordance with the organisational regulations.

Article 43i Auditor

The Swiss Federal Audit Office is the external auditor of the Supervisory Organisation and provides the Board of Directors and FINMA with a report on the findings of its audit.

Article 43j Official secrecy

Article 14 applies by analogy for both the Supervisory Organisation and its governing bodies and those mandated by it.

Chapter 3: Funding

Article 43k Fees and supervision charge

¹ The Supervisory Organisation levies fees for supervisory proceedings in individual cases and for services. In addition, it levies an annual supervision charge on supervised persons and entities to cover its costs that are not covered by the fees.

² The supervision charge is assessed according to the gross earnings and the size of the undertaking as well as its assets under management.

³ The Supervisory Organisation issues a fee schedule and submits this to FINMA for approval.

Article 43l Reserves

¹ The Supervisory Organisation shall form reserves within an appropriate time for the exercise of its supervisory activity in an amount equivalent to one annual budget.

² FINMA shall determine this time frame as part of the Supervisory Organisation's authorisation procedure.

Article 43m Accounting, liability and tax exemption

Articles 18 to 20 shall also apply by analogy for the Supervisory Organisation.

Chapter 4: Supervisory Measures

Article 43n Audit and supervisory instruments

The supervisory instruments as specified in Articles 24 to 32, 33a, 34 and 37 are also available to the Supervisory Organisation.

Article 43o Cooperation with domestic authorities

Articles 38 to 41 shall apply by analogy in respect of cooperation with domestic authorities.

Article 43p Cooperation with foreign authorities

Administrative assistance for foreign authorities is conducted by way of FINMA in accordance with Articles 42 and 43.

Chapter 5: Supervision of the Supervisory Organisation

Article 43q Competency

¹ The Supervisory Organisation is supervised by FINMA.

² FINMA verifies that the Supervisory Organisation complies with the provisions of Chapters 2 and 3 under this title.

Article 43r Supervisory instruments

¹ FINMA shall take the necessary measures if the Supervisory Organisation does not comply with the provisions of Chapters 2 and 3 under this title.

² The Supervisory Organisation must furnish FINMA with all information and documents that FINMA requires to perform its supervision of the Supervisory Organisation.

³ FINMA may dismiss persons who no longer fulfil the guarantee of irreproachable business conduct.

⁴ FINMA may liquidate the Supervisory Organisation as a measure of last resort.

Article 48 Non-compliance with rulings

Anyone who fails to comply with a legally enforceable ruling issued by FINMA or the Supervisory Organisation containing notice of the penalties under this Article or with a decision by the appellate courts is liable to a fine not exceeding CHF 100,000.

Article 54 Right of appeal

¹ The contesting of rulings by FINMA and the Supervisory Organisation is governed by the provisions on federal justice.

² Rulings by the Supervisory Organisation may be challenged directly with an appeal to the Federal Administrative Court.

³ Where rulings by the Supervisory Organisation are to be judged before the Federal Administrative Court or the Federal Supreme Court, the relevant court shall consult with FINMA.

⁴ The ruling authority is entitled to appeal to the Federal Supreme Court.

16. Federal Intermediated Securities Act of 3 October 2008¹¹¹

Article 4 paragraph 2 letters a to c and paragraph 3

² The following are deemed to be custodians:

- a. banks within the meaning of the Financial Institutions Act of ...¹¹²;
- b. securities firms within the meaning of the Financial Institutions Act¹¹³;
- c. fund management companies within the meaning of the Financial Institutions Act¹¹⁴, insofar as they maintain unit accounts;

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

¹¹¹ SR 957.1

¹¹² SR ...

¹¹³ SR ...

¹¹⁴ SR ...

17. Insurance Supervision Act of 17 December 2004¹¹⁵

Article 14 paragraphs 1 and 1^{bis}

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

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

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

Article 14a Tax compliance

Article 11 of the Financial Institutions Act of ...¹¹⁶ also applies by analogy for insurance companies.

Article 54d

Articles 110 and 111 of the Financial Institutions Act of...¹¹⁷ apply by analogy to recognising foreign insolvency measures as well as for coordination with foreign insolvency proceedings.

Article 67 Guarantee of irreproachable business conduct

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

Article 72 letter b

Two or more companies form an insurance conglomerate if:

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

Article 75

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

¹¹⁵ SR **961.01**

¹¹⁶ SR ...

¹¹⁷ SR ...

18. Financial Market Infrastructure Act of ...¹¹⁸

Article ...

Consultation

¹¹⁸ SR ...