



# The Swiss Federal Act on Banks and Savings Banks

(Banking Act; BA)

**SR 952.0**  
of 8 November 1934 (status as at 1 January 2024)

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*The Swiss Federal Assembly of the Swiss Confederation,*  
based on Articles 34<sup>ter</sup>, 64 and 64<sup>bis</sup> of the Federal Constitution<sup>2</sup>, after examination of the Swiss Federal Council's message of 2 February 1934<sup>3</sup>, *decrees:*

## Section I: Scope of the Act

### ARTICLE 1<sup>4</sup>

- 1 Banks, private bankers (individual proprietorships<sup>5</sup>, general and limited partnerships) and savings banks, hereinafter referred to as banks, shall be subject to this Act.
- 2 Natural persons and legal entities that are not subject to this Act may not accept deposits from the public on a commercial basis. The Swiss Federal Council shall provide for exceptions, provided that the protection of depositors is guaranteed. Issuing bonds is not deemed to be the acceptance of deposits on a professional basis.<sup>6</sup>
- 3 The present Act specifically does not apply to:
  - a. stockbrokers and trading houses dealing only in securities and transactions who engage in business directly related thereto, provided they do not engage in the banking business;
  - b. asset managers, notaries and business agents who simply manage their customers' funds and who do not engage in regular banking business.
- 4 The term "bank" or "banker", alone or in combination with other words, may only be used in a company name, in the designation of the business purpose and in business advertising by institutions that have obtained a license from the Swiss Financial Market Supervisory Authority (FINMA) as a

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<sup>1</sup> Version of the Title according to Section I of the Act of 22 April 1999, in force since 1 October 1999 (AS **1999** 2405; BBI **1998** 3847)

<sup>2</sup> [BS 1 3 and AS **1976** 2001]

<sup>3</sup> BBI **1934** I 171

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

<sup>5</sup> Now: Sole proprietorships.

<sup>6</sup> Version according to Section I of the Act of 18 March 1994, in force since 1 February 1995 (AS **1995** 246; BBI 1993 I 805).

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

bank. Article 2(3) remains reserved.<sup>7</sup>

- 5 This Act shall apply to the Swiss National Bank or central mortgage institutions only if this is explicitly stated.

### ARTICLE 1a<sup>8</sup> Banks

A bank shall be an institution primarily active in the financial sector that:

- a. accepts deposits from the public in excess of CHF 100 million on a professional basis or publicly advertises as doing so;
- b.<sup>9</sup> accepts deposits from the public up to CHF 100 million or crypto-based assets as defined by the Federal Council on a professional basis or publicly advertises as doing so, and invests or gives interest on the deposits received from the public or the crypto-based assets; or
- c. on a large scale refinances itself with loans from banks that do not own any significant holdings in it in order to finance for own account and in any manner possible any number of persons or companies with which it does not form an economic unit.

### ARTICLE 1b<sup>10</sup> Innovation funding

- 1 The provisions of this Act shall also apply to persons who are primarily active in the financial sector, and:
  - a. accept deposits from the public up to CHF 100 million or crypto-based assets designated by the Federal Council on a professional basis or who publicly advertise as doing so; and
  - b. who neither invest nor give interest on these deposits from the public.<sup>11</sup>
- 2 The Swiss Federal Council may adjust the amount mentioned in (1), taking into account of the competitiveness and innovative capacity of Switzerland as a financial center.
- 3 Persons as per (1) shall specifically:
  - a. precisely define their scope of business and provide for an administrative organization in keeping with their business activities;

<sup>7</sup> Version according to Annex Section 15 of the Financial Markets Supervision Act of 22 June 2007, in force since 1 January 2009 (AS **2008** 5207 5205; BBI 2006 2829).

<sup>8</sup> Inserted with Annex Section II 14 of the Financial Institution Act of 15 June 2018, in force since 1 January 2019 (AS **2018** 5247; BBI 2015 8901)

<sup>9</sup> Version according to Section I of the Act of 17 December 2021 (Depositor protection scheme and insolvency), in force since 1 January 2023 (AS **2022** 732; BBI 2020 6359).

<sup>10</sup> Inserted with Annex Section II 14 of the Financial Institution Act of 15 June 2018, in force since 1 January 2019 (AS **2018** 5247; BBI 2015 8901)

<sup>11</sup> Version pursuant to Section I 6 of the Federal Act of 25. Sept. 2020 to adapt federal law to developments in distributed electronic registry technology, in force since 1 August 2021 (AS **2021** 33, 399; BBI 2020 233).

- b. dispose of an adequately endowed risk management and effective internal controls, which ensure the adherence to legal regulations and company-internal policies (Compliance);
  - c. dispose of adequate financial means;
  - d. ensure that the persons in charge of administration and management enjoy a good reputation and thereby assure an irreproachable conduct of business operations;
- 4 The following provisions shall remain applicable:
- a. The accounting for persons as per (1) shall base itself exclusively on the provisions of the Swiss Code of Obligations (CO)s (CO)<sup>12</sup>.
  - b. Persons as per (1) shall have their annual financial statements and, if necessary, their consolidated financial statements audited in accordance with the provisions of the CO; Article 727a(2)-(5) CO shall not apply.
  - c. Persons as per (1) shall arrange for an audit firm licensed by the Federal Audit Oversight Authority under Article 9a(1) or (4<sup>bis</sup>) of the Auditor Oversight Act of 16 December 2005<sup>13</sup> with an audit in accordance with Article 24 of the Financial Market Supervision Act of 22 June 2007<sup>14</sup>(FINMASA).
  - d.<sup>15</sup> The provisions on privileged deposits (Article 37a) and on immediate payout (Article 37b) shall not apply to deposits from the public or crypto-based assets as designated by the Federal Council held by persons as per (1); depositors shall be informed of this prior to making the deposit.
- 5 Under special circumstances, FINMA may also declare (1)-(4) applicable to persons who accept deposits from the public on a professional basis in excess of CHF 100 million or who publicly advertise as doing so but who neither invest nor grant interests on these funds and who ensure the clients' protection with special precautions.
- 6 If the threshold of CHF 100 million is exceeded, FINMA must be notified within 10 days and a license application in accordance with Article 1a shall be submitted within 90 days. (5) shall remain applicable.

## ARTICLE 1<sup>BIS</sup> 16

<sup>12</sup> SR **220**

<sup>13</sup> SR **221.302**

<sup>14</sup> SR **956.1**

<sup>15</sup> Version pursuant to Section I 6 of the Federal Act of 25. Sept. 2020 to adapt federal law to developments in distributed electronic registry technology, in force since 1 August 2021 (AS **2021** 33, 399; BBI 2020 233).

<sup>16</sup> Inserted with Annex Section II 5 of the Swiss National Bank Act of 3 October 2003 (AS **2004** 1985; BBI 2002 6097). Repealed by Annex Section 10 of the Financial Markets Infrastructure Act of 19 June 2015, with effect from 1 January 2016 (AS **2015** 5339; BBI 2014 7483)

## ARTICLE 2<sup>17</sup>

- 1 The provisions of this Act shall apply by analogy to the assets of foreign banks in Switzerland:
  - a. established branch offices;
  - b. appointed representatives.<sup>18</sup>
- 2 FINMA<sup>19</sup> shall issue the necessary directives. FINMA shall issue directives for such entities and may, in particular, require that these entities must be provided with adequate endowment capital and furnish collateral.
- 3 In view of reciprocal recognition of equivalent rules regarding banking activities and of an equivalence in banking supervision, the Swiss Federal Council is empowered to sign treaties with states which stipulate that banks of the treaty state in question may open a branch, agency or representation without FINMA's authorization.<sup>20</sup>

## ARTICLE 2<sup>BIS</sup><sup>21</sup>

- 1 As far as they are not subject to FINMA's jurisdiction in bankruptcies in the context of single-entity supervision, the following are subject to Sections XI, XII and XIIIa of this Act:<sup>22</sup>
  - a. group parent companies of a financial group or financial conglomerate domiciled in Switzerland;
  - b. group companies domiciled in Switzerland that fulfill functions significant for the activities subject to licensing (significant group companies).
- 2 The Swiss Federal Council shall define the criteria to determine significance.
- 3 FINMA shall name the significant group companies and maintain a list of these. This list shall be accessible to the public.

<sup>17</sup> Version according to Section I of the Act of 11 March 1971, in force since 1 July 1971 (AS **1971** 808 824 Article 1; BBl 1970 I 1144).

<sup>18</sup> Version according to Annex Section 15 of the Financial Markets Supervision Act of 22 June 2007, in force since 1 January 2009 (AS **2008** 5207 5205; BBl 2006 2829).

<sup>19</sup> Term according to Annex Section 15 of the Financial Markets Supervision Act of 22 June 2007, in force since 1 January 2009 (AS **2008** 5207 5205; BBl 2006 2829). This amendment has been taken into account in the entire enactment.

<sup>20</sup> Inserted with Section I of the Act of 18 March 1994 (AS **1995** 246; BBl 1993 I 805). Version according to Annex Section 15 of the Financial Markets Supervision Act of 22 June 2007, in force since 1 January 2009 (AS **2008** 5207 5205; BBl 2006 2829).

<sup>21</sup> Inserted with Annex Section 10 of the Financial Markets Infrastructure Act of 19 June 2015, in force since 1 January 2016 (AS **2015** 5339; BBl 2014 7483).

<sup>22</sup> Version according to Section I of the Act of 17 December 2021 (Depositor protection scheme and insolvency), in force since 1 January 2023 (AS **2022** 732; BBl 2020 6359).

## Section II: License to Operate a Bank <sup>23</sup>

### ARTICLE 3<sup>24</sup>

- 1 Banks shall be required to obtain a license from FINMA prior to engaging in business operations; they may not be entered into the Commercial Register before such a license has been granted.
- 2 A license shall be granted, if:
  - a. bank's articles of incorporation, partnership agreements and business rules provide a clear definition of the scope of its business and establish an adequate organization in view of the proposed business activities. Where the business purpose or scope of business so requires, the bank must create separate bodies for its management on the one hand and for its direction, supervision and control on the other hand. These bodies must be adequately segregated in order to ensure the effective supervision of the bank's management;
  - b.<sup>25</sup> the bank demonstrates that it has fully paid in its minimum capital as defined by the Swiss Federal Council;
  - c. the persons in charge of the bank's administration and management enjoy a good reputation and thereby guarantee proper business conduct;
  - c.<sup>bis</sup><sup>26</sup> natural persons or legal entities that directly or indirectly hold equity interest in the bank of at least 10 percent of the capital or voting rights or whose business activities are otherwise such that they may influence the bank in a significant manner (qualified participation), guarantee that their influence will not have a negative impact on the bank's prudent and solid business activity;
  - d.<sup>27</sup> the persons entrusted with the bank's management have their domicile in a place where they can actually and responsibly exercise the management.
- 3 The bank shall file its articles of incorporation, partnership agreements and business regulations with FINMA and notify it of all subsequent amendments concerning the purpose and scope of its business, its share capital or its internal organization. Such amendments may not be entered into the Commercial Register unless they have been approved by FINMA.
- 4 ...<sup>28</sup>

<sup>23</sup> Version according to Section I of the Act of 11 March 1971, in force since 1 July 1971 (AS **1971** 808 824 Article 1; BBl 1970 I 1144).

<sup>24</sup> Version according to Section I of the Act of 11 March 1971, in force since 1 July 1971 (AS **1971** 808 824 Article 1; BBl 1970 I 1144). Also see the final provisions 22 4 1999 at the end of this text.

<sup>25</sup> Version according to Section I of the Act of 18 March 1994, in force since 1 February 1995 (AS **1995** 246; BBl 1993 I 805).

<sup>26</sup> Inserted with Section I of the Act of 18 March 1994, in force since 1 February 1995 (AS **1995** 246; BBl 1993 I 805). See also the final provisions and amendments dated 18 March 1994 at the end of this Act.

<sup>27</sup> Version according to Section I of the Act of 18 March 1994, in force since 1 February 1995 (AS **1995** 246; BBl 1993 I 805). See also the final provisions and amendments dated 18 March 1994 at the end of this Act.

<sup>28</sup> Repealed by Section I of the Act of 18 March 1994 with effect from 1 February 1995 (AS **1995** 246; BBl 1993 805).

- 5 All natural persons or legal entities shall notify FINMA prior to directly or indirectly acquiring or selling qualified equity interests as defined in (2)(c<sup>bis</sup>) in a bank organized pursuant to Swiss law. Banks shall also notify FINMA whenever qualified equity interests are increased or decreased and thus reach, exceed or fall below the threshold of 20, 33 or 50 percent of the capital or voting rights, respectively.<sup>29</sup>
- 6 The bank shall notify FINMA of any persons subject to the requirements under (5) as soon as it becomes aware of them, but at least once a year.<sup>30</sup>
- 7 Banks organized pursuant to Swiss law shall notify FINMA before they establish a subsidiary, branch office, agency or representation abroad.<sup>31</sup>

### ARTICLE 3a<sup>32</sup>

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

### ARTICLE 3b<sup>33</sup>

Should a bank be part of a financial group or a financial conglomerate, FINMA may require the existence of an adequate consolidated supervision by a financial supervisory authority as a prerequisite to it issuing a license.

### ARTICLE 3c<sup>34</sup>

- 1 Two or more companies shall be deemed to be a financial group if:
  - a. at least one acts as a bank or securities firm<sup>35</sup>;
  - b. they operate primarily in the financial sector; and
  - c. they form an economic unit and, due to circumstances on hand, it is to be assumed that one or more individual companies are legally obliged and factually forced to assist other group companies.

<sup>29</sup> Inserted with Section I of the Act of 18 March 1994, in force since 1 February 1995 (AS **1995** 246; BBl 1993 I 805).

<sup>30</sup> Inserted with Section I of the Act of 18 March 1994, in force since 1 February 1995 (AS **1995** 246; BBl 1993 I 805). See also the final provisions and amendments dated 18 March 1994 at the end of this Act.

<sup>31</sup> Inserted with Section I of the Act of 18 March 1994, in force since 1 February 1995 (AS **1995** 246; BBl 1993 I 805).

<sup>32</sup> Inserted with Section I of the Act of 18 March 1994 (AS **1995** 246; BBl 1993 I 805). Version according to Section I of the Act of 22 April 1999, in force since 1 October 1999 (AS **1999** 2405; BBl 1998 3847). See also the final provisions of these amendments at the end of this text.

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

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

<sup>35</sup> Term according to Section I of the Act of 17 December 2021 (Depositor protection scheme and insolvency), in force since 1 January 2023 (AS **2022** 732; BBl 2020 6359). This amendment was made to the provisions mentioned in the Official Compilation of Federal Legislation (AS).



- 2 A financial group shall be deemed to be a bank or security firm-dominated financial conglomerate pursuant to (1) if it is predominantly involved in banking or securities trading and if at least one insurance company of considerable economic significance is part of it.

#### ARTICLE 3d<sup>36</sup>

- 1 FINMA may subject a financial group or financial conglomerate dominated by banking or securities trading to group or conglomerate supervision if the group or conglomerate:
  - a. controls a bank or a securities firm in Switzerland organized in accordance with Swiss law; or
  - b. is actually managed from Switzerland.
- 2 If other foreign authorities concurrently claim the full or partial supervision of the financial group or the financial conglomerate, FINMA, under observance of its competences, shall agree with the foreign authority on responsibilities, modalities and extent of the group or conglomerate supervision. Before finalizing its decision, it shall consult those companies of the financial group or conglomerate that are incorporated in Switzerland.<sup>37</sup>

#### ARTICLE 3e<sup>38</sup>

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

#### ARTICLE 3f<sup>39</sup>

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

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<sup>36</sup> Inserted with Annex Section II 6 of the Swiss Insurance Supervision Act of 17 December 2004, in force since 1 January 2006 (AS **2005** 5269; BBI 2003 3789).

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

<sup>38</sup> Inserted with Annex Section II 6 of the Swiss Insurance Supervision Act of 17 December 2004, in force since 1 January 2006 (AS **2005** 5269; BBI 2003 3789).

<sup>39</sup> Inserted with Annex Section II 6 of the Swiss Insurance Supervision Act of 17 December 2004, in force since 1 January 2006 (AS **2005** 5269; BBI 2003 3789).

## ARTICLE 3g<sup>40</sup>

- 1 FINMA shall be authorized to issue provisions on capital adequacy, liquidity, risk distribution, intra-group risk positions and accounting for financial groups.
- 2 FINMA shall be authorized to issue or establish entity-specific provisions on capital adequacy, liquidity, risk distribution, intra-group risk positions and accounting for financial conglomerates dominated by their banking or securities trading business. In regard to capital adequacy requirements, it shall take into consideration the prevailing rules of the financial and insurance industries as well as the relative significance of these two industries within the financial conglomerate and the associated risks.
- 3 The Federal Council may issue rules on the financial resources and organization of significant group companies as defined in Article 2<sup>bis</sup>(1)(b) that perform significant functions for systemically important banks.<sup>41</sup>
- 4 The requirements for financial resources and organization will depend on the scope and nature of the essential services to be provided by the essential group companies should the group be wound up or liquidated.<sup>42</sup>

## ARTICLE 3h<sup>43</sup>

### ARTICLE 3<sup>bis</sup> 44

- 1 FINMA may also make the license to establish a bank to be organized in accordance with Swiss law but which is subject to a controlling foreign influence, as well as the license to establish a branch office or appoint a permanent representative, contingent on the following additional conditions:<sup>45</sup>
  - a.<sup>46</sup> the country where the foreign bank or of the controlling corporation or shareholder is domiciled must guarantee reciprocity of supervision, provided no contradictory international obligations exist;
  - a. the use of a corporate name that does not indicate or suggest a Swiss character of the bank;
  - c.<sup>47</sup> ...

<sup>40</sup> Inserted with Annex Section II 6 of the Swiss Insurance Supervision Act of 17 December 2004, in force since 1 January 2006 (AS **2005** 5269; BBI 2003 3789).

<sup>41</sup> Inserted with Section I of the Act of 17 Dec 2021 (Depositor protection scheme and insolvency), in force since 1 January 2023 (AS **2022** 732; BBI 2020 6359).

<sup>42</sup> Inserted with Section I of the Act of 17 Dec 2021 (Depositor protection scheme and insolvency), in force since 1 January 2023 (AS **2022** 732; BBI 2020 6359).

<sup>43</sup> Inserted with Annex Section II 6 of the Swiss Insurance Supervision Act of 17 December 2004 (AS **2005** 5269; BBI 2003 3789). Repealed by Annex Section 15 of the Financial Markets Supervision Act of 22 June 2007, with effect from 1 January 2009 (AS **2008** 5207 5205; BBI 2006 2829).

<sup>44</sup> Inserted with Section I of the Act of 11 March 1971, in force since 1 July 1971 (AS **1971** 808 824 Article 1; BBI 1970 I 1144).

<sup>45</sup> Version according to Annex Section 15 of the Financial Markets Supervision Act of 22 June 2007, in force since 1 January 2009 (AS **2008** 5207 5205; BBI 2006 2829).

<sup>46</sup> Version according to Section I of the Act of 16 December 1994, in force since 1 July 1995 (AS **1995** 2109; BBI 1994 IV 950).

<sup>47</sup> Repealed by Section I of the Act of 18 March 1994, with effect from 1 February 1995 (AS **1995** 246; BBI 1993 I 805).

- 1<sup>bis</sup> If a bank is part of a financial group or financial conglomerate, FINMA may make the license contingent upon the approval of the relevant foreign supervisory authorities.<sup>48</sup>
- 2 The bank must inform the Swiss National Bank of the scope of its business activities and its relationships abroad.
- 3 A bank organized in accordance with Swiss law shall fall under the provisions of (1) whenever foreigners with qualified equity interests directly or indirectly hold more than half of the voting rights or in any other way exercise a controlling influence.<sup>49</sup>

A foreigner shall be:

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

#### ARTICLE 3<sup>ter</sup> 50

- 1 Banks that are controlled by foreigners only after their incorporation shall require an additional license in accordance with Article 3<sup>bis</sup>.
- 2 If there is a change in foreign shareholders with qualified equity interests, a new additional license must be obtained.<sup>51</sup>
- 3 The bank's board members and management must notify FINMA of all matters which could imply that the bank is under foreign control or that there has been a change in foreign shareholders with qualified equity interests.<sup>52</sup>

#### ARTICLE 3<sup>quater</sup> 53

- 1 The Swiss Federal Council shall be authorized to declare in international treaties that the special licensing requirements set out in Articles 3<sup>bis</sup> and 3<sup>ter</sup> do not apply at all or only in part if citizens of a treaty state or legal entities domiciled in a treaty state establish or take over a bank organized pursuant to Swiss law or acquire qualified interests therein. Provided there are no international obligations to the contrary, the Swiss Federal Council may make this contingent on the granting of reciprocal rights by the treaty state.
- 2 Should the legal entity on its part be directly or indirectly controlled by citizens of a third country or by legal entities domiciled in a third country, the aforementioned provisions shall be applicable.

<sup>48</sup> Inserted with Section I of the Act of 16 December 1994 (AS **1995** 2109; BBI 1994 IV 950). Version according to Annex Section II 6 of the Swiss Insurance Supervision Act of 17 December 2004, in force since 1 January 2006 (AS **2005** 5269; BBI 2003 3789).

<sup>49</sup> Version according to Section I of the Act of 18 March 1994, in force since 1 February 1995 (AS **1995** 246; BBI 1993 I 805).

<sup>50</sup> Inserted with Section I of the Act of 11 March 1971, in force since 1 July 1971 (AS **1971** 808 824 Article 1; BBI 1970 I 1144).

<sup>51</sup> Version according to Section I of the Act of 16 December 1994, in force since 1 July 1995 (AS **1995** 2109; BBI 1994 IV 950).

<sup>52</sup> Version according to Section I of the Act of 16 December 1994, in force since 1 July 1995 (AS **1995** 2109; BBI 1994 IV 950).

<sup>53</sup> Inserted with Section I of the Act of 18 March 1994, in force since 1 February 1995 (AS **1995** 246; BBI 1993 I 805).

## Section III: Capital, Liquidity and other Requirements relating to Business Operations<sup>54</sup>

### ARTICLE 4<sup>55</sup>

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

### ARTICLE 4<sup>bis</sup> 56

- 1 A bank's loans to any single customer, as well as its equity interests in any single company, shall be in adequate proportion to the bank's own capital.
- 2 The Implementing Ordinance shall define this proportion, with special consideration given to loans to public-law entities and to the type of security provided.
- 3 3 ...<sup>57</sup>

### ARTICLE 4<sup>ter</sup> 58

- 1 Loans may be granted to the bank's governing bodies and significant shareholders as well as to related persons and affiliated companies only in application of generally accepted principles of the banking industry.
- 2 2 ...<sup>59</sup>

<sup>54</sup> Version according to Section I of the Act of 11 March 1971, in force since 1 July 1971 (AS **1971** 808 824 Article 1; BBI 1970 I 1144).

<sup>55</sup> Version according to Annex section II 5 of the Swiss National Bank Act of 3 October 2003, in force since 1 January 2005 (AS **2004** 1985; BBI 2002 6097).

<sup>56</sup> Inserted with Section I of the Act of 11 March 1971, in force since 1 July 1971 (AS **1971** 808 824 Article 1; BBI 1970 I 1144). See also the final provisions and amendments dated 18 March 1994 at the end of this Act.

<sup>57</sup> Repealed by Section I of the Act of 18 March 1994 with effect from 1 February 1995 (AS **1995** 246; BBI 1993 805).

<sup>58</sup> Inserted with Section I of the Act of 11 March 1971, in force since 1 July 1971 (AS **1971** 808 824 Article 1; BBI 1970 I 1144). Also see the final provisions dated 18 March 1994 at the end of this Act.

<sup>59</sup> Repealed by Section I of the Act of 18 March 1994 with effect from 1 February 1995 (AS **1995** 246; BBI 1993 805).

**ARTICLE 4<sup>quater</sup> 60**

Both in Switzerland and abroad, banks shall abstain from misleading or obtrusive marketing of their Swiss domicile or their association to Swiss institutions.

**ARTICLE 4<sup>quinquies</sup> 61**

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

**ARTICLE 4<sup>sexies</sup> 62**

For crypto-based assets held by the bank as safe-custody assets for custody clients, FINMA may set a maximum amount on a case-by-case basis if this is deemed warranted by the risks inherent in the transaction. In particular, it shall give consideration to the function of the crypto-based assets, their underlying technologies and risk mitigating factors.

**ARTICLE 5<sup>63</sup>**

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<sup>60</sup> Inserted with Section I of the Act of 11 March 1971, in force since 1 July 1971 (AS **1971** 808 824 Article 1; BBI 1970 I 1144).

<sup>61</sup> Inserted with Section I of the Act of 18 March 1994, in force since 1 February 1995 (AS **1995** 246; BBI 1993 I 805).

<sup>62</sup> Inserted by Section I 6 of the Act of 25 September 2020 on the amendment of federal legislation to take account of developments in the distributed ledger technology, in force since 1 August 2021 (AS **2021** 33, 399; BBI 2020 233).

<sup>63</sup> Repealed by Annex Section 15 of the Financial Market Supervision Act of 22 June 2007, with effect from 1 January 2009 (AS **2008** 5207 5205; BBI 2006 2829).

## Section IV:<sup>64</sup> Accounting

### ARTICLE 6 Preparation of financial statements

- 1 Banks shall prepare an annual report for every business year, consisting of:
  - a. the annual financial statements;
  - b. the management report;
  - c. the consolidated financial statements.
- 2 Banks shall prepare at least semi-annual interim financial statements.
- 3 The annual report and the interim financial statements shall be prepared in accordance with the provisions of Title 32 of the Code of Obligations<sup>65</sup> and this Act as well as any applicable implementing provisions.
- 4 In exceptional cases, the Swiss Federal Council may decide to diverge from (3).

### ARTICLE 6a Publication

- 1 The annual report shall be made accessible to the public.
- 2 Interim financial statements shall be made accessible to the public if the implementing provisions to this Act require an institution to do so.
- 3 (1) and (2) do not apply to private banks that do not publicly solicit customer deposits. Article 958e (2) of the Swiss Code of Obligations<sup>66</sup> shall remain applicable.

### ARTICLE 6b Implementing regulations

- 1 The Swiss Federal Council will issue implementing provisions in regard to the form, content and publication of annual reports and interim financial statements.
- 2 The Swiss Federal Council may deviate from the provisions of the Swiss Code of Obligations<sup>67</sup> on accounting and financial reporting if this is justified by the special features of the banking business or the protection of creditors, and an institution's economic situation is presented in an equivalent manner.
- 3 The Swiss Federal Council may authorize FINMA to issue implementing provisions for matters of limited effect, usually aspects mainly technical in nature.

<sup>64</sup> Version according to Annex Section 7 of the Act of 23 December 2011 (Accounting Act), in force since 1 January 2013 (AS **2012** 6679; BBl 2008 1589).

<sup>65</sup> SR **220**

<sup>66</sup> SR **220**

<sup>67</sup> SR **220**

- 4 In consideration of the conditions set out under (2), FINMA may restrict the application of the accounting standards recognized by the Swiss Federal Council in the banking sector.

## Section V:<sup>68</sup> Systemically Important Banks

### ARTICLE 7 Definition and purpose

- 1 Systemically important banks are banks, financial groups and bank-dominated financial conglomerates, the failure of which would cause considerable damage to the Swiss economy and the Swiss financial system.
- 2 The purpose of the provisions of this section, in conjunction with the generally applicable banking regulations, shall be to further mitigate the risks to the stability of the Swiss financial system posed by systemically important banks, to ensure the continuation of economically important functions and to avoid any recourse to state aid.

### ARTICLE 8 Criteria and determination of systemic importance

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

### ARTICLE 9 Special requirements

- 1 Systemically important banks shall meet special requirements. The scope and structure of these shall be based on the degree of systemic importance of the bank concerned. The requirements

<sup>68</sup> Version according to Section I of the Act of 30 September 2011 (strengthening the stability in the financial sector), in force since 1 March 2012 (AS 2012 811; BBl 2011 4717).

must be commensurate and reflect the impact on the banks concerned and on competition, as well as taking into account internationally recognized standards.

- 2 In particular, systemically important banks shall:
  - a. dispose of capital that in particular:
    1. shows a higher loss absorbency than that of not systemically important banks, as measured by legal requirements,
    2. significantly contribute to ensuring the continuation of systemically important functions in the event of impending insolvency (PONV),
    3. is of a quality that sets incentives for the banks to limit their degree of systemic importance as well as to improve their capacity to be restructured or liquidated in Switzerland and abroad,
    4. is measured for their risk-weighted assets on the one hand and for their non-risk-weighted assets (that may also contain off-balance sheet transactions) on the other hand;
  - b. dispose of liquidity that ensures a better absorbency of liquidity shocks compared to banks that are not systemically important and that can also service its outstanding payment commitments even in times of unusual stress;
  - c. diversify risks so as to limit counterparty risk and large exposures;
  - d. design their contingency planning with respect to structure, infrastructure, management and control as well as intra-group liquidity and capital flows in a way that it can be implemented immediately, thus ensuring the continuation of the bank's systemically important functions in the event of impending insolvency.

## **ARTICLE 10** Application to the individual banks

- 1 After consulting the Swiss National Bank, the FINMA shall issue a formal decision stipulating the special requirements as defined in Article 9(2)(a)-(c) that the systemically important bank must meet. It shall inform the general public of the basic content of this formal decision, and the banks' compliance with it.
- 2 Systemically important banks must prove that they meet the special requirements of Article 9(2)(d) and that they are able to continue providing the systemically important functions in the event of an impending insolvency. Should a bank fail to provide this proof, FINMA shall impose any necessary measures.
- 3 When defining capital requirements under Article 9(2)(a), FINMA may grant alleviations once the bank has improved its recovery or liquidation capacities in Switzerland and abroad, exceeding the requirements defined in Article 9(2)(d).



- 4 After consulting the Swiss National Bank and FINMA, the Swiss Federal Council shall regulate:
  - a. the special requirements as per Article 9(2);
  - b. the criteria for assessing the proof under (2);
  - c. and the measures that the FINMA may impose if the bank fails to supply the proof as per (2).<sup>69</sup>

### ARTICLE 10a Measures in regard to remuneration packages

- 1 If a systemically important bank or its group parent company directly or indirectly receives state aid from federal funds despite implementing the special requirements, the Swiss Federal Council shall simultaneously impose measures in regard to the bank's remuneration packages for the bank's employees for the duration of the claimed aid.
- 2 In particular, after considering the bank's financial situation and the support provided, the Swiss Federal Council can:
  - a. wholly or partially prohibit the payment of variable remunerations;
  - b. prescribe adjustments to the bank's remuneration system.
- 3 A systemically important bank and its group parent company must include a binding caveat in their remuneration system to the effect that in the case of state aid the legal entitlement to variable remuneration may be curtailed as per this article.

## Section VI:<sup>70</sup> Additional Capital

### ARTICLE 11 Principles

- 1 If their legal form allows for the issuance of shares or participation capital (share capital without voting rights), banks and the group parent companies of financial groups and bank-dominated financial conglomerates may in their articles of incorporation:
  - a. authorize the Board of Directors to increase the share capital or the participation capital (buffer capital);
  - b. allow for an increase in the share capital or participation capital that is carried out with the conversion of mandatory convertible bonds (conversion capital) if a trigger event occurs.
- 2 Banks and the group parent company of financial groups and bank-dominated financial conglomerates may, irrespective of their legal form, provide in the issuing conditions of bonds that creditors

<sup>69</sup> Also see the transitional amendment as of 30 September 2011 at the end of this text.

<sup>70</sup> Version according to Section I of the Act of 30 September 2011 (strengthening the stability in the financial sector), in force since 1 March 2012 (AS **2012** 811; BBl 2011 4717).

must waive their claims if a specific event occurs (bonds with debt waiver clause).

- 2<sup>bis</sup> In their articles of incorporation, co-operative banks may indicate the possibility of raising participation capital.<sup>71</sup>
- 3 The additional capital as defined in (1)–(2<sup>bis</sup>) may be created solely to reinforce the bank's equity base and for preventing or coping with a crisis of the bank.<sup>72</sup>
- 4 The capital raised with the issue of mandatory convertible bonds or bonds with a debt waiver clause as per the provisions of this section may be included in the required capital to the extent that this is admissible as per this Act and its implementing provisions. Its eligibility is contingent on FINMA's prior approval of the respective issue conditions.

## ARTICLE 12 Buffer capital

- 1 The general meeting may authorize the Board of Directors to increase the share capital or the participation capital by amending the articles of incorporation. The articles of incorporation shall indicate the nominal amount by which the Board of Directors may increase the capital.
- 2 For important reasons, the Board of Directors may revoke the subscription rights of the shareholders or participation certificate holders, in particular if this serves the rapid and smooth placement of the shares or participation certificates. In this case, the new shares or participation certificates must be issued at market conditions. If it is in the bank's interest, a discount shall be granted if this enables a rapid and complete placement of the shares or participation certificates.
- 3 In all other respects, the provisions of the Swiss Code of Obligations<sup>73</sup> on the authorized capital increase shall apply, with the exception of the following:
- a. Article 651(1) and (2) (time limits and restrictions in regard to the amount of authorized capital increases);
  - b. Article 652b(2) (important reasons for revoking subscription rights);
  - c. Article 652d (capital increase using equity);
  - d. Article 656b(1) and (4) (limitation of amount of an approved increase in participation capital).

## ARTICLE 13 Conversion Capital

- 1 The general meeting may decide a contingent increase of the share capital or participation capital by defining in the articles of incorporation that the debt securities arising from mandatory convertible bonds are converted into shares or participation certificates once the triggering event occurs.

<sup>71</sup> Inserted with Annex Section II 14 of the Financial Institutions Act of 15 June 2018, in force since 1 Jan 2020 (AS **2018** 5247, 2019 4631; BBI 2015 8901).

<sup>72</sup> Amended by Annex Section II 14 of the Financial Institutions Act of 15 June 2018, in force since 1 January 2020 (AS **2018** 5247, 2019 4631 BBI 2015 8901).

<sup>73</sup> SR **220**

- 2 It may limit the nominal value of the contingent capital increase in its articles of incorporation. In the articles of incorporation, the annual general meeting shall define:
  - a. the number, type and nominal value of the shares and participation certificates;
  - b. the basis on which the issue price is calculated;
  - c. the revocation of the subscription rights of the shareholders and participation certificate holders;
  - d. the restrictions of the transferability of registered shares and registered participation certificates.
- 3 The Board of Directors shall be authorized to issue mandatory convertible bonds within the scope of the articles of incorporation's provisions. Unless the articles of incorporation specify otherwise, the Board of Directors shall determine:
  - a. a possible split into several bonds or into several tranches;
  - b. the triggering event or, in the case of tranches, the triggering events;
  - c. the issue price or the rules by which this is determined;
  - d. the conversion ratio or the rules by which this is determined.
- 4 The mandatory convertible bonds shall be offered for subscription to the shareholders and participation certificate holders in proportion to their equity interest. If the mandatory convertible bonds are issued at market conditions or with a discount to ensure a rapid and complete placement, the general meeting may revoke the subscription rights of the shareholders and participation certificate holders.
- 5 Once the triggering event for the conversion occurs, the Board of Directors shall immediately issue a public document. This document must contain the number, nominal value and type of the issued shares and participation certificates, the new amount of the share capital and the participation capital as well as the necessary amendments to the articles of incorporation.
- 6 The Board of Directors' resolution is to be submitted to the Commercial Register without delay. The Commercial Register entry cannot be blocked.
- 7 The share capital and the participation capital shall be increased upon the Board of Directors' resolution to do so. Simultaneously, all claims arising from the mandatory convertible bonds shall expire.
- 8 None of the provisions of the Swiss Code of Obligations<sup>74</sup> on contingent capital increases shall apply, with the exception of the following provisions:
  - a. Article 653a(2) (minimum capital contribution);

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<sup>74</sup> SR 220

- b. Article 653d(2) (protection of beneficiaries of conversion or option rights);
- c. Article 653i (expiry).

## ARTICLE 14<sup>75</sup> Participation capital of co-operative banks

- 1 Participation capital (Article 11(2<sup>bis</sup>)) shall be divided into subtotals (participation shares). Participation shares shall be denoted as such. They shall be issued against contributions, have a nominal value but do not constitute a membership.
- 2 The holders of participation shares shall be informed of general meetings with agenda points and requests to be discussed, the resolutions made as well as the annual report and the audit report in the same manner as the members of the co-operative.
- 3 Amendments of the articles of incorporation and other resolutions of the general meeting that will impair their status shall only be permitted if they also impair the status of holders of co-operative shares in the same manner.
- 4 The position of the owners of participation shares shall be at least equal to that of members of the co-operative when it comes to sharing the retained earnings and the liquidation proceeds.
- 5 They may contest the resolutions of the general meeting just like a member of the co-operative.
- 6 They may submit a request to be examined specifically to the annual general meeting if this is necessary to exercise their rights. Should the general meeting reject the request, they may submit a request to the court to appoint a special auditor within three months, if they jointly hold at least 10 percent of the participation capital or participation capital with a nominal value of CHF 2 million. Articles 697a–697g CO<sup>76</sup> shall apply to this procedure by analogy.

## ARTICLE 14a<sup>77</sup> Reserves, dividends and the acquisition of own participation shares of co-operative banks

- 1 Co-operative banks shall allot 5% of their annual profits to their reserves until these make up 20% of equity. They shall allocate to the general reserves, regardless of their amount, the following:
  - a. Additional proceeds generated with the issue of participation shares beyond their nominal value after covering the issue expenses, unless these funds are used for amortizations or for charitable purposes;
  - b. The difference between payments received on canceled participation shares and any shortfall from the participation shares issued for this;

<sup>75</sup> Amended by Annex Section II 14 of the Financial Institutions Act of 15 June 2018, in force since 1 January 2020 (AS **2018** 5247, 2019 4631 BBI 2015 8901).

<sup>76</sup> SR **220**

<sup>77</sup> Inserted with Annex Section II 14 of the Financial Institutions Act of 15 June 2018, in force since 1 January 2020 (AS **2018** 5247, 2019 4631; BBI 2015 8901).

- c. 10% of the amounts that are paid as profit share after a payment of a dividend of 5% on the participation capital has been made.
- 2 They shall use the general reserves, provided these do not exceed half of equity, to absorb losses or for measures that ensure the going concern of the bank in economically hard times, to avoid lay-offs or to soften their impact.
  - 3 Any dividends on participation shares shall be paid out solely from retained earnings and the reserves created for this purpose.
  - 4 A co-operative bank may acquire its own participation shares under the following conditions:
    - a. It disposes of unappropriated retained earnings to cover such expenditures and the total nominal value of the participation shares to be acquired does not exceed 10% of participation capital.
    - b. The rights associated with the acquisition of participation shares shall be suspended.
  - 5 The percentage stipulated in (4)(a) may be exceeded up to the upper limit of 20%, provided the own participation shares acquired beyond the 10% limit are sold or eliminated by means of a capital reduction within two years.

#### ARTICLE 14b<sup>78</sup> Co-operative banks' notification duties and registers

- 1 The acquisition of unlisted participation shares shall be subject to the same duties of notification, providing proof and identification towards the co-operative bank as the acquisition of unlisted bearer shares towards the public limited company (Articles 697i–697k and 697m CO<sup>79</sup>).
- 2 The co-operative bank shall enter the owners of participation shares as well as the beneficial owners reported to it in the co-operative bank's register.
- 3 Apart from the rules on the co-operative bank register, the company law provisions concerning the register of bearer shares as well as the beneficial owners reported to the company shall also apply to the register by analogy (Article 697l CO).

## Section VII: Savings and Deposits<sup>80</sup>

### ARTICLE 15

- 1 Deposits referred to as "savings" in any combination of words may be accepted only by banks that publish financial statements. No other companies are authorized to accept savings deposits and may not use the term "savings" with regard to the money deposited with them in either their

<sup>78</sup> Inserted with Annex Section II 14 of the Financial Institutions Act of 15 June 2018, in force since 1 Jan 2020 (AS **2018** 5247, 2019 4631; BBI 2015 8901).

<sup>79</sup> SR **220**

<sup>80</sup> Version according to Annex section 17 of the Act of 16 December 1994, in force since 1 January 1997 (AS **1995** 1227; BBI 1991 III 1).

company name, or in the designation of their business purpose or in their advertising.<sup>81</sup>

2–3 ...<sup>82</sup>

## ARTICLE 16<sup>83</sup>

The following assets shall be considered to be deposits as per Article 37d of this Act:<sup>84</sup>

- 1 Tangible assets and securities belonging to the depositor;
- 1<sup>bis</sup>.<sup>85</sup> crypto-based assets if the bank has agreed to keep them available for the custody client at all times, and these:
  - a. are individually assigned to the depositor, or
  - b. are allocated to a joint account and it is clear which share of the joint assets is attributable to the depositor;
- 2 Tangible assets, securities and claims which the bank keeps safe on behalf of the depositor;
- 3 Freely available bank claims from third parties arising from spot transactions, completed forward transactions, collateral transactions or issues for the account of depositors.

## Section VIII: ...

### ARTICLE 17<sup>86</sup>

## Section IX: Supervision and Audit<sup>87</sup>

### ARTICLE 18<sup>88</sup>

- 1 Banks, financial groups and financial conglomerates must arrange for an audit firm licensed by the Federal Audit Oversight Authority under Article 9a(1) of the Auditor Oversight Act of 16 December

<sup>81</sup> Version according to Section I of the Act of 18 March 1994, in force since 1 February 1995 (AS **1995** 246; BBI 1993 I 805).

<sup>82</sup> Repealed by Annex Section 17 of the Act of 16 December 1994, with effect from 1 January 1997 (AS **1995** 1227; BBI 1991 III 1)

<sup>83</sup> 67 Version according to Annex section 17 of the Act of 16 December 1994, in force since 1 January 1997 (AS **1995** 1227; BBI 1991 III 1).

<sup>84</sup> Version according to Section I of the Act of 3 October 2003, in force since 1 July 2004 (AS **2004** 2767; BBI 2002 8060).

<sup>85</sup> Inserted by Section I 6 of the Act of 25 September 2020 on the amendment of federal legislation to take account of developments in the distributed ledger technology, in force since 1 August 2021 (AS **2021** 33, 399; BBI 2020 233).

<sup>86</sup> Repealed by Annex Section 5 of the Federal Intermediated Securities Act of 3 October 2008, with effect from 1 January 2010 (AS **2009** 3577; BBI 2006 9315).

<sup>87</sup> Term according to Annex Section 15 of the Financial Markets Supervision Act of 22 June 2007, in force since 1 January 2009 (AS **2008** 5207 5205; BBI 2006 2829). This amendment has been taken into account in the entire enactment.

<sup>88</sup> Version according to Annex Section 5 of the Act of 20 June 2014 (Bundling of Supervision over Auditing Firms), in force since 1 January 2015 (AS **2014** 4073; BBI 2013 6857).

2005<sup>89</sup> to carry out an audit in accordance with Article 24 of the Financial Market Supervision Act of 22 June 2007,<sup>90</sup>

- 2 Banks, financial groups and financial conglomerates must have their annual financial statements, and if applicable, the consolidated financial statements, audited in accordance with the principles of an ordinary audit as per Code of Obligations<sup>91</sup> by an audit firm subject to state supervision.

## ARTICLES 19–22<sup>92</sup>

# Section X: Supervision<sup>93</sup>

## ARTICLE 23<sup>94</sup>

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

## ARTICLE 23<sup>bis</sup> 95

- 1 If a bank outsources significant functions to another natural or legal person, these shall be subject to the information and notification requirements as per Article 29 of the Financial Markets Supervision Act of 22 June 2007<sup>96</sup>.
- 2 FINMA may audit such persons at any time.

## ARTICLE 23<sup>ter</sup> 97

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

## ARTICLE 23<sup>quater</sup> 98

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<sup>89</sup> SR **221.302**

<sup>90</sup> SR **956.1**

<sup>91</sup> SR **220**

<sup>92</sup> Repealed by Annex Section 15 of the Financial Markets Supervision Act of 22 June 2007, with effect from 1 January 2009 (AS **2008** 5207 5205; BBI 2006 2829).

<sup>93</sup> Version according to Annex Section 15 of the Financial Markets Supervision Act of 22 June 2007, in force since 1 January 2009 (AS **2008** 5207 5205; BBI 2006 2829).

<sup>94</sup> Version according to Annex Section 15 of the Financial Markets Supervision Act of 22 June 2007, in force since 1 January 2009 (AS **2008** 5207 5205; BBI 2006 2829).

<sup>95</sup> Inserted with Section I of the Act of 11 March 1971 (AS **1971** 808; BBI 1970 I 1144). Version according to Annex Section 10 of the Financial Markets Infrastructure Act of 19 June 2015, in force since 1 January 2016 (AS **2015** 5339; BBI 2014 7483).

<sup>96</sup> SR **956.1**

<sup>97</sup> Inserted with Section I of the Act of 11 March 1971 (AS **1971** 808; BBI 1970 I 1144). Version according to Annex Section 15 of the Financial Markets Supervision Act of 22 June 2007, in force since 1 January 2009 (AS **2008** 5207 5205; BBI 2006 2829).

<sup>98</sup> Inserted with Section I of the Act of 11 March 1971 (AS **1971** 808; BBI 1970 I 1144). Repealed by Annex Section 15 of the Financial Markets Supervision Act of 22 June 2007, with effect from 1 January 2009 (AS **2008** 5207 5205; BBI 2006 2829).

## ARTICLE 23<sup>quinquies</sup> 99

- 1 Should the FINMA revoke a bank's license, this shall cause the dissolution of legal entities, general and limited partnerships and the deletion from the Commercial Register for sole proprietorships<sup>100</sup>. FINMA shall appoint a liquidator and monitor its activities.
- 2 The above is subject to the measures defined in Section XI.

## ARTICLE 23<sup>sexies</sup> 101

## ARTICLE 23<sup>septies</sup> 102

## ARTICLE 23<sup>octies</sup> 103

## ARTICLE 24<sup>104</sup>

# Section XI:<sup>105</sup> Measures in case of impending insolvency

## ARTICLE 25 Prerequisites

- 1 Should there be a justified concern that a bank is overindebted or has serious liquidity problems or that the bank can no longer fulfill the capital adequacy provisions after the expiry of a deadline set by the FINMA, the FINMA may order the following:
  - a. protective measures pursuant to Article 26;
  - b. restructuring procedures pursuant to Article 28–32;
  - c. the bank's liquidation due to bankruptcy<sup>106</sup> (bankruptcy of the bank) pursuant to Articles 33–37g.
- 2 The protective measures may be ordered as stand-alone measures or in conjunction with a restructuring or liquidation.

<sup>99</sup> Inserted with Section I of the Act of 11 March 1971 (AS **1971** 808; BBI 1970 I 1144). Version according to Annex Section 15 of the Financial Markets Supervision Act of 22 June 2007, in force since 1 January 2009 (AS **2008** 5207 5205; BBI 2006 2829).

<sup>100</sup> Now: Sole proprietorships.

<sup>101</sup> Inserted with Section I of the Act of 18 March 1994 (AS **1995** 246; BBI 1993 I 805). Repealed by Annex Section 15 of the Financial Markets Supervision Act of 22 June 2007, with effect from 1 January 2009 (AS **2008** 5207 5205; BBI 2006 2829).

<sup>102</sup> Inserted with Section I of the Act of 22 April 1999 (AS **1999** 2405; BBI 1998 3847). Repealed by Annex Section 10 of the Financial Markets Infrastructure Act of 19 June 2015, with effect from 1 January 2016 (AS **2015** 5339; BBI 2014 7483).

<sup>103</sup> Inserted with Section I of the Act of 3 October 2003 (AS **2004** 2767; BBI 2002 8060). Repealed by Annex Section 15 of the Financial Markets Supervision Act of 22 June 2007, with effect from 1 January 2009 (AS **2008** 5207 5205; BBI 2006 2829).

<sup>104</sup> Repealed by Section I of the Act of 17 December 2021 (Depositor protection scheme and insolvency), with effect from 1 January 2023 (AS **2022** 732; BBI 2020 6359).

<sup>105</sup> Version according to Section I of the Act of 3 October 2003, in force since 1 July 2004 (AS **2004** 2767; BBI 2002 8060).

<sup>106</sup> Terminology as per Section I of the Act of 18 March 2011 (Protection of bank deposits), in force since 1 September 2011 (AS **2011** 3919; BBI 2010 3993). This amendment has been taken into account throughout the entire enactment.



- 3 The provisions on debt restructuring proceedings (Articles 293-336 of the Federal Act of 11 April 1889<sup>107</sup> on Debt Enforcement and Bankruptcy [DCBA]) and on notifying the court (Articles 716a(1) (7), 725a(3), 725b(3) and 728c(3) CO<sup>108</sup>) are not applicable to banks.<sup>109</sup>
- 4 The FINMA's orders shall pertain to all of the bank's assets, including assets and liabilities as well as contractual relationships, whether they are in Switzerland or abroad.<sup>110</sup>

## ARTICLE 26 Protective Measures

- 1 FINMA may order protective measures as follows:<sup>111</sup>
  - a. issue instructions to the governing bodies of the bank;
  - b.<sup>112</sup>appoint an investigator;
  - c. strip governing bodies of their power to legally represent the bank or remove them from office;
  - d. dismiss the banking-act or company-law audit firm;
  - e. limit the bank's business activities;
  - f. forbid the bank to make or accept payments or undertake security trades;
  - g. close down the bank;
  - h. order deferment of payments or payment extension, except for mortgage-secured receivables of central mortgage bond institutions.
- 2 It shall ensure that the measures are made public appropriately if this is necessary for their enforcement or for the protection of third parties. It may dispense with such publication of the measures if doing so would defeat the purpose of the measures ordered.<sup>113</sup>
- 3 Provided the FINMA does not order anything else regarding accrued interests, payment deferrals shall have the effect as per Article 297 DCBA<sup>114</sup>.

<sup>107</sup> SR **281.1**

<sup>108</sup> SR **220**

<sup>109</sup> Version according to Annex Section 2 of the Act of 16 March 2023, in force since 1 January 2024 (AS **2018** 355; BBI 2020 8967)

<sup>110</sup> Inserted with Section I of the Act of 18 March 2011 (Protection of bank deposits), in force since 1 September 2011 (AS **2011** 3919; BBI 2010 3993).

<sup>111</sup> Version according to Annex Section 15 of the Financial Markets Supervision Act of 22 June 2007, in force since 1 January 2009 (AS **2008** 5207 5205; BBI 2006 2829).

<sup>112</sup> Version according to Annex Section 15 of the Financial Markets Supervision Act of 22 June 2007, in force since 1 January 2009 (AS **2008** 5207 5205; BBI 2006 2829).

<sup>113</sup> Second sentence inserted with Section I of the Act of 17 Dec 2021 (Depositor protection scheme and insolvency), in force since 1 January 2023 (AS **2022** 732; BBI 2020 6359).

<sup>114</sup> SR **281.1**

## ARTICLE 27<sup>115</sup> Precedence of netting, liquidation or transfer agreements

- 1 Memorandums of understanding concluded in advance pertaining to the following shall remain unaffected by measures foreseen as per Sections XI and XII:
  - a. netting of accounts receivable, including the agreed-upon method and the value assessment;
  - b.<sup>116</sup> discretionary utilization of collateral in the form of securities or other financial instruments, including cash collateral (excluding physical cash), whose value is objectively ascertainable;
  - c.<sup>117</sup> transfer of accounts receivable and accounts payable as well as of collateral in the form of securities or other financial instruments, including cash collateral (excluding physical cash), whose value is objectively ascertainable;
- 2 Article 30a remains applicable.

## ARTICLE 28<sup>118</sup> Restructuring Plans

- 1 If it appears likely that the bank can recover or can continue to provide individual banking services, FINMA may initiate its restructuring.
- 2 It shall issue the necessary provisions for such a restructuring.<sup>119</sup>
- 3 It may entrust a person to prepare a restructuring plan (restructuring agent: Sanierungsbeauftragter).
- 4 It may set out the procedure in more detail.<sup>120</sup>

## ARTICLE 28a<sup>121</sup> \*Restructuring of Cantonal banks

- 1 In the event of a cantonal bank's being placed in restructuring proceedings, FINMA shall take into account the special status, ownership structure and, where applicable, legal form of the cantonal bank.
- 2 Should a cantonal bank be at risk of insolvency, FINMA shall inform the canton without delay and consult with it on the development of the restructuring plan. The Canton shall designate the competent authority.

<sup>115</sup> Version according to Annex Section 10 of the Financial Markets Infrastructure Act of 19 June 2015, in force since 1 January 2016 (AS **2015** 5339; BBI 2014 7483)

<sup>116</sup> Version according to Section I of the Act of 17 December 2021 (Depositor protection scheme and insolvency), in force since 1 January 2023 (AS **2022** 732; BBI 2020 6359).

<sup>117</sup> Version according to Section I of the Act of 17 December 2021 (Depositor protection scheme and insolvency), in force since 1 January 2023 (AS **2022** 732; BBI 2020 6359).

<sup>118</sup> Version as per Section I of the Act of 18 March 2011 (Protection of bank deposits), in force since 1 September 2011 (AS **2011** 3919; BBI 2010 3993).

<sup>119</sup> Version according to Section I of the Act of 17 December 2021 (Depositor protection scheme and insolvency), in force since 1 January 2023 (AS **2022** 732; BBI 2020 6359).

<sup>120</sup> Inserted with Section I of the Act of 17 Dec 2021 (Depositor protection scheme and insolvency), in force since 1 January 2023 (AS **2022** 732; BBI 2020 6359).

<sup>121</sup> Inserted with Section I of the Act of 17 Dec 2021 (Depositor protection scheme and insolvency), in force since 1 January 2023 (AS **2022** 732; BBI 2020 6359).

- 3 FINMA may permit deviations from the provisions on the restructuring procedure for cantonal banks, particularly with regard to the write-down of the entire share capital and the conversion and reduction of claims. In doing so, the measures taken by the Canton to reorganize the bank shall be taken into account.

### ARTICLE 29<sup>122</sup> Restructuring of the Bank

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

### ARTICLE 30<sup>123</sup> Continuation of banking services

- 1 The restructuring plan may foresee the continuation of selected banking services, regardless of the continued existence of the bank concerned.
- 2 In particular, it may provide that:
  - a. the bank's assets or parts thereof, including assets and liabilities as well as contractual relationships, are transferred to other legal entities or to a temporary "bridge bank";
  - b. the bank merges with another company to form a new legal entity;
  - c. another legal entity takes over the bank;
  - d. the legal form of the bank is changed.<sup>124</sup>
- 3 The legal entities and the bridge bank in accordance with paragraph 2 shall, on approval of the restructuring plan, take the place of the bank to the extent of the transfer of assets. The Mergers Act of 3 October 2003<sup>125</sup> shall not be applicable.<sup>126</sup>

### ARTICLE 30a<sup>127</sup> Suspension of the Termination of Agreements

- 1 With the ordering or approval of measures as per this section, the FINMA may postpone the following:
  - a. the termination of agreements and the exercising of rights aimed at their termination;

<sup>122</sup> Version according to Section I of the Act of 18 March 2011 (Protection of bank deposits), in force since 1 September 2011 (AS **2011** 3919; BBI 2010 3993).

<sup>123</sup> Version according to Section I of the Act of 18 March 2011 (Protection of bank deposits), in force since 1 September 2011 (AS **2011** 3919; BBI 2010 3993).

<sup>124</sup> Version according to Section I of the Act of 17 December 2021 (Depositor protection scheme and insolvency), in force since 1 January 2023 (AS **2022** 732; BBI 2020 6359).

<sup>125</sup> SR **221.301**

<sup>126</sup> Version according to Section I of the Act of 17 December 2021 (Depositor protection scheme and insolvency), in force since 1 January 2023 (AS **2022** 732; BBI 2020 6359).

<sup>127</sup> Inserted with Annex Section 10 of the Financial Markets Infrastructure Act of 19 June 2015, in force since 1 January 2016 (AS **2015** 5339; BBI 2014 7483).

- b. the exercising of netting, liquidation or transfer rights as per Article 27.
- 2 The deferment may only be ordered if the termination or the exercising of rights as per (1) is due to the ordered measures.
  - 3 It may be ordered for a maximum of two working days. FINMA shall specify the beginning and the end of the deferment.
  - 4 The deferment shall be excluded or become void if the termination or the exercising of a right as per (1)
    - a. is not linked to the ordered measures; and
    - b. is due to the behavior of the bank in an insolvency proceeding or the legal entity that takes over the agreements in part or in full.
  - 5 If, after the deferment has elapsed, the licensing requirements and the remaining statutory provisions have been complied with, the agreement shall continue to be in force and the rights as per (1) in connection with the ordered measures can no longer be exercised.

#### ARTICLE 30b<sup>128</sup> Capital measures

- 1 The restructuring plan may foresee the reduction of the previous equity capital and the creation of new equity capital, the conversion of debt into equity capital and the reduction of claims.
- 2 The existing owners shall have no subscription rights.
- 3 Not subject to conversion or reduction are:
  - a. privileged claims of the first and second class in accordance with Article 219(4) of the Swiss Federal Law on Debt Collection (DCBA)(DCBA)A(DCBA)<sup>129</sup>: to the extent of their privileged status;
  - b. secured claims: to the extent that they are secured;
  - c. offsettable claims: to the extent that they can be offset; and
  - d. claims arising from liabilities that the bank was permitted to incur during the period of the measures in accordance with Article 26(1)(e–h) or during a restructuring procedure with the approval of FINMA or an investigator or restructuring agent appointed by it.
- 4 FINMA is authorized to exempt claims arising from the delivery of goods and the provision of services to the extent that this is necessary for the continuation of the bank.

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<sup>128</sup> Inserted with Section I of the Act of 17 Dec 2021 (Depositor protection scheme and insolvency), in force since 1 January 2023 (AS **2022** 732; BBI 2020 6359).

<sup>129</sup> SR **281.1**

- 5 Any conversion of debt capital into equity capital and any reduction of claims is only possible if:
  - a. the conversion capital in accordance with Article 11(1)(b) is fully converted into equity and the bonds issued in accordance with Article 11(2) are fully reduced with a waiver of claims; and
  - b. the company's capital is fully reduced.
  
- 6 The Federal Council may designate debt instruments that, contrary to (5)(b), are reduced prior to a complete reduction of the share capital, to the extent that these are issued by a cantonal bank and provide for appropriate subsequent compensation of the creditors.
  
- 7 The conversion of debt capital into equity capital and the reduction of claims must be carried out in the following order:
  - a. subordinated claims;
  - b. claims based on debt instruments for loss absorption in the event of insolvency measures (bail-in bonds); (8) remains reserved;
  - c. other claims, with the exception of deposits;
  - d. deposits.
  
- 8 Bail-in bonds of group parent companies issued to third-party creditors in accordance with Article 2<sup>bis</sup>(1)(a) shall rank in accordance with (7)(c) provided that the other claims ranking in the same order do not exceed 5 percent of the nominal value of the total eligible bail-in bonds. In this case, the other claims are excluded from the conversion and the reduction of claims.
  
- 9 FINMA is authorized to temporarily suspend the participation rights of the new owners.

### ARTICLE 30c<sup>130</sup> Restructuring plan

- 1 The restructuring plan must comply with the following requirements; it:
  - a. is based on a prudent valuation of the bank's assets and liabilities along with a prudent estimate of the restructuring requirements.
  - b. is deemed not to be economically worse for creditors than the immediate initiation of bankruptcy proceedings.
  - c. takes into account the priority of creditors' interests over those of the owners and the ranking of creditors appropriately.
  - d. adequately considers the legal and economic interconnection between assets, liabilities and

<sup>130</sup> Inserted with Section I of the Act of 17 Dec 2021 (Depositor protection scheme and insolvency), in force since 1 January 2023 (AS 2022 732; BBI 2020 6359).

contractual relationships.

- 2 It states and explains the key features of the restructuring and, in particular, contains information on:
  - a. the fulfillment of the requirements according to (1);
  - b. how the bank will comply with the licensing requirements and other legal provisions after the restructuring has been completed;
  - c. the bank's future capital structure and business model;
  - d. the bank's assets and liabilities;
  - e. the bank's future organization and management, as well as the appointment and dismissal of its governing bodies
  - f. the severance arrangements for departing members of the governing bodies;
  - g. the future group or conglomerate organization;
  - h. the nature and extent of any interference with the rights of owners and creditors;
  - i. a possible exclusion of the bank's right of contestation in accordance with Article 32(1) and of liability claims in accordance with Article 39;
  - j. transactions that require entry in the commercial register or land register.

## **ARTICLE 31<sup>131</sup>** Approval of Plan of Restructuring

- 1 FINMA will approve the restructuring plan if it meets the requirements of Article 30c.
- 2 No approval of the bank's owners is necessary.
- 3 FINMA may approve the restructuring plan of systemically important banks even if it places creditors in a less favorable economic position than under Article 30c(1)(b), provided that they are adequately compensated.
- 4 It must make the basics of this restructuring plan public. In doing so, it must also provide information on how the affected creditors and owners can inspect the plan.

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<sup>131</sup> Version according to Section I of the Act of 17 December 2021 (Depositor protection scheme and insolvency), in force since 1 January 2023 (AS **2022** 732; BBl 2020 6359).

### ARTICLE 31a<sup>132</sup> Rejection of Restructuring Plan

- 1 Should the restructuring plan provide for a curtailment of the creditors' rights, FINMA shall set the creditors a deadline within which they can reject the restructuring plan, at the latest with its approval.
- 2 Should creditors representing more than half of the third-class claims on the books pursuant to Article 219(4) DCBA<sup>133</sup> reject the restructuring plan, FINMA shall define the bank's liquidation pursuant to Articles 33–37g.
- 3 (1) and (2) do not apply to the restructuring of systemically important banks and group companies of systemically important financial groups or conglomerates.<sup>134</sup>

### ARTICLE 31b<sup>135</sup> Compensation for transfer

- 1 If assets, liabilities and contractual relationships are only partially transferred to another entity or to a bridge bank, FINMA may determine an appropriate compensation.
- 2 FINMA may order an independent valuation to determine the value.

### ARTICLE 31c<sup>136</sup> Compensatory adjustment in the event of capital measures

- 1 If the restructuring plan calls for a capital measure in accordance with Article 30b, it may provide for an appropriate compensation for the owners if the valuation in accordance with Article 30c(1)(a) shows that the value of the equity capital allocated to the creditors exceeds the nominal value of their claims converted or reduced in accordance with Article 30b.
- 2 The compensation may be provided in the form of shares, other equity interests, options or debtor warrants.

### ARTICLE 31d<sup>137</sup> Legal effect of the restructuring plan

- 1 The provisions of the restructuring plan will take effect as follows:
  - a. for systemically important banks and group companies of systemically important financial groups or conglomerates: upon approval of the restructuring plan;

<sup>132</sup> Inserted with Section I of the Act of 18 March 2011 (Protection of bank deposits), in force since 1 September 2011 (AS **2011** 3919; BBI 2010 3993).

<sup>133</sup> SR **281.1**

<sup>134</sup> Inserted with Section I of the Act of 30 Sept 2011 (Strengthening the stability in the financial sector) (AS **2012** 811; BBI 2011 4717). Version according to Section I of the Act of 17 Dec 2021 (Depositor protection scheme and insolvency), in force since 1 January 2023 (AS **2022** 732; BBI 2020 6359).

<sup>135</sup> Inserted with Section I of the Act of 30 Sept 2011 (Strengthening the stability in the financial sector) (AS **2012** 811; BBI 2011 4717). Version according to Section I of the Act of 17 Dec 2021 (Depositor protection scheme and insolvency), in force since 1 January 2023 (AS **2022** 732; BBI 2020 6359).

<sup>136</sup> Inserted with Section I of the Act of 17 Dec 2021 (Depositor protection scheme and insolvency), in force since 1 January 2023 (AS **2022** 732; BBI 2020 6359).

<sup>137</sup> Inserted with Section I of the Act of 17 Dec 2021 (Depositor protection scheme and insolvency), in force since 1 January 2023 (AS **2022** 732; BBI 2020 6359).

- b. in all other cases: upon expiry of the deadline in accordance with Article 31a paragraph 1 without the plan having been implemented.
- 2 The effectiveness shall occur immediately, in particular for:
- a. the reduction of existing equity and the creation of new equity;
  - b. the conversion of debt into equity;
  - c. the reduction of claims;
  - d. the transfer of real estate;
  - e. the establishment or transfer of rights in rem in real estate or changes in the share capital.
- 3 Entries in the land register, the commercial register or other registers shall have a purely declaratory effect. They must be made as quickly as possible.

## ARTICLE 32 Assertion of claims

- 1 Once FINMA has approved a restructuring plan, the bank shall be entitled to contest legal transactions in accordance with Articles 285-292 DCBA<sup>138</sup>.
- 2 Should the restructuring plan exclude the bank's contesting of legal transactions as per (1), each creditor is entitled to do so up to the extent that the restructuring plan curtails his/her rights.
- 2<sup>bis</sup> Legal acts performed during the FINMA-approved restructuring plan cannot be appealed in accordance with Articles 285–292 DCBA.<sup>139</sup>
- 3 The date of approval of the restructuring plan, rather than the date of the opening of bankruptcy proceedings, is decisive for the calculation of the periods under Articles 286–288 DCBA. If FINMA has previously imposed protective measures in accordance with Article 26(1)(e)-(h), the date of the issuance of this order shall be decisive.<sup>140</sup>
- 3<sup>bis</sup> The right of contestation shall lapse two years after the restructuring plan has been approved.<sup>141</sup>
- 4 Paragraphs (1) and (2<sup>bis</sup>) shall also apply to the assertion of legal claims regarding responsibility pursuant to Article 39.<sup>142</sup>

<sup>138</sup> SR **281.1**

<sup>139</sup> Inserted with Section I of the Act of 30 September 2011 (Strengthening the stability in the financial sector), in force since 1 March 2012 (AS **2012** 811; BBI 2011 4717).

<sup>140</sup> Version according to Section I of the Act of 17 Dec 2021 (Depositor protection scheme and insolvency), in force since 1 January 2023 (AS **2022** 732; BBI 2020 6359).

<sup>141</sup> Inserted with Section I of the Act of 18 March 2011 (AS **2011** 3919; BBI 2010 3993). Version according to Section I of the Act of 17 Dec 2021 (Depositor protection scheme and insolvency), in force since 1 January 2023 (AS **2022** 732; BBI 2020 6359).

<sup>142</sup> Version according to Section I of the Act of 17 December 2021 (Depositor protection scheme and insolvency), in force since 1 January 2023 (AS **2022** 732; BBI 2020 6359).



## Section XII:<sup>143</sup> Liquidation of Insolvent Banks (Bank Bankruptcy)

### ARTICLE 33 Order of Insolvency Proceedings and Appointment of Liquidators- intment of Liquidators<sup>144</sup>

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

### ARTICLE 34 Consequences and Procedure

- 1 Ordering a bank's liquidation shall have the effect of opening bankruptcy proceedings pursuant to Articles 197–220 DCBA<sup>145</sup>.
- 2 The liquidation shall be conducted in accordance with Articles 221–270 DCBA. To this end, FINMA may issue different rulings, subject to Articles 35–37m of this Act.<sup>146</sup>
- 3 FINMA may set out the procedure in more detail.<sup>147</sup>

### ARTICLE 35<sup>148</sup> Creditors' Meetings and Creditor's Committee

- 1 The official liquidator may request that FINMA:
  - a. appoint a creditors' meeting, specifying its competencies as well as the quorums for attendance and votes cast required to pass resolutions;
  - b. set up a creditors' committee, specifying its composition and competencies.
- 2 FINMA shall not be bound to the liquidator's requests.

<sup>143</sup> Originally before Article 29. Version according to Section I of the Act of 3 October 2003, in force since 1 July 2004 (AS **2004** 2767; BBI 2002 8060).

<sup>144</sup> Terminology as per Section I of the Act of 18 March 2011 (Protection of bank deposits), in force since 1 September 2011 (AS **2011** 3919; BBI 2010 3993). This amendment has been taken into account throughout the entire enactment.

<sup>145</sup> SR **281.1**

<sup>146</sup> Version according to Section I of the Act of 17 December 2021 (Depositor protection scheme and insolvency), in force since 1 January 2023 (AS **2022** 732; BBI 2020 6359).

<sup>147</sup> Version according to Section I of the Act of 17 December 2021 (Depositor protection scheme and insolvency), in force since 1 January 2023 (AS **2022** 732; BBI 2020 6359).

<sup>148</sup> Version according to Section I of the Act of 18 March 2011 (Protection of bank deposits), in force since 1 Sept 2011 (AS **2011** 3919; BBI 2010 3993).

## ARTICLE 36 Handling of Claims; Claims Schedule

- 1 When preparing the claims schedule, any claims on the books are deemed to be lodged automatically.
- 2 Creditors can consult the claims schedule to the extent that it is necessary for the protection of their creditor rights; in doing so, professional secrecy pursuant to Article 47 shall be maintained to the extent possible.

## ARTICLE 37<sup>149</sup> Liabilities incurred in connection with protective measures or in the course of remediation

Liabilities that the bank incurred with the approval of FINMA or an investigator or restructuring agent appointed by it during the period of the measures in accordance with Article 26(1)(e–h) or during a restructuring procedure shall be satisfied before all others in the event of bankruptcy liquidation.

## ARTICLE 37a<sup>150</sup> Privileged Deposits

- 1 Deposits in the name of the depositor, including medium-term bonds that are deposited with the bank in the name of the depositor, shall be assigned to the second class of creditors for up to CHF 100,000 for each creditor, pursuant to Article 219(4) DCBA<sup>151</sup>.
- 2 ...<sup>152</sup>
- 3 Deposits with enterprises which act as banks but without a FINMA license are not privileged.
- 4 Should a claim belong to several persons, the privileged status may be asserted only once.
- 5 Receivables of bank foundations acting as pension schemes pursuant to Article 82 of the Swiss Federal Act on Retirement, Survivors' and Disability Insurance of 25 June 1982<sup>153</sup> and vested benefits institutions subject to the Vested Benefits Act of 17 December 1993<sup>154</sup> shall be considered deposits of the individual pension holders and policy holders. Regardless of other deposits belonging to these pension and policy holders, they are insured for an amount up to (1).
- 6 Banks must hold domestic receivables or other assets sourced in Switzerland in the amount of 125 percent of their privileged deposits. FINMA may increase this amount and in justified cases allow for exceptions, in particular for those institutions that maintain equivalent coverage due to the structure of their business activities.

<sup>149</sup> Version according to Section I of the Act of 17 December 2021 (Depositor protection scheme and insolvency), in force since 1 January 2023 (AS **2022** 732; BBI 2020 6359).

<sup>150</sup> Version according to Section I of the Act of 18 March 2011 (Protection of bank deposits), in force since 1 Sept 2011 (AS **2011** 3919; BBI 2010 3993).

<sup>151</sup> SR **281.1**

<sup>152</sup> Repealed by Section I of the Act of 17 Dec 2021 (Depositor protection scheme and insolvency), with effect from 1 Jan 2022 (AS **2022** 732; BBI 2020 6359).

<sup>153</sup> SR **831.40**

<sup>154</sup> SR **831.42**

- 7 The Federal Council specifies the deposits and depositors in more detail in accordance with (1). It may adjust the maximum amount referred to in (1) for inflation.<sup>155</sup>

### ARTICLE 37b<sup>156</sup> Payment from available liquid assets

- 1 Privileged deposits as defined in Article 37a(1) shall be paid out from a bank's available liquid assets outside of the claims schedule and excluding any netting, as follows:
- a. immediately: if they are held at Swiss offices;
  - b. as soon as this is actually and legally possible: if they are held at foreign business locations.
- 2 In individual cases, FINMA shall determine the maximum amount of deposits that can be paid out in accordance with (1). It thereby shall take into account the ranking of the remaining creditors pursuant to Article 219 DCBA<sup>157</sup>.

### ARTICLE 37c<sup>158</sup>

### ARTICLE 37d<sup>159</sup> Segregation of Deposit Items

Deposited assets pursuant to Article 16 shall be segregated in accordance with Articles 17 and 18 of the Federal Intermediated Securities Act (FISA) dated 3 October 2008<sup>160</sup>. Article 19 of the Intermediated Securities Act shall apply to securities held in collective custody in the event of a shortfall.

### ARTICLE 37e Distribution and Wind-down Procedures

- 1 Once all assets have been realized and the processes relating to determination of the bankruptcy assets and liabilities have been completed, the bankruptcy liquidators shall prepare a final distribution list as well as a final account and submit these items for FINMA's approval. Processes arising from ceding legal claims in accordance with Article 260 DCBA<sup>161</sup> are not taken into account.<sup>162</sup>
- 2 Prior to approval, the distribution list and the final accounts will be made available for inspection for ten days. The publication and approval will be announced in the Swiss Official Gazette of Commerce and on the FINMA website.<sup>163</sup>

<sup>155</sup> Inserted with Section I of the Act of 17 Dec 2021 (Depositor protection scheme and insolvency), in force since 1 January 2023 (AS **2022** 732; BBI 2020 6359).

<sup>156</sup> Version according to Section I of the Act of 17 December 2021 (Depositor protection scheme and insolvency), in force since 1 January 2023 (AS **2022** 732; BBI 2020 6359).

<sup>157</sup> SR **281.1**

<sup>158</sup> Repealed with Section I of the Act of 18 March 2011 (Protection of bank deposits), in effect from 1 Sep 2011 (AS **2011** 3919; BBI 2010 3993).

<sup>159</sup> Version pursuant to Section I 6 of the Federal Act of 25. Sept. 2020 to adapt federal law to developments in distributed electronic registry technology, in force since 1 August 2021 (AS **2021** 33, 399; BBI 2020 233).

<sup>160</sup> SR **957.1**

<sup>161</sup> SR **281.1**

<sup>162</sup> Version according to Section I of the Act of 17 December 2021 (Depositor protection scheme and insolvency), in force since 1 January 2023 (AS **2022** 732; BBI 2020 6359).

<sup>163</sup> Version according to Section I of the Act of 17 December 2021 (Depositor protection scheme and insolvency), in force since 1 January 2023 (AS **2022** 732; BBI 2020 6359).

- 3 FINMA shall issue the necessary orders for the wind-down procedures. It shall announce the wind-down publicly.

### ARTICLE 37f Coordination with Foreign Procedures

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

### ARTICLE 37g<sup>164</sup> Recognition of Foreign Injunctions regarding Bankruptcy and Liquidation and Restructuring Measures

- 1 It shall be in FINMA's discretion to recognize bankruptcy injunctions or insolvency measures pronounced abroad against banks.
- 2 FINMA may put assets located in Switzerland at the disposal of a foreign bankruptcy estate without any previous domestic legal procedure, if the foreign insolvency proceedings:
  - a. treat the claims of creditors domiciled in Switzerland that are collateralized and privileged as per Article 219 DCBA<sup>165</sup> (Swiss Federal Act on Debt Enforcement and Bankruptcy) equally; and
  - b. adequately take into account the other claims of creditors domiciled in Switzerland.
- 3 It shall be in FINMA's discretion to recognize bankruptcy injunctions or measures pronounced against banks in the country where their headquarters are domiciled.
- 4 Should legal procedures take place domestically for the assets located in Switzerland, third-class creditors as defined in Article 219(4) DCBA and creditors domiciled abroad may also be included in the claims schedule.
- 4<sup>bis</sup> Should the bank have branch offices in Switzerland, a procedure in accordance with Article 50(1) DCBA shall be permitted until the claims schedule in accordance with Article 172 Swiss Federal Act on International Private Law (IPLA)<sup>166</sup> of 18 December 1987 has become legally valid.<sup>167</sup>
- 5 Moreover, Articles 166-175 IPLA shall apply.<sup>168</sup>

<sup>164</sup> Version according to Section I of the Act of 18 March 2011 (Protection of bank deposits), in force since 1 September 2011 (AS **2011** 3919; BBl 2010 3993).

<sup>165</sup> FN 165: SR **281.1**

<sup>166</sup> SR **291**

<sup>167</sup> Inserted with Annex Section 2 of the Act of 16 March 2018, in force since 1 January 2019 (AS **2018** 3263; BBl 2017 4125).

<sup>168</sup> Version according to Annex Section 2 of the Act of 16 March 2018, in force since 1 January 2019 (AS **2018** 3263; BBl 2017 4125)

## Section XII:<sup>169</sup> Appeals in proceedings under sections XI and XII

### ARTICLE 37g<sup>bis</sup> Appeals against the approval of the restructuring plan

- 1 Should an appeal against the approval of a restructuring plan be accepted, the court may only award a compensation.
- 2 The compensation is as a rule paid in the form of shares, other equity interests, options or debtor warrants.

### ARTICLE 37g<sup>ter</sup> Appeals by creditors and owners

- 1 Creditors and owners of a bank, a group parent company or a significant group company as defined in Article 2<sup>bis</sup>(1) may only lodge an appeal in the proceedings under sections XI and XII against
  - a. the approval of the restructuring plan;
  - b. realization measures;
  - c. the approval of the distribution list and the final account.
- 2 Realization measures taken by the bankruptcy liquidator shall be deemed to be material acts. Any party with a legitimate interest may request that FINMA issue a ruling within the meaning of Article 25a of the Federal Act on Administrative Procedure of 20 December 1968<sup>170</sup> (APA).
- 3 An appeal pursuant to Article 17 DCBA <sup>171</sup> is ruled out in these proceedings.

### ARTICLE 37g<sup>quater</sup> Deadlines

- 1 The deadline for lodging an appeal against the approval of the restructuring plan and against realization measures is ten days. Article 22a of the APA<sup>172</sup> does not apply.
- 2 The period for lodging an appeal against the approval of the restructuring plan begins on the day after public announcement of the restructuring plan's basic features. The period for lodging an appeal against the approval of the distribution list and the final account begins on the day after the approval has been publicly announced.

<sup>169</sup> Inserted with Section I of the Act of 17 Dec 2021 (Depositor protection scheme and insolvency), in force since 1 January 2023 (AS 2022 732; BBl 2020 6359).

<sup>170</sup> SR 172.021

<sup>171</sup> SR 281.1

<sup>172</sup> SR 172.021

## ARTICLE 37g<sup>quinquies</sup> Suspensive effect

Appeals in proceedings in accordance with Sections XI and XII do not have a suspensive effect. The judge presiding over the proceedings may grant a suspensive effect if requested to do so. No suspensive effect may be granted for appeals against:

- a. the imposition of protective measures;
- b. the order of a restructuring procedure;
- c. the approval of the restructuring plan; and
- d. the ordering of bankruptcy liquidation.

## Section XIII:<sup>173</sup> Depositor protection scheme

### ARTICLE 37h<sup>174</sup> Principle

- 1 Banks must ensure that privileged deposits with Swiss branches are secured pursuant to Article 37a(1). With this in mind, banks must join the self-regulation of banks prior to accepting such deposits.
- 2 The self-regulation organizations shall be subject to FINMA approval.
- 3 The self-regulation shall be approved if it:
  - a. ensures that the deposit insurance scheme pays out the insured deposits to the investigator or restructuring agent or bankruptcy liquidator appointed by FINMA within seven working days of receiving the notification from FINMA of the order for bankruptcy liquidation or a protective measure to be taken in accordance with Article 26(1)(e-h);
  - b. stipulates that the banks are obliged to contribute a total of 1.6 percent of the total amount of the secured deposits, but at least CHF 6 billion;
  - c. ensures that each bank deposits half of its contribution obligations in perpetuity:
    1. deposits easily realizable securities of high quality or Swiss francs in cash with a secure third-party custodian, or
    2. grants the deposit insurance scheme cash loans;
  - d. requires each bank to undertake the necessary preparations in the course of its ordinary busi-

<sup>173</sup> Originally before Article 36. Version according to Section I of the Act of 3 October 2003, in force since 1 July 2004 (AS **2004** 2767; BBl 2002 8060).

<sup>174</sup> Version according to Section I of the Act of 17 December 2021 (Depositor protection scheme and insolvency), in force since 1 January 2023 (AS **2022** 732; BBl 2020 6359). See also the transitional provisions of these amendments at the end of this text.

ness activities to enable the investigator or restructuring agent or bankruptcy liquidator to prepare a payout plan, contact the depositors and make the payouts in accordance with Article 37j.

- 4 The preparations as per (3)(d) include in particular the provision of:
  - a. an appropriate infrastructure;
  - b. standardized processes;
  - c. a list of depositors with the deposits secured in accordance with (1)
  - d. a summarized list of the other privileged deposits in accordance with Article 37a(1).
- 5 The Swiss Federal Council may adapt the requirements foreseen under (3)(b) provided special circumstances warrant it.
- 6 Should the self-regulation not satisfy the requirements of (1)-(4), the Swiss Federal Council shall regulate the deposit protection in an ordinance. In particular, it shall designate the entities which protect deposits and define the banks' contributions to these.
- 7 The effects of the types of financing in accordance with (3)(c) on the liquidity and capital adequacy requirements must be counterbalanced by treating the various types of financing as equally as possible. The Swiss Federal Council shall define the technical implementing regulations.

#### ARTICLE 37i<sup>175</sup> Trigger of the Deposit Protection

- 1 If the FINMA has ordered protective measures as per Article 26(1)(e)-(h) or bankruptcy as per Article 33, it shall inform the provider of the Deposit Protection Scheme of this and the needed amount of contributions to pay out the protected deposits.
- 2 The provider of the deposit insurance scheme shall make available the corresponding amount available to the investigator or restructuring agent appointed by FINMA or the bankruptcy liquidator within seven working days of receiving the notification.<sup>176</sup>
- 3 In case protective measures are in place, FINMA may defer notification as long as:
  - a. it seems likely that the protective measures will be lifted within a short period of time; or
  - b. the protected deposits are not affected by the protective measures.
- 4 ...<sup>177</sup>

<sup>175</sup> Version as per Section I of the Act of 18 March 2011 (Protection of bank deposits), in force since 1 September 2011 (AS **2011** 3919; BBI 2010 3993).

<sup>176</sup> Version according to Section I of the Act of 17 December 2021 (Depositor protection scheme and insolvency), in force since 1 January 2023 (AS **2022** 732; BBI 2020 6359).

<sup>177</sup> Repealed by Section I of the Act of 17 Dec 2021 (Depositor protection scheme and insolvency), with effect from 1 Jan 2022 (AS **2022** 732; BBI 2020 6359).

## ARTICLE 37j<sup>178</sup> Payout

- 1 The investigator or restructuring agent or liquidator appointed by FINMA is to draw up a payout plan based on the list of depositors in accordance with Article 37h(4)(c).
- 2 It shall immediately contact the depositors listed in the payout plan to obtain payment instructions for the payout of the secured deposits.
- 3 After receiving the payment instructions, it must ensure that the secured deposits are paid out to the depositors immediately, but no later than on the seventh working day after receipt of the instructions.
- 4 In the event that the amount made available by the deposit insurance scheme is insufficient to satisfy all claims included in the payout plan, the payout shall be made on a pro rata basis.
- 5 The period specified in (3) above can be extended or suspended in the case of deposits where:
  - a the legal claims are unclear or complex;
    - a. there is no objectively justified need for a rapid payout; or
    - b. the payment instructions are unclear or imprecise.
- 6 The deposits as per (5) above must be described in more detail in the self-regulation to be approved by FINMA.

## ARTICLE 37j<sup>bis</sup> 179 Offsetting, claims and legal assignment

- 1 The secured deposits shall be paid out under exclusion of any netting.
- 2 The depositors shall not be entitled to any direct compensation from the provider of the Deposit Protection Scheme.
- 3 Depositors' rights shall be transferred to the provider of the Deposit Protection Scheme in the amount of disbursements made.

## ARTICLE 37k<sup>180</sup> Data Exchange

- 1 FINMA shall give the provider of the Deposit Protection Scheme the information necessary to fulfill its duties.

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<sup>178</sup> Inserted with Section I of the Act of 18 March 2011 (AS 2011 3919; BBI 2010 3993). Version according to Section I of the Act of 17 Dec 2021 (Depositor protection scheme and insolvency), in force since 1 January 2023 (AS 2022 732; BBI 2020 6359).

<sup>179</sup> Inserted with Section I of the Act of 17 Dec 2021 (Depositor protection scheme and insolvency), in force since 1 January 2023 (AS 2022 732; BBI 2020 6359).

<sup>180</sup> Inserted with Section I of the Act of 18 March 2011 (Protection of bank deposits), in force since 1 September 2011 (AS 2011 3919; BBI 2010 3993).



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

## Section XIIIa:<sup>181</sup> Dormant assets

### ARTICLE 37I Transfer of Assets<sup>182</sup>

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

### ARTICLE 37m<sup>183</sup> Liquidation

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

## Section XIV: Liability and Penal Provisions

### ARTICLE 38<sup>184</sup>

- 1 Private bankers shall be subject to the provisions of the Swiss Code of Obligations<sup>185</sup> in regard to responsibilities under civil law.
- 2 Article 39 shall apply to all other banks.

<sup>181</sup> Inserted with Section I of the Act of 18 March 2011 (Protection of bank deposits), in force since 1 September 2011 (AS **2011** 3919; BBI 2010 3993).

<sup>182</sup> Inserted with Section I of the Act of 22 March 2013 (Dormant Assets), in force since 1 January 2015 (AS **2014** 1267; BBI 2010 7495).

<sup>183</sup> Inserted with Section I of the Act of 22 March 2013 (Dormant Assets), in force since 1 January 2015 (AS **2014** 1267; BBI 2010 7495).

<sup>184</sup> Version according to Annex Section 15 of the Financial Markets Supervision Act of 22 June 2007, in force since 1 January 2009 (AS **2008** 5207 5205; BBI 2006 2829).

<sup>185</sup> SR **220**

### 3 ARTICLE 39<sup>186</sup>

The responsibility of the founders of a bank, of the bodies responsible for a bank's management, its direction, supervision and control as well as the liquidators and audit firms appointed by the bank shall be subject to the provisions of company law (Articles 752–760 of the Swiss Code of Obligations<sup>187</sup>).

### ARTICLES 40 – 45<sup>188</sup>

#### ARTICLE 46<sup>189</sup>

- 1 Whoever intentionally does the following shall be imprisoned up to three years or fined accordingly:
  - a. unlawfully accept public or savings deposits;
  - b. maintain business accounts inadequately or who do not archive business accounts, documentation and records as required by law;
  - c. do not establish and make public the annual account or an interim financial statement pursuant to article 6.
- 2 Whoever acts in negligence shall be penalized with a fine of up to CHF 250,000.
- 3 ...<sup>190</sup>

#### ARTICLE 47<sup>191</sup>

- 1 Whoever intentionally does the following shall be imprisoned up to three years or fined accordingly:
  - a.<sup>192</sup> disclose confidential information entrusted to them in their capacity as a member of an executive or supervisory body, employee, representative, or liquidator of a bank or a person in accordance with Article 1b, as member of a body or employee of an audit firm or that they have observed in this capacity;
  - b. attempt to induce an infraction of the professional secrecy;

<sup>186</sup> Version according to Annex Section 5 of the Act of 20 June 2014 (Bundling of Supervision over Auditing Firms), in force since 1 January 2015 (AS **2014** 4073; BBI 2013 6857).

<sup>187</sup> SR **220**

<sup>188</sup> Repealed by Section I of the Act of 3 October 2003, with effect from 1 July 2004 (AS **2004** 2767; BBI 2002 8060).

<sup>189</sup> Version according to Annex Section 15 of the Financial Markets Supervision Act of 22 June 2007, in force since 1 January 2009 (AS **2008** 5207 5205; BBI 2006 2829).

<sup>190</sup> Repealed by Annex Section 10 of the Financial Markets Infrastructure Act of 19 June 2015, with effect from 1 January 2016 (AS **2015** 5339; BBI 2014 7483)

<sup>191</sup> Version according to Annex Section 15 of the Financial Markets Supervision Act of 22 June 2007, in force since 1 January 2009 (AS **2008** 5207 5205; BBI 2006 2829).

<sup>192</sup> Version according to Annex Section II 14 of the Financial Institutions Act of 15 June 2018, in force since 1 January 2019 (AS **2018** 5247; BBI 2015 8901).

c.<sup>193</sup> disclose confidential information to third parties or use this information for own benefits or the benefit of others.

1<sup>bis</sup> Whoever enriches themselves or others with an action in accordance with (1)(a) or (c) shall be punished with imprisonment for up to five years or fined accordingly.<sup>194</sup>

2 Whoever acts in negligence shall be penalized with a fine of up to CHF 250,000.

3 ...<sup>195</sup>

4 The violation of the professional confidentiality shall remain punishable even after a bank license has been revoked or a person has ceased his/her official responsibilities.

5 The federal and cantonal provisions on the duty to provide evidence or on the duty to provide information to an authority shall be exempted from this provision.

6 Prosecution and judgment of offenses pursuant to these provisions shall be incumbent upon the cantons. The general provisions of the Swiss Penal Code<sup>196</sup> shall be applicable.

## ARTICLE 48<sup>197</sup>

## ARTICLE 49<sup>198</sup>

1 Whoever intentionally does the following shall be fined up to CHF 500,000:

- a. unlawfully using the term "bank", "banker" or "savings" in their company name, the description of their business purpose or in their business advertising;
- b. not forwarding to FINMA the mandatory reports;
- c. publicly advertising their acceptance of savings and public deposits without possessing the legally required license to do so.

2 Whoever acts in negligence shall be fined up to CHF 150,000.

3 ...<sup>199</sup>

<sup>193</sup> Inserted with Section 12 of the Act of 12 December 2014 on the Expansion of the Prosecution of the Violation of the Professional Confidentiality, in force since 1 July 2015 (AS **2015** 1535; BBI 2014 6231 6241).

<sup>194</sup> Inserted with Section 12 of the Act of 12 December 2014 on the Expansion of the Prosecution of the Violation of the Professional Confidentiality, in force since 1 July 2015 (AS **2015** 1535; BBI 2014 6231 6241).

<sup>195</sup> Repealed by Annex Section 10 of the Financial Markets Infrastructure Act of 19 June 2015, with effect from 1 January 2016 (AS **2015** 5339; BBI 2014 7483)

<sup>196</sup> SR **311.0**

<sup>197</sup> Repealed by Annex Section 15 of the Financial Markets Supervision Act of 22 June 2007, with effect from 1 January 2009 (AS **2008** 5207 5205; BBI 2006 2829).

<sup>198</sup> Version according to Annex Section 15 of the Financial Markets Supervision Act of 22 June 2007, in force since 1 January 2009 (AS **2008** 5207 5205; BBI 2006 2829).

<sup>199</sup> Repealed by Annex Section 10 of the Financial Markets Infrastructure Act of 19 June 2015, with effect from 1 January 2016 (AS **2015** 5339; BBI 2014 7483)

## ARTICLE 50<sup>200</sup>

## ARTICLE 50<sup>bis</sup> 201

## ARTICLE 51<sup>202</sup>

## ARTICLE 51<sup>bis</sup> 203

# Section XV: Transitional and Final Provisions

## ARTICLE 52<sup>204</sup>

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

## ARTICLE 52a<sup>205</sup>

The Swiss Federal Council shall review the amendments of 15 June 2018 no later than 3 years after their entry into force to determine whether they meet financial market supervisory goals in accordance with FINMASA<sup>206</sup>. It shall report its findings to the Swiss Federal Assembly and highlight the possible need for amending laws and ordinances.

## ARTICLE 53

1 The entry into force of this law shall repeal the following provisions:

- a.<sup>207</sup> the cantonal provisions on banks; with the exception of the provisions on cantonal banks, the provisions concerning professional trading in securities as well as the provisions on the monitoring of compliance with cantonal laws against the abuse of interest rates;

<sup>200</sup> Repealed by Annex Section 15 of the Financial Market Supervision Act of 22 June 2007, with effect from 1 January 2009 (AS **2008** 5207 5205; BBI 2006 2829).

<sup>201</sup> Inserted with Section 22 of the Annex to the Act on administrative criminal law (AS **1974** 1857; BBI 1971 I 993). Repealed by Annex Section 15 of the Financial Markets Supervision Act of 22 June 2007, with effect from 1 January 2009 (AS **2008** 5207 5205; BBI 2006 2829).

<sup>202</sup> Repealed by Annex Section 15 of the Financial Markets Supervision Act of 22 June 2007, with effect from 1 January 2009 (AS **2008** 5207 5205; BBI 2006 2829).

<sup>203</sup> Inserted with Section I of the Act of 11 March 1971 (AS **1971** 808; BBI 1970 I 1144). Repealed by Annex Section 15 of the Financial Markets Supervision Act of 22 June 2007, with effect from 1 January 2009 (AS **2008** 5207 5205; BBI 2006 2829).

<sup>204</sup> Version according to Section I of the Act of 30 September 2011 (Strengthening the stability in the financial sector), in force since 1 March 2012 (AS **2012** 811; BBI 2011 4717).

<sup>205</sup> Inserted with Annex Section II 14 of the Financial Institution Act of 15 June 2018, in force since 1 January 2019 (AS **2018** 5247; BBI 2015 8901)

<sup>206</sup> SR **956.1**

<sup>207</sup> Version according to Annex Section 17 of the Act of 16 December 1994, in force since 1 January 1997 (AS **1995** 1227; BBI 1991 III 1).

b. Article 57 of the Final Title of the Civil Code. Code.e. Code.<sup>208</sup>

- 2 The cantonal provisions for a statutory lien in favor of savings deposits shall become void if they are not replaced by new regulations in accordance with Articles 15 and 16 within three years of the coming into force of the present Act.

#### ARTICLE 54<sup>209</sup>

#### ARTICLE 55<sup>210</sup>

#### ARTICLE 56

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

Date of entry into force: 1 March 1935<sup>211</sup>

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<sup>208</sup> SR **210**

<sup>209</sup> Repealed by Annex Section 17 of the Act of 16 December 1994, with effect from 1 January 1997 (AS **1995** 1227; BBl 1991 III 1)

<sup>210</sup> Repealed with Section I of the Act of 11 March 1971, with effect from 1 July 1971 (AS **1971** 808 824 Article 1 BBl 1970 I 1144).

<sup>211</sup> Swiss Federal Council Decision of 26 February 1935

### Final Provisions to the Amendments of 11 March 1971<sup>212</sup>

- 1 Banks and financial companies founded prior to the effective date of the Act<sup>213</sup> are not required to obtain a new license in order to remain operative.
- 2 Financial companies that are now subject to the Act must register with the Swiss Federal Banking Commission within three months of its effective date<sup>214</sup>.
- 3 Banks and financial companies must adapt to comply with the provisions of Article 3(2)(a), (c) and (d) as well as of Article 3<sup>bis</sup>(1)(c)<sup>215</sup> within two years of the effective date of the Act<sup>216</sup>. Their license may be revoked if their adaptation does not occur on a timely basis.
- 4 In order to allow taking into consideration the particular circumstances of financial companies and credit offices that have a waiting period, the Swiss Federal Council shall be permitted to issue special provisions.

### Final Provisions to the Amendments of 18 March 1994<sup>217</sup>

- 1 Natural persons and legal entities holding deposits from the public at the time the amendment to this Act of 18 March 1994 takes effect, that fall into the scope of the prohibition set out in Article 1(2), have to repay these within two years of the effective date of entry into force of the new Act. The Swiss Federal Banking Commission may extend or shorten this deadline on a case-by-case basis, whenever particular conditions exist.
- 2 Bank-like financial companies, which had been authorized by the Swiss Federal Banking Commission to publicly solicit the acceptance of third-party funds prior to the implementation of the Act, do not require a new license to operate as a bank. They must adopt Articles 4<sup>bis</sup> and 4<sup>ter</sup> within one year from the date these amendments to the Act have taken effect.
- 3 Banks must adopt the provisions of Articles 3(2)(c<sup>bis</sup>) and (d) as well as 4(2<sup>bis</sup>) within one year of the entry into force of this amendment.
- 4 The cantons must ensure compliance with the provisions of Articles 3a<sup>218</sup>(1) and 18(1) within three years of the entry into force of this amendment. Should responsibility for supervision as per Article 3a(2) be transferred to the Swiss Federal Banking Commission prior to expiry of this deadline, the provisions of Article 18(1) must be complied with already at the time of the transfer.
- 5 All natural persons and legal entities who at the date on which these amendments to the Act take

<sup>212</sup> (AS 1971 808; BBI 1970 I 1144)

<sup>213</sup> The Act entered into force on 1 July 1971 (Article 1 of the Swiss Federal Council Decision of 24 June 1971 – AS 1971 824 Article 1).

<sup>214</sup> The Act entered into force on 1 July 1971 (Article 1 of the Swiss Federal Council Decision of 24 June 1971 – AS 1971 824 Article 1).

<sup>215</sup> This provision has been repealed.

<sup>216</sup> The Act entered into force on 1 July 1971 (Article 1 of the Swiss Federal Council Decision of 24 June 1971 – AS 1971 824 Article 1).

<sup>217</sup> (AS 1995 246; BBI 1993 I 805)

<sup>218</sup> This provision has been reworded.

effect, hold qualified equity interests in a bank according to Article 3(2)(c<sup>bis</sup>), must notify the Swiss Federal Banking Commission to this effect within one year of the date when these amendments to the Act take effect.

- 6 Banks must inform the Swiss Federal Banking Commission as per Article 3(6) for the first time one year after the date when these amendments to the Act take effect.
- 7 Banks organized according to Swiss law must inform the Swiss Federal Banking Commission of all subsidiaries, branch offices, agencies and representations abroad within three months following the date when these amendments to the Act take effect.

### **Final Provisions to the Amendment of 22 April 1999<sup>219</sup>**

- 1 In the case of cantonal banks which are subject in full to the supervision of the Swiss Federal Banking Commission at the time this Act takes effect, the license foreseen under Article 3 is deemed to have been granted.
- 2 In the case of the Cantonal Bank of the Canton of Geneva, the equity interests held by the municipalities shall be deemed to be equivalent to the shares held by the Canton as foreseen under Article 3a, provided the canton does not reduce its current equity holdings.

### **Final Provisions to the Amendment of 3 October 2003<sup>220</sup>**

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

### **Final Provisions to the Amendment of 17 December 2004<sup>221</sup>**

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

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<sup>219</sup> (AS **1999** 2405; BBl 1998 3847)

<sup>220</sup> (AS **2004** 2767; BBl 2002 8060).

<sup>221</sup> (AS **2005** 5269; BBl 2003 3789)

**Transitional provision in regard to the amendment of 30 September 2011<sup>222</sup>**

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

**Transitional provision in regard to the amendment of 22 March 2013<sup>223</sup>**

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

**Transitional provision in regard to the amendment of 17 December 2021<sup>224</sup>**

Self-regulation requirements as set out in Article 37h(3)(d) must be met no later than five years after the amendment of 17 December 2021 takes effect.

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<sup>222</sup> AS **2012** 811; BBI 2011 4717

<sup>223</sup> AS **2014** 1267; BBI 2010 7495

<sup>224</sup> AS **2022** 732; BBI 2020 6359



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