



AUDIT FINANCIAL SERVICES

Swiss Federal Ordinance on Banks and Savings Banks

(Banking Ordinance, BO)

SR 952.02

(Status as of Status as of 1 January 2010)

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Other Languages

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FR: Ordonnance du 17 mai 1972 sur les banques et les caisses d'épargne (Ordonnance sur les banques, OB)

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SWISS FEDERAL ORDINANCE ON BANKS AND SAVINGS BANKS (Banking Ordinance, BO)

of May 17, 1972 (Status as of 1 January 2010¹)²

The Federal Council,

based upon Article 3 Paragraph 2 letter *b*, 4 Paragraph 2, 4^{bis} Paragraph 2, 6 Paragraph 5, 20 Paragraph 1, 21 Paragraph 1, 23 Paragraph 4 and 56 of the Bank Act 8 November 1934³,
(hereinafter referred to as the Act),

decrees:

1. Scope of the Act⁴

Art. 1 and 2⁵

Art. 2a⁶

Deemed banks within the meaning of Article 1 Paragraph 1 of the Act are those enterprises which are active principally in the field of finance and in particular those:

- a.⁷ who accept deposits from the public on a professional basis or solicit these publicly in order to finance in any way, for their own account, an undefined number of unrelated persons or enterprises, with which they form no economic unit, or
- b. who refinance themselves in substantial amounts from a number of banks which are not significant shareholders and with which they form no economic entity in order to provide any form of financing for their own account to an undefined number of unrelated persons or institutions or,
- c ...⁸

¹ Abbreviation introduced by No. I of the O of 29 Nov. 1995, effective since 1 Jan. 1996 (As **1996 45**).

² Version in accordance with No. I of the O of 23 Aug. 1989, effective since 1 Jan. 1990 (AS **1989 1772**).

³ SR **952.0**

⁴ Version in accordance with No. I of the O of 14 Oct. 2009, effective since 1 Jan. 2010 (AS **2009 5279**).

⁵ Repealed through Appendix No. 7 of the Swiss Financial Market Audit Ordinance of 15 Oct. 2008, with effect since 1 Jan. 2009 (SR **956.161**).

⁶ Introduced by No. I of the O of 23 Aug. 1989, effective since 1 Jan. 1990 (AS **1989 1772**).

⁷ Version in accordance with No. I of the O of 12 December 1994, effective since 1 Feb. 1995 (AS **1995 253**).

⁸ Repealed through Art. 57 No. 1 of the Stock Exchange Ordinance of 2 Dec. 1996 (SR **954.11**).

Art. 3⁹

¹ Those who are prohibited, pursuant to Article 1 Paragraph 2 of the Act, from accepting deposits from the public on a professional basis, may not make publicity in any form for such deposits, in particular in advertisements, prospectuses, circulars or electronic media.

² Private bankers are not considered to publicly solicit deposits within the meaning of Article 5 Paragraph 2¹⁰ and Article 6 Paragraph 6 of the Act, if their advertising refers solely to their activity as asset managers or security dealers without encompassing the possibility of depositing funds.

Art. 3a¹¹

¹ In addition to banks, only corporations and establishments, which are subject to public law, as well as cashier offices for which they are entirely liable, may accept deposits from the public on a professional basis.

² Those who accept on a continuing basis more than 20 deposits from the public are considered to be acting on a professional basis within the meaning of the Act.

³ Not considered as deposits are:

- a. monies which constitute the contractual consideration for the transfer of property or for the provision of services or are transferred as security;
- b. debenture bonds and other standardized debt instruments issued for mass trading or rights with similar function not evidenced by certificates (book register securities) if the creditors are informed in a manner equivalent to that provided for in Article 1156 of the Swiss Code of Obligations¹²;
- c.¹³ creditor balances on customer accounts of security, currency and precious metal brokers, asset managers or similar enterprises who act solely in order to execute customer transactions so long as no interest is paid thereon;
- d. monies, the acceptance of which is inseparably connected with a life insurance contract, employee benefit schemes or other recognized forms of benefit schemes pursuant to Article 82 of the Federal Act of 25 June 1982¹⁴ concerning Professional Old-Age, Survivors' and Invalidity Insurance.

⁴ Not considered as deposits from the public are deposits from:

- a. domestic and foreign banks or enterprises under state supervision;
- b. shareholders or partners of the debtor who hold a qualified participation in the debtor or who are connected with them by economic or family ties;

⁹ Version in accordance with No. I of 12 December 1994, effective since 1994 1 Feb. 1995 (As **1995** 253).

¹⁰ This Article is currently rescinded.

¹¹ Introduced by No. I of the O of 12 Dec. 1994, effective 1 Feb. 1995 (AS **1995** 253).

¹² SR **220**

¹³ Version in accordance with No. I of the O of 14 March 2008 (AS **2008** 1199).

¹⁴ SR **831.40**

- c. institutional investors whose cash resources are managed professionally;
- d.¹⁵ depositors with associations, foundations or cooperatives, provided that they are not active in the field of finance, who pursue an ideal purpose or mutual assistance that uses the investments exclusively for this purpose and the duration of the investment amounts to six months at a minimum; or
- e. employees as well as retired employees with their employer.

2. License to Conduct Business Operations

Art. 4

¹ The fully paid in capital required in Article 3 Paragraph 2 letter b of the Act must amount to at least 10 million Swiss francs. Where a company is capitalized by contributions in kind, the value of the assets contributed and the extent of the liabilities shall be verified by an auditing company recognized by the Swiss Financial Market Supervisory Authority (FINMA); the same applies if an existing company is converted into a bank.¹⁶

² If an existing business is converted into a bank, then the entire paid-in capital may amount to less than 10 million Swiss francs if the adjusted core capital within the sense of Article 23 of the Capital Adequacy Ordinance of 29 September 2006 (CAO)¹⁷ reached this amount. FINMA¹⁸ shall judge cases on an individual basis.¹⁹

³ In particular cases, FINMA may grant exemption, namely in so far as

- a. the banks form a part of a central organization which guarantees their commitments;
- b. the central organization and its affiliated banks fulfill the prescriptions concerning equity and risk diversification on a consolidated basis; and
- c. the management of the central organization can issue binding instructions to the affiliated banks.²⁰

Art. 5

¹ Reciprocity within the meaning of Article 3^{bis} Paragraph 1 of the Act is guaranteed in particular if:

- a. Swiss resident persons are permitted to open banks (separate companies or registered offices, branch offices or agencies of Swiss banks) in the foreign country;

¹⁵ Version in accordance with No. I of the O of 12 Nov. 2003 (AS 2003 4077).

¹⁶ Version in accordance with Appendix No. 7 of the Swiss Financial Market Audit Ordinance of 15 Oct. 2008, with effect since 1 Jan. 2009 (SR 956.161).

¹⁷ SR 952.03

¹⁸ Term in accordance with Appendix No. 7 of the O of 15 Oct. 2008, effective since 1 Jan 2009 (SR 956.161). This amendment is observed in the entire text..

¹⁹ Introduced by No. I of the O of 12 Dec. 1994 (AS 1995 253). Version in accordance with Appendix 7 No. 1 Capital Adequacy Ordinance of 29 Sept. 2006, effective since 1 Jan. 2007 (SR 952.03).

²⁰ Introduced by No. I of the O of 12. Dec. 1994, effective since 1 Feb. 1995 (AS 1995 253).

- b. the business operations of these banks in the foreign country are not subject to materially more limiting provisions than those imposed on foreign banks operating in Switzerland.

² Reciprocity is granted for permanent representatives of a foreign bank within the meaning of Article 3^{bis} Paragraph 1 of the Act if Swiss banks are permitted to open permanent representations with the same functions in the foreign country.

Art. 6²¹

¹ In applications for a banking license from new banks, particulars are to be provided concerning persons who are to be entrusted with the administration and management pursuant to Article 3 Paragraph 2 lit. c of the Act as well as the owners of qualified participations pursuant to Article 3 Paragraph 2 lit c^{bis} of the Act. The applications are to contain in particular the following:

- a. in the case of natural persons: nationality, residence, qualified participations in other companies and pending legal or administrative proceedings as well as a signed curriculum vitae, references, and an extract from the Central Penal Register;
- b. in the case of legal entities: the statutes, an extract from the Commercial Register or an equivalent confirmation, a description of the business activities, the financial situation, and, if applicable, the group structure as well as details of any completed or pending legal and administrative proceedings.

² Applications for a supplementary permission pursuant to Article 3^{ter} of the Act and notifications concerning qualified participations pursuant to Article 3 Paragraphs 5 and 6 of the Act must contain the particulars required in Paragraph 1.

³ Persons who possess a qualified participation must provide FINMA with a declaration as to whether they have acquired the participation for their own account or on a fiduciary basis for third parties and whether they have granted options or similar rights for this participation.

Art. 6a²²

¹ The bank shall, within 60 days following the end of the financial year, provide FINMA with a list of all shareholdings which are qualified participations.

² The list shall contain details as to the identity and share of equity of all holders of qualified participations existing as of the balance-sheet date as well as changes thereto since the prior year.

³ In addition, the particulars and documents required under Article 6 Paragraphs 1 and 3 are to be included as regards shareholdings not previously notified.

Art. 6b²³

¹ Before a bank may be active abroad within the meaning of Article 3 Paragraph 7 of the Act, all details necessary to assess the activity shall be provided to FINMA. In particular, the following are to be submitted or indicated:

²¹ Version in accordance with No. I of the O of 12 December 1994, effective since 1 Feb. 1995 (AS 1995 253).

²² Introduced by No. I of the O of 12 Dec. 1994, effective since 1 Feb. 1995 (AS 1995 253).

²³ Introduced by No. I of the O of 12 Dec. 1994, effective since 1 Feb. 1995 (AS 1995 253).

- a. a business plan which in particular describes the type of planned transactions and the organizational structure;
- b. the address of the business offices abroad;
- c. the names of the persons entrusted with the administration and management;
- d. the audit company;
- e. the supervisory authorities in the country concerned.

² The bank must make notification of the discontinuance or every significant change in business activities abroad as well as a change in the audit company or supervisory authorities.

3. Internal Organization

Art. 7

¹ The bank must describe precisely its field of business operations, with regard to the objectives and to the geographic terms in the by-laws, shareholder agreements or business rules.²⁴

² ...²⁵

³ The scope of the bank's operations shall correspond to its financial resources and administrative organization.

⁴ The bank must in fact be managed from Switzerland. General instructions and decisions concerning consolidated supervision remain reserved, in so far as the bank forms part of a group active in the field of finance and which is subjected to an appropriate consolidated supervision by foreign supervisory authorities.²⁶

Art. 8

¹ Where the business purpose or volume requires a special governing body responsible for direction, supervision and control, such body shall consist of at least three members.

² No member of the body responsible for direction, supervision and control shall belong to the bank's management.

³ In special cases, FINMA may grant an exception subject to certain conditions.

Art. 9²⁷

¹ The bank shall provide for an effective internal segregation of functions between trading, asset management and back office. FINMA may grant exemption in certain justified individual cases or require the segregation of further functions.

² The bank shall lay down in regulations or in internal guidelines the main principles underlying the management of risks and the competencies and procedures for the approval of high-risk

²⁴ Version in accordance with Art. 57 No. 1 of the Stock Exchange Ordinance of 2 Dec. 1996, effective since 1 Feb. 1997 (SR 954.11).

²⁵ Repealed through Art. 57 No. 1 of the Stock Exchange Ordinance of 2 Dec. 1996 (SR 954.11).

²⁶ Introduced by No. I of the O of 12 Dec. 1994, effective since 1 Feb. 1995 (AS 1995 253).

²⁷ Version in accordance with Art. 57 No. 1 of the Stock Exchange Ordinance of 2 Dec. 1996, effective since 1 Feb. 1997 (SR 954.11).

transactions. It must in particular identify, limit and supervise market, credit, default, settlement, liquidity and image risks as well as operational and legal risks.

³ The internal documentation of the bank on decision-making and monitoring of transaction connected with risk is to be structured such that it allows the audit company to form a reliable opinion on the business conduct.²⁸

⁴ The bank shall be responsible for an effective system of internal control. It shall in particular appoint internal auditors (inspectorate) independent from the management. FINMA may, in certain justified individual cases, exempt a bank from the obligation of appointing internal auditors.²⁹

Art. 10

Private bankers must include the necessary organizational provisions in their partnership agreement or in their internal regulations.

4.³⁰ Group and Conglomerate Supervision

Art. 11 Financial Sector

¹ Operating in the financial sector are those who:

- a. provide or arrange financial services, in particular those who carry out deposit or credit transactions, securities trading, collective investment transactions or asset management on their own behalf or for third parties; or
- b. predominately hold qualified participations in companies operating in the financial sector (holding companies).

² The activities of the insurance companies (insurance sector) are legally equivalent to the activities in the financial sector provided that sufficient regulations are not foreseen in this Ordinance or in the CAO³¹.

Art. 12 Economic Unit and Obligation to Assist

¹ Companies form an economic unit when one of them directly or indirectly holds more than half the voting rights or the capital in the other or controls the other in another manner.

² An obligation to assist within the sense of Article 3c Paragraph 1 letter c of the act can result due to other circumstances, in particular due to:

- a. personnel or financial interdependencies;
- b. the use of common company names;

²⁸ Version in accordance with Appendix No. 7 of the Swiss Financial Market Audit Ordinance of 15 Oct. 2008, with effect since 1 Jan. 2009 (SR 956.161).

²⁹ Version in accordance with Appendix No. 7 of the Swiss Financial Market Audit Ordinance of 15 Oct. 2008, with effect since 1 Jan. 2009 (SR 956.161).

³⁰ Version in accordance with Appendix 7 No. 1 Capital Adequacy Ordinance of 29 Sept. 2006, effective since 1 Jan. 2007 (SR 952.03).

³¹ SR 952.03

- c. a uniform market presence; or
- d. comfort letters.

Art. 13 Group Companies

Group companies are companies associated through an economic unit or an obligation to assist.

Art. 14 Scope of Consolidated Supervision

¹ The group supervision by FINMA includes all group companies of a financial group active in the financial sector in accordance with Article 11 Paragraph 2. Within the framework of the conglomerate supervision, group companies are additionally included in accordance with Article 11 Paragraph 2.

² In justified cases, FINMA can exempt group companies of the financial sector from the consolidated supervision or declare their content only partially applicable, namely if the group companies are absent from the consolidated supervision.

³ It can completely or partially include a company in the financial sector, which is controlled by one of the financial groups supervised by FINMA or a financial conglomerate together with third parties, in the consolidated supervision.

Art. 14a Content of the Consolidated Supervision

¹ The consolidated supervision has namely the purpose of identifying whether the financial group:

- a. is adequately organized;
- b. has an adequate internal control system;
- c. measures, limits and monitors the risk connected with their business operations;
- d. is managed by persons who guarantee proper business conduct;
- e. complies with the separation of personnel between the governing, supervising and the controlling body pursuant to Article 8;
- f. complies with the provisions on capital adequacy and risk distribution;
- g. has adequate liquidity;
- h. correctly applies the guidelines on financial statement accounting; and
- i. has a recognized, independent and professional audit company.

² For the consolidated supervision on financial conglomerates, FINMA may deviate from the content pursuant to Paragraph 1.

5. Liquidity**Art. 15³²**

Repealed

³² Repealed through No. I of the O of 24 March 2004, with effect since 1 Jan. 2005 (AS 2004 2875).

Art. 16³³ Liquid Assets

¹ Liquid assets (liquidity) at the book value within the meaning of Article 4 of the Act are:

- a. cash liquidity;
- b. assets that the National Bank permits as money stabilizing repo transactions;
- c.³⁴ debt instruments from domestic borrowers that are traded on a representative market, with the exception of the banks own debt instruments as well as those from companies that form an economic unit together with the bank;
- d. assets that are discount, lombard or repo capable with the central bank of a foreign branch's country;
- e. debt securities from foreign states and other legal public bodies if they are traded at a representative market;
- f. debt securities and bills of exchange from first class foreign banks as well as other equivalent papers that mature within six months;
- g. precious metals (gold, silver, platinum, palladium) and precious metal receivables that mature within one month, as long as there are no offsetting liabilities within each type of precious metal;
- h.³⁵ current account receivables and the fixed advances due within one month that are backed by assets in accordance with letters b and c;
- i. excess of the liquid assets to be offset (Art. 16a) over the offsettable short-term liabilities (Art. 17a).

² Liquid assets represented by claims against foreign debtors can be taken into consideration only insofar as either the payment in Swiss francs or the transfer of the payable amount in foreign currency into Switzerland is secured.

³ Pledged liquid assets must be deducted to the extent that they are liable to secure margins for existing liabilities.

Art. 16a³⁶ Liquid assets to be offset³⁷

The following liquid assets are to be offset if they mature within one month:³⁸

- a. due from banks at sight or time;
- b.³⁹ debt securities to the extent that they are not included under Article 16;

³³ Version in accordance with No. I of the O of 24 March 2004, effective since 1 Jan. 2005 (AS **2004** 2875).

³⁴ Version in accordance with No. I of the O of 30 Sept. 2005, effective since 1 Jan. 2006 (AS **2005** 4849).

³⁵ Version in accordance with No. I of the O of 30 Sept. 2005, effective since 1 Jan. 2006 (AS **2005** 4849).

³⁶ Introduced by No. I of the O of 25 Nov.. 1987, effective since 1 Jan. 1998 (AS **1998** 106).

³⁷ Introduced by No. I of the O of 24 March 2004, effective since 1 Jan. 2005 (AS **2004** 2875).

³⁸ Version in accordance with No. I of the O of 24 March 2004, effective since 1 Jan. 2005 (AS **2004** 2875).

³⁹ Version in accordance with No. I of the O of 24 March 2004, effective since 1 Jan. 2005 (AS **2004** 2875).

- c. money-market book receivables; such assets are unsecured receivables from first-class debtors who have issued bonds, notes or other money-market paper which have maturities of up to one year;
- d. receivables included in other assets.

Art. 17⁴⁰ Short-term liabilities to be backed⁴¹

The following short-term liabilities are to be backed:⁴²

- a.⁴³ the excess of the offsettable short-term liabilities (Art. 17a) over the offsettable liquid assets (Art. 16a).
- b. 50% of the short-term payables and other accounts or books without withdrawal restrictions;
- c. 15% of deposits in savings, deposit or similar books or accounts with withdrawal restrictions, excluding amounts not available for distribution (e.g. pension-fund liabilities).

Art. 17a⁴⁴ Short-term liabilities to be offset⁴⁵

¹ The following are short-term liabilities to be offset if they mature within one month:⁴⁶

- a. due to banks at sight and on time;
- b. due to customers on time;
- c. restricted pension fund monies;
- d. bonds, cash bonds and certificates of deposits;
- e. precious metal accounts as long as there are no offsetting assets or balances within each type of precious metal;
- f. payables included in other liabilities.

² Short-term liabilities assumed against the pledging of liquid assets (Art. 16 Para. 3) may be deducted and do not fall into the offsetting process.⁴⁷

Art. 18⁴⁸ Backing rate, notification requirements and consolidation⁴⁹

¹ Liquid assets must together be at least equal to 33% of the short-term liabilities. For the calculation, antecedent liquid assets are to be offset in accordance with Article 16a and short-

⁴⁰ Version in accordance with No. I of the O of 25 Nov. 1987, effective since 1 Jan. 1998 (AS **1998**106).

⁴¹ Introduced by No. I of the O of 24 March 2004, effective since 1 Jan. 2005 (AS **2004** 2875).

⁴² Version in accordance with No. I of the O of 24 March 2004, effective since 1 Jan. 2005 (AS **2004** 2875).

⁴³ Version in accordance with No. I of the O of 24 March 2004, effective since 1 Jan. 2005 (AS **2004** 2875).

⁴⁴ Introduced by No. I of the O of 25 Nov.. 1987, effective since 1 Jan. 1998 (AS **1998** 106).

⁴⁵ Introduced by No. I of the O of 24 March 2004, effective since 1 Jan. 2005 (AS **2004** 2875).

⁴⁶ Version in accordance with No. I of the O of 24 March 2004, effective since 1 Jan. 2005 (AS **2004** 2875).

⁴⁷ Version in accordance with No. I of the O of 24 March 2004, effective since 1 Jan. 2005 (AS **2004** 2875).

⁴⁸ Version in accordance with No. I of the O of 25 Nov. 1987, effective since 1 Jan. 1998 (AS **1998**106).

⁴⁹ Introduced by No. I of the O of 24 March 2004, effective since 1 Jan. 2005 (AS **2004** 2875).

term liabilities in accordance with Article 17a. The balance determines the excess in accordance with Article 16 Paragraph 1 lit. I or in accordance with Article 17 lit. a.⁵⁰

² A bank must advise its audit company⁵¹ if its sight and other liabilities due within one month to an individual customer or bank exceed 10% of its total unnetted sight and other liabilities due within one month. Liabilities falling within Article 17 letter c are only included in this computation at the percentage rate stated in that Article. Liabilities to independent legal entities and persons who are linked through interlocking share capital interests of over 50% are to be considered as one group.

³ Banks must maintain adequate liquidity on the level of financial groups and financial conglomerates in correspondence with Articles 6-12 of the CAO^{52, 53}.

Art. 19⁵⁴ Complementary Liquidity

¹ The banks that possess privileged deposits pursuant to Article 37b of the Act must hold complementary liquid assets pursuant to Article 16 along with the liquidity pursuant to Article 18 within the scope of their duty to document procedures pursuant to Article 37h Paragraph 3 of the Act.

² Within the framework of the general reporting procedures, the banks shall notify FINMA of the sums:

- a. of the deposits indicated in the financial statement pursuant to Article 25 Paragraph 1 numbers 2.3-2.5 as at the close of the business year;
- b. the deposits pursuant to letter a that are privileged pursuant to Articles 37b of the Act and 23 of the Ordinance on Banking Bankruptcy of 30 June 2005 (BBO)⁵⁵;
- c.⁵⁶ the deposits pursuant to letter b that amount to no more than 5000 francs pro investor.

³ Based on details reported pursuant to Paragraph 2 letter b, FINMA calculates the required complementary liquidity and informs the individual banks.⁵⁷

⁴ The complementary liquidity is to be guaranteed per share respectively as at 01 July.

⁵ As an exception, FINMA may request that individual banks disclose in an appropriate manner the amount to be reported pursuant to Paragraph 2 letter b if this appears necessary for the protection of the non-privileged creditors.⁵⁸

⁵⁰ Version in accordance with No. I of the O of 24 March 2004, effective since 1 Jan. 2005 (AS **2004** 2875).

⁵¹ Term in accordance with Appendix No. 7 of the Swiss Financial Market Audit Ordinance of 15 Oct. 2008, with effect since 1 Jan. 2009 (SR **956.161**).

⁵² SR **952.03**

⁵³ Version in accordance with Appendix 7 No. 1 Capital Adequacy Ordinance of 29 Sept. 2006, effective since 1 Jan. 2007 (SR **952.03**).

⁵⁴ Repealed through No. I of the O of 30 Sept 2005, with effect since 24 March 2004 (AS **2004** 2875). Version in accordance with No. I of the O of 30 Sept. 2005, effective since 1 Jan. 2006 (AS **2005** 4849).

⁵⁵ Sr **952.812.32**

⁵⁶ Version in accordance with No. I of the O of 13 May. 2009, effective since 1 June 2009 (AS **2009** 2465).

⁵⁷ Version in accordance with No. I of the O of 13 May. 2009, effective since 1 June 2009 (AS **2009** 2465).

⁵⁸ Version in accordance with No. I of the O of 13 May. 2009, effective since 1 June 2009 (AS **2009** 2465).

Art. 20⁵⁹ Liquidity Statement

¹ FINMA confers with the National Bank for the execution of the provisions on the liquidity.

² The banks establish liquidity statements on a quarterly basis. FINMA specifies a corresponding form.

6.⁶⁰ ...

Art. 21 – 22**7.⁶¹ Annual Financial Statements****Art. 23** Contents

¹ Annual financial statements consist of the balance sheet, the statement of earnings and the appendix. They are supplemented by the annual business report; the latter also includes details of all material events, which occurred subsequent to the balance-sheet date.

² Banks with a balance-sheet total of at least 100 m. Swiss francs and whose on-balance-sheet operations represent a significant part of their business, must prepare in addition a statement of cash flows as part of the annual financial statements.

Art. 23a Consolidated Accounts

¹ Should a bank hold, directly or indirectly, more than half of the voting rights of one or more companies or exercises in another manner a controlling influence thereover (banking group), it is to prepare in addition consolidated financial statements (consolidated accounts). If the controlled companies are immaterial to the objectives of consolidated accounts, consolidated accounts are not to be prepared.

² Consolidated accounts are to be drawn up in accordance with generally accepted accounting principles pertaining to consolidations.

³ Banking groups which have total assets of less than one billion Swiss francs and less than 50 employees are exempted from the obligation to prepare consolidated accounts.

⁴ Consolidated accounts must nevertheless be prepared whenever:

- a. the bank has its own bonds in circulation;
- b. the equity securities of the bank are listed on the stock exchange;
- c. persons representing at least 10 percent of the bank's capital require them;
- d. they are necessary for the most reliable possible assessment of the net assets, financial and profitability situation of the bank;
- e. by holding the majority of voting rights or in another manner, the bank controls one or more banks, and financial or real-estate companies with registered offices abroad.

⁵⁹ Version in accordance with No. I of the O of 24 March 2004, effective since 1 Jan. 2005 (AS **2004** 2875).

⁶⁰ Repealed through Appendix 7 No. 1 Capital Adequacy Ordinance of 29 Sept. 2006, effective since 1 Jan. 2007 (SR **952.03**).

⁶¹ Version in accordance with No. I of the O of 12 December 1994, effective since 1 Feb. 1995 (AS **1995** 253).

⁵ A Swiss banking group, which is included as a sub-group in its parent company's consolidated accounts and subject to the provisions of Paragraph 4 lit. c, need not prepare separate consolidated accounts whenever:

- a. the consolidated accounts of the ultimate parent company are drawn up and audited in accordance with the provisions of this Ordinance or equivalent foreign regulations; and
- b. it makes available to the public the consolidated financial statements of the ultimate parent company like its own annual financial statements.

Art. 23b Interim Accounts

¹ Banks with a balance sheet total of at least 100 m. Swiss francs must draw up semi-annual interim accounts, and banks which are obligated to prepare consolidated accounts, consolidated interim accounts.

² The interim accounts consist of the balance sheet and the profit and loss account.

³ The presentation and valuation principles applicable to interim accounts are to follow the same principles as apply for annual financial statements.

⁴ For banks, which are obligated to prepare, consolidated accounts, Article 23a Paragraph 2 applies by analogy. Article 24 General Accounting Principles

Art. 24 Generally Accepted Accounting Principles

¹ The accounts for single companies are to be prepared according to principles of orderly bookkeeping in such a manner as to permit the most reliable possible assessment of the net assets, financial situation and profitability of the bank.

² Accounts are to be drawn up in particular according to the principles of:

- a. orderly recording of transactions;
- b. completeness of financial statements;
- c. clarity of information;
- d. materiality of information;
- e. prudence;
- f. continuation of the enterprise as a going-concern;
- g. consistency in presentation and valuation;
- h. proper matching of revenues and expenses between accounting periods;
- i. prohibition of set-off of assets and liabilities as well as of income and expenses;
- j. substance over form.

³ Material (Para. 2 lit. d) are considered to be those matters and amounts, which have an effect on the financial statements in such a manner that the recipient of the financial statements could be influenced in his evaluation and decisions concerning the bank.

⁴ The creation of silent reserves is permitted under Article 25a Paragraph 3. A release of silent reserves must be disclosed whenever the reported results are presented in a materially more favorable manner than the actual results as a result of a release of silent reserves.

⁵ Comparative figures are to be given in the annual accounts. In interim accounts, the balance sheet should contain the figures of the prior year's annual accounts and the statement of earnings those of the prior year's interim accounts.

Art. 25 Classification of Balance Sheet

¹ In single-company accounts, the balance sheet must be classified at least as follows:

1. *Assets*
 - 1.1 Liquid assets
 - 1.2 Amounts due arising from money-market paper
 - 1.3 Amounts due from banks
 - 1.4 Amounts due from customers
 - 1.5 Amounts due secured by mortgage
 - 1.6 Securities and precious metals held for trading purposes
 - 1.7 Financial investments
 - 1.8 Participation
 - 1.9 Fixed assets
 - 1.10 Accrued income and prepaid expenses
 - 1.11 Other assets
 - 1.12 Unpaid capital
 - 1.13 Total assets
 - 1.13.1 Total subordinated amounts receivable
 - 1.13.2 Total amounts due from group companies and holders of qualified participations
2. *Liabilities*
 - 2.1 Amounts due arising from money-market paper
 - 2.2 Amounts due to banks
 - 2.3 Amounts due to customers in the form of savings or deposits
 - 2.4 Other amounts due to customers
 - 2.5 Medium-term bonds ("Kassenobligationen")
 - 2.6 Debentures and mortgage bond loans
 - 2.7 Accrued expenses and deferred income
 - 2.8 Other liabilities
 - 2.9 Value adjustments and provisions
 - 2.10 Reserves for general banking risks
 - 2.11 Company capital

- 2.12 General legal reserve
- 2.13 Reserve for own shares
- 2.14 Revaluation reserve
- 2.15 Other reserves
- 2.16 Retained earnings brought forward
- 2.17 Earnings for the year
- Less:*
- 2.18 Accumulated losses brought forward
- 2.19 Loss for the year
- 2.20 Total liabilities
- 2.20.1 Total subordinated amounts payable
- 2.20.2 Total amounts payable to group companies and holders of qualified participations
- 3. *Off balance-sheet transactions*
- 3.1 Contingent liabilities
- 3.2 Irrevocable facilities granted
- 3.3 Contingent liabilities for calls and margin liabilities
- 3.4 Commitment credits
- 3.5 Derivative financial instruments
- 3.6 Fiduciary transactions

² Further positions, which are material to individual banks, are to be disclosed in the balance sheet or appendix. Zero positions may be omitted. Immaterial positions of similar nature may be regrouped.

³ Value adjustments which may be allocated directly to individual assets may be set off directly from the related asset position or may be included in liabilities under the caption "value adjustments and provisions" under Paragraph 1 point 2.9. The method chosen is to be applied consistently and disclosed in the appendix under the accounting principles applied. Value adjustments directly set-off are also to be disclosed in the appendix.

⁴ Separate disclosure of the reserves for general banking risks according to Paragraph 1 point 2.10 may be omitted; in this case, the reserves for general banking risks are to be disclosed in the caption "value adjustments and provisions" under Paragraph 1 point 2.9.

⁵ Own shares held for trading purposes are not to be considered in the appropriation of a special reserve under Paragraph 1 point 2.13.

⁶ The interim accounts are to be classified according to Paragraph 1. Disclosure of amounts due to and from group companies and qualified participants under Paragraph 1 points 1.13.2 and 2.20.2 may be omitted.

Art. 25a Classification of Statement of earnings

¹ In single-company accounts, the statement of earnings must be classified at least as follows:

1. *Income and expense from ordinary banking operations*
 - 1.1 Net profits/losses from interest-differential business:
 - 1.1.1 Interest and discount income
 - 1.1.2 Interest and dividend income from trading portfolios
 - 1.1.3 Interest and dividend income from financial fixed assets
 - 1.1.4 Interest expense
 - 1.1.5 Sub-total net profits/losses from interest-differential business
 - 1.2 Net revenue from commission business and services:
 - 1.2.1 Commission income from lending activities
 - 1.2.2 Commission income from security and investment activities
 - 1.2.3 Commission income from other services rendered
 - 1.2.4 Commission expense
 - 1.2.5 Sub-total net profits/losses from commission business and services
 - 1.3 Profits/losses from dealing
 - 1.4 Other ordinary profits/losses
 - 1.4.1 Profits/losses on sales of financial fixed assets
 - 1.4.2 Income from participation
 - 1.4.3 Profits/losses from real estate
 - 1.4.4 Other ordinary income
 - 1.4.5 Other ordinary expenses
 - 1.4.6 Sub-total other ordinary profits/losses
 - 1.5 Business expenses
 - 1.5.1 Personnel expenses
 - 1.5.2 Operating expenses
 - 1.5.3 Sub-total administrative expenses
 - 1.6 Gross profit
2. *Profit / loss for the year*
 - 2.1 Gross profit
 - 2.2 Depreciation and amortization of fixed assets
 - 2.3 Value adjustments, provisions and losses

- 2.4 Sub-total
- 2.5 Extraordinary income
- 2.6 Extraordinary expenses
- 2.7 Taxes
- 2.8 Profit / loss for the year
- 3. *Appropriation of profit / elimination of losses*
- 3.1 Profit / loss for the year
- 3.2 Retained earnings / accumulated losses brought forward
- 3.3 Retained earnings / accumulated losses
- 3.4 Appropriation of retained earnings:
 - appropriation to general legal reserve
 - appropriation to other reserves
 - distributions in relation to capital
 - other appropriationsElimination of losses:
 - transfer from general legal reserve
 - transfer from other reserves
 - other elimination of losses
- 3.5 Retained earnings / accumulated losses to be carried forward

² Further positions, which are material for individual banks, are to be disclosed in the statement of earnings or appendix. Zero positions may be omitted. Immaterial positions of similar nature may be added together.

³ In the statement of earnings, the creation of silent reserves must be booked in the captions "depreciation and amortization of fixed assets" under Paragraph 1 point 2.2, "value adjustments, provisions and losses" under Paragraph 1 point 2.3 or "extraordinary expenses" under Paragraph 1 point 2.6 and the dissolution of silent reserves in the position "extraordinary income" under Paragraph 1 point 2.5.

⁴ The position "sub-total" under Paragraph 1 position 2.4 is only to be disclosed when the annual profit or loss is materially affected by extraordinary profits or losses.

⁵ The position "interest and dividend income from trading portfolios" under Paragraph 1 point 1.1.2 may be omitted when the cost of refinancing security trading transactions is included in the caption "profit from dealing" as per Paragraph 1 point 1.3 and the interest and dividend income from trading portfolios is also included in this caption.

⁶ Banks, which are required to prepare interim accounts pursuant to Article 23b may limit the presentation of the statement of earnings to the line "gross profit" as per Paragraph 1 point 1.6; in this case and in place of the positions as per Paragraph 1 point 2, the development of risks as

well as provisions and value adjustments must be commented upon. In addition, the statement of earnings contained in interim accounts is to be classified in accordance with Paragraph 1.

Art. 25b Classification of Cash Flow Statement

¹ The cash flow statement must show, through the source and use of funds, the sources of changes in liquidity during the reporting period.

² In single-company accounts, the cash flow statement must be classified at least as follows:

Cash flows from:

- a. operations (inner financing)
- b. capital transactions
- c. transactions with fixed assets
- d. banking operations.

³ Funds generated from banking operations must be analyzed in such a manner that the refinancing is visible.

Art. 25c Contents of Appendix

¹ In single-company accounts, the appendix must contain at least the following information:

1. Commentary relating to the volume of individual business areas and their effect on reporting; number of employees
2. Presentation and valuation policies used for the financial statements, principles underlying the recording of transactions as well as commentary as to the management of risks, in particular how interest-sensitivity risk is dealt with and the use of derivative financial instruments
3. Information concerning the balance sheet
 - 3.1 Summary of collateral for loans and off-balance sheet transactions;
 - 3.2 Analysis of securities and precious metals held for trading purposes, of financial fixed assets and participation;
 - 3.2.1 In addition, all positions held for trading and investment purposes and lent out are to be disclosed
 - 3.2.2 Material receivables and payables contained in other captions and which are valued at market prices (trading portfolios) and when the result is shown under income from dealing are to be additionally broken down
 - 3.3 Company name, registered office, business activity, company capital and percentage of significant shareholdings (shares of voting rights and capital as well as any contractual relationships)
 - 3.4 Summary of fixed assets
 - 3.4.1 In addition, the fire insurance values of real estate and other fixed assets are to be disclosed.

- 3.4.2 To be disclosed also is the aggregate amount of leasing commitments not entered into the balance sheet.
- 3.5 Capitalized establishment expenses, capital increase and organizational costs
- 3.6 Aggregate amount of assets pledged or assigned to secure own liabilities as well as assets subject to reservation of title
- 3.7 Indication of commitments to own welfare and pension funds
- 3.8 Analysis of outstanding debenture bonds
- 3.9 Analysis of value adjustments and provisions as well as reserves for general banking risks and analysis of changes thereof during the reporting year
 - 3.9.1 Value adjustments and provisions are to be analyzed according to: value adjustments and provisions for risks of default (collectibility and country risks), for other business risks, for financial fixed assets, provisions for taxes and deferred taxes as well as other provisions
 - 3.9.2 Value adjustments and provisions for specific risks must be disclosed in the positions pursuant to 3.9.1.
 - 3.9.3 Value adjustments directly set off against assets are to be deducted from the total of value adjustments and provisions.
 - 3.9.4 Material releases and re-utilisations of value adjustments and provisions as well as reserves for general banking risks are to be commented upon and justified.
- 3.10 Composition of the company's capital
 - 3.10.1 Cantonal banks shall disclose the interest and maturity conditions pertaining to their dotation capital in so far as this is provided at agreed fixed rates and an obligation to pay interest thereon exists which is not dependent on the annual profit.
 - 3.10.2 To the extent that they are known or should be known, shareholders or groups of shareholders linked by voting rights, whose participation at the balance sheet date exceeds 5 percent of all voting rights, are to be disclosed by name and percentage of capital held for each person; whenever a limit inferior to 5 percent is laid down by the by-laws, this limit is determinant.
 - 3.10.3 Private bankers may omit the disclosures pursuant to this bullet.
- 3.11 Proof of equity and changes therein prior to appropriation of profits / elimination of loss
- 3.12 Maturity structure of current assets, financial investments and liabilities to third parties
- 3.13 Amounts due to and from affiliated companies as well as to and from governing bodies.
- 3.14 Breakdown of assets and liabilities analyzed according to domestic and foreign origin according to the principle of domicile, in so far as the bank has total assets of at least one billion Swiss francs or more than 50 employees
- 3.15 If foreign business is material and in so far as the bank has total assets of at least one billion Swiss francs or more than 50 employees, total assets are to be further analyzed by country or groups of countries

- 3.15.1 The bank may itself determine the degree of detail of the analysis.
- 3.15.2 The percentage size of each country or group of countries is to be added next to their absolute amount.
- 3.16 Breakdown of individual assets and liability captions according to the most significant currencies for the bank, in so far as the bank has total assets of at least one billion Swiss francs or more than 50 employees
 - 3.16.1 The bank may itself determine the degree of detail of the analysis
- 4. Information concerning off-balance sheet transactions
 - 4.1 Contingent liabilities analyzed according to guarantees to secure credits and similar, to performance guarantees and similar, to irrevocable commitments and other contingent liabilities
 - 4.2 Commitment credits analyzed according to commitments arising from deferred payments, commitments arising from acceptances and other commitments arising from guarantee credits.
 - 4.3 Derivative financial instruments open at year end indicating the positive and negative replacement values and contract volumes analyzed according to interest-rate instruments, foreign currencies, precious metals, equity securities/indices and others
 - 4.4 Fiduciary transactions analyzed according to fiduciary deposits with third-party banks, fiduciary deposits with group banks and affiliated banks and fiduciary loans and other fiduciary financial transactions
- 5. Information concerning the statement of earnings
 - 5.1 Details of significant income from refinancing in the position "interest and discount income" pursuant to Article 25a Paragraph 1 point 1.1.1, in so far as the corresponding refinancing costs have been set off against the income from dealing according to Article 25a Paragraph 5
 - 5.2 An appropriate analysis of income from dealing split by business area
 - 5.3 Breakdown of the caption "personnel expenses" into salaries, social costs and other personnel expenses
 - 5.4 Breakdown of the caption "operating expenses" into expenses for office space, expenses for EDP, equipment, furniture, motor vehicles and other installations and other business expenses
 - 5.5 Commentaries on significant losses, extraordinary income and expenses as well as on material releases of silent reserves, reserves for general banking risks and releases of value adjustments and provisions no longer necessary
 - 5.6 Revaluations of fixed assets up to the limit of purchase cost (Art. 665 - 665a CO⁶²) are to be justified

⁶² SR 220

5.7 Banks active abroad with more than 50 employees or with a total balance sheet of more than 1 billion Swiss francs must present income and expenses from ordinary banking transactions in accordance with Article 25a Paragraph 1 point 1 analyzed between domestic and foreign according to the principle of permanent establishments.

² Zero positions may be omitted and immaterial positions of similar nature may be added together.

Art. 25d Principles Underlying Consolidated Financial Statements

¹ The consolidated financial statements must give a true and fair view of the net asset, financial situation and profitability of the banking group. Orderly bookkeeping is to follow particularly the principles set out in Article 24 Paragraphs 2 and 3.

² Article 24 Paragraph 5 applies as regards prior year's comparative figures.

Art. 25e Principles of Consolidation

¹ Banks, finance companies and real estate companies with domicile in Switzerland or abroad are to be consolidated according to the method of global consolidation whenever control is exercised by virtue of a shareholding of more than 50% of voting rights or controlled in another manner.

² The consolidation of capital is to be performed using the purchase method.

³ Minority interests in companies named in Paragraph 1 as well as all other participation over which the bank can exercise a significant influence are, in principle, to be consolidated using the equity method. They may, however, be accounted for according to the principle of partial consolidation whenever the prescriptions regarding capital adequacy provide therefore. A significant influence is presumed to exist in the case of a participation of 20 percent or more in the voting capital.

⁴ Insurance companies are in principle to be dealt with in accordance with Paragraph 3; in case of a majority holding or control in another manner, they can be accounted for by full consolidation. In both cases, individual positions of the financial statements, which are impacted in a significant manner, are to be disclosed in the appendix.

⁵ Shareholdings of 50% in jointly held enterprises may be included in the consolidated accounts using the partial consolidation method or the equity method.

⁶ Temporarily held participation are not to be consolidated. Non-consolidated participation are to be included in the balance sheet at their acquisition cost less economically necessary depreciation.

Art. 25f Classification of Consolidated Balance Sheet

¹ Unless otherwise provided for in the following paragraphs, the consolidated balance sheet is to be classified according to Article 25 Paragraph 1.

² The caption "intangible assets" is to be inserted prior to the position "other assets" pursuant to Article 25 Paragraph 1 point 1.11.

³ The position "reserves for general banking risks" pursuant to Article 25 Paragraph 1 position 2.10 must be disclosed.

⁴ Instead of the positions "general legal reserve", "reserve for own shares", "revaluation reserve", "other reserves", "retained earnings brought forward", "profit for the year", "accumulated losses brought forward" and "loss for the year" as per Article 25 Paragraph 1 positions 2.12 - 2.19, the positions "capital reserves", "income reserves", "minority interests in capital and reserves", "revaluation reserves" and "consolidated profit" as well as "less consolidated loss" are to be utilized. The captions "consolidated profit" or "loss" are to indicate in sub-captions "thereof minority interest in consolidated profit" and "thereof minority interest in consolidated loss".

⁵ Article 25 Paragraph 2, 3 and 6 are to be applied as well.

Art. 25g Classification of Consolidated Statement of Earnings

¹ Unless otherwise provided for in the following paragraphs, the statement of earnings is to be classified according to Article 25a Paragraph 1 points 1 and 2.

² The caption "revenue from participation" as per Article 25a Paragraph 1 point 1.4.2 is to be re-analyzed and should disclose separately the aggregate amount of income from participation accounted for according to the equity method and from other non-consolidated participation.

³ The position "profit for the year" as per Article 25a Paragraph 1 position 2.8 is to be shown as consolidated profit with separate disclosure of the portion of minority interest in the profit.

⁴ Article 25a Paragraph 2 as well as 4 to 6 are to be applied as well.

Art. 25h Classification of Consolidated Statement of Cash Flows

¹ In the consolidated accounts, the cash flow statement is to be classified according to Article 25b Paragraph 2 and 3.

² The positions are to be added to by analogy according to the particularities of the consolidated accounts. Article 25i Appendix to Consolidated Financial Statements

Art. 25i Appendix to the Consolidated Financial Statement

¹ Unless otherwise provided for in the following paragraphs, the appendix is to be classified according to Article 25c Paragraph 1.

² The disclosures pursuant to Article 25c Paragraph 1 point 2 are to include details of the principles underlying the preparation of the consolidated accounts.

³ In the caption pursuant to Article 25c Paragraph 1 point 3.3, the details concerning participation are to show separately the participation accounted for according to the full consolidation method, partial consolidation method, according to the equity method and other non-consolidated participation.

⁴ In the caption pursuant to Article 25c Paragraph 1 point 3.4, participation accounted for according to the equity method are to be disclosed separately. In addition, capitalized goodwill is to be shown as a separate item; material changes in goodwill are to be commented upon.

⁵ The proof of equity and changes therein pursuant to Article 25c Paragraph 1 point 3.11 is to be adapted accordingly in the consolidated balance sheet within the meaning of Article 25f Paragraph 4.

⁶ The disclosures pursuant to Article 25c Paragraph 1 point 3.10 are to be omitted.

Art. 25k Impact of Consolidated Accounts on Single-Company Accounts

¹ If the bank is obligated to prepare consolidated financial statements, it is exempted from presenting a statement of cash flows in the single-company accounts pursuant to Article 25b and from positions 3.1, 3.2, 3.3, 3.4, 3.8, 3.12, 3.14, 3.15, 3.16, 4.1, 4.2, 4.3, 5.1, 5.3, 5.4 and 5.7 of the appendix pursuant to Article 25c Paragraph 1.

² The duty to prepare consolidated interim accounts further exempts the bank from the need to prepare single-company interim accounts.

Art. 26 Manner of Publication

¹ The publication of annual financial statements and annual reports must be made in printed form. The business reports are to be made available to the press and any person requesting them.

² Interim financial statements are to be published in the Swiss Official Gazette or in a Swiss newspaper; they may be published also in common by a banking association in the form of a printed summarized table, which is to be published as the other interim accounts.

³ Private bankers which solicit monies from the public as well as banks with a balance sheet total of less than 5 m. Swiss francs may limit themselves to making their business reports, or whenever applicable, interim financial statements available for viewing by the public at their cash counters.

⁴ Three copies of the annual report and interim financial statements are to be sent to both FINMA and the Swiss National Bank.

Art. 27 Deadlines for Publication

¹ Annual financial statements are to be published or made available for viewing by the public within four months, and interim financial statements within two months of the end of the business year in accordance with Article 26 or must be made available for inspection by the general public.

² If a bank cannot comply with the deadlines set out in Paragraph 1, it must file for an extension with FINMA on a timely basis. If the circumstances justify it, FINMA will consent to the extension.

Art. 28 Guidelines of FINMA

¹ The Guidelines of FINMA are to be followed in the preparation and classification of annual and interim financial statements.

² In its Guidelines, FINMA may consent to financial statement reporting systems which deviate from the above provisions if these are in conformity with recognized international standards which guarantee at least equivalent information for the public.⁶³

⁶³ Introduced by No. I of the O of 8 Dec. 1997 (AS 1998 16).

8.⁶⁴ ...

Art. 29

9.⁶⁵ ...

Art. 30

10.⁶⁶ ...

Art. 31 and 32

11. ...⁶⁷

Art. 33

12. ...

Art. 34⁶⁸

Art. 35 – 40⁶⁹

Art. 40a⁷⁰

Art. 41 and 42⁷¹

13. ...

Art. 43 - 47⁷²

Art. 47a⁷³

Art. 48 and 49⁷⁴

⁶⁴ Repealed through No. I of the O of 12 Dec. 1994 (AS **1995 253**).

⁶⁵ Repealed through Appendix No. 7 of the Swiss Financial Market Audit Ordinance of 15 Oct. 2008, with effect since 1 Jan. 2009 (SR **956.161**).

⁶⁶ Repealed through No. I of the O of 30 Oct. 1996 (AS **1996 3094**).

⁶⁷ Repealed through No. I of the O of 14 Oct. 2009 (AS **1996 3094**) with effect since 1 Jan. 2010 (AS **2009 5279**).

⁶⁸ Repealed through No. I of the O of 12 Dec. 1994 (AS **1995 253**).

⁶⁹ Repealed through Appendix No. 7 of the Swiss Financial Market Audit Ordinance of 15 Oct. 2008, with effect since 1 Jan. 2009 (SR **956.161**).

⁷⁰ Introduced by Art. 57 No. I of the Stock Exchange Ordinance of 2 Dec. 1996 (SR **954.11**). Repealed through Appendix No. 7 of the Swiss Financial Market Audit Ordinance of 15 Oct. 2008, with effect since 1 Jan. 2009 (SR **956.161**).

⁷¹ Repealed through Appendix No. 7 of the Swiss Financial Market Audit Ordinance of 15 Oct. 2008, with effect since 1 Jan. 2009 (SR **956.161**).

⁷² Repealed through Appendix No. 7 of the Swiss Financial Market Audit Ordinance of 15 Oct. 2008, with effect since 1 Jan. 2009 (SR **956.161**).

⁷³ Introduced by No. I of the O of 14 Jan. 1976 (AS **1976 91**). Repealed through Appendix No. 7 of the Swiss Financial Market Audit Ordinance of 15 Oct. 2008, with effect since 1 Jan. 2009 (SR **956.161**).

14. ...**Art. 50**⁷⁵**Art. 50a**⁷⁶**Art. 51**⁷⁷**Art. 51a - Art. 51b**⁷⁸**Art. 52 - 54**⁷⁹**15.**⁸⁰ **Deposit Protection****Art. 55** Duty to Notify

¹ FINMA notifies the bearer of the deposit guarantee of the decree of protective measures pursuant to Article 26 Paragraph 1 letter e-h of the Act or the opening of bankruptcy proceedings pursuant to Article 33 of the Act and informs him of the eventual reported details pursuant to Article 19 Paragraph 2 letters b and c.⁸¹

² It may refrain from notification as long as, within the framework of a reorganization,:

- a. justified expectations exist that decreed protective measures will again be appealed, or
- b.⁸² the privileged claims pursuant to Article 37h of the Act and Article 23 BBO are not affected by the decreed protective measures.

Art. 56 Deadline

¹ The deadline for the disbursement of the guaranteed deposits pursuant to Article 37h of the Act amounts to three months.

² It begins with the notification of the bearers of the deposit guarantees.

³ It does not begin or it will be discontinued so long as the decree pursuant to Article 55 Paragraph 1 is not enforceable.

⁷⁴ Repealed through Appendix No. 7 of the Swiss Financial Market Audit Ordinance of 15 Oct. 2008, with effect since 1 Jan. 2009 (SR **956.161**).

⁷⁵ Repealed through Appendix No. 7 of the Swiss Financial Market Audit Ordinance of 15 Oct. 2008, with effect since 1 Jan. 2009 (SR **956.161**).

⁷⁶ Introduced by No. I of the O of 14 Jan. 1976 (AS **1976 91**). Repealed through Appendix No. 7 of the Swiss Financial Market Audit Ordinance of 15 Oct. 2008, with effect since 1 Jan. 2009 (SR **956.161**).

⁷⁷ Repealed through Appendix No. 7 of the Swiss Financial Market Audit Ordinance of 15 Oct. 2008, with effect since 1 Jan. 2009 (SR **956.161**).

⁷⁸ Introduced by No. I of the O of 14 Jan. 1976 (AS **1976 91**). Repealed through Appendix No. 7 of the Swiss Financial Market Audit Ordinance of 15 Oct. 2008, with effect since 1 Jan. 2009 (SR **956.161**).

⁷⁹ Repealed through Appendix No. 7 of the Swiss Financial Market Audit Ordinance of 15 Oct. 2008, with effect since 1 Jan. 2009 (SR **956.161**).

⁸⁰ Repealed through No. I of the O of 31 March 2004 (AS **2004 2777**). Version in accordance with No. I of the O of 30 Sept. 2005, effective since 1 Jan. 2006 (AS **2004 4849**).

⁸¹ Version in accordance with No. I of the O of 13 March 2009, effective since 1 June 2009 (AS **2009 2465**).

⁸² Version in accordance with No. I of the O of 13 March 2009, effective since 1 June 2009 (AS **2009 2465**).

Art. 57 Disbursement Plan

¹ The bankruptcy liquidator, reorganization or determination appointees assigned by FINMA establishes a disbursement plan with the claims evident from the books that are deemed to be privileged deposits pursuant to Article 37*h* of the Act and Article 23 BBO⁸³ and which are not met according to Article 37*a* of the Act.

² The appointee is not obligated to audit claims to be included in the disbursement plan on the basis of the books. Obvious unjustified claims are not to be included in the disbursement plan.

³ The bearer of the deposit guarantee can view the disbursement plan with the appointee.

Art. 58 Disbursement of the Guaranteed Deposits

¹ The bearer of the deposit security makes available to the appointee the necessary amount for the disbursement. The appointee disburses the privileged deposit.⁸⁴

² If this amount is not sufficient for the disbursement of all claims included in the disbursement, then the disbursement occurs pro-rata.

Art. 59⁸⁵ Rights of the Depositor

After expiration of the deadline pursuant to Article 56, the depositor has a right to disbursement of their guaranteed deposits pursuant to Article 57 of the Act from the bearer of the deposit guarantee.

Art.60 and 61⁸⁶

16. Final Provisions⁸⁷

Art. 62⁸⁸

Art. 62^a⁸⁹ Transitional Provisions of the Amendments of 14 March 2008

¹ Existing currency traders who are now subject to the Act as a result of the amendments to this Ordinance must register with the supervisory authority within three months of the effective date.

² They must satisfy the requirements of the Act within one year of the effective date and submit a request for authorization. They are allowed to carry on their activities until the decision on the authorization.

³ In particular cases the supervisory authority can extend the deadlines within this Article.

⁸³ SR 952.812.32

⁸⁴ Version in accordance with No. I of the O of 13 March 2009, effective since 1 June 2009 (AS 2009 2465).

⁸⁵ Version in accordance with No. I of the O of 13 March 2009, effective since 1 June 2009 (AS 2009 2465).

⁸⁶ Repealed through No. I of the O of 31 March 2004 (AS 2004 2777), with effect since 1 July 2004.

⁸⁷ Version in accordance with No. I of the O of 30 Sept. 2005, effective since 1 Jan. 2006 (AS 2004 4849).

⁸⁸ Repealed through Appendix No. 7 of the Swiss Financial Market Audit Ordinance of 15 Oct. 2008, with effect since 1 Jan. 2009 (SR 956.161).

⁸⁹ Introduced by No. I of the O of 14 March 2008 (AS 2008 1199).

Art. 62b⁹⁰ Transitional provisions of the amendments from 14 October 2009

¹ Associations, foundations and cooperatives which, as a result of these changes, now hold public deposits falling under the ban of Article 1 Paragraph 2 of the Law must pay back the deposits within two years following the effective date.

² In justified cases, the supervisory authority may extend this deadline.

Art. 63 Entry into Force⁹¹

¹ This Ordinance enters into force on 1 July 1972.

² ...⁹²

FINAL PROVISIONS OF THE AMENDMENT OF AUGUST 23, 1989⁹³

FINAL PROVISIONS OF THE AMENDMENT OF DECEMBER 4, 1989⁹⁴

FINAL PROVISIONS OF THE AMENDMENT OF DECEMBER 12, 1994⁹⁵

FINAL PROVISIONS OF THE AMENDMENT OF NOVEMBER 29, 1995⁹⁶

FINAL PROVISIONS OF THE AMENDMENT OF DECEMBER 8, 1997⁹⁷

⁹⁰ Version in accordance with No. I of the O of 14 Oct. 2009, effective since 1 January 2010 (AS **2009** 5279).

⁹¹ Version in accordance with No. I of the O of 30 Sept. 2005, effective since 1 Jan. 2006 (AS **2004** 4849).

⁹² Repealed through No. I of the O of 30 Sept. 2005, with effect since 1 Jan. 2006 (AS **2005** 4849).

⁹³ AS **1989** 1772. Repealed through No. I of the O of 30 Sept. 2005, with effect since 1 Jan. 2006 (AS **2005** 4849).

⁹⁴ AS **1989** 2542. Repealed through No. I of the O of 30 Sept. 2005, with effect since 1 Jan. 2006 (AS **2005** 4849).

⁹⁵ AS **1995** 253. Repealed through No. I of the O of 30 Sept. 2005, with effect since 1 Jan. 2006 (AS **2005** 4849).

⁹⁶ AS **1996** 45. Repealed through No. I of the O of 30 Sept. 2005, with effect since 1 Jan. 2006 (AS **2005** 4849).

⁹⁷ AS **1998** 16. Repealed through No. I of the O of 30 Sept. 2005, with effect since 1 Jan. 2006 (AS **2005** 4849).



BO (952.02)

*Appendix*⁹⁸

⁹⁸ Repealed through No. II of the O of 24 March 2004, with effect since 1 Jan. 2005 (AS **2004** 2875).



BO (952.02)

Appendix II⁹⁹

⁹⁹ Repealed through No. I of the O of 12 Dec. 1994 (AS 1995 253).

Key word	Banking Act (Art.)	Banking Ordinance (Art.)	Key word	Banking Act (Art.)	Banking Ordinance (Art.)
A			E		
Acquisition costs		25e	Economic unit	3c	12, 16
Advertising	1, 16, 49	3	Eligible capital	4, 4 ^{bis}	
Annual report / financial statement	6, 46	23, 23b, 24, 26, 27, 28	Equity method		25e
Appendix		23, 25, 25a, 25c, 25h, 25k	F		
Asset managers	1	3, 3a, 11	Fiduciary	16	6, 25c
Audit / auditors / auditing company	18, 23, 26, 39, 47	4, 9, 14a, 18	Financial group	3 ^{bis}	
B			- definition	3c	
Balance sheet		23, 25, 25f	- supervision	3d	
Bank licence			- management	3f	
- authorization	1, 1 ^{bis} , 3	6, 62a	- organization	3f	
- foreign controlled banks	3 ^{bis} , 3 ^{ter}		Foreign banks	2, 3 ^{bis}	
- withdrawal	23, 33		Foreigner	3 ^{bis}	
Bankruptcy	37f, 37g		Full consolidation		25e
Business agents	1		G		
Business operation	3		Generally accepted accounting principles		23a, 24, 25, 25d
Business plan		6b	Group companies		13, 14, 25
C			I		
Cantonal bank	3a, 53	25c	Imprisonment	46, 47	
Capital adequacy	3g, 4, 25	4, 14a, 25e	Information transmission	4 ^{quinquies}	
Commercial Registry	3, 23 ^{quinquies}	6	Insolvency	25	
Company name	1, 3 ^{bis} , 15	25c	- Protective measures	25, 26, 27, 37	
Composition of creditors	25		- Restructuring procedures	25, 28, 29, 39, 31, 32, 37g	
Consolidated accounts / financial statement		23a, 23b, 25d	- Liquidation	25, 30, 31, 33, 34, 35, 36, 37, 37d, 37e, 37f, 37g, 37h	
Consolidation of capital		25e	Interim accounts		23b, 24, 25a, 25k
Contingent liabilities		25c	Interim financial statement	6, 46	26, 27
Controlling influence	3 ^{bis}	23a	Internal control	4 ^{quinquies}	9, 14a
Custody Deposits	37d		J		
D			Jointly held enterprises		25e
Deposits	1, 15, 16, 37a ^{bis} , 37b, 37d	2a, 3a, 11, 17, 19, 33	L		
Deposit protection	37h	55	Legal cession	37i	
- Deadline		56	Lending limits	4 ^{bis}	
- Disbursement		57, 58	Liquid assets	37a ^{bis}	16, 16a, 18, 19
Depreciation of money	37c		Liquidity	3g, 4, 25	14a, 18, 19, 20
Direction	3				
Disclosure	3				
Distribution table	37e				

Key word	Banking Act (Art.)	Banking Ordinance (Art.)	Key word	Banking Act (Art.)	Banking Ordinance (Art.)
M					
Management	3		Segregation of duties	3	9
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