



AUDIT FINANCIAL SERVICES

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

(Foreign Banks Ordinance-FINMA, FBO-FINMA)

SR 952.111

(Status as of 01 January 2009)

Related German Version: Verordnung der Eidgenössischen Finanzmarktaufsicht vom 21. Oktober 1996 über die ausländischen Banken in der Schweiz (Auslandbankenverordnung-FINMA, ABV-FINMA)

Related French Version: Ordonnance de l'Autorité fédérale de surveillance du octobre 1996 sur les banques étrangères en Suisse (Ordonnance de la FINMA sur les banques étrangères, OBE-FINMA)

Unofficial translation issued in April 2009

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

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

of 21 October 1996 (Status as of 01 January 2009)

The Swiss Financial Market Supervisory Authority (FINMA),²

based on Article 2 Paragraph 2 of the Bank Act of 8 November 1934³ (BankA),⁴

decrees:

1st Section: General Provisions

Art. 1 Foreign Bank

¹ A foreign bank is deemed to be each corporation organized according to foreign law, which:

- a. maintains a bank license in a foreign country;
- b. in the company name, purpose of business or in the correspondence applies the term "Bank" or "Banker"; or
- c. performs banking activities within the sense of Art. 2a of the Bank Ordinance of 17 May 1972⁵ (BankO).

² If the foreign bank is factually managed in Switzerland or if all or a majority of its business activities are undertaken in or from within Switzerland, then the bank must be organized according to Swiss law and is subject to the regulations governing domestic banks.

¹ Version in accordance with no. I 2 of FINMA Ordinance of 20 Nov. 2008 on the amendment of Authorities Ordinance to the Swiss Financial Market Supervisory Authority Act, effective as of 1 Jan. 2009 (AS **2008** 5613).

² Version in accordance with no. I 2 of FINMA Ordinance of 20 Nov. 2008 on the amendment of Authorities Ordinance to the Swiss Financial Market Supervisory Authority Act, effective as of 1 Jan. 2009 (AS **2008** 5613).

³ SR **952.0**

⁴ Version in accordance with no. I 2 of FINMA Ordinance of 20 Nov. 2008 on the amendment of Authorities Ordinance to the Swiss Financial Market Supervisory Authority Act, effective as of 1 Jan. 2009 (AS **2008** 5613).

⁵ SR **952.02**

Art. 2 Licensing Obligation

¹ A foreign bank requires an authorization of FINMA⁶ if it employs persons in Switzerland who on a permanent and commercial basis in or from within Switzerland:

- a. enter into transactions, maintain customer accounts or legally bind the bank (branch);
- b. are active in a manner other than mentioned under lit. a, namely if they forward client orders to the foreign bank or if they represent the foreign bank for marketing or other purposes (representative office).

² The Swiss branch of a foreign bank shall obtain a license from FINMA if it intends to set up an office which is not entered into the Commercial Register (agency).

³ If FINMA receives evidence of any other cross-border activities, it can inform the responsible foreign supervisory authorities under the requirements of Art. 23^{sexies} of the Banking Law.

Art. 3 Applicable Law

¹ Insofar as this Ordinance does not otherwise specify, the BankA - with the exception of the provisions on the capital adequacy (Art. 4) and the risk distribution of risks (Art. 4^{bis}) - as well as the BankO shall apply.⁷

² FINMA can require that foreign banks fulfill all legal provisions for Swiss banks, if the legal provisions at the location of headquarters of the foreign bank do not grant Swiss banks similar relief and if an international treaty does not exist.

2nd Section: Bank Branches**Art. 4** Licensing Requirements

¹ FINMA will grant the foreign bank a license to open a branch if:

- a. the foreign bank is appropriately organized and possesses adequate qualified staff and financial resources to operate a branch in Switzerland;
- b. the foreign bank is subject to adequate supervision, which includes the branch;
- c. the responsible foreign supervisory authorities make no objection to the establishment of a branch;
- d. the responsible foreign supervisory authorities state that they will immediately inform FINMA in the event of circumstances arising that may seriously jeopardize the interests of bank creditors;
- e. the responsible foreign supervisory authorities are able to provide FINMA with official support;
- f. the conditions governing the granting of a license, as stated in Art. 3^{bis} Paragraph 1 of the Banking law are met;
- g. the branch meets the conditions for the granting of a license within the meaning of Art. 3, Paragraph 2 letters c and d of the BankA and possesses a regulation that precisely defines its business activities and provides an adequate organization; and
- h. the foreign bank provides evidence that the company name of the branch qualifies for

⁶ Version in accordance with no. 12 of FINMA Ordinance of 20 Nov. 2008 on the amendment of Authorities Ordinance to the Swiss Financial Market Supervisory Authority Act, effective as of 1 Jan. 2009 (AS **2008** 5613). This change has been accounted for in the entire ordinance.

⁷ SR **952.02**

entry into the Commercial Register.

² If the foreign bank is part of a group which is active in the financial business sector, FINMA can add to the licensing requirements that the group is subject to an appropriate consolidated supervision by foreign supervisory authorities.

Art. 5 Entry into the Commercial Register

The foreign bank can only enroll the branch for registration into the Commercial Register when it has obtained a license from FINMA to set up a branch.

Art. 6 Multiple Branches

¹ If a foreign bank sets up more than one branch in Switzerland, then it must:

- a. obtain a license for every branch;
- b. designate one of the them as the branch responsible for all communication with FINMA.

² These branches must fulfill the requirements of the BankA, the BankO⁸ and this Ordinance as a group. A single audit report⁹ is sufficient.

Art. 7 Securities

FINMA may require the branch to lodge security, if necessary, for the protection of creditors.

Art. 8 Preparation of Annual and Interim Financial Statements of the Branch

¹ The branch may prepare its annual and interim financial statements according to the requirements which apply to the foreign bank if these requirements satisfy international accounting standards.

² Separate disclosure is required for amounts receivable and payable:

- a. with the foreign bank;
- b. with corporations that are active in the financial sector or real estate companies, if:
 1. the foreign bank together with these entities represent an economical entity; or
 2. it must be assumed, that the foreign bank is legally required or factually forced to financially support such a company.

³ Paragraph 2 also shall also be applicable to off-balance-sheet transactions.

⁴ The branch shall submit three copies of its annual and interim financial statements to FINMA. A publication is not required.

Art. 9 Publication of the Annual Report of the Foreign Bank

¹ Within four months after the year-end, the branch must make the foreign bank's annual report available to the press and to any person requesting it and provides FINMA with one copy.

² The annual report of the foreign bank must be written in one of Switzerland's official languages or in English.

Art. 10 Audit Report

⁸ SR **952.02**

⁹ Version in accordance with no. 12 of FINMA Ordinance of 20 Nov. 2008 on the amendment of Authorities Ordinance to the Swiss Financial Market Supervisory Authority Act, effective as of 1 Jan. 2009 (AS **2009** 5613). This change has been accounted for in the entire ordinance.

¹ The audit company¹⁰ shall submit their report in one of Switzerland's official languages to the responsible manager of the branch and to FINMA.

² The branch transmits the audit report to the unit of the foreign bank that is responsible for the activities of the branch.

Art. 11 Closing of a Branch

The foreign bank shall obtain FINMA's approval prior to closing down a branch.

3rd Section: Agencies

Art. 12 Licensing Requirements

¹ FINMA will grant the Swiss branch of a foreign bank a license to open an agency, if:

- a. the conditions governing the granting of a license, as stated in Article 3^{bis}, Paragraph 1 of the BankA are met;
- b. the agency possesses a regulation that precisely defines its business activities and provides for an adequate organization.

² The branch must apply for a license for the opening of each further agency.

Art. 13 Closing of an Agency

The branch shall report the closing of an agency to FINMA.

4th Section: Representative Offices

Art. 14 Licensing Requirements

FINMA will grant the foreign bank the license to open a representative office, if:

- a. the foreign bank is subject to appropriate supervision;
- b. the foreign supervisory authorities raise no objection to the establishment of a representative office;
- c. reciprocity is guaranteed according to Art. 5 Paragraph 2 of the BankO¹¹, international undertakings to the contrary remain reserved; and
- d. the persons charged with the management of the representative office assure a proper conduct of the representation's activity.

Art. 15 Multiple Representative Offices

If a foreign bank sets up more than one representative office in Switzerland, then it must:

- a. obtain a license for each one;
- b. designate one of them as the office responsible for all communication with FINMA.

Art. 16 Annual Report

¹⁰ Version in accordance with no. I 2 of FINMA Ordinance of 20 Nov. 2008 on the amendment of Authorities Ordinance to the Swiss Financial Market Supervisory Authority Act, effective as of 1 Jan. 2009 (AS **2009** 5613).

¹¹ SR **952.02**

The representative office shall submit to FINMA a copy of the annual report of the foreign bank being represented within four months after the year-end.

Art. 17 Closing a Representative Office

The foreign bank shall report the closing of a representative office to FINMA.

5th Section: Final Provisions

Art. 18 Repeal of Previous Law

The Ordinance on Foreign Banks of 22 March 1984¹² is repealed.

Art. 19 Effective Date

¹ The Ordinance shall enter into effect on 1 January 1997.

² The annual financial statements may be prepared according to this Ordinance for the first time as of 31 December 1996.

¹² [AS 1984 604]

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