



AUDIT FINANCIAL SERVICES

# Swiss Federal Act on Banks and Savings Banks

(Bank Act, BankA)

## SR **952.0**

(Status as of 1 January 2009)

Related German Version: Bundesgesetz vom 8. November 1934 über die Banken und Sparkassen (Bankengesetz, BankG)

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# FEDERAL ACT ON BANKS AND SAVINGS BANKS

(Bank Act; BankA)

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*The Federal Assembly of the Swiss Confederation,*

based upon Articles 34<sup>ter</sup>, 64 and 64<sup>bis</sup> of the Federal Constitution, after examination of the message of the Federal Council of 2 February 1934,

*resolves:*

## Section I: Scope of the Act

### Art. 1

<sup>1</sup> The banks, private bankers (individual proprietorships, general and limited partnerships) and savings banks, hereinafter referred to as banks, are subject to this Act.

<sup>2</sup> Natural persons and legal entities that are not subject to this law may not accept deposits from the public on a professional basis. The Federal Council may provide for exceptions so long as the protection of the depositors is ensured. The issue of bonds is not deemed to be the acceptance of deposits on a professional basis.

<sup>3</sup> The present Act shall not apply to:

- a. stock exchange agents and stock exchange firms trading in securities and transactions which are directly related thereto, provided they do not engage in regular banking business;
- b. asset managers, notaries and business agents who simply manage their customers' funds and who do not engage in regular banking business.

<sup>4</sup> The term "bank" or "banker", alone or in combination with other words, may only be used in the company name, in the designation of the business purpose and in the business advertising, in the case of institutes that have obtained a license from the Swiss Financial Market Supervisory Authority (FINMA). Art. 2 Para. 3 shall take precedence.

<sup>5</sup> The Swiss National Bank and the central mortgage institutions are governed by the provisions of the Act to the extent expressly stated.

### Art. 1<sup>bis</sup>

<sup>1</sup> FINMA can subordinate operators of systems pursuant to Article 19 of the Swiss National Bank Act of 3 October 2003 to the present Act and grant them a banking license.

<sup>2</sup> It shall grant a banking license only on condition that the authorization conditions of this Act as well the extended duties of disclosure and minimum requirements set by the National Bank are observed on an on-going basis.

<sup>3</sup> It may exempt a system operator from certain provisions of the Act and order the easing or tightening of provisions in order to take account of his particular business activity and risk situation.

## **Art. 2**

<sup>1</sup> The provisions of this Act apply correspondingly to the:

- a. established branches;
- b. appointed deputies,

of foreign banks in Switzerland.

<sup>2</sup> FINMA shall issue the necessary directives. It may, in particular, require that these entities are adequately capitalized and that guarantees are provided.

<sup>3</sup> The Federal Council is empowered, on the basis of reciprocal recognition of equivalent rules over banking activities and of equivalent measures in the area of banking supervision, to enter into treaties with states which stipulate that banks from the contracting states may open a branch, agency or representation without the authorization of FINMA.

## **Section II: Authorization to Engage in Banking Business**

### **Art. 3**

<sup>1</sup> Banks are required to obtain authorization from FINMA prior to engaging in business operations; they may not be entered into the Commercial Registry before such authorization has been granted.

<sup>2</sup> The authorization will be granted if:

- a. the articles of association, by-laws and business rules of the bank provide for a clear definition of the scope of business and establish an adequate organization corresponding to the proposed business activities; where the scope or the importance of the business activities is significant, the bank must create separate bodies for the management on the one hand and for the direction, supervision and control on the other. The authorities of these bodies must be segregated in a manner so as to ensure the effective supervision of the bank's management;
- b. the bank discloses the minimal fully paid-in share capital as determined by the Federal Council;
- c. the persons charged with the administration and management of the bank enjoy a good reputation and thereby assure the proper conduct of the business operations;
- c<sup>bis</sup> natural persons or legal entities, which directly or indirectly participate in at least 10 percent of the capital or voting rights of a bank or otherwise whose business activities are such that they may influence the bank in a significant manner (qualified participation),

guarantee that their influence will not have a negative impact on a prudent and solid business activity;

- d. the persons entrusted with the management of the bank have their domicile in a place where they may exercise the management in a factual and responsible manner.

<sup>3</sup>The bank shall file its articles of incorporation, by-laws, and business rules with FINMA and notify it of all subsequent amendments concerning the business purpose, the scope of business, the capital or the internal organization of the bank. Such amendments may not be entered into the Commercial Registry unless they have been approved by FINMA.

<sup>4</sup> *repealed*

<sup>5</sup> Each natural person or legal entity shall notify FINMA prior to acquiring or selling directly or indirectly a qualified participation as defined in Paragraph 2 lit. c<sup>bis</sup> in a bank organized pursuant to Swiss law. This duty to notify also exists whenever a qualified participation is increased or decreased in such a manner that the threshold of 20, 33 or 50 percent of the capital or voting rights is reached or exceeded or declines thereunder.

<sup>6</sup>The bank shall make notification of those persons who fall under the requirements of Paragraph 5 as soon as it has knowledge thereof, at least however once a year.

<sup>7</sup>Banks organized pursuant to Swiss law shall notify FINMA before they establish a subsidiary, branch, agency or representation abroad.

### **Art. 3a**

A bank which is constituted in the form of an establishment or limited-liability company on the basis of a Cantonal legal ordinance shall be deemed to be a Cantonal bank. The Canton must hold a participation of more than one third of the capital and possess more than one third of the voting rights. The Canton may guarantee, either in full or in part, for the liabilities of the bank.

### **Art. 3b**

If a bank is part of a financial group or a financial conglomerate, then FINMA may make its authorization dependent on the existence of an adequate consolidate supervision by a financial market supervisor.

### **Art. 3c**

<sup>1</sup> Two or more companies are deemed to be a financial group if:

- a. at least one is active as a bank or securities dealer;
- b. they are active primarily in the financial area;
- c. and they form an economic unit or, due to other circumstance, it is to be accepted that one or more of the companies subject to supervision are legally obligated or factually compelled to assist group companies.

<sup>2</sup> A financial group in accordance with Paragraph 1 is deemed to be a predominant banking or securities trading financial conglomerate if it is primarily active in banking or securities trading and if an insurance company of considerable economic significance belongs to it.

**Art. 3d**

<sup>1</sup> FINMA may subject a financial group or banking or securities trading dominated financial conglomerate to the group or conglomerate supervision if it:

- a. controls a bank or a securities trader in Switzerland organized pursuant to Swiss law;
- b. is effectively managed from Switzerland.

<sup>2</sup> If other foreign authorities concurrently call for the complete or partial supervision of the financial group or the financial conglomerate, FINMA, under observance of its competencies, comes to an agreement with the foreign authority on responsibilities, modalities and object of the group or conglomerate supervision. Before its decision, it consults those companies of the financial group or the financial conglomerate that are incorporated in Switzerland.

**Art. 3e**

<sup>1</sup> The group supervision by FINMA is carried out as a supplement to the individual institution supervision on a bank.

<sup>2</sup> The conglomerate supervision by FINMA is carried out as a supplement to the individual institute supervision on a bank or an insurance company and to the supervision on a financial or insurance group by the respective supervisory authorities.

**Art. 3f**

<sup>1</sup> The persons of financial group or the financial conglomerate entrusted with the executive management on the one hand and the governance, supervision and control on the other hand must have a good reputation and guarantee proper management.

<sup>2</sup> The financial group or the financial conglomerate must be organized in such a manner that it is able to detect, limit and monitor all material risks, in particular.

**Art. 3g**

<sup>1</sup> FINMA is authorized to issue provisions on capital adequacy, liquidity, risk distribution, intra-group risk positions and accounting for financial groups.

<sup>2</sup> FINMA is authorized to issue or establish in individual cases provisions on capital adequacy, liquidity, risk distribution, intra-group risk positions and accounting for banking or securities trading dominated financial conglomerates. As concerns the required capital adequacy, it takes into consideration the existing rules of the financial and insurance industries as well as the relative significance of both industries in the financial conglomerate and the risks connected therewith.

**Art. 3h**        *repealed*

**Art. 3<sup>bis</sup>**

<sup>1</sup> FINMA can make the authorization to establish a bank, which is to be organized in accordance with Swiss law but whose case involves the existence of a controlling foreign influence, as well as the authorization to establish an office, a branch or an agency of a foreign or foreign-controlled bank and the license to appoint a permanent representative of a foreign bank, additionally dependent on the following conditions:

- a. the country of residence of the foreign bank or of the foreign controlling corporate or individual shareholder shall guarantee reciprocity, as long as no contradictory commitments exist;
- b. the corporate name of the foreign controlled Swiss bank shall in no way indicate or suggest that the bank is Swiss controlled;
- c. *repealed*

<sup>1bis</sup> If a bank is part of a financial group or financial conglomerate, FINMA can make authorization dependent on the agreement of the controlling foreign supervisory authority.

<sup>2</sup> The bank must inform the Swiss National Bank of the scope of its business activities and its relationships abroad.

<sup>3</sup> A bank organized under Swiss law falls under the provisions of Paragraph 1 whenever a foreigner with a qualified participation directly or indirectly holds more than half of the voting rights or exercises a controlling influence in another manner.

A foreigner is deemed to be:

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

**Art. 3<sup>ter</sup>**

<sup>1</sup> Banks that fall under foreign control after their formation require additional authorization in accordance with Article 3<sup>bis</sup>.

<sup>2</sup> A new additional authorization must be obtained if a foreign controlled bank experiences a change of its foreign shareholders holding a qualified participation.

<sup>3</sup> The members of the Board and the management of a bank are to notify FINMA of all matters which may lead one to conclude that the bank is foreign-controlled or that there has been a change in foreigners holding qualified participations.

**Art. 3<sup>quater</sup>**

<sup>1</sup> The Federal Council is empowered through treaties with other states, to declare the particular requirements of Art. 3<sup>bis</sup> and Art. 3<sup>ter</sup> as totally or partially inapplicable if citizens of a contracting state as well as legal entities with registered office in a contracting state establish or take over a

bank organized under Swiss law or acquire a qualified participation therein. In so far as no international commitments to the contrary exist, the Federal Council can subject this to the existence of reciprocity in the contracting state.

<sup>2</sup> Should the legal entity on its part be controlled directly or indirectly by citizens of a third state or by legal entities with registered office in a third state, the afore-mentioned provisions are applicable.

### **Section III: Equity, Liquidity and Other Requirements Relating to Business Operations**

#### **Art. 4**

<sup>1</sup> Banks must maintain individually and on a consolidated basis appropriate capital adequacy and liquidity.

<sup>2</sup> The Federal Council determines the elements of the capital adequacy and liquidity. It establishes the minimum requirements in accordance with the business practices and the risks. FINMA is authorized to issue implementing provisions.

<sup>3</sup> In special cases FINMA is authorized to permit less stringent application of the guidelines or to seek enforcement of more stringent provisions.

<sup>4</sup> The qualified participation of a bank in a company outside of the financial or insurance industries may not exceed 15 percent of its eligible capital. Such participation may not amount to more than 60 percent of the eligible capital. The Federal Council defines the exceptions.

#### **Art. 4<sup>bis</sup>**

<sup>1</sup> The loans of a bank to any single customer, as well as the participation in any single company, must bear an appropriate relationship to the bank's eligible capital.

<sup>2</sup> The Implementing Ordinance establishes the lending limits with special consideration given to loans to public authorities and to the type of security furnished.

<sup>3</sup> *repealed*

#### **Art. 4<sup>ter</sup>**

<sup>1</sup> Credit may be granted to the bank's governing bodies and controlling shareholders, as well as to related persons and companies, only in conformity with generally accepted principles of the banking profession.

<sup>2</sup> *repealed*

#### **Art. 4<sup>quater</sup>**

Both in Switzerland and abroad, banks shall abstain from misleading or obtrusive publicity of their Swiss domicile or Swiss traditional practices or institutions.

**Art. 4**<sup>quinquies</sup>

<sup>1</sup> Banks, whose parent companies are supervised by banking or financial market supervisory authorities, may transmit information or documents not publicly available to their parent companies which are necessary for the purpose of consolidated supervision, in so far as:

- a. such information is used exclusively for internal control or direct supervision of banks or other financial intermediaries subject to license;
- b. the parent company and the supervisory authorities responsible for consolidated supervision are bound by official or professional secrecy;
- c. this information may not be transmitted to third parties without the prior permission of the bank or on the basis of a blanket permission in a state treaty.

<sup>2</sup> In cases where doubt exists regarding the transmission of data pursuant to Paragraph 1, banks may demand a directive from FINMA to allow or forbid the transmission of information.

**Art. 5** *repealed***Section IV – Annual Financial Statements and Balance Sheets****Art. 6**

<sup>1</sup> Banks shall prepare for each business year an annual report consisting of annual financial statements and a business report. The Federal Council determines those cases where consolidated financial statements are to be prepared in addition.

<sup>2</sup> The annual report is to be drafted pursuant to the provisions of the Swiss Code of Obligations pertaining to corporations and with this Act. Whenever general conditions require it, the Federal Council may permit departures therefrom. Such a decision of the Federal Council is to be published.

<sup>3</sup> The Federal Council determines which banks are to prepare interim financial statements.

<sup>4</sup> Single-company, consolidated and interim financial statements are to be published or made available to the public.

<sup>5</sup> The Federal Council lays down the classification rules for single-company, consolidated and interim financial statements and lays down in which form and to which extent and within which deadlines they are to be published or made available to the public.

<sup>6</sup> Paragraphs 3 and 4 do not apply to private bankers who do not publicly solicit customer deposits.

**Section V: ...****Art. 7-9** *repealed***Art. 10** *repealed***Section VI: ...****Art. 11 -13** *repealed***Art. 14** *repealed***Section VII: Savings and Custody Deposit Accounts****Art. 15**

<sup>1</sup> Deposits referred to as "savings" in any combination of words may only be accepted by banks publishing annual financial statements. All other companies are not authorized to accept savings deposits and may not use the term "savings" with regard to the money deposited with them in either their company name, or in the designation of their business purpose or in their advertising.

<sup>2-3</sup> *repealed*

**Art. 16**

Valuables in custody deposit accounts within the sense of Art. 37d of the Act are deemed to be:

1. Tangible assets and securities of the custody deposit account customer;
2. Tangible assets, securities and claims which the bank holds on a fiduciary basis for the custody deposit account customer;
3. Freely available delivery claims of the bank from third parties from spot transactions, completed forward transactions, collateral transactions or issues for the account of the custody deposit account customer.

**Section VIII: Pledge Contracts****Art. 17**

<sup>1</sup> A bank that wants to reserve itself the right to repledge or to give a pledge as replacement, must be authorized by the pledgor in a special deed.

<sup>2</sup> The bank may not repledge or give the pledge as replacement for an amount exceeding its own claim against the pledgor. The bank must ascertain that no other rights exceeding that amount accrue in favor of third persons.

## **Section IX: Supervision and Audit**

### **Art. 18**

<sup>1</sup> The banks, financial groups and financial conglomerates entrust an authorized audit company with an annual audit. The audit company examines whether it:

- a. renders its account pursuant to the applicable provisions (financial audit); and
- b. complies with the statutory provisions (regulatory audit).

<sup>2</sup> If a bank, a financial group or a financial conglomerate has an internal audit, then it must submit the internal audit's report to the audit company. Duplication of work is to be avoided.

<sup>3</sup> The Federal Council issues implementing provisions on content and execution of the audit, on form of the reporting and the requirements of the audit company. It may authorize FINMA to issue implementing provisions for technical matters.

**Art. 19 – 22** *repealed*

## **Section X: Supervisory Authority**

### **Art. 23**

<sup>1</sup> FINMA may itself carry out direct audits at banks, banking groups and financial conglomerates if this is necessary in view of the economic significance, the complexity of the factors to be addressed or for the approval of internal models.

### **Art. 23<sup>bis</sup>**

<sup>1</sup> *repealed*

<sup>2</sup> *repealed*

<sup>3</sup> FINMA is authorized to transmit non-publicly accessible information and documents to other Swiss financial-market supervisory authorities as well the Swiss National Bank if they require for them for fulfillment of their duties.

<sup>4</sup> In supervising the operators of payment and security-settlement systems which are subordinated to this law, FINMA shall cooperate with the Swiss National Bank. It shall coordinate its activity with the Swiss National Bank and shall consult with the latter prior to issuing a supervisory order.

### **Art. 23<sup>ter</sup>**

In implementation of Art. 3 Para. 2 lit. c<sup>bis</sup> and 5 of this Act, FINMA can, in particular, suspend the voting rights connected to shares or stock which are held by shareholders or partners with a qualified participation.

**Art 23**<sup>quater</sup> *repealed*

**Art. 23**<sup>quinquies</sup>

<sup>1</sup> If FINMA withdraws the authorization for business operations, it shall result in dissolution for legal persons as well as general and limited partnerships and removal from the Commercial Registry for individual companies.

<sup>2</sup> Provisions pursuant to the eleventh section remain reserved.

**Art. 23**<sup>sexies</sup> *repealed*

**Art. 23**<sup>septies</sup>

<sup>1</sup> If, in the case of direct audits in Switzerland, the foreign supervisory authorities wish to receive information which directly or indirectly concerns the asset management or deposit transactions for individual customers, FINMA collects such information itself and transmits it to the financial market supervisory authorities which have made the request.

<sup>2</sup> The procedure is based on the Federal Act on Administrative Procedure of 20 December 1968.

**Art. 23**<sup>octies</sup> *repealed*

**Art. 24**

<sup>1</sup> *repealed*

<sup>2</sup> In the procedures foreseen in Sections XI and XII of this Act, creditors and owners of a bank may only appeal against the approval of a plan of restructuring and operations of disposal. Appeals pursuant to Art. 17 of the Federal Act of 11 April 1889 on Debt Enforcement and Bankruptcy (German: "SchKG"; French: "LP") are excluded in these procedures.

<sup>3</sup> Appeals within the sense of Paragraph 2 have no suspensory effect. The judge presiding over the preparatory hearing may grant the suspensory effect upon request.

## **Section XI: Measures in Case of the Risk of Insolvency**

**Art. 25** *Preconditions*

<sup>1</sup> Should a justified concern exist that a bank is over-indebted or has serious liquidity problems or that the bank no longer fulfills the capital-adequacy provisions after expiry of a deadline set by FINMA, FINMA can decree the following:

- a. protective measures pursuant to Article 26;
- b. restructuring procedures pursuant to Articles 28–32;
- c. the liquidation of the Bank (bankruptcy of the bank) pursuant to Articles 33–37g.

<sup>2</sup> The protective measures may be decreed on an isolated basis or in conjunction with a restructuring or liquidation.

<sup>3</sup>The provisions concerning the procedure of composition of creditors (Art. 293–336 SchKG), concerning moratoriums under company law (Art. 725 and 725a of the Swiss Code of Obligations) and concerning the duty to inform the judge (Art. 729b Para. 2 of the Swiss Code of Obligations) are inapplicable to banks.

**Art. 26** *Protective Measures*

<sup>1</sup> FINMA may decree protective measures; in particular it can:

- a. issue directives to the governing bodies of the bank;
- b. appointment of an investigator
- c. withdraw the power of representation of the governing bodies or remove them from office;
- d. remove the banking-law audit company or the company-law auditors from office;
- e. limit the business activities of the bank;
- f. forbid the bank from making or accepting payments or undertaking security trades;
- g. close the bank;
- h. decree a stay of enforcement and postponement of maturity, except for secured debts of mortgage bond issuing houses.

<sup>2</sup> It shall ensure that appropriate publication is made of the measures if this is necessary for their enforcement or for the protection of third parties.

<sup>3</sup> Insofar as FINMA does not decree otherwise in relation to the accrual of interest, a stay of enforcement shall have the effects of Article 297 SchKG.

**Art. 27** *Protection of the System*

<sup>1</sup> Whenever possible, FINMA shall inform the operators of domestic and foreign payment or security settlement systems concerning the measures it intends to take pursuant to Article 26 Para. 1 lit. f-h and of the exact time when they shall take effect.

<sup>2</sup> Payment and security transaction orders, which were entered into a system before FINMA has ordered measures or before the system operator has or should have knowledge of these measures, may only be revoked if they are not irrevocable according to the rules of the system.

<sup>3</sup> The legal validity of netting agreements or understandings concluded in advance concerning the disposal on the free market of collateral in the form of securities or other financial instruments traded on a representative market shall remain unaffected by measures foreseen in Article 26 Para. 1 letters f-h.

**Art. 28** *Person in Charge of Restructuring and Conduct of Business during the Procedure*

<sup>1</sup> FINMA may, in the case of a well-founded prospect of restructuring, commission a person with the restructuring of the bank (person in charge of restructuring). It shall determine his duties.

<sup>2</sup> FINMA shall lay down the manner in which the bank is to be managed during the period of restructuring.

**Art. 29** *Plan of Restructuring*

<sup>1</sup> The person in charge of restructuring shall develop a plan of restructuring which shall protect the interests of creditors and shareholders in the best possible manner.

<sup>2</sup> Should the plan of restructuring foresee an encroachment on the rights of creditors or shareholders, the person in charge of the restructuring shall communicate the plan to the creditors and shareholders affected. The latter may raise objections with the person in charge of restructuring within 20 days.

<sup>3</sup> The plan of restructuring is to be submitted to FINMA for approval. It does not require the consent of the general assembly of shareholders of the bank.

**Art. 30** *Rejection of Plan of Restructuring*

Should creditors representing, according to the books of account, more than the half of the amount of the claims of the third class pursuant to Article 219 Para. 4 SchKG reject the restructuring plan within the timeframe for making notification, FINMA shall order the liquidation pursuant to Articles 33-37g.

**Art. 31** *Approval of Plan of Restructuring*

FINMA shall approve the plan of restructuring if it in particular:

- a. is based upon a prudent valuation of the bank's assets;
- b. places the creditors in all probability in a more favorable position than they would be in the case of a liquidation of the bank;
- c. appropriately takes account of the objections of the creditors and the shareholders;
- d. takes into consideration the precedence of the interests of the creditors over those of the shareholders and takes account of the ranking of the creditors;
- e. ensures compliance with the authorization conditions and the other legal provisions after completion of the restructuring.

**Art. 32** *Assertion of Claims*

<sup>1</sup> As soon as FINMA has approved the plan of restructuring, the bank is empowered to challenge legal acts in accordance with Articles 285-292 SchKG.

<sup>2</sup> Should the plan of restructuring exclude for the bank the contestation of legal acts pursuant to Paragraph 1, then each creditor is entitled to do so up to the limit that the plan of restructuring encroaches on his/her rights.

<sup>3</sup> The date on which the plan of restructuring is approved shall be relevant for determining the deadlines foreseen under Articles 286–288 SchKG. Should FINMA have decreed previously a protective measure as foreseen in Article 26 Paragraph 1 letters e-h, then the date on which the decree was issued shall be valid.

<sup>4</sup> Paragraphs 1 and 2 shall apply by analogy for the assertion of civil responsibility claims pursuant to Article 39.

## **Section XII: Liquidation of Insolvent Banks (Bank Bankruptcy)**

### **Art. 33**                    *Order to Liquidation und Appointment of Liquidators*

<sup>1</sup> Should no prospect of restructuring exist or this have failed, FINMA shall withdraw the license from the bank, shall decree its liquidation and shall make this public.

<sup>2</sup> FINMA shall appoint one or several liquidators. The latter shall be subject to the supervision of FINMA and shall report to it, as demanded.

<sup>3</sup> It shall inform the creditors at least annually as to the status of the procedure.

### **Art. 34**                    *Consequences and Procedure*

<sup>1</sup> The decreeing of the liquidation shall have the effect of opening bankruptcy proceedings pursuant to Articles 197–220 SchKG.

<sup>2</sup> The liquidation shall be conducted in accordance with Articles 221-270 SchKG, subject to the provisions below.

<sup>3</sup> FINMA can issue differing decrees and injunctions.

### **Art. 35**                    *Assembly of Creditors and Committee of Creditors*

<sup>1</sup> An assembly of creditors shall only be held if the liquidators consider it opportune.

<sup>2</sup> FINMA can appoint a committee of creditors. It shall describe its tasks.

### **Art. 36**                    *Handling of Claims; Scheduling of Claims*

<sup>1</sup> In preparing the schedule of claims, the claims which are inscribed in the books of account shall be deemed to have been registered.

<sup>2</sup> The creditors can consult the schedule of claims to the extent that it is necessary for the protection of their creditor rights; in doing so, professional secrecy pursuant to Article 47 is to be preserved as far as possible.

**Art. 37** *Liabilities Contracted During Protective Measures*

Liabilities which the bank could enter into during the duration of measures pursuant to Article 26 Paragraph 1 letters e-h shall be satisfied prior to all others in the case of a liquidation.

**Art. 37a** *suspended***Art. 37a<sup>bis</sup>** Immediate Repayment

<sup>1</sup> Deposits in accordance with Article 37b Paragraph 1<sup>bis</sup> will be immediately repaid out of the available liquid assets beyond the claims and to the exclusion of any settlement.

<sup>2</sup> FINMA determines the highest amount of the immediately payable deposits. It takes into account the ranking of the remaining creditors pursuant to Article 219 SchKG.

**Art. 37b** *Privileged Deposits*<sup>1</sup> *suspended*

<sup>1bis</sup> Deposits not payable to the originator, including medium term bonds that are deposited with the bank in the name of the investor will be allocated at an amount not exceeding 100'000 Francs per creditor of the second class pursuant to Article 219 Paragraph 4 SchKG.

<sup>2</sup> Deposits with enterprises which are active as banks but without the authorization of FINMA shall not be privileged.

<sup>3</sup> Should a claim belong to several persons, the privileged status may only be asserted once.

<sup>4</sup> Claims from bank foundations as benefit contracts pursuant to Article 82 of the Swiss Federal Act on Occupational Retirement, Survivors' and Disability Pension Plans of 25 June 1982 as well as from vested benefits foundations as vested benefit schemes pursuant to the Vested Benefits Act of 17 December 1992 are deemed to be deposits of the individual pension holders and the individual policy holders. They are privileged up to an amount pursuant to Paragraph 1<sup>bis</sup> independent of the remaining deposits of the individual pension holders and the individual policy holders.

<sup>5</sup> The banks must permanently hold domestically backed claims or other assets allocated in Switzerland at an amount of 125 percent of their privileged deposits. FINMA may raise the share and allow for exceptions in justified cases, in particular for those institutes that maintain an equivalent backing due to the structure of their business activities.

**Art. 37c** *Adjustment for the Depreciation of Money*

The Federal Council may adjust the amounts foreseen in Articles 37a and 37b to take account of the depreciation of money.

**Art. 37d** *Treatment of Assets in Custody Deposit Accounts*

<sup>1</sup> Valuables in custody deposit accounts pursuant to Article 16 in the event of the liquidation of the bank shall be not counted towards the total liquidation assets but shall be segregated there from in favor of the depositor, subject to the aggregate claims of the bank against the depositor.

<sup>2</sup> Should the bank to be liquidated itself maintain a custody deposit account with a third party, it shall be presumed that the assets deposited are those of its custody deposit account customers; they shall be segregated in accordance with paragraph 1.

<sup>3</sup> The liquidator of the bank must honor its obligations regarding custody deposit accounts towards a third-party depository as well as obligations arising from transactions pursuant to Article 16 point 3.

**Art. 37e** *Distribution and Termination of Procedure*

<sup>1</sup> The distribution table shall not be published.

<sup>2</sup> Following distribution, the liquidators shall submit a final report to FINMA.

<sup>3</sup> FINMA shall take the decisions necessary to close the procedure. It shall make the closure public.

**Art. 37f** *Coordination with Foreign Procedures*

<sup>1</sup> Should the bank be also the object abroad of foreclosure procedures, FINMA shall coordinate the bankruptcy of the bank as far as possible with the competent foreign bodies.

<sup>2</sup> Should a creditor have been partially satisfied in a procedure abroad which is in relation to the bankruptcy of the bank, then this portion shall be charged against the bankruptcy dividend in the Swiss procedure after deduction of costs incurred by him.

**Art. 37g** *Recognition of Foreign Decrees re: Bankruptcy and Measures*

<sup>1</sup> FINMA shall decide about the recognition of bankruptcy injunctions and liquidation and restructuring measures which are issued abroad in respect of banks.

<sup>2</sup> FINMA may also recognize bankruptcy injunctions and measures which are issued in the country of the effective head office of the bank.

<sup>3</sup> Privileged creditors with domicile abroad can also be included in the schedule of claims.

<sup>4</sup> In all other respects, articles 166-175 of the Federal Law dated December 18, 1987 on International Private Law shall apply.

**Section XIII: Securing of Deposits****Art. 37h** *General*

<sup>1</sup> *suspended*

<sup>1bis</sup> Banks shall ensure that privileged deposits pursuant to Article 37b Paragraph 1<sup>bis</sup> with Swiss branches are secured. Banks possessing such deposits are required to adhere to the system of self-regulation of the banks.

<sup>2</sup> The system of self-regulation shall be subject to the authorization of FINMA.

<sup>3</sup> The system of self-regulation shall be approved if it:

- a. ensures the repayment of secured deposits within three months of the introduction of measures pursuant to Article 26 paragraph 1 lit. e-h or of the liquidation procedure pursuant to Articles 33-37g;
- b. *suspended*;
- b<sup>bis</sup> foresees a maximum amount of 6 billion francs for the aggregate outstanding contributions due;
- c. ensures that each bank shall hold on an on-going basis liquid funds for the half of its contributions due in addition to its legal liquidity.

<sup>4</sup> The Federal Council can adapt the amount foreseen under paragraph 3 whenever special circumstances warrant it.

<sup>5</sup> Should the system of self-regulation not satisfy the requirements of paragraphs 1-3, the Federal Council may regulate the securing of deposits by way of ordinance. It shall designate in particular the entities which guarantee deposits and shall lay down the contributions of the banks.

**Art. 37i**            *Legal cession*

The entities which guarantee pursuant to Article 37h created within the framework of the system of self-regulation shall enter into the rights of the depositors to the extent of their payments.

## **Section XIV: Liability for Torts and Penal Provisions**

**Art. 38**

<sup>1</sup> For the private bankers, the civil law responsibilities are pursuant to the provisions of the Swiss Code of Obligations.

<sup>2</sup> Article 39 applies for all other banks.

**Art. 39**

<sup>1</sup> The responsibility of the founders of a bank, of the bodies responsible for the management, direction, supervision and control as well as the liquidators and auditors appointed by the bank shall be governed by the provisions of company law (Art. 752-760 of the Code of Obligations).

<sup>2</sup> *repealed*

**Art. 40 – Art. 45** *repealed*

**Art. 46**

<sup>1</sup> Imprisonment of up to three years or fine will be awarded to persons who deliberately:

- a. accepts public or savings deposits without authorization;
- b. does not appropriately maintain business accounts or does not archive business accounts, documentation and records according to provisions;
- c. does not establish and make public the annual account or an interim financial statement pursuant to Article 6.

<sup>2</sup> Persons acting with negligence will be penalized with a fine of up to 250'000 francs.

<sup>3</sup> In the case of a repeat within five years of the prior conviction, the fine will amount to 45 day rates at a minimum.

**Art. 47**

<sup>1</sup> Imprisonment of up to three years or fine will be awarded to persons who deliberately:

- a. disclose a secret that is entrusted to him in his capacity as body, employee, appointee, or liquidator of a bank, as body or employee of an audit company or that he has observed in this capacity;
- b. attempts to induce such an infraction of the professional secrecy.

<sup>2</sup> Persons acting with negligence will be penalized with a fine of up to 250'000 francs.

<sup>3</sup> In the case of a repeat within five years of the prior conviction, the fine will amount to 45 day rates at a minimum.

<sup>4</sup> The violation of the professional secrecy also punishable after conclusion of the licensed or official responsibilities or the professional exercising duties is punishable.

<sup>5</sup> The federal and cantonal provisions on the duty to provide evidence or on the duty to provide information to an authority remain reserved.

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

**Art. 48** *repealed*

**Art. 49**

<sup>1</sup> A fine of up to 500'000 francs will be awarded to persons who deliberately:

- a. use the term "bank", "banker" or "savings" in the company name, in the designation of the business purpose or in the business advertising without authorization;
- b. does not make the mandatory registration with FINMA;

- c. bids for the acceptance of savings and public deposits without possessing the legally required authorization.

<sup>2</sup> Persons acting with negligence will be penalized with a fine of up to 150'000 francs.

<sup>3</sup> In the case of a repeat within five years of the prior conviction, the fine will amount to 10'000 francs at a minimum.

**Art. 50** *repealed*

**Art. 50<sup>bis</sup>** *repealed*

**Art. 51** *repealed*

**Art. 51<sup>bis</sup>** *repealed*

## **Section XV: Transitional and Final Provisions**

**Art. 52** *repealed*

### **Art. 53**

<sup>1</sup> With the entry into force of this law the following provisions are repealed:

- a. the Cantonal provision on banks; subject remain the provisions for Cantonal banks, the provisions concerning the provisions concerning professional trading in securities as well as the provisions for the supervision of compliance with legal Cantonal regulations against interest rate abuses;
- b. Article 57 of the Final Title of the Civil Code.

<sup>2</sup> The Cantonal provisions for a statutory lien in favor of savings deposits shall become void if they are not replaced by new regulations according to Articles 15 and 16 within three years of the coming into force of the present Law.

**Art. 54** *repealed*

**Art. 55** *repealed*

### **Art. 56**

The Federal Council assigns the entry into force of this law and legislates the necessary provisions.

Date of entry into force: 1 March 1935

## **Final Provisions to the Changes of 11 March 1971**

<sup>1</sup> Banks and financial companies that are formed prior to the effective date of the Act must not obtain new authorization for business operations.

<sup>2</sup> Financial companies that are newly subject to the Act must register with the Swiss Federal Banking Commission within three months of its effective date.

<sup>3</sup> Banks and financial companies must adapt within three months of the effective date of the Act the provisions of Article 3 Paragraph 2 letters *a*, *c*, and *d* as well as of Article 3<sup>bis</sup> Paragraph 1 letter *c*. Should the adaptation not occur on a timely basis, the authorization may be withdrawn.

<sup>4</sup> In order to allow for a waiting period while taking into consideration the particular circumstances of financial companies and credit offices, the Federal Council is permitted to issue special provisions.

### **Final Provisions to the Changes of 18 March 1994**

<sup>1</sup> Natural persons and legal entities, which hold deposits from the public on the date the law takes effect in spite of the prohibition to do so set out in Art. 1 Para. 2, have to repay these within two years of the effective date of implementation of the new law. The Banking Commission may extend or shorten this deadline on a case-by-case basis, whenever particular conditions exist.

<sup>2</sup> Bank-like financial companies, which are authorized by the Swiss Federal Banking Commission to publicly solicit monies prior to implementation of the Act, require no new permission to operate as a bank. They must adapt to articles 4<sup>bis</sup> and 4<sup>ter</sup> within one year from the date the law takes effect.

<sup>3</sup> Banks must adapt to the provisions of Art. 3 Para. 2 lit. *c*<sup>bis</sup> and *d* as well as Art. 4 Para. 2<sup>bis</sup> within one year of the effective date of the Act.

<sup>4</sup> Cantons have three years after the effective date of the law to ensure compliance with the provisions of Art. 3a Para. 1 and Art. 18 Para. 1. Should responsibility for supervision as per Art. 3a Para. 2 be transferred to the Banking Commission prior to expiry of this deadline, the provisions of Art. 18 Para. 1 must be complied with at the time of the transfer.

<sup>5</sup> Each natural person and legal entity who at the date on which the law takes effect, holds a qualified participation in a bank according to Art. 3 Para. 2 lit. *c*<sup>bis</sup>, must notify the Banking Commission to this effect within one year following the date when the change in the law takes effect.

<sup>6</sup> Banks must make the annual notification as per Art. 3 Para. 6 for the first time within one year following the date when the law takes effect.

<sup>7</sup> Banks organized under Swiss law must inform the Banking Commission within three months following the date when the law takes effect of all subsidiaries, branches, agencies and representations abroad.

### **Final Provisions to the Changes of 22 April 1999**

<sup>1</sup> In the case of Cantonal banks which are subject in full to the supervision of the Banking Commission at the time that this law takes effect, the license foreseen under Article 3 shall be deemed to have been granted.

<sup>2</sup> For the Cantonal bank of the Canton of Zug, the requirement of the Canton to hold more than one third of the voting rights in accordance with Art. 3a par. 1 shall not apply, provided that the

Cantonal guarantee and the exercise of the voting right is not modified by the Canton and that it remains certain that important resolutions cannot be adopted without the consent of the Canton.

<sup>3</sup> In the case of the Cantonal bank of the Canton of Geneva, the participations in the capital held by the communes shall be deemed to be equivalent to the shareholding of the Canton as foreseen under Article 3a provided that the existing participation held by the Canton is not reduced.

### **Final Provisions to the Changes of 3 October 2003**

<sup>1</sup> The system of self-regulation shall be submitted for approval to the Banking Commission within one year of the entry into force of this amendment.

<sup>2</sup> Should the Banking Commission issue an injunction regarding the liquidation of a bank prior to the entry into force of this amendment, the previous law shall apply for the liquidation as well as for a banking moratorium or a stay of enforcement of the bankruptcy procedures.

### **Final Provisions to the Changes of 17 December 2004**

<sup>1</sup> Persons who factually 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.

<sup>2</sup> Existing financial groups and financial conglomerates must adapt the new provision within two years of the effective date of these amendments.

<sup>3</sup> The Swiss Federal Banking Commission may extend these deadline upon timely and justified petition.

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