

ORDINANCE ON FOREIGN BANKS IN SWITZERLAND

of October 21, 1996

The Federal Banking Commission (hereinafter referred to as the "Banking Commission"),

on the basis of Article 2, paragraph 2 of the Federal Law on Banks and Savings Banks of November 8, 1934,

decrees:

PART 1: GENERAL PROVISIONS

Art. 1 Foreign Bank

- ¹ A foreign bank is every corporation which is organised according to foreign law, and which:
 - a. possesses a bank license in a foreign country;
 - b. in its name, purpose of business or in its correspondence uses the term "Bank" or "Banker"; or
 - c. performs banking activities as defined in Art. 2a of the Implementing Ordinance dated May 17, 1972.
- ² If the foreign bank is effectively 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 organised according to Swiss law and is subject to the regulations governing domestic banks.

Art. 2 Licensing Obligation

- ¹ A foreign bank requires approval from the Banking Commission 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 the Banking Commission if it intends to set up an office which is not entered into the Commercial Register (agency).
- ³ If the Banking Commission 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 Banking Law, with the exception of the provisions of the banks' equity resources (Art. 4) and the diversification of risks (Art. 4^{bis}) - as well as the Implementing Ordinance, shall apply by analogy.
- ² The Banking Commission can require that foreign banks fulfil all legal provisions for Swiss banks, if the legal provisions at the location of headquarters of the foreign bank does not grant Swiss banks similar relief and if an international agreement does not exist.

PART 2: BANK BRANCHES

Art. 4 Licensing Requirements

- ¹ The Banking Commission will grant the foreign bank a license to open a branch if:
- a. the foreign bank is appropriately organised 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 the Banking Commission in the event of circumstances arising that may seriously jeopardise the interests of bank creditors;
 - e. the responsible foreign supervisory authorities are able to provide the Banking Commission 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, par. 2 lit. c and d of the Banking Law and the possesses a regulation that precisely defines its business activities and provides for an adequate organisation; and
 - h. the foreign bank provides evidence that the company name of the branch qualifies for entry into the Commercial Register.
- ² If the foreign bank is part of a group which is active in the financial business sector, then the Banking Commission 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 enrol the branch for registration into the Commercial Register when it has obtained a license from the Banking Commission 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 the Banking Commission.
- ² These branches must fulfil the requirements of the Banking Law, the Implementing Ordinance and this Ordinance as a group. A single audit report is sufficient.

Art. 7 Securities

The Banking Commission 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 can 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 Par. 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 the Banking Commission. 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. They must also send the Banking Commission 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

- ¹ The auditors shall submit their report in one of Switzerland's official languages to the responsible manager of the branch and to the Banking Commission.
- 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 the Banking Commission's approval prior to closing down a branch.

PART 3: AGENCIES

Art. 12 Licensing Requirements

- ¹ The Banking Commission 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 Banking law are met;
 - b. the agency possesses a regulation that precisely defines its business activities and provides for an adequate organisation.
- 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 the Banking Commission.

PART 4: REPRESENTATIVE OFFICES

Art. 14 Licensing Requirements

The Banking Commission 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 par. 2 of the Implementing Ordinance, 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 the Banking Commission.

Art. 16 Annual Report

The representative office shall submit to the Banking Commission 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 the Banking Commission.

PART 5: FINAL PROVISIONS

Art. 18 Repeal of Previous Law

The Ordinance on Foreign Banks of March 22, 1984 is repealed.

Art. 19 Effective Date

- ¹ The Ordinance shall enter into effect on January 1, 1997.
- ² The annual financial statements according to this Ordinance may be prepared for the first time as of December 31, 1996.

Federal Banking Commission
The President
The Director