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SWITZERLAND



LEXOLOGY

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In-Depth: Banking Regulation (formerly The Banking Regulation Review) is an annual survey of the most important developments in banking regulation in the most significant jurisdictions worldwide. It provides high-level insight across the gamut of the legal and regulatory requirements applicable to banks, including prudential regulation, rules governing the conduct of business, funding, control and transfers of banking business and much more.

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LEXOLOGY

Explore on **Lexology**

Switzerland

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Introduction

The Swiss banking industry has a long tradition and has been internationally focused from the outset. Services offered by Swiss banks comprise all banking services.

As of February 2025, there are 236 licensed banks in Switzerland, of which:

1. there is one global systemically relevant banking group (G-SIBs) (under the lead of UBS Group AG, noting that the former Credit Suisse AG and Credit Suisse (Switzerland) Ltd were merged with UBS AG and UBS Switzerland AG, respectively, in the course of 2024) and three are systemically relevant banks or banking groups (SIBs) (Zurich Cantonal Bank, Raiffeisen Switzerland and PostFinance);
2. 24 are (partly) state-owned cantonal banks;
3. 64 are foreign-controlled banks (i.e., controlled by significant foreign shareholders); and
4. 24 are Swiss branch offices of foreign banks.

Since 2013, the Swiss legislator and regulatory authorities have reinforced the capital adequacy and liquidity requirements and addressed the 'too big to fail' issue in line with the Basel III standards. The last package of reforms making up Basel III, the final Basel III regulations of 2017 (also referred to as Basel 3.1 or Basel IV) entered into force on 1 January 2025 in Switzerland. In light of the demise of the banking group Credit Suisse in 2023, the Swiss Financial Market Supervisory Authority (FINMA) has called for more stringent enforcement powers and the legislature is expected to review the 'too big to fail' regime applicable to G-SIBs and SIBs, with a focus on UBS, whose size has significantly increased after the takeover of Credit Suisse group.

In the years to come, Swiss banking regulators and the industry will face significant challenges, with a series of regulatory revisions and reforms initiated in response to the Credit Suisse crisis. Their assessment, implementation and application will be a major focus moving forward.

Year in review

Regulatory developments

In addition to the issues addressed in the next sections, the following regulatory developments can be outlined.

UBS takeover of Credit Suisse

In March 2023, Credit Suisse experienced a liquidity and confidence crisis that led to its takeover by UBS and the subsequent merger of Credit Suisse entities (including Credit Suisse Group AG, Credit Suisse AG and Credit Suisse (Switzerland) AG) with entities of UBS

group. Since then, FINMA (in December 2023), the Federal Council (in April 2024) and an investigative commission of the Swiss Parliament (in December 2024) published reports summarising the events leading to and the administrative actions in connection with the takeover of Credit Suisse. The reports identify a number of potential areas for improvement in relation to G-SIBs, particularly as regards the 'too big to fail' regime, and the supervisor's toolkit and practices. This specifically concerns the following focus areas:

1. Strengthening the prevention regime: This effort primarily focuses on improving G-SIB's corporate governance, notably through the introduction of a senior manager regime (clear allocation of responsibilities) and new rules on bonuses (including retention periods and clawbacks). In addition, it aims to tighten quantitative and qualitative capital requirements for G-SIBs in a targeted manner, incorporating a forward-looking component. Finally, it calls for an expansion of FINMA's toolkit and responsibilities with regard to early intervention (going concern), including the authority to impose fines, the obligation to disclose certain proceedings to the public, the acceleration of regulatory proceedings, and an increase in direct audit activities.
2. Reinforcing the liquidity regime: This focus aims to enhance the Swiss National Bank's (SNB) capacity to provide liquidity, while also anchoring the possibility of a public liquidity backstop at a statutory level, as part of a potential restructuring of a G-SIB.
3. Expanding the crisis toolkit: This aims to ensure G-SIBs can exit the market in an orderly manner during a crisis by expanding resolution planning, reducing legal risks in their implementation, and improving inter-authority cooperation.

These measures will be assessed through the regular legislative process and implemented over the coming years, with a priority given to those the Federal Council can enact via Ordinance, such as specific capital, accounting requirements, and crisis and resolution planning. A draft bill addressing the broader set of measures targeted towards G-SIBs is expected from the Federal Council in 2026.

National implementation of the final Basel III post-crisis reforms

The Capital Adequacy Ordinance (CAO) sets the minimum capital requirements for banks, implementing the Basel III standards.

The CAO was amended with effect as from 1 January 2025 to implement the last package of Basel III (i.e., the final Basel III standards, also referred to as Basel 3.1 or Basel IV). The purpose of the new rules is to improve transparency and comparability of banks' capital ratios, in particular by reducing the variability in the calculation of risk-weighted assets (RWA) and increasing the risk sensitivity of the capital requirements. The provisions amended the rules for calculating capital requirements, notably for credit, market and operational risks. In this context, the risk sensitivity of the standardised approaches for credit and operational risks was enhanced, the use of internal model approaches to calculate capital requirements for credit and market risks was constrained and the existing Basel II output floor was replaced by a more robust risk-sensitive floor. In addition, the CAO now enshrines various Basel III regulations that were previously implemented at FINMA

Circular level. In parallel, FINMA published a number of new implementing ordinances accompanying the new rules that also took effect as from 1 January 2025.

Amendments to the Anti-money Laundering Regulations and Ultimate Beneficial Owners Register

On 22 May 2024, the Federal Council adopted a bill proposing amendments to the Anti-Money Laundering Act of 1997 (AMLA). The main proposal is the creation of a central federal register, requiring Swiss and certain foreign legal entities to disclose their ultimate beneficial owners, under a new Federal Act on the Transparency of Legal Entities and the Identification of Ultimate Beneficial Owners (UBO). This UBO register would be accessible only to designated Swiss authorities and financial intermediaries subject to Swiss AML due diligence and reporting obligations. Parliamentary discussions started in the second half of 2024 and are set to continue through 2025, with the legislature likely aiming to to enact the new law before Switzerland's next evaluation by the FATF in 2027.

Additionally, the AMLA revision also aims to extend know-your-customer (KYC) due diligence obligations to certain legal and advisory professions and introduce regulations for currency transactions in real estate and precious metals. The legislative review of these proposals, however, is suffering some delay.

The New Federal Act on Data Protection

A new Act on Federal Data Protection (nFADP) came into effect on 1 September 2023. One of the main goals of this revision was to ensure that the European Union continues to recognise Switzerland as a country offering an adequate level of data protection and that cross-border data transfers between the European Union and Switzerland remain possible in the future without further hurdles. The European Commission confirmed that new Swiss data protection law meets European standards on 15 January 2024, allowing unaltered personal data flows between the European Union, EEA and Switzerland. Overall, the nFADP will strengthen the Swiss data protection framework and largely align it with the European Union's GDPR.

On 14 August 2024, the Federal Council recognised the adequacy of data protection applicable to transfers of personal data to US companies certified under the Swiss-US Data Privacy Framework (DPF) developed by the US Department of Commerce and the Swiss federal administration (amongst others). As a result, transfers of personal data to DPF certified US companies can now occur without the need for additional protective measures (such as binding corporate rules or standard contractual clauses) from a Swiss data protection standpoint.

Circular 2023/01 on operational risks

On 1 January 2024, FINMA Circular 2023/01 on operational risks and resilience at banks entered into force, superseding the erstwhile Circular 2008/21 on operational risks. This updated Circular 2023/01 more comprehensively reflects technological advancements and clarifies FINMA's regulatory expectations regarding the management of operational risks, especially those associated with information and communication technology, critical data, cyber threats and business continuity management. Furthermore, Circular 2023/01

integrates the revised Basel Committee on Banking Supervision principles on operational risk management and operational resilience, as promulgated in March 2021. Circular 2023/01 on 1 January 2024 has also superseded the Recommendations for Business Continuity Management previously issued by the Swiss Bankers Association. To facilitate the transition towards an enhanced operational resilience, the Circular introduces phased transitional provisions set to unfold over the course of two years.

Agreement with the United Kingdom on the mutual recognition in financial services

On 21 December 2023, Switzerland and the United Kingdom concluded the Berne Financial Services Agreement, predicated on the mutual recognition of the equivalence of their national legislative and regulatory frameworks. This Agreement aims to enhance competitiveness and foster cooperation between the two jurisdictions, facilitating the improvement of market for cross-border financial services, with a particular focus on services for wholesale and sophisticated clients in the sectors of insurance, banking, asset management and capital markets. The approval of the Agreement by the parliaments of both countries is still pending.

AI use by financial institutions

On 18 December 2024, FINMA published guidance on the use of AI in financial institutions. In general, FINMA does not view AI as inherently high-risk. Instead, the risks depend on the specific AI applications used and how they are integrated into the institution's activities and processes. The guidance highlights general risks, which can be summarised as follows: (1) quality, accuracy and bias; (2) explainability, data protection and operational risks. Financial institutions are allowed to use AI in their activities but must effectively manage the associated risks through governance, training, documentation and robust testing and monitoring.

Sustainability reporting

Swiss companies of public interest, including publicly listed firms and those regulated by FINMA (e.g., banks, insurance companies and securities firms), with a workforce of 500 or more employees and meeting certain financial thresholds (total assets of at least 20 million Swiss francs or turnover exceeding 40 million Swiss francs) are required to annually report on non-financial matters. These reports cover environmental, social and governance (ESG) issues, human rights adherence and anti-corruption initiatives. The first reporting year began in 2024, covering the 2023 financial year.

Starting in 2025, these non-financial reports will need to include detailed climate-related disclosures, as set out in the Ordinance on climate disclosures, which took effect on 1 January 2024. For financial institutions, this includes adhering to the recommendations of the Task Force on Climate-related Financial Disclosures (TCFD), outlining a climate transition plan aligned with Swiss climate goals, setting quantitative targets, and, where possible, reporting on greenhouse gas emissions. The disclosures must also include forward-looking, scenario-based analyses of climate compatibility.

On 26 June 2024, the Federal Council launched the consultation procedure for an amendment to the non-financial reporting rules, aimed at aligning Swiss requirements with European law. The preliminary draft notably proposes expanding the regulation's scope to include public interest companies regardless of size, and large privately held companies. The draft also mandates obtaining assurance from an auditor or a conformity assessment body for the report. This revision will likely be influenced by recent EU developments, particularly the sustainability Omnibus package. Its outcome therefore remains uncertain.

Developments in sustainable finance and the prevention of greenwashing

While Switzerland's approach in connection with sustainable finance is generally more liberal than the one in the European Union, sustainability in the financial sector is becoming an increasingly important theme in Switzerland. On 16 December 2022, the Federal Council published a report drawing on previous publications that lays down the Swiss strategy in the area of sustainable finance for 2022 to 2025. This report sets out 15 measures built on four areas of action:

1. sustainability data from all sectors of the economy;
2. transparency in the financial sector;
3. impact investments and green bonds; and
4. pricing of pollution.

Currently, initiatives in relation to the prevention of greenwashing come mainly from the industry. On 16 June 2022, the Swiss Bankers Association (SBA) adopted guidelines on the integration of ESG preferences and ESG risks into investment advice and portfolio management (most recent version May 2024) applicable to banks that are SBA members at the point of sale. These guidelines entered into force on 1 January 2023 and apply from 1 January 2024 for new clients, with a transitional period until 1 January 2025 for existing clients. The Asset Management Association (AMAS) has further issued voluntary self-regulation on transparency and disclosures for manufacturing and managing sustainable collective investment schemes, which came into force on 30 September 2023 and became effective on 1 September 2024. The Swiss Insurance Association (SIA) also adopted self-regulation addressing greenwashing as of 1 January 2025, setting a uniform minimum standard for unit-linked life insurance policies with a sustainability focus.

Following updates to self-regulations by the SBA in May 2024 and AMAS in April 2024, the Federal Council concluded in June 2024 that these updates addressed most of the issues identified in previous assessments. As a result, it decided not to introduce mandatory state regulation to combat greenwashing in the financial sector at this time, noting that self-regulations can adapt more quickly and align with international law. Additionally, Switzerland amended the Federal Act on Unfair Competition, effective 1 January 2025, to specify that making unsubstantiated environmental claims can lead to legal remedies, including criminal sanctions, for affected parties such as consumers and consumer protection associations.

Alongside these legislative developments, FINMA has issued various guidelines and regulations in relation to sustainable finance. In November 2021, FINMA

published Guidance 05/2021 on preventing and combating greenwashing in relation to sustainability-linked funds. The Swiss regulator has also emphasised that climate-change related financial risks are among the most significant long-term risks for Swiss banks and the Swiss financial sector. In May 2021, FINMA amended its circular on disclosure to require large banks to provide qualitative and quantitative information on climate-related financial risks, requiring large banks to provide qualitative and quantitative information on climate-related risks, including risk management processes and methodologies. In January 2023, FINMA reiterated the importance of managing climate risks in its Guidance 01/2023. Additionally, in December 2024, FINMA released a new circular on nature-related financial risks, requiring banks and insurance companies to integrate these risks into their risk management and reporting practices. The circular, based on a proportionality principle, will apply from 1 January 2026 for category 1 and 2 banks and from 1 January 2027 for category 3 to 5 banks. It will initially focus on climate-related risks, expanding to cover all nature-related risks by 1 January 2028.

Future changes

Regulatory reactions to the demise of Credit Suisse

The collapse of Credit Suisse in 2023 marked a watershed moment for Switzerland's financial sector, prompting intense scrutiny of the country's regulatory and supervisory frameworks and leading to a wave of revision proposals, parliamentary motions, and interpellations. The proposed measures introduce far-reaching reforms that will not only affect the regulation of G-SIBs (particularly through changes to the 'too big to fail' regime), but will also reshape the broader supervisory framework, including enhancements to the regulator's toolkit. As a result, Swiss financial market laws are expected to undergo significant revisions in the coming years.

While the timeline for preparing, assessing and implementing these measures remains uncertain, it is anticipated that the Federal Council will present a first draft of the revised 'too big to fail' regime, including new capital adequacy rules, for public consultation by the end of 2025. The legislative dispatch could then be submitted to Parliament by the end of 2026, with debates expected in 2027. Consequently, the revised frameworks are unlikely to come into force before 2029.

International administrative assistance

The Federal Department of Finance recently concluded an assessment to carry out an in-depth review of the provisions on international cooperation with foreign services, in particular the FINMASA, to identify areas for improvement. On 20 September 2024, the Federal Council issued its proposal for public consultation. The proposals mainly focus on three areas for revision:

1. Rights of individual bank clients within administrative assistance proceedings: Currently, bank clients generally have procedural rights in administrative assistance proceedings, including the right to be heard and to appeal. To exercise these rights, clients must be notified of the assistance request before the requested information and documents are transferred. FINMA may delay client notification

until after transmission in exceptional cases, such as when there is a risk of collusion or urgency. Additionally, FINMA can deny access to correspondence with the foreign requesting authority. This procedural safeguard, commonly known as 'client proceedings'", is a unique feature of Swiss law. The revision proposes a fundamental shift toward abolishing bank clients' procedural rights in the phase preceding the transmission of information.

2. FINMA collaboration to recognition or audit evaluations by foreign authorities: The revision proposes expanding FINMA's cooperation with foreign authorities responsible for assessing Switzerland's financial market supervisory regime in the context of equivalence recognition decisions. This includes the potential sharing of certain non-public information.
3. Direct cross-border transmission of information by FINMA-supervised entities: The revision would further clarify and specify the conditions under which FINMA-supervised institutions can share non-public information directly with foreign regulators.

The consultation period concluded in January 2025. The federal council is now reviewing the feedback received in preparation for a dispatch to parliament.

Consultation on FINMA Insolvency Ordinance (InsO-FINMA)

On 9 October 2024, FINMA launched a consultation on a new Ordinance on Insolvency Proceedings at Financial Institutions (InsO-FINMA), which will replace multiple existing ordinances, including the FINMA Banking Insolvency Ordinance, the FINMA Insurance Bankruptcy Ordinance, and the FINMA Collective Investment Schemes Bankruptcy Ordinance. The InsO-FINMA aims to harmonise insolvency procedures across all financial institutions subject to FINMA's restructuring and bankruptcy jurisdiction, minimising institution-specific variations.

The consultation period ended on 9 December 2024, and the Federal Council is expected to work towards the ordinance's entry into force in the third quarter of 2025.

The regulatory regime applicable to banks

Main statutes

In addition to the Financial Market Supervision Act of 2007 (FINMASA) governing the supervisory activities and instruments of FINMA, the main federal statutes governing the Swiss financial markets are as follows:

1. the Banking Act of 1934 (BA);
2. the Financial Market Infrastructures Act of 2015 (FMIA);
3. the Collective Investment Schemes Act of 2006 (CISA);
4. the Mortgage Bond Act of 1930 (MBA);

5. the Anti-Money Laundering Act of 1997 (AMLA);
6. the Financial Services Act of 2020 (FinSA); and
7. the Financial Institutions Act of 2020 (FinIA).

These statutes are supplemented by a number of ordinances enacted either by the Swiss government (i.e., the Federal Council) or, as regards more technical aspects, by FINMA; their practical application is further regulated by FINMA circulars.

Banking and securities firms' activities

Under Swiss banking laws, a business entity that solicits or takes deposits from the public (or refinances itself with substantial amounts from other unrelated banks) to provide financing to a large number of persons or entities is considered a bank. The conduct of banking activities in or from Switzerland is subject to a licensing requirement and to supervision by FINMA.

Swiss financial markets law makes no distinction between commercial and investment banks, and banks are not limited in the scope of their activities. FinIA provides for a 'licence cascade', in which the banking licence is considered the highest ranking licence encompassing the authorisation to operate as a securities firm, manager of collective assets (e.g., funds), portfolio manager or trustee without the need to apply for a separate authorisation. This formal simplification, however, does not exempt a licensed bank from adapting, as the case may be, its capital, liquidity, organisation or internal policies to comply with the specific requirements applicable to the conduct of another category of regulated activities.

The main statutes governing the securities business of both banking and non-banking intermediaries in Switzerland are FinIA and FMIA and their respective implementing ordinances. The activities of a securities firm are defined broadly. They encompass the activities of securities brokers acting for the account of clients (client dealers) provided they hold securities deposits or maintain accounts in their books for more than 20 clients, market makers and own-account dealers provided they are members of a trading venue, operate an organised trading facility (OTF) or execute trades for a total value exceeding 5 billion Swiss francs per year in Switzerland.

As regards cross-border banking and securities activities, the Swiss licensing regime is rather liberal: foreign-regulated entities that operate on a strict cross-border basis (i.e., by offering banking or securities services to Swiss investors without having a business presence in Switzerland) do not need to be authorised by FINMA. If, however, the activities of a foreign bank or securities firm involve a permanent physical presence in Switzerland, this cross-border exemption is not available. In practice, FINMA considers a foreign entity to have a Swiss presence as soon as employees are hired in Switzerland. That said, FINMA may also look at further criteria to determine whether a foreign bank has a Swiss presence, such as the business volume of that bank in Switzerland or the use of teams specifically targeting the Swiss market.

However, the provision of financial services to clients in Switzerland on a cross-border basis falls within the scope of FinSA. The latter imposes a number of point-of-sale obligations and duties on financial services providers (e.g., client segmentation,

compliance with rules of conduct and organisational measures, affiliation with an ombudsman and registration in a client advisers' register).

The granting of a licence to a foreign bank to establish a Swiss branch or representative office is conditional upon the principle of reciprocity being satisfied. FINMA will deem the reciprocity test met if a Swiss bank is permitted to establish a representative branch, office or agency in the country in which the foreign bank has its registered office without being subject to substantially more restrictive provisions than those imposed in Switzerland.

The granting of a licence to a Swiss bank controlled by foreign shareholders is also made dependent upon the reciprocity requirement by the relevant foreign country of domicile or incorporation of the foreign shareholders.

Other regulated activities

A Swiss bank may also serve as a custodian for collective investment schemes. This type of activity is subject to the CISA and its implementing ordinances.

FINMA further supervises compliance by banks with due diligence duties under the AMLA and its various implementing ordinances.

In 2019, the BA introduced a simplified authorisation for fintech firms, the activities of which are limited to deposit-taking activities to the exclusion of lending activities involving maturity transformation. This licence entitles to accept and hold public funds up to 100 million Swiss francs without any time limit, provided such deposits do not bear interest and are not used to fund a traditional lending business during this period of custody. Currently, only six Swiss entities have a fintech licence.

FINMA

The single integrated financial market supervisory authority, FINMA, is responsible for the supervision of banks, securities firms, stock exchanges, collective investment schemes, managers of collective assets, fund management companies and supervisory organisations that are in charge of the ongoing supervision of portfolio managers and trustees, as well as the private insurance sector. FINMA also directly monitors compliance by certain financial intermediaries such as banks and securities firms with their due diligence duties in relation to anti-money laundering and the financing of terrorism.

FINMA is a public institution with separate legal personality. Although it carries out its supervisory activity independently, FINMA has a reporting duty towards the Federal Council, which approves its strategic objectives, as well as its annual report prior to publication, and appoints FINMA's CEO. Parliament is responsible for overseeing FINMA's activities.

FINMA employs around 580 full-time equivalent staff (as of March 2024). Its operating expenses are covered by fees and duties levied from the supervised entities. FINMA is able to carry out its tasks within a relatively modest organisation mainly thanks to the dual supervisory system, which relies strongly on external auditors and self-regulatory organisations. External auditors carry out direct supervision and on-site audits, whereas FINMA retains responsibility for the overall supervision and enforcement measures.

Regulatory duties are delegated to self-regulatory organisations: the SBA, for instance, issues self-regulatory guidelines to its members, which FINMA recognises as minimum standards that need to be complied with by all Swiss banks. In particular, the SBA's guidelines governing banks' duty of due diligence in identifying the contracting party and the beneficial owner of accounts[1] and the portfolio management guidelines[2] play an important role in practice.

Prudential regulation

Relationship with the prudential regulator

The Swiss banking supervision system is based on an indirect supervision model. Banks, foreign banks' branches and financial groups (or conglomerates) subject to Swiss supervision must appoint an external audit company licensed by the Federal Audit Oversight Authority. The auditor assists FINMA in its supervisory functions: it examines annual financial statements, and reviews whether regulated entities comply with their by-laws and with Swiss financial markets regulation and self-regulatory provisions. FINMA requires that financial and regulatory audits be conceptually separated and may require, where appropriate, that these two audits be carried out by different audit firms. The results of the financial and regulatory audits are detailed in annual audit reports that are to be handed over to the supervised entity and to FINMA. FINMA exercises its oversight and ascertains whether the various regulatory requirements are complied with, largely based on these reports.

In addition, auditors are obliged to inform FINMA if they suspect any breach of law or uncover other serious irregularities. Supervised entities also have a general duty to inform FINMA of any event or incident that may be of relevance from a supervisory perspective. Furthermore, banks have specific reporting duties: for instance, in cases of changes in the foreign controlling persons (or entities), in the qualified shareholders, and in the status of statutory equity capital, liquidity ratios or risk concentrations. On the basis of these informational tools, FINMA initiates investigations (if necessary, through an appointed investigator) and, if a breach is ascertained, takes enforcement measures aimed at restoring compliance. In cases of serious breach, FINMA can ultimately withdraw a licence. In the event of serious breach (and, in particular, in the event of violation of market conduct rules), FINMA may also order the disgorgement of illegally generated profits, on the other hand, FINMA has no authority to impose fines. In practice, the most common sanctions that FINMA imposes relate to the forced liquidation of unauthorised securities firms, insolvency procedures and sanctions following non-compliance with Swiss know-your-customer (KYC) rules. The 2023 setback of Credit Suisse followed by its 'shotgun' acquisition by UBS have reignited discussions about the supervisory tools available to FINMA, including the authority to impose fines. However, in December 2023, the Swiss Parliament rejected a parliamentary motion that aimed to extend FINMA's mandate to include the power to impose fines. In its 2024 report, the Parliamentary Investigation Commission noted that the issue requires further assessment. Depending on the Federal Council's proposals for revising the supervisory toolkit, the Swiss legislator may

revisit this matter. The Federal Council is expected to publish its dispatch to Parliament by the end of 2025.

The intensity of the supervision and the direct involvement of FINMA, in particular as regards qualitative aspects of supervision, depend on the category to which a bank is assigned. In this context, FINMA applies a risk-oriented supervision, classifying regulated banks according to their importance (notably in terms of assets under management, deposits and required equity) and risk profile:

1. Category 1 institutions are extremely large, important and complex market participants, which require intensive and continuous supervision;
2. Category 2 institutions are deemed very important and complex, and require close and continual supervision;
3. Category 3 market participants are large and complex, to which a preventive supervision model is applied; and
4. Category 4 and 5 institutions are small to medium-sized participants, for which event-driven and theme-based supervision is generally deemed sufficient.

In response to the 2008 financial crisis, a more rigorous supervisory regime was put in place for G-SIBs (UBS AG as well as UBS Switzerland AG and, at the time, Credit Suisse AG as well as Credit Suisse (Switzerland) Ltd) and SIBs, as they raise systemic risks. Accordingly, FINMA does not rely exclusively on the reports of the banks' auditors but carries out its own investigations and maintains close contact with the two banking groups.

The G-SIBs and SIBs regimes rely on an intensive and continuous supervision by FINMA, in accordance with a risk-based approach, including stress tests and specific capital adequacy and crisis resistance requirements. G-SIBs and SIBs are notably required to establish detailed recovery and resolution plans and to implement specific corresponding organisational measures. As an example, both Credit Suisse AG and UBS AG have set up a non-operating holding company as group parent (Credit Suisse Group AG and UBS Group AG), and they have transferred Swiss-based systemically important functions to separate subsidiaries (Credit Suisse (Switzerland) Ltd and UBS Switzerland AG). Within FINMA, a specific division, the Recovery and Resolution Division, is in charge of crisis restructuring and insolvency proceedings and monitors and coordinates these emergency and resolution planning efforts. In the aftermath of Credit Suisse's demise, FINMA will focus on addressing the identified deficiencies within its recovery and resolution framework. Consequently, FINMA is set to intensify its scrutiny of the practical implementation of recovery plans, especially under severe time constraints, and ensure resolution plans are robust enough to withstand rapid bank runs. Additionally, FINMA will mandate institution-specific crisis simulations, engaging the relevant national and international authorities. FINMA has also advocated for the inclusion of a public liquidity backstop provision in ordinary legislation, aimed at covering the liquidity needs that may arise during a restructuring process.

In 2020, FINMA introduced a specific regime for small banks (supervisory categories 4 and 5). This regime aims at reducing the regulatory burden on small, particularly liquid and well-capitalised institutions. Banks eligible to participate in the small banks regime may

benefit from a significantly less complex regulatory regime under the Capital Adequacy Ordinance (CAO) that allows them to, for example, waive the requirements with respect to the calculation of risk-weighted assets. Likewise, the Liquidity Ordinance (LO) provides for a relaxation of the applicable liquidity coverage ratio (LCR) requirements for these institutions.

Management of banks

The granting of a banking licence is conditional upon the fulfilment of certain organisational requirements. In particular, the articles of incorporation and internal regulations of a bank must define the exact scope of business and the internal organisation, which must be adequate for the activities of the bank. As a general rule, two separate corporate bodies must be in place:

1. a board of directors that is primarily in charge of the strategic management of the bank, and the establishment, maintenance, monitoring and control of the bank's internal organisation. The board must comprise at least three members who meet professional qualifications, enjoy a good reputation and offer every guarantee of proper business conduct. Depending on the size, complexity and risk profile of the bank, FINMA may require that the board comprises more than three members. In addition, FINMA expects, as a rule, that a substantial number of the board members have a close relationship to Switzerland in terms of residence, career or education. In practice, FINMA requires at the very least that the chair or vice chair of the board be domiciled in Switzerland. As a matter of principle, the board must be free of any conflicts of interest with the management or with the bank itself. By law, the board of directors of a Swiss bank is non-executive, with a strict prohibition of a double mandate both as director and manager; and
2. the executive management, which also implements the instructions of the board of directors. Its members must meet the various professional qualifications and fit and proper tests. As a rule, FINMA requires that a Swiss bank be managed from Switzerland, and senior managers are typically expected to be domiciled in Switzerland.

Under FINMA practice, the strategic management, supervision and control by the board of directors, the central management tasks of the management, and decisions concerning the establishment or discontinuation of business relationships may not be delegated to another affiliated or non-affiliated entity. As a result, a Swiss bank that is a subsidiary of a foreign group must be granted a certain degree of independence in its decision-making process. General instructions and decisions from a foreign parent entity are permitted, however. For the rest, as a general rule, outsourcing of other functions within a Swiss bank to affiliated or non-affiliated service providers both in Switzerland and abroad is generally permitted, subject to the satisfaction of certain requirements, in particular in relation to Swiss banking secrecy and data protection rules. FINMA Circular 2018/3 governs outsourcing solutions at banks in a principle-based and technology-neutral manner.

It imposes, inter alia, the following rules:

1.

banks must maintain an up-to-date inventory of all outsourced services, including information regarding the outsourced services, the service provider, the service recipient and the responsible unit within the financial institution;

2. in the case of outsourcing outside Switzerland, banks have to make sure that all necessary data for reorganisation, resolution and liquidation purposes remain accessible in Switzerland at all times;
3. the requirements provided by the Circular are to be complied with regardless of whether outsourcing is within a group, although the intra-group nature of an outsourcing may be taken into account for risk assessment purposes; and
4. banks are required to assess compliance with requirements for data protection and banking secrecy, separately, in light of the relevant applicable statutes.

Specific constraints and requirements regarding the organisation of a Swiss bank (e.g., with respect to internal audit, controls, compliance and reporting, segregation between trading, asset management and execution function) vary depending on the actual business and size of the bank.

In this context, FINMA Circular 2010/1 on remuneration schemes, the purpose of which is to increase the transparency and risk orientation of compensation schemes in the financial sector, provides for 10 principles that certain financial institutions must observe. Although these rules do not impose any absolute or relative cap on remuneration, FINMA requires that variable compensations (i.e., any part of the remuneration that is at the discretion of the employer or contingent upon performance criteria) be dependent on long-term sustainable business performance, taking into account assumed risks and costs of capital. FINMA thus expects a significant portion of the remuneration to be payable under deferral arrangements. Furthermore, the compensation policy is to be disclosed annually to FINMA. These rules are notably mandatory for banks and financial groups (or conglomerates) with capital requirements in excess of 10 billion Swiss francs. In practice, this now concerns only UBS. For other financial institutions, the Circular represents guidelines for adequate remuneration policies. FINMA can, however, deviate from this and require, where appropriate, a determined institution to comply with some or all of the provisions of Circular 2010/1.

Finally, FINMA Circular 2017/1 on corporate governance and Circular 2023/01 on operational risks integrate the key principles of corporate governance and risk management issued by the Banking Committee on Banking Supervision into Swiss regulation. Circular 2023/01 on operational risks and resilience was published on 13 December 2022 and replaced Circular 2008/21 as of 1 January 2024. The fully revised Circular reflects new technological developments and implements the principles for operational resilience published by the Basel Committee on Banking Supervision in March 2021.

Regulatory capital and liquidity

Since 2013, the Swiss legislator and FINMA have gradually introduced the Basel III standards into Swiss law (i.e., rules on eligible capital, on the amount of capital required to absorb losses, risk diversification, liquidity and disclosure). The capital adequacy and

liquidity requirements are set out in the CAO and the LO in line with the applicable Basel III standards. The Swiss implementation of the last package of Basel III (i.e., the final Basel III standards (also referred to as Basel 3.1 or Basel IV)) that notably seeks to increase credibility in the calculation of risk-weighted assets (RWA) entered into force on 1 January 2025.

As the Basel III capital requirements are minimum requirements and Switzerland has a tradition of imposing more stringent capital requirements on its banks, the CAO provides for an additional layer of capital (additional capital), which requires Swiss banks to have additional capital based on the size and specificities of their business.

Compared to Basel III, the CAO provides for:

1. the possibility of a direct deduction from Common Equity Tier 1 capital as an alternative to a risk-weighting of an asset; and
2. the application of requirements on a stand-alone basis for which Basel III does not make any recommendations.

Calculation of capital requirements

As regards credit risks, Swiss banks can choose between the standard approach (international standard SA-BIS) and an internal ratings-based approach (IRB) in its two variations: foundation IRB or advanced IRB.

As regards operational risks, the basic indicator and the former standard approach as well as the institution-specific approaches have been replaced by a new more risk sensitive standard approach. Swiss banks are now to use said new approach which is based on the key figures Business Indicator, Business Indicator Component, Internal Loss Multiplier and Loss Component.

As regards market risks, the CAO implements the respective rules developed by the Basel Committee in cooperation with the International Organization of Securities Commissions. Capital requirements must be met both at the level of the individual institution and at the level of the financial group or conglomerate. Stand-alone reporting is required on a quarterly basis and consolidated reporting on a semi-annual basis.

The required capital is as follows.

Minimum capital requirements

The minimum capital requirements (after application of regulatory adjustments) call at all times for an aggregate (Tier 1 and Tier 2) capital ratio of 8 per cent of a bank's risk-weighted assets, with a minimum Common Equity Tier 1 capital ratio of 4.5 per cent and a minimum Tier 1 capital ratio of 6 per cent of such risk-weighted assets. [3]

In this context, banks' assets are notably weighted against credit risk, non-counterparty-related risks, market risks, operational risks, risks under guarantees for central counterparties and value adjustment risks in connection with derivative counterparty credit risks

Capital buffer

Banks must have a capital buffer in accordance with requirements specified in the CAO for each bank category. If the minimum ratio is temporarily not met because of unforeseeable events, such as a crisis within the international or Swiss financial system, this does not amount to a breach of the capital requirements, but a deadline will be set by FINMA for replenishing the capital buffer.

Countercyclical buffer

The Swiss National Bank (SNB) can request the Federal Council to order that banks must maintain a countercyclical buffer of up to 2.5 per cent of all or certain categories of their risk-weighted assets in Switzerland in the form of Common Equity Tier 1 capital if this is deemed necessary to back the resiliency of the banking sector with respect to risks of excessive credit expansion or to counter an excessive credit expansion. Following its deactivation at the outset of the covid-19 pandemic in March 2020, the Federal Council reactivated the countercyclical buffer of 2.5 per cent applicable to loans secured by Swiss residential property as of 30 September 2022.

Extended countercyclical buffer

Banks with total assets of at least 250 billion Swiss francs, of which the total foreign commitment amounts to at least 10 billion Swiss francs, or with a total foreign commitment of at least 25 billion Swiss francs are further required to maintain an extended countercyclical buffer in the form of Common Equity Tier 1 capital. An extended countercyclical buffer is calculated based on foreign private sector credit exposures, including non-bank financial sector exposures.

Additional capital requirements

In special circumstances and on a case-by-case basis, FINMA may demand that certain banks maintain additional capital, notably to respond to risks that FINMA deems not adequately covered by the minimal capital requirements. The additional capital requirements, with the capital buffer, primarily aim at ensuring that the minimum capital requirements can also be met under adverse conditions.

Qualifying capital

To qualify under the capital requirements, equity must be fully paid in or have been generated by the bank. As a rule, it cannot be directly or indirectly financed by the bank, set off against claims of the bank or secured by assets of the bank. All qualifying capital must be subordinated to all unsubordinated claims of creditors in the case of liquidation, bankruptcy or restructuring of the bank. Capital instruments that are not only convertible, or subject to a conditional waiver in the case of an imminent insolvency of a bank, are qualified based on their respective terms prior to conversion or reduction, other than in the

context of the requirements for additional capital or convertible instruments of systemic banks.

The capital qualifying under the above general requirements is divided into Tier 1 capital and Tier 2 capital. Tier 1 capital is, in turn, subdivided into:

1. Common Equity Tier 1 capital, which consists of the paid-in capital, disclosed reserves, reserves for general banking risks (after deduction of latent taxes unless provided for) and profits carried forward and, with certain limitations, profits for the current business year as shown on audited interim financial statements reviewed in accordance with FINMA guidelines; and
2. Additional Tier 1 capital, which consists of perpetual equity or debt instruments with restricted optional repayments and discretionary distributions providing for a conversion into Common Equity Tier 1 instruments (or, in the case of equity instruments without a conversion feature, a waiver of any privilege over Common Equity Tier 1 instruments), or a reduction and write-off to contribute to the restructuring of a bank in the case of its threatened insolvency (point of non-viability (PONV)). The conversion or reduction takes place when FINMA determines a recourse to public sector assistance, whereby for the investors the conversion or reduction becomes effective before the recourse, or when ordered by FINMA to avoid insolvency in the case of equity instruments, whereas an additional trigger of breaching a minimum threshold of 5.125 per cent of Common Equity Tier 1 capital is required for debt instruments. If such trigger occurs for liabilities that are included as Additional Tier 1 capital, FINMA shall order the reduction of the exposure or conversion into Common Equity Tier 1 capital and the timing thereof, and shall determine the amount covered. In doing so, it shall comply with the contractual terms and conditions of the issue or loan and the resulting order of priority. Debt instruments with capital reduction may provide for a conditional participation in the benefits of a subsequent recovery of the bank's financial situation. Additional Tier 1 capital issued by a special purpose vehicle, the proceeds of which are immediately and without restrictions passed on to the ultimate holding company or an operative company of the group in the same or higher quality, qualifies as Additional Tier 1 capital on a consolidated basis.

Tier 2 capital consists of equity or debt instruments with a minimum term of five years with restricted optional repayments and discretionary distributions providing for their conversion or reduction at such time as the bank reaches the PONV as for Additional Tier 1 capital. During the five years before final maturity, the amount of such instruments that qualify is reduced by 20 per cent of their nominal amount for each year.

Regulatory deductions

Banks must apply full or threshold deductions to the above capital elements to account for various items, such as losses, unfunded valuation adjustments, goodwill, deferred tax assets and defined benefit pension fund assets in line with the Basel minimum standards.

Leverage ratio

On the basis of the LO, which implements a leverage ratio in line with Basel III, FINMA Circular 2015/3, 'Leverage ratio – banks' defines the methodology for calculating the leverage ratio in line with the Basel III methodology.

In accordance with Basel III requirements, the CAO requires a risk-weighted capital ratio as well as an unweighted capital adequacy requirement for all non-systemic banks. A safety net in the form of a leverage ratio has been implemented and provides for a minimum core capital (Tier 1) to a total exposure ratio of 3 per cent for all non-systemic banks. The FINMA Circular 2015/3 enables banks to also apply the Basel III standard approach for derivatives when calculating the leverage ratio.

Risk diversification rules

The maximum risk concentration permissible is 25 per cent of the overall required capital (after application of required deductions). The CAO provides that risk concentrations are to be measured only against core capital (Tier 1), meaning that supplementary capital (Tier 2) is generally not taken into account. Moreover, banks are allowed only very restricted use of models for determining their risk concentrations, as modelling errors have a major impact when calculating these risks. The risk diversification provisions in the CAO are supplemented by FINMA Circular 2019/1, 'Risk diversification – banks'.

Compliance with capital adequacy requirements has to be reported to the SNB on a quarterly basis and is one of the topics addressed in the long-form reports issued by banks' external auditors on a yearly basis.

Liquidity requirements

The LO sets out the quantitative and qualitative requirements for the minimum liquidity for banks. Although FINMA is in charge of the implementation and enforcement of the LO, it must consult with the SNB on any questions relating to its implementation.

The LO implements the quantitative elements required by the Basel III framework for the LCR. The implementation of the net stable funding ratio (NSFR), which was postponed owing to delays in the introduction of the NSFR on the EU and US financial markets, was implemented in July 2021 (along with the revised FINMA Circular 2015/2 on the liquidity risks for banks), in line with the implementation in the European Union and the United States. As mentioned earlier in this chapter, reduced LCR requirements apply to small banks, which are further detailed in FINMA Circular 2015/2.

Banks have to report their LCR at each month end to the SNB. Banks that hold privileged deposits must maintain additional liquid assets to cover their respective obligations, as set by FINMA, based on the amount of privileged deposits reported annually by the bank.

Specific regime applicable to systemic banks: capital, liquidity and risk diversification

The CAO sets out the specific capital requirements for SIBs and G-SIBs in line with G20 standards.

SIBs must have sufficient capital to ensure continuity of their service at times of stress and to avoid state intervention, restructuring or winding up by FINMA (i.e., going concern

capital requirement). The going concern requirement consists of a basic and a progressive component and is set with respect to both the bank's leverage ratio and its risk-weighted assets.

The progressive component is calculated based on the degree of systemic importance of a bank, such as its size and market share. The basic going concern capital requirement of a SIB consists of a base requirement of 4.5 per cent leverage ratio and a 12.86 per cent risk-weighted assets ratio, and a surcharge. The size of the surcharge is set with respect to the degree of systemic importance (i.e., the total exposure and the market share of the relevant SIB). The going concern requirement is further split into a minimum requirement component of a 3 per cent leverage ratio and an 8 per cent risk-weighted assets ratio that a SIB has to maintain at all times, and a buffer component by which a SIB may temporarily fall short (e.g., in the case of losses and under strict conditions).

Systemic banks operating at an international level are further subject to an additional capital requirement to guarantee their recovery or the continuation of their systemic functions in an operating unit while liquidating other units without support from the public (i.e., gone concern requirement). By analogy, the gone concern requirement of a G-SIB quantitatively corresponds to its total going concern capital requirement: that is, a minimum 4.5 per cent leverage ratio and a minimum 12.86 per cent risk-weighted assets ratio, plus any surcharges applicable to the relevant G-SIB, to the exclusion of countercyclical buffers. After consultation with the SNB, FINMA may lower the level of those requirements, based on the effectiveness of measures taken to improve the global resolvability of the relevant G-SIB group and in consideration with other factors. However, the gone concern requirement must not fall below a 3.75 per cent leverage ratio or a 10 per cent risk-weighted assets ratio. The gone concern requirement is complied with, as a general rule, by means of bail-in instruments such as bonds with conversion rights, subject to the regulator's decision. The CAO also provides for specific rules for the treatment of systemically important banks' stakes in their subsidiaries (see below). In particular, certain group entities of SIB, such as their parents or Swiss units performing systemically important functions, will need to fulfil, both at group level and on a stand-alone basis, the specific requirements with which systemic banks have to comply.

Systemic banks also must satisfy the countercyclical buffer and extended countercyclical buffer requirements. Capital requirements apply both on a stand-alone and consolidated basis. Finally, FINMA may, in extraordinary circumstances, require a SIB to hold additional capital or demand that the going concern capital requirement is fulfilled with higher-quality capital.

In addition, SIBs are subject to more stringent liquidity requirements both on a stand-alone and a consolidated basis, which take into account extraordinary stress scenarios. The LO sets forth additional liquidity requirements that SIBs must meet and ensures that SIBs hold sufficient liquidity to absorb liquidity shocks and cover their needs in the event of restructuring or liquidation. In particular, SIBs need to hold sufficient liquidity to confront a 90-day liquidity crisis as opposed to 30 days for non-SIBs. Further, FINMA may require additional liquidity requirements at entity level.

As regards risk diversification, the maximum risk concentration permissible for systemic banks is 25 per cent (or, in the case of exposure to another systemic bank, 15 per cent) of the Common Equity Tier 1 capital (other than Common Equity Tier 1 capital constituting the progressive element) only. The CAO provides for specific rules for the treatment of

systemically important banks' stakes in their subsidiaries. The same regime applies to SIBs and G-SIBs. This regime provides, inter alia, for an abolition of the full deduction of parent companies' positions held in subsidiaries from core equity capital and of the accompanying relief measures allowed for these two large banks and for replacement thereof, after a transition period, by a risk weighting of up to 250 per cent with respect to positions in Swiss-based subsidiaries and 400 per cent with respect to positions in foreign subsidiaries of these two large banks. These requirements relate to parent companies' stand-alone capital ratios, but not the consolidated ratios.

As part of the review of the 'too big to fail' regime, more stringent capital requirements are also being discussed.

Recovery and resolution

The provisions of the Banking Act of 1934 (BA) dealing with insolvent banks aim at streamlining reorganisation procedures, ensuring prompt repayment of preferential deposits and the continuity of basic banking services. These provisions enhance the flexibility of such proceedings and confer additional instruments and powers to FINMA with a view to increasing the likelihood of a successful reorganisation. FINMA is, for instance, empowered to order a transfer of all or part of a failing bank's activities to a bridge bank, the conversion of certain convertible debt instruments issued by the bank (CoCos or convertibles), the reduction or cancellation of the bank's equity capital and the conversion of the bank's obligations into equity. The FINMA Banking Insolvency Ordinance details the reorganisation and bankruptcy proceedings set forth in the BA.

With effect as of 1 January 2023, the BA was amended to enshrine in the law itself the reorganisation measures such as capital measures (e.g., a bail-in) that may affect the rights of a bank's owners and creditors, something that was previously only provided for in the FINMA Banking Insolvency Ordinance. In particular, detailed rules with regard to the claims that qualify for bail-in measures and the order of priority of such claims were now introduced in the BA. They allow FINMA to order the conversion of the bank's obligations (third-party funding) into equity capital, with the exception of certain limited claims that would be ranked in privileged classes in the event of a liquidation procedure. This measure could also potentially concern clients' deposits that do not qualify as preferential deposits (being defined as cash deposits of up to 100,000 Swiss francs whose payment would be secured within liquidation proceedings). The amendments to the BA specify the content of the restructuring plan and replace the requirement that a restructuring plan needs to put creditors in a better position than liquidation by the more usual 'no-creditor-worse-off-than-in-liquidation' requirement. Furthermore, the available capital measures (cancellation of existing equity and the write-down or conversion of debt into equity) are addressed in more detail. Conversion of debt into equity is no longer an *ultima ratio* measure but may be ordered by FINMA if it is deemed to be the most appropriate measure. Further amendments to the BA strengthen the deposit protection scheme.

Under the BA, FINMA may further order a stay of early termination rights (and, as a result, netting, private realisation of collateral and porting) with any of the protective or reorganisation measures it may take in the event of insolvency risk and in relation to any contractual agreement with the bank. Where agreements subject to termination rights in the case of protective or reorganisation measures are governed by non-Swiss

law or non-Swiss jurisdiction clauses, the Banking Ordinance (BO) generally requires, for enforceability purposes, that Swiss banks and securities firms only enter into new agreements or agree to the amendment of agreements, provided the counterparty contractually acknowledges and consents to a stay of the termination right.

In line with international standards, systemic banks must have both a recovery plan and a resolution plan for identifying risks to the stability of the financial system as a result of their systemically important nature, and to determine viable ways of dealing with the effects of a crisis. Pursuant to the BO, a systemic bank has to establish a recovery plan that contains the measures that it would implement in the event of a crisis and that would allow it to pursue its activity without requiring government funds. Responsibility for drafting and regularly updating the recovery plan lies at executive board level of the systemic bank and must be embedded in a viable corporate governance framework. The recovery plan and any amendments thereto are subject to FINMA's approval.

On 26 March 2024, FINMA confirmed that the recovery and resolutions plans of Zurich Cantonal Bank and Raiffeisen Switzerland (SIBs), as well as the recovery plan of PostFinance (SIB) was in place, while noting that the resolutions plan of PostFinance was still subject to improvement. The recovery and resolution plans of UBS (G-SIB) are in the process of being revised due to the takeover of Credit Suisse; FINMA announced on 15 October 2024 that the annual approval thereof had been suspended as the integration of the Credit Suisse is triggering the need for adjustments of its recovery plans by UBS. FINMA expects UBS to further develop its resolution planning.

As noted earlier in this chapter, the Swiss 'too big to fail' regime is currently under review, taking into account the conclusions from various authorities in relation to the Credit Suisse crisis with potential draft bills amending such regime to be expected in the course of 2026.

Conduct of business

The obligations ordained by the anti-money laundering regulations have a material effect on how banks conduct their activities. Financial intermediaries are required to verify the identity of their contracting partners and the beneficial owner of accounts as well as to periodically review this information and monitor high-risk transactions.

If reasons for suspicion of money laundering exist, banks must notify the Money Laundering Reporting Office Switzerland (MROS) by filing a suspicious activity report (SAR). In this context, a two-step process applies. First, banks must monitor the account during the review of the case by the MROS (with the aim of blocking any transaction that may result in preventing or complicating the confiscation of the concerned assets). As of 1 January 2023, the Swiss legislator has suppressed the 20-day statutory period for the MROS to conduct its review. However, in the event that the MROS does not inform the bank within 40 days that it is transmitting the SAR to a prosecution authority, the bank is free to terminate the relationship. In such a case, it is required to keep a paper trail following any withdrawal and to inform MROS of the termination of the business relationship and the date on which it occurred. As a second step, if the MROS informs the bank that it transmits the SAR to a prosecution authority, the bank must implement a full freeze on the account for up to five working days until a decision to maintain the freeze is rendered by the criminal authority.

An immediate freezing of assets is, however, required for assets connected to persons whose details have been transmitted to the financial intermediary by FINMA, the Federal Gaming Board or a self-regulatory organisation because of a suspicion of such persons being involved with or supporting terroristic activities. The MROS is vested with powers regarding requests for information from the Swiss financial intermediaries and the exchange of information with foreign financial intelligence units (FIUs). The rules of conduct of Swiss banks in relation to the prevention of money laundering and terrorism financing are further detailed by the Agreement on the Swiss banks' code of conduct with regard to the exercise of due diligence 2020 (CDB), which represents mandatory minimum standards for all banks. A breach by a bank of its duty to communicate is subject to a fine of up to 500,000 Swiss francs. In addition, certain behaviours may constitute a criminal offence of money laundering, as the case may be, by negligence.

With respect to its customer relationships, a bank is primarily bound by the duties and obligations stated in the relevant contractual documentation. In addition, FinSA governs the provision of financial services, whether provided in Switzerland or to Swiss clients. FinSA is complemented by an implementing ordinance, namely the Financial Services Ordinance (FinSO). FinSA is inspired by the EU financial markets and services legal acts (the Markets in Financial Instruments Directive, the Prospectus Directive and the Packaged Retail and Insurance-based Investment Products Regulation). FinSA notably introduces the following requirements, including for non-Swiss financial service providers acting in Switzerland on a cross-border basis (unless the financial service is the result of a reverse-solicitation situation expressly excluded from the scope of FinSA):

1. to classify clients according to new client categories (private, professional and institutional);
2. compliance with certain organisational measures and rules of conduct (e.g., information duties, including in relation to conflicts of interest, suitability and appropriateness tests, documentation requirement, reporting duties, duty of care);
3. a duty for client advisers to register in a client adviser register. In this respect, an exemption is available for foreign financial service providers that are subject to prudential supervision in their home jurisdiction, provided they only offer their services to institutional and per se professional clients in Switzerland; and
4. to be affiliated with an ombudsman's office (except for institutions that exclusively provide financial services to institutional or per se professional clients).

A breach of the duties of information, diligence and loyalty may give rise to civil liability as well as regulatory consequences to the extent that FINMA is of the view that a bank no longer meets the requirements of good reputation and proper business conduct.

The requirements of the FinSa and the FinSO are also further specified in a FINMA Circular 2025/02 on rules of conduct under the FinSA and the FinSO, which has entered into force on 1 January 2025, with certain requirements applying as from 1 July 2025. Circular 2025/02 notably details supervisory expectations as regards financial intermediaries' information duties, suitability and appropriateness, conflicts of interests (including remunerations from third parties) and securities lending.

A Swiss bank is bound by a statutory duty of confidentiality towards its clients. A breach of that duty is considered to also be a breach of the client–bank contractual relationship and may give rise to civil and criminal liability. As a general rule, any disclosure of client data to a third party, including the parent company, its supervisory authority or an affiliated entity is prohibited. Exceptions apply under certain circumstances, such as in the context of consolidated supervision, or following a request for international judicial or administrative assistance issued by a public authority (including FIUs for anti-money laundering purposes), or if a client has consented to a disclosure. In recent years, the importance and scope of Swiss banking secrecy have been the subject of intense discussion in Switzerland following pressure from other countries, and the situation significantly changed with the implementation of the automatic exchange of information.

Funding

The main funding sources for Swiss banks are money market instruments, interbank funding, customer savings accounts, other customers' deposits, cash bonds and bonds.

Control of banks and transfers of banking business

Control regime

For purposes of the BA, a participation is deemed to be qualified if it amounts to at least 10 per cent of the capital or voting rights of a bank, or if the holder of the participation is otherwise in a position to significantly influence the business activities of the bank (a qualified participation). In practice, FINMA requires disclosure of participations of 5 per cent or more for its assessment of whether the requirements of a banking licence are continuously being met.

The BA does not set any restrictions on the type of entities or individuals holding a controlling stake in a bank. However, one of the general licensing conditions is that individuals or legal entities that directly or indirectly hold a qualified participation in a bank must ensure that their influence will not have a negative impact on the prudent and reliable business activities of the bank. Thus, the bank's shareholders and their activities may be of relevance for the granting and maintenance of a banking licence. Shareholders with a qualified participation may be deemed to have a negative influence on the bank; for example, in cases of a lack of transparency, unclear organisation or financial difficulties of financial groups or conglomerates, and influence of a criminal organisation on the shareholders. Should FINMA take the view that the conditions for the banking licence are no longer being met because of a shareholder with a qualified participation, it may suspend the voting rights in relation to that qualified participation or, if appropriate and as a last measure, withdraw the licence.

If foreign nationals with a qualified participation directly or indirectly hold more than half the voting rights of, or otherwise have a controlling influence on, a bank incorporated under the laws of Switzerland, the granting of the banking licence is subject to additional

requirements. In particular, the corporate name of a foreign-controlled Swiss bank must not indicate or suggest that the bank is controlled by Swiss individuals or entities, and the countries where the owners of a qualified participation in a bank have their registered office or their domicile must grant reciprocity (i.e., it must be possible for Swiss residents and Swiss entities to operate a bank in the respective country, and the banks operated by Swiss residents must not subject to more restrictive provisions than foreign banks in Switzerland). In practice, the reciprocity requirement no longer applies as regards foreign holders of qualified participations domiciled or incorporated in Member States of the World Trade Organization.

Furthermore, FINMA may request that a bank is subject to adequate consolidated supervision by a foreign supervisory authority if the bank forms part of a financial group or conglomerate.

If a Swiss bank falls under foreign control, as described above, or if a foreign-controlled bank experiences changes in its foreign shareholders directly or indirectly holding a qualified participation, an additional special licence for foreign-controlled banks must be obtained prior to such events. Under the BA, a foreigner is as follows:

1. an individual who is not a Swiss citizen and has no permanent residence permit for Switzerland; or
2. a legal entity or partnership that has its registered office outside Switzerland or, if it has its registered office within Switzerland, is controlled by individuals as defined in (a).

According to Swiss law, there are no restrictions regarding the business activities of the entities holding qualified participations in a bank as long as the conditions for granting and maintaining the licence are complied with. Generally, transactions between the (controlling) shareholders of a bank and the bank itself may be subject to specific requirements (e.g., the granting of loans to significant shareholders must be in compliance with generally recognised banking principles).

Each controlling shareholder has the duty to notify about an acquisition or disposal of a qualified participation, as well as the fact that its participation reaches, exceeds or falls below certain thresholds. Furthermore, the holder of a qualified participation is required not to negatively influence the prudent and reliable business activities of the bank.

Even though the acquisition of a qualified participation in a bank by a Swiss individual or a Swiss entity in theory only triggers notification obligations, it is necessary to seek a letter of no objection from FINMA for the account of the bank prior to an envisaged transfer of a controlling stake in a Swiss bank, as FINMA controls the continuing compliance with the conditions of a banking licence. FINMA will examine whether the influence of the new shareholder with a qualified participation would be detrimental to the prudent and reliable business activities of the bank.

Transfers of banking business

Historically, the vast majority of acquisition transactions in the Swiss banking industry were structured as share deals. Over the course of the past few years, a number of transactions have been structured as asset deals.

Outlook and conclusions

The Swiss regulatory landscape has continually evolved to address emerging challenges within the banking industry, such as the effects of a high density of regulations for certain sectors, and governmental influence on and support of financial institutions. This evolution includes the intensification of capital adequacy and liquidity requirements, with FINMA focusing on systemic risk issues. The Swiss regulatory framework has further progressively converged from a principle-based to a rule-based approach, particularly for systemically important financial institutions. The takeover of Credit Suisse by UBS in 2023 highlights the ongoing complexities of managing systemic risks and underscores the necessity for flexible regulatory measures to ensure financial stability and integrity in response to both anticipated and unforeseen market dynamics. This development has prompted the revision of existing regulations, aimed at identifying areas of improvement and addressing weaknesses exposed during the crisis. This will shape the development of Swiss financial markets regulation and supervision in the years to come.

Every three years, FINMA publishes its strategic goals and priorities for the next three-year period. For the period from 2025 to 2028, FINMA has updated its strategic goals to the following main policy challenges:

1. supervision: enhance focus on the conduct, risk management, risk tolerance, and governance of supervised entities, with a specific emphasis on anti-money laundering (AML), sanctions, and customer conduct rules;
2. resilience: ensure the stability of financial institutions, focusing on recovery and resolution plans, crisis exercises, capital and liquidity buffers, and the management of operational risks (including cybersecurity and climate- and nature-related financial risks);
3. regulation: contribute actively to the development of effective financial market regulation, particularly in response to the Credit Suisse crisis, through national and international cooperation, and adapting to new technologies; and
4. supervisor's organisation: increase resources for supervision and integrate new supervisory technologies into its activities.

Following recent market trends and the Credit Suisse crisis, FINMA has sharpened its focus on mitigating liquidity risks and operational vulnerabilities, notably those linked to IT and outsourcing structures. This focus will continue in the years ahead.

Additionally, FINMA has ramped up enforcement actions, with increased attention on individuals responsible for serious violations of supervisory law with, including the potential imposition of professional bans and public disclosure of decisions. The regulator is particularly focuses on risk management and compliance with AML obligations.

The growth of Switzerland's fintech sector and emerging business models present an ongoing challenge for both the Swiss legislator and regulator. FINMA regularly engages with international bodies to establish a framework that promotes innovation while protecting customers and investors. It is also critically evaluating the potential long-term impact of artificial intelligence on the Swiss financial sector.

Finally, climate change has become a key supervisory focus, with greenwashing and the management of climate-related financial risks remaining high on the regulatory agenda.

Endnotes

1 Agreement on the Swiss banks' code of conduct with regard to the exercise of due diligence of July 2018 (CDB 20). ^ Back to section

2 Portfolio Management Guidelines of November 2020. ^ Back to section

3 These requirements form the first pillar of a bank's regulatory capital base. ^ Back to section

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