

FEDERAL LAW ON BANKS AND SAVINGS BANKS

of November 8, 1934 (Incorporating Last Amendment under Date of October 3, 2003)¹

The Federal Assembly of the Swiss Confederation,
based upon Articles 34^{ter}, 64 and 64^{bis} of the Federal Constitution, after examination of the
message of the Federal Council of February 2, 1934,

resolves

SECTION I – SCOPE OF THE LAW

Art. 1

- 1 The present Law shall apply to banks, private bankers (individual proprietorships, general and limited partnerships) and savings banks, hereinafter referred to as banks.
- 2 Natural persons and legal entities, which are not subject to this law, may not accept deposits from the public on a professional basis. The Federal Council may foresee exceptions so long as the protection of the depositors is assured. The issue of bonds is not deemed to be the acceptance of deposits on a professional basis.
- 3 The present Law 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. portfolio managers, notaries and business agents who simply manage their customers' funds and who do not engage in regular banking business.
- 4 The term bank or banker, alone or in combination with other words, may only be used in the company name, designation of the business purpose or advertising, in the case of institutes which have obtained a license from the Federal Banking Commission (Banking Commission). Art. 2 par. 3 shall take precedence.
- 5 The Swiss National Bank and the central mortgage institutions are governed by the provisions of the present Law to the extent expressly stated.

Art. 1^{bis}

- 1 The Supervisory Authority can subordinate to the present law the operators of systems captured by Art. 19 of the Law on the National Bank dated October 3, 2003 and grant them a banking license.
- 2 *It shall grant a banking license only on condition that the licensing prerequisites of this law as well the extended duties of disclosure and minimum conditions set by the National Bank are observed on an on-going basis.*
- 3 *It can exempt a system operator from certain provisions of the Law and order alleviating or more onerous provisions in order to take account of its particular business activity and risk situation.*

¹ All amendments dated October 3, 2003 are in italic print. These changes take effect on July 1, 2004.

Art. 2

- ¹ The provisions of the present Law shall apply by analogy to the offices, branches, agencies and permanent representatives of foreign banks in Switzerland.
- ² The Banking Commission shall issue the necessary directives. It may, in particular, require that these unincorporated entities are adequately capitalized and that guarantees are provided.
- ³ The Federal Council is empowered, on the basis of reciprocal recognition of equivalent rules over banking activities and equivalent measures in the field of banking supervision, to enter into treaties with states which grant the possibility for banks from the contracting states to open a branch, agency or representation without the permission of the Banking Commission.

SECTION II – LICENCE TO ENGAGE IN BANKING BUSINESS

Art. 3

- ¹ Banks are required to obtain a license from the Banking Commission prior to engaging in business operations; they may not register with the Register of Commerce before such license has been granted.
- ² A license will be granted if:
 - a. the articles of association, by-laws, company contracts 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.^{bis} 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.
- ³ The bank shall file its articles of incorporation, by-laws, company contracts and internal regulations with the Banking Commission and notify that body 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 registered with the Register of Commerce unless they have been approved by the Banking Commission.
- ⁴ repealed

- ⁵ Each natural person or legal entity shall notify the Banking Commission prior to acquiring or selling directly or indirectly a qualified participation as defined in par. 2 lit. c^{bis} in a bank organized in accordance with 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.
- ⁶ The bank shall make notification of those persons who fall under the requirements of par. 5 as soon as it has knowledge thereof, at least however once a year.
- ⁷ Banks organized under Swiss law shall notify the Banking Commission 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. 3^{bis}

- ¹ The license to establish a bank which is to be organized in accordance with Swiss law, but in whose case a controlling foreign influence exists, as well as the license 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 is to be subjected additionally to 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
- ^{1bis} If a bank forms part of a group which operates in the field of finance, the license may be given subject to it submitting to appropriate consolidated supervision by foreign supervisory authorities as well as their approval to operate the business.
- ² The bank must inform the Swiss National Bank of the scope of its business activities and its relations with other countries.
- ³ A bank organized under Swiss law falls under the provisions of par. 1 whenever a foreigner with a qualified participation directly or indirectly holds more than 50 percent of the voting rights in the bank or a significant influence on it is exercised in another manner.
- A foreigner is deemed to be:
- a) natural persons who are neither Swiss citizens or do not possess an establishment 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 a).

Art. 3^{ter}

- 1 An additional license within the meaning of Article 3^{bis} must be obtained by any bank which falls under foreign control.
- 2 A new additional license must be obtained, if a foreign controlled bank experiences a change of its foreign shareholders holding a qualified participation.
- 3 The members of the Board and the management of a bank are to notify the Banking Commission 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^{quater}

- 1 The Federal Council is empowered through treaties with other states, to declare the particular requirements of Art. 3^{bis} and Art. 3^{ter} 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.
- 2 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

- 1 Banks must provide for an adequate relationship between:
 - a) their equity and their total liabilities;
 - b) their liquid assets and their easily marketable assets on one hand and their short-term liabilities on the other hand.
- 2 The Implementing Ordinance establishes the directives to be observed in this respect under normal circumstances, taking into consideration the kind of business and the type of bank; it shall define the terms of own funds, liquid assets, easily marketable assets and short-term liabilities.
- 2bis. The qualified participation of a bank in an enterprise outside the fields of finance or insurance may not exceed the equivalent of 15 percent of its equity. The total of such participations may not exceed 60 percent of equity. The Federal Council decides upon exceptions.
- 3 In special cases the Banking Commission is authorized to permit less stringent application of the guidelines or to seek enforcement of more stringent provisions.
- 4 repealed

Art. 4^{bis}

- 1 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 equity.
- 2 The Implementing Ordinance establishes the lending limits with special consideration given to loans to public authorities and to the type of security furnished.

3 repealed

Art. 4^{ter}

1 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.

2 repealed

Art 4^{quater}

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^{quinquies}

- ¹ 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.
- ² In cases where doubt exists regarding the transmission of data pursuant to par. 1, banks may demand a directive from the Banking Commission to allow or forbid the transmission of information.

Art. 5

- ¹ Banks shall transfer at least one twentieth of their yearly net profits into a reserve fund designated to cover losses and to permit write-offs. The transfers have to be effected until this fund amounts to one fifth of the paid-in capital or, in the case of banks which have no paid-in capital, to one twentieth of the deposits.
- ^{1bis} The following shall be allocated to reserve funds even after these have reached the statutory level:
 - a. any proceeds exceeding the nominal value of share issues or issues of stock certificates after covering the issue costs;
 - b. one tenth of the amounts which are distributed from the net profits after regular allocations to the reserve fund and after a dividend or interest on stock certificates of 5 % has been paid to the parties entitled to such a share in earnings.
- ² This article shall not be applied to private bankers which do not publicly solicit deposits from the public.

SECTION IV – ANNUAL FINANCIAL STATEMENTS AND BALANCE SHEETS

Art. 6

- ¹ 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.
- ² The annual report is to be drafted in accordance with the provisions of the Code of Obligations pertaining to companies limited by shares and with this law. Whenever general conditions require it, the Federal Council may permit departures therefrom. Such a decision of the Federal Council is to be published.

- 3 The Federal Council determines which banks are to prepare interim financial statements.
- 4 Single-company, consolidated and interim financial statements are to be published or made available to the public.
- 5 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.
- 6 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 REDUCTION OF CAPITAL; SPECIAL PROVISIONS FOR CO-OPERATIVE BANKS

Art. 11

- 1 The reduction of capital of banks which are organized as companies limited by shares or limited partnership corporations is governed by the relevant rules of the Code of Obligations, without prejudice, however, to the following provisions:
- a. the general meeting may not vote a reduction of the capital unless a special audit report shows that the creditors' claims are fully covered, despite a reduction of capital, and that the liquidity remains assured;
 - b. the reduction of the capital may be carried out at the expiry of a two month period from the day the resolution, together with the notice to creditors, was published according to the by-laws of the bank, and after the creditors who filed their claims within that period have been paid or secured;
 - c. the book profit which may result from the reduction of the capital stock must be transferred to the reserve fund unless it is needed for write-offs of doubtful assets or for provisions for such assets.
- 2 The provisions of paragraph 1 apply by analogy to the reduction of the authorized capital of a limited liability company or the reduction or cancellation of participation certificates in a co-operative company.

Art. 12

- 1 Banks that are organized as co-operatives may not redeem the participation certificates of retiring co-operative members before the annual financial statements of the fourth business year after the resignation has been approved. Every other form of invalidation of the membership is equal to a resignation.

- ² The participation certificates of retiring co-operative members remain pledged for the commitments of the co-operative bank until their redemption.
- ³ The redemption may only take place if the creditors' claims remain covered and liquidity is assured.

Art. 13

- ¹ New commercial banks may not be constituted as co-operative banks.
- ² Where an existing co-operative bank subsequently becomes a commercial bank, the Banking Commission will fix a time limit for the conversion into a joint stock company, a limited partnership corporation or a limited liability company.
- ³ In case of doubt, the Banking Commission shall decide whether an institution falls under the classification of commercial banks.

Art. 14

repealed

SECTION VII – SAVINGS AND CUSTODY DEPOSIT ACCOUNTS

Art. 15

- ¹ Deposits referred to as savings in any combination of words whatever may only be accepted by banks publishing annual financial statements. All other types of companies are not authorized to accept savings deposits and they may not use in their company name, or in the designation of their business purpose or in their advertising the term "savings" in connection with the money deposited with them.
- ² repealed
- ³ repealed

Art. 16

Valuables in custody deposit accounts within the meaning of Art. 37d of the Law 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

- ¹ 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.

- ² 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

- ¹ Each year, banks must submit their annual financial statements to audit by an external auditor.
- ² repealed

Art. 19

- ¹ The auditor must examine the annual financial statements to ascertain whether they comply with the requirements of the law, the by-laws and regulations as regards form and content. The auditor must also ascertain that the provisions of the present Law and its Implementing Ordinance, as well as any possible Cantonal provisions concerning statutory liens in favor of savings deposits and the requirements for holding a banking license, have been adhered to.
- ² Banks must at any time make available to the auditor their books, records and other supporting documents which are customary in Swiss banking circles in order to ascertain and value assets and liabilities as well as any other information needed by the auditor to accomplish his duties.
- ³ If a bank has a professional internal audit department, their report must be submitted to the external auditor. Duplication of auditing efforts shall be avoided as far as possible.

Art. 20

- ¹ In order for an auditing firm to perform bank audits within the meaning of the Law, it must be recognized as a bank auditor. The Implementing Ordinance determines the conditions for recognition. The Banking Commission decides in each individual case.
- ² Recognized bank auditors must restrict their activities exclusively to auditing and immediately related professional services such as reviews, liquidations and financial restructurings. They may not engage in actual banking transactions or in trust operations. The Banking Commission will issue directives on the auditing firms' scope of activity.
- ³ The auditing firm shall be independent of the board and management of the client bank.
- ⁴ The audit must be performed with the care of a properly qualified auditor.
- ⁵ Except vis-à-vis the responsible governing bodies of the client bank and the Banking Commission, the auditors must keep secret all facts of which they received knowledge during the audit.

Art. 21

- ¹ The auditors shall report on the results of the examination made pursuant to Article 19, paragraph 1. The report must clearly show the relation between investments and credits abroad on the one hand and the balance sheet total on the other hand. The Implementing Ordinance shall determine the details of the contents of the audit report.
- ² The auditing report shall be communicated to the body responsible for the direction, supervision and control according to the law, the by-laws, the articles of incorporation or the regulations. Where the bank is organized as a legal entity, the auditing report shall be submitted to the statutory auditors as defined by the Swiss Federal Code of Obligations.
- ³ In the event that the audit reveals either the violation of a legal provision or any other irregularity, the auditing firm shall set an appropriate time limit for the bank to take corrective action. The auditing firm must inform the Banking Commission if the correction is not carried out within the prescribed time limit.
- ⁴ Where the setting of a time limit within the meaning of paragraph 3 appears of no use, or if the auditing firm discovers a criminal offence, serious violations, or losses reducing the capital funds by 50%, or other irregularities jeopardizing the security of the creditors, or if it can no longer confirm that the claims of the creditors are still covered by the assets, the Banking Commission shall be informed without delay.

Art. 22

- ¹ The auditing fees shall be borne by the client bank. The level of fees is established in accordance with the scale approved by the Banking Commission.
- ² Repealed.

SECTION X – THE FEDERAL BANKING COMMISSION

Art. 23

- ¹ The Federal Council shall elect a Federal Banking Commission consisting of seven to eleven members, and appoint its Chairman and the Deputy Chairman (or chairmen). Sole responsibility for the supervision of the banking system, investment funds, stock exchanges, the disclosure of significant participations and public take-over bids will be transferred to this commission. The Commission shall maintain a permanent secretariat.
- ² The Commission, which may be subdivided into several chambers, shall issue regulations governing its own organization and management which shall require the approval of the Federal Council.
- ³ Annually, the Banking Commission reports to the Federal Council on its activities. It communicates with the Federal Council via the Federal Department of Finance.
- ⁴ *repealed*
- ⁵ The members of the Commission must be experts. They may not be the chairman, vice-chairman, delegated member of a Board with executive responsibilities ("Delegierter") or member of the Executive Committee of the Board nor member of the Management of a bank, a fund manager, a stock exchange, a security dealer nor of a recognized auditing firm.

Art. 23^{bis}

- 1 The Banking Commission issues the decisions necessary to enforce the present law and supervises compliance with the legal requirements.
- 2 The Banking Commission may demand from the auditors as well as the banks any information or document its needs to fulfill its duties; it is authorized to demand reports from the auditing firm, in particular the auditing report on a bank, and it may retain the services of an auditing firm to perform special reviews.
- 3 *The Banking Commission is authorized to transmit to the other Swiss financial-market supervisory authorities as well the National Bank information and documents which are not publicly accessible which they require for the fulfillment of their duties.*
- 4 *In supervising the operators of payment and security-settlement systems which are subordinated to this law, the Banking Commission shall cooperate with the National Bank. It shall coordinate its activity with the National Bank and shall consult with the latter prior to issuing a supervisory order.*

Art. 23^{ter}

- 1 In all cases where the Banking Commission is informed of violations of the law or of other irregularities, it shall issue the necessary decisions to restore orderly conditions and remove the abuses.
- 1bis In implementation of Art. 3 par. 2 lit. c^{bis} and 5 of this law, the Banking Commission can, in particular, suspend the voting rights connected to shares or stock which are held by shareholders or partners with a qualified participation.
- 2 Where an enforceable decision of the Banking Commission is not implemented within the prescribed time limit after prior warning, the Banking Commission may itself execute the action that was ordered, at the expense of the delinquent bank.
- 3 In case of non-compliance with enforceable decisions, the Banking Commission may also publish these in the Swiss Commercial Gazette or announce them in some other manner. Formal notice must be given before such a measure can be taken.
- 4 Where the Banking Commission is apprised of violations of Articles 46, 49 and 50 of the present Law, it informs the Federal Department of Finance without delay. It informs the competent Cantonal authorities of violations of Articles 47 and 48 of the present Law or of common Law felonies or misdemeanors.

Art 23^{quater}

- 1 *The Banking Commission may appoint an independent and knowledgeable person to investigate within a bank a matter which is relevant from a banking supervisory point of view and implement supervisory-law measures ordered by it (person charged with the investigation).*
- 2 *In the injunction regarding the appointment, the Banking Commission shall describe the tasks of the person charged with the investigation. It shall lay down the extent to which he may act in the place of the governing bodies of the bank.*
- 3 *The bank shall grant the person charged with the investigation access to its premises as well as surrendering all documents and providing all information which he requires for the fulfillment of his duties.*
- 4 *The costs of the person charged with the investigation are to be borne by the bank. Wherever ordered to by the Banking Commission, it shall make an advance payment for the costs incurred.*

Art. 23^{quinqüies}

- ¹ The Banking Commission shall withdraw the license to conduct business operations from banks that no longer meet the conditions necessary for such license or that grossly violate their legal duties.
- ² As a result of a decision to withdraw the license, legal entities and general or limited partnerships shall be liquidated and their registration removed from the Register of Commerce. The Banking Commission designates a liquidator and supervises his activities.
- ³ *Measures as foreseen in section eleven shall take precedence.*

Art. 23^{sexies}

- ¹ The Banking Commission may, in implementation of this law, request information or documents from foreign bank and financial market supervisory authorities.
- ² The Banking Commission may only transmit information and documents not publicly available to foreign bank and financial market supervisory authorities, in so far as these authorities:
 - a. will use such information exclusively for the direct supervision of banks and other financial intermediaries requiring authorization;
 - b. are bound by official or professional secrecy; and
 - c. will not transmit this information to competent authorities or bodies which are entrusted with supervisory activities in the public interest without the prior consent of the Banking Commission or on the basis of a blanket permission contained in a treaty with a contracting state. The transmission of information to penal authorities is not permitted whenever legal assistance in penal matters would be excluded. The Banking Commission decides after consulting with the Federal Office of the Police.
- ³ In so far as the information to be transmitted by the Banking Commission concerns individual customers of the bank, the Federal Law on Administrative Procedures dated December 20, 1968 is applicable.

Art. 23^{septies}

- ¹ In enforcement of this law, the Banking Commission may itself undertake direct inspections in foreign establishments of banks for whose consolidated supervision it is responsible within the framework of home country control, or entrust auditing firms to perform such work.
- ² The Banking Commission may permit foreign banking and financial market supervisory authorities to carry out direct inspections at Swiss establishments of foreign banks insofar as these authorities:
 - a. are responsible for the consolidated supervision of the banks subject to audit within the framework of home country control;
 - b. shall use the information obtained exclusively for the direct supervision of banks and other financial intermediaries requiring authorization;
 - c. are bound by official or professional secrecy; and
 - d. will not transmit this information to competent authorities or bodies which are entrusted with supervisory activities in the public interest without the consent of the Banking Commission. The transmission of information to penal authorities is not permitted whenever legal assistance in penal matters would be excluded. The Banking Commission shall decide after consulting with the competent authority.

- 3 During the conduct of cross-border direct inspections, only data necessary for a consolidated supervision over banks or financial intermediaries may be investigated. This shall encompass in particular data as to whether a bank or financial intermediary throughout the group:
- a. is appropriately organized;
 - b. appropriately identifies, limits and monitors risks inherent in its business activity;
 - c. is managed by persons who offer guarantees for the proper conduct of business activities;
 - d. complies with capital-adequacy and risk-diversification provisions on a consolidated basis; and
 - e. adequately complies with its reporting duties vis-à-vis the supervisory authorities.
- 4 Insofar as foreign banking and financial-market supervisory authorities during their direct inspections within Switzerland wish to gain access to information which directly or indirectly relates to asset management or deposit activities for specific customers, the Banking Commission shall gather the information itself and shall transmit it to the authorities requesting it. The procedure shall follow the Law on Administrative Procedure dated December 20, 1968.
- 5 The Banking Commission may accompany the foreign banking and financial-market supervisory authorities during their direct inspections within Switzerland or charge a Banking-Law audit firm to do so. The bank in question may demand that they be accompanied.
- 6 Establishments within the meaning of this article are deemed to be:
- a. subsidiary companies, branches or representative offices of banks;
 - b. other enterprises, provided that their activity is included in the consolidated supervision by a banking and financial-market supervisory authority.
- 7 Establishments organized in accordance with Swiss law are to provide foreign supervisory authorities of banks and financial intermediaries and the Banking Commission with information necessary for the carrying out of direct inspections or administrative assistance by the Banking Commission and grant access to their books and records.

Art. 23^{octies}

- 1 *The Banking Commission shall levy dues for supervisory procedures both on a case-by-case basis and for services. In addition, it shall charge the entities subject to its supervision a lump-sum fee each year for the costs not covered by the dues.*
- 2 *The lump-sum fee shall be made up of a fixed basic fee and a variable additional fee.*
- 3 *The fixed basic fee shall cover the supervisory costs which are incurred for all entities subject to its supervision on a regular basis irrespective of the size of the enterprise.*
- 4 *The variable additional fee shall cover the costs insofar as they are not covered from the proceeds of the fixed basic fee and the dues. It shall be charged on the basis of the costs incurred by the Commission in the preceding year. They shall be measured according to defined criteria such as total assets, security turnover and net fund assets.*
- 5 *The Federal Council shall determine the details; it shall determine in particular:*
- a. the rates for the dues;*
 - b. the allocation of the lump-sum supervisory fee amongst the entities subject to its supervision;*
 - c. the level of the fixed basic fee.*

Art. 24

- ¹ The decisions of the Banking Commission can be appealed to the Federal Court according to Chapter V of the Federal Law of December 16, 1943 concerning the Federal Jurisprudence.
- ² *In the procedures foreseen in Chapters XI and XII of this law, creditors and owners of a bank may only appeal against the approval of a plan of restructuring and operations of disposal. Appeals foreseen under Art. 17 of the Federal Law of April 11, 1889 on Debt Enforcement and Bankruptcy (German: "SchKG"; French: "LP") are excluded in these procedures.*

SECTION XI – MEASURES IN CASE OF THE RISK OF INSOLVENCY

Art. 25 Preconditions

¹ 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 the Banking Commission, the Banking Commission 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.

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

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

Art. 26 Protective Measures

¹ The Banking Commission may decree protective measures; in particular it can:

- a. issue instructions to the governing bodies of the bank;
- b. appoint a person charged with the investigation pursuant to Article 23^{quater};
- c. withdraw the power of representation of the governing bodies or remove them from office;
- d. remove the banking-law or 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.

² 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.

³ Insofar as the Banking Commission 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

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

² Payment and security transaction orders, which were entered into a system before the Banking Commission 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.

³ 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 par. 1 lit. f-h.

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

- ¹ The Banking Commission 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.
- ² The Banking Commission shall lay down the manner in which the bank is to be managed during the period of restructuring.

Art. 29 Plan of Restructuring

- ¹ 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.
- ² 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.
- ³ The plan of restructuring is to be submitted to the Banking Commission 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 par. 4 SchKG reject the restructuring plan within the timeframe for making notification, the Banking Commission shall order the liquidation pursuant to Articles 33-37g.

Art. 31 Approval of Plan of Restructuring

The Banking Commission 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. guarantees compliance with the licensing prerequisites and the other legal prescriptions after completion of the restructuring.

Art. 32 Assertion of Claims

- ¹ As soon as the Banking Commission has approved the plan of restructuring, the bank is empowered to challenge legal acts in accordance with Articles 285-292 SchKG.
- ² 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.

- ³ The date on which the plan of restructuring is approved shall be relevant for determining the deadlines foreseen under Articles 286–288 SchKG. Should the Banking Commission have decreed previously a protective measure as foreseen in Article 26 Paragraph 1 lit. e-h, then the date on which the decree was issued shall be valid.
- ⁴ 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

- ¹ Should no prospect of restructuring exist or this have failed, the Banking Commission shall withdraw the license from the bank, shall decree its liquidation and shall make this public.
- ² The Banking Commission shall appoint one or several liquidators. The latter shall be subject to the supervision of the Banking Commission and shall report to it, as demanded.
- ³ It shall inform the creditors at least annually as to the status of the procedure.

Art. 34 Consequences and Procedure

- ¹ The decreeing of the liquidation shall have the effect of opening bankruptcy proceedings pursuant to Articles 197–220 SchKG.
- ² The liquidation shall be conducted in accordance with Articles 221–270 SchKG, subject to the provisions below.
- ³ The Banking Commission can issue differing decrees and injunctions.

Art. 35 Assembly of Creditors and Committee of Creditors

- ¹ An assembly of creditors shall only be held if the liquidators consider it opportune.
- ² The Banking Commission can appoint a committee of creditors. It shall describe its tasks.

Art. 36 Handling of Claims; Scheduling of Claims

- ¹ In preparing the schedule of claims, the claims which are inscribed in the books of account shall be deemed to have been registered.
- ² 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 lit. e-h shall be satisfied prior to all others in the case of a liquidation.

Art. 37a Small Deposits

¹ *Insofar as they are contactable, depositors foreseen in Article 37b with an aggregate matured claim of 5.000 francs or less shall be satisfied as quickly as possible outside the schedule of claims and excluding any possibility of set-off.*

² *The Banking Commission can reduce this amount.*

Art. 37b Privileged Deposits

- ¹ Deposits which are not in bearer form, including medium-term notes ("Kassenobligationen") which are deposited with the bank in the name of depositor shall be allocated, up to an amount not exceeding 30.000 francs per creditor, to the second class pursuant to Article 219 Paragraph 4 SchKG.
- ² Deposits with enterprises which are active as banks but without the authorization of the Banking Commission shall not be privileged.
- ³ Should a claim belong to several persons, the privileged status may only be asserted once.

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

- ¹ 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 therefrom in favor of the depositor, subject to the aggregate claims of the bank against the depositor.
- ² 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.
- ³ 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

- ¹ The distribution table shall not be published.
- ² Following distribution, the liquidators shall submit a final report to the Banking Commission.
- ³ The Banking Commission shall take the decisions necessary to close the procedure. It shall make the closure public.

Art. 37f Coordination with Foreign Procedures

- ¹ Should the bank be also the object abroad of foreclosure procedures, the Banking Commission shall coordinate the bankruptcy of the bank as far as possible with the competent foreign bodies.
- ² 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

- ¹ The Banking Commission shall decide about the recognition of bankruptcy injunctions and liquidation and restructuring measures which are issued abroad in respect of banks.
- ² The Banking Commission may also recognize bankruptcy injunctions and measures which are issued in the country of the effective head office of the bank.

- ³ *Privileged creditors with domicile abroad can also be included in the schedule of claims.*
- ⁴ *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

- ¹ *Banks shall ensure that privileged deposits within the meaning of Art. 37b with Swiss branches are secured. Banks possessing such deposits are obligated for this purpose to adhere to the system of self-regulation of banks.*
- ² *The system of self-regulation shall be subject to the authorization of the Banking Commission.*
- ³ *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. foresees a maximum amount of 4 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.*
- ⁴ *The Federal Council can adapt the amount foreseen under paragraph 3 whenever special circumstances warrant it.*
- ⁵ *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

- ¹ *repealed*
- ² *With regard to private bankers, the liability for torts is governed by the provisions of the Code of Obligations.*
- ³ *All other banks are subject to the provisions of Articles 39-45.*

Art. 39

- ¹ *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).*

² *The same shall apply to:*

- a. *persons charged with investigations and restructuring, as well as liquidators appointed by the Banking Commission;*
- b. *auditors appointed by the Banking Commission charged with an extraordinary audit.*

Art. 40 – Art. 45

repealed

Art. 46

¹ Whoever intentionally:

- a. opens a bank, operates a registered office, branch or agency of a foreign bank or appoints a permanent representative therefore without having obtained a license from the Banking Commission;
- b. fails to obtain the complementary license prescribed for foreign controlled banks;
- c. violates the conditions attached to the license;
- d. uses the term "bank", "banker" or "savings" as part of their company name, their designation of business purpose or in their business advertising without permission;
- e. makes misleading statements in advertising or misuses the Swiss domicile of a bank or Swiss traditional practices and institutions;
- f. who accepts deposits from the public or savings deposits without being authorized to do so;
- g. repledges pledges in violation of Article 17 or gives them as collateral for repurchase agreement;
- h. *repealed*
- i. *furnishes false information to the Banking Commission or the auditors;*
- k. as a recognized bank auditor in the performance of the audit, grossly violates the duties assigned to him by the present Law or Implementing Ordinance; in particular, whoever makes untrue statements in the audit report or omits essential facts or fails to request pertinent information from the client or fails to report his findings to the Banking Commission;
- l. fails to keep books of account properly or does not retain account books and records in conformity with the regulations;

shall be punished by a prison term not exceeding six months or a fine not exceeding SFr. 50,000.

² If the act has been committed by negligence, the penalty shall be a fine not exceeding SFr. 30,000.

Art. 47

- ¹ Whoever divulges a secret entrusted to him in his capacity as officer, employee, mandatory or liquidator of a bank, as person charged by the Banking Commission with an investigation or restructuring, officer or employee of a recognized auditing company or has become aware thereof in this capacity,
- whoever tries to induce others to violate professional secrecy,
- shall be punished by imprisonment for not more than six months or by a fine of not more than SFr. 50,000.
- ² If the act has been committed by negligence, the penalty shall be a fine not exceeding SFr. 30,000.
- ³ The violation of professional secrecy remains punishable even after termination of the official or employment relationship or the exercise of the profession.
- ⁴ Still applicable are the Federal and Cantonal regulations concerning the obligation to testify and to furnish information to a government authority.

Art. 48

Whoever in full knowledge of the facts undermines or jeopardizes the credit standing of a bank, the National Bank or the Central Mortgage Institutions by the assertion or dissemination of falsehoods, shall, upon indictment, be punished by a prison term or a fine.

Art. 49

- ¹ Whoever intentionally:
- a. fails to draw up and publish the annual accounts or interim balance sheets in accordance with the provisions of Article 6;
 - b. does not order the annual accounts to be audited by recognized bank auditors or fails to have an audit performed that was prescribed by the Banking Commission;
 - c. disregards the obligations towards the bank auditors;
 - d. fails to comply with the request of the Banking Commission to re-establish proper conditions and remove irregularities;
 - e. *fails to submit the prescribed reports to the Banking Commission;*
 - f. redeems investment trust certificates in violation of Article 12
- shall be punished by imprisonment or a fine not exceeding SFr. 20,000.
- ² If the offence has been committed by negligence, the penalty shall be a fine not exceeding SFr. 10,000.

Art. 50

Whoever, despite warning and after being specifically advised of the penalties implicit in this Article, nevertheless fails to comply with a provision of this Law or a related ordinance or an official order relating thereto will be fined up to SFr. 5,000.

Art. 50^{bis}

The special dispositions of the Federal Law on Federal Penal Administration (Articles 14-18) are applicable.

Art. 51

- ¹ The general dispositions of the Swiss Penal Code are applicable to infractions of Articles 47 - 48.
- ² The general dispositions of the Federal Law on Federal Penal Administration (Articles 2-13) are applicable to infractions of Articles 46, 49, 50 and 50^{bis}.
- ³ The prosecution of violations is subject to a five year period of limitation. This period of limitation may not be extended by more than one half through interruptions.

Art. 51^{bis}

- ¹ The prosecution and judgment of violations of Articles 47 and 48 is the duty of the cantons.
- ² Violations of Articles 46, 49, 50 and 50^{bis} shall be prosecuted and judged by the Federal Department of Finance in accordance with the Federal Law on Federal Penal Administration.

SECTION XV – TRANSITIONAL AND FINAL PROVISIONS

Art. 52

repealed

Art. 53

- ¹ 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.
- ² 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: March 1, 1935

FINAL PROVISIONS TO THE CHANGES DATED MARCH 18, 1994

- ¹ 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 par. 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.
- ² Bank-like finance companies which are authorized by the Banking Commission to publicly solicit monies prior to implementation of the law, require no new permission to operate as a bank. They must adapt to articles 4^{bis} and 4^{ter} within one year from the date the law takes effect.
- ³ Banks must adapt to the provisions of art. 3 par. 2 lit. c^{bis} and d as well as art. 4 par. 2^{bis} within one year of the effective date of the law.
- ⁴ Cantons have three years after the effective date of the law to ensure compliance with the provisions of Art. 3a par. 1 and Art. 18 par. 1. Should responsibility for supervision as per Art. 3a par. 2 be transferred to the Banking Commission prior to expiry of this deadline, the provisions of Art. 18 par. 1 must be complied with at the time of the transfer.
- ⁵ 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 par. 2 lit. c^{bis}, must notify the Banking Commission to this effect within one year following the date when the change in the law takes effect.
- ⁶ Banks must make the annual notification as per Art. 3 par. 6 for the first time within one year following the date when the law takes effect.
- ⁷ 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 DATED APRIL 22, 1999

- ¹ 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.

- ² 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.
- ³ 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 DATED OCTOBER 3, 2003

- ¹ *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.*
- ² *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.*

Translated by: **kpmg** M.J. Wharton, September 25, 2004