

English in financial regulation and capital markets

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The Swiss Financial Market Supervisory Authority FINMA issues its ordinances, circulars and decisions in the official languages. Because many supervised institutions are international groups and because FINMA cooperates intensively with foreign supervisors, the authority publishes a large share of its communication in English as well. Its annual report, its risk monitor, its guidance notes and many of its circulars are available in English translations. FINMA points out that the English versions are for information only and that the German, French or Italian versions are legally binding. For the compliance departments of international banks in Switzerland, which often work in English, these translations are nevertheless the documents of daily practice.¹

The capital markets have accepted English for longer still. Under the Financial Services Act, which entered into force in 2020, prospectuses for public offerings and admissions to trading in Switzerland may be drawn up in an official language or in English. This rule allows Swiss and foreign issuers to use the same English prospectus that they use for offerings in other markets. The summary of the prospectus, which retail investors are most likely to read, is subject to the same language options. SIX Swiss Exchange accepts listing documents and ad hoc announcements in English. Many Swiss listed companies publish their annual reports first in English.²

Banking documentation follows international standards drafted in English. Derivatives transactions between banks and their institutional clients are documented under the ISDA Master Agreement, usually the 2002 version, whose standard terms are written in English and governed by English or New York law, although Swiss law schedules exist as well. Syndicated loans follow the documentation of the Loan Market Association, whose forms are based on English law. Swiss banks also use the Swiss Master Agreement for OTC derivatives instruments published by the Swiss Bankers Association, which is available in German, French and English. These

standard documents shape the vocabulary of financial practice in Basel, where Part E described the presence of the cantonal banks, private banks and the international banks that serve the life sciences groups.³

In the field of crypto-assets and digital assets, which Part K will treat in detail, English is almost the only language of practice. White papers, smart contract documentation and the token terms of projects in the Crypto Valley around Zug and in Basel are drafted in English. The Swiss DLT Act of 2021 introduced ledger-based securities into the Code of Obligations in the official languages, while the market that uses these instruments communicates in English. A lawyer advising on a token offering in Switzerland must translate between the Swiss statutory concepts, such as the *Registerwertrecht*, and the English vocabulary of the global crypto market.⁴

1 Notes

1. See the publications section of the FINMA website, where English versions of circulars, guidance and reports are marked as translations. On the FINMA Risk Monitor, published annually since 2017, see the FINMA website. To be verified. ↩
2. Federal Act on Financial Services of 15 June 2018 (FinSA, SR 950.1), in force since 1 January 2020, and the Financial Services Ordinance (FinSO, SR 950.11). The provision on the language of the prospectus is found in the implementing rules, possibly Art. 46 FinSO or the corresponding article of FinSA. On the listing rules of SIX Exchange Regulation, see its website. Article number to be verified. ↩
3. On the ISDA Master Agreement 1992 and 2002, see the documentation of the International Swaps and Derivatives Association. On the Loan Market Association (LMA), founded in 1996 in London, see its website. On the Swiss Master Agreement for OTC Derivatives Instruments of the Swiss Bankers Association, see its publications. See Part E of this book. To be verified. ↩

4. Federal Act on the Adaptation of Federal Law to Developments in Distributed Ledger Technology of 25 September 2020 (DLT Act), in force in two stages in February and August 2021, introducing Art. 973d et seq. of the Code of Obligations. See Part K, chapter I of this book. To be verified. ↩

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