

The licence and its conditions

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The Banking Act requires every institution that accepts deposits from the public on a professional basis, or that refinances itself with several banks to finance an unlimited number of persons, to obtain a banking licence from FINMA. The Act and the Banking Ordinance make the licence subject to four conditions. The bank needs an adequate organisation that effectively separates the board of directors, which exercises oversight, from the executive management. It must also hold adequate capital as well as a minimum fully paid-in capital of ten million francs. Finally, the institution and the persons entrusted with its administration and management must offer the guarantee of irreproachable business conduct.¹

The guarantee of irreproachable business conduct, the *Gewähr für eine einwandfreie Geschäftstätigkeit*, is one of the central concepts of Swiss financial supervision. It requires the members of the board and the management to have a good reputation, professional competence and the integrity to manage the institution in compliance with the law. FINMA examines this guarantee when it grants a licence and when the persons concerned change, and can withdraw the guarantee from individuals who violate supervisory law. With its long history in Swiss practice, the concept allows FINMA to address the conduct of individuals as well as the organisation of institutions.

The licence requirement applies to institutions that operate in Switzerland. Foreign banks that serve Swiss clients from abroad, without a physical presence in Switzerland, are not subject to the licence requirement, under the traditionally liberal Swiss approach to cross-border financial services. Foreign banks that want to establish a branch or a representative office in Switzerland must obtain an authorisation. This liberal approach contrasts with the restrictive approach of the European Union, which limits the access of Swiss banks to its market, as Part K examines.

1 Notes

1. Art. 1 and 3 Banking Act (SR 952.0) and Art. 2 ff. Banking Ordinance (SR 952.02) on the licensing requirement and the conditions for a banking licence, including the minimum capital of CHF 10 million (Art. 15 BankO) and the guarantee of irreproachable business conduct (Art. 3 para. 2 lit. c BankA). To be verified. ↩

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