

Revision of 2003 and governance

*Dr Alexander Ressos, TEP
Attorney-at-Law (Switzerland), Solicitor (Hong Kong),
Solicitor (England & Wales)*

The most significant revision of the law took place in 2003 and entered into force on 30 June 2004. The report of the Grand Council's finance committee explained its aims: to transform BancaStato from a mortgage and commercial bank into a universal bank, to bring the cantonal law into line with the federal banking legislation of 1999 and to reorganize governance, in particular by reducing the board of directors from fifteen to seven members.¹ The reduction reflected a general trend in the governance of cantonal banks, which moved away from large boards representing parties and regions towards smaller boards selected for professional competence. The memory of 1914, when the party allegiance of directors had weakened the control of the banks, gives this trend a particular meaning in Ticino.

The same report described the relationship between the bank and the canton in financial terms. Article 40 requires the bank to transfer part of its profit to the State, a payment that the committee described as corresponding indirectly to a cantonal tax.² In 2023 BancaStato's group profit reached CHF 101 million, of which CHF 65.1 million went to the canton, while CHF 64 million were allocated to reserves for general banking risks. Mortgage loans amounted to CHF 11.8 billion.³ The canton thus earns a substantial return on its ownership, which can be seen as remuneration for the guarantee and for the endowment capital. Several other cantons are understood to charge their banks an explicit fee for the guarantee, calculated on the capital that the bank saves because of the guarantee. Ticino achieves a comparable result through the profit distribution.⁴

1 Federal supervision

Article 36 of the Ticinese law places the bank under the full supervision of the federal supervisory authority in accordance with federal law. The

text of the article still refers to the Federal Banking Commission, which was merged into FINMA on 1 January 2009.⁵ Since the revision of 1999, cantonal banks are subject to the same prudential rules as other banks: licensing conditions, capital and liquidity requirements, risk management, audit and FINMA enforcement. The State guarantee does not reduce these requirements. The cantonal parliament and government add a layer of political oversight through the approval of the accounts, the appointment of the board and the parliamentary control of the cantonal administration. The combination of federal prudential supervision and cantonal political oversight is the institutional answer to the gap that existed in 1914, when neither the Confederation nor the canton supervised the banks.

For the practitioner. A deposit with a cantonal bank such as BancaStato raises questions that do not arise with a private bank: - Check the cantonal law: the guarantee may be full, partial or absent under Article 3a BankA. - The Ticinese guarantee (Art. 4 of the law of 25 October 1988) covers all obligations not covered by the bank's own funds. It is subsidiary and requires the bank's inability to pay. - Deposits up to CHF 100,000 are in addition privileged and insured under the federal scheme, while amounts above that threshold rely on the cantonal guarantee alone. - The guarantee is a liability of the canton and depends on the canton's own creditworthiness. - Cantonal banks are fully subject to FINMA supervision. The guarantee does not lower prudential standards.

2 Notes

1. Rapporto n. 5117 R / 5117A R (as above). ↩
2. Rapporto n. 5117 R / 5117A R (as above). ↩
3. tio.ch, 14 March 2024 (as above). ↩
4. Source as cited in the printed edition. ↩

5. Legge sulla Banca dello Stato (as above), Art. 36: "La Banca è sottoposta alla vigilanza totale della Commissione federale delle banche conformemente alla legislazione federale." The text of the law at <https://m3.ti.ch/CAN/RLeggi/public/index.php/raccolta-leggi/pdfatto/atto/622> still names the Commission. Federal Act on the Swiss Financial Market Supervisory Authority of 22 June 2007 (FINMASA), SR 956.1, commencement note to Art. 61, <https://www.droit-bilingue.ch/en-de/9/95/956.1-61-81.html> (certain provisions in force on 1 February 2008, the remainder on 1 January 2009; AS 2008 5205).
↩

For general information only. This article does not constitute legal or tax advice, does not replace advice on an individual case and creates no lawyer-client relationship. It reflects the legal position as of September 2026.

Online version: helveticaregister.com/lugano-revision-of-2003-and-governance