

Accountability: the senior managers regime, remuneration and clawback

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Capital was the subject that attracted the attention of markets. Accountability was the subject that attracted the attention of the public. Few aspects of the Credit Suisse affair caused as much indignation as the impression that those responsible for years of losses, scandals and failed controls had kept their remuneration while the Confederation assumed the risk. The Federal Council's response consists of three elements: a senior managers regime, stricter rules on variable remuneration, and a clarified duty of care for persons subject to fit-and-proper requirements. The second statutory package, sent into consultation on 12 August 2026, sets out all three.¹

1 The senior managers regime

The proposed senior managers regime applies to banks that qualify as complex organisations, which the draft defines by a threshold of about 250 full-time equivalents. FINMA may extend the requirements to further institutions as a supervisory measure. The regime covers the members of the board of directors and of the executive board, the heads of key functions such as internal audit, risk management, compliance, operations, finance and information technology, and the heads of business units that contribute at least ten per cent of gross revenue. Each bank must keep an overview of responsibilities that identifies the person responsible for each function and area. The persons concerned must sign individual statements confirming their duties.²

The purpose of the regime is evidential as much as organisational. In the enforcement proceedings after the Credit Suisse collapse, as in earlier cases, it proved difficult to attribute failures to individuals when responsibilities were shared among committees and reporting lines. A documented allocation of responsibilities makes it easier for the bank itself and for

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FINMA to identify who was in charge of a function when things went wrong. The draft also introduces a statutory duty of care for all persons subject to fit-and-proper requirements in all banks. They must perform their duties with all due care and ensure compliance with applicable law and internal regulations within their area of responsibility. The consequences of a breach range from internal disciplinary measures and adjustments of variable remuneration to FINMA's existing instruments, such as prohibitions from practising. The draft does not create any automatic vicarious liability. A sanction requires evidence of a breach by the person concerned.³

The Swiss regime has well-known foreign models. In the United Kingdom, the Senior Managers and Certification Regime came into force for banks on 7 March 2016, following the recommendations of the Parliamentary Commission on Banking Standards, which had been set up after the LIBOR scandal.⁴ Hong Kong's Securities and Futures Commission announced its Manager-in-Charge regime for licensed corporations on 16 December 2016. It requires at least one designated manager for each of eight core functions.⁵ The Monetary Authority of Singapore issued its Guidelines on Individual Accountability and Conduct on 10 September 2020, with effect from 10 September 2021, built around five outcomes that begin with the clear identification of senior managers responsible for core functions.⁶ Ireland adopted the Central Bank (Individual Accountability Framework) Act 2023, whose Senior Executive Accountability Regime has applied to executive roles since 1 July 2024.⁷

From the perspective of a practitioner who has worked under the Singapore and Hong Kong regimes, the Swiss draft is moderate. It adopts the documentary core of the foreign models, namely the responsibilities map and individual statements, without a separate certification regime for staff below senior management and without the British reversal of the burden of proof that was discussed and abandoned before 2016.⁸ It relies on FINMA's existing enforcement instruments for individuals and leaves the power to fine to institutions. For Zurich's banks the practical burden lies in documentation, governance processes and legal review of responsibility statements. Experience in London, Hong Kong and Singapore suggests that such regimes change behaviour mainly through the conversations they force inside a bank about who is in charge of what.

2 Variable remuneration and clawback

The second element concerns remuneration. The consultation draft extends general principles, hitherto contained in a FINMA circular, to all

banks. These principles require that remuneration systems do not create incentives to take inappropriate risks. For systemically important banks, stricter rules are added. A part of the variable remuneration of senior and highly paid managers must be deferred, with the possibility of cancelling or reducing deferred amounts and of clawing back amounts already paid in the event of misconduct. FINMA receives powers to intervene where the rules are not observed.⁹

The political background to this element is the dispute over the bonuses of Credit Suisse managers. In 2023 the Federal Department of Finance, relying on Article 10a of the Banking Act, which permits restrictions on remuneration where a systemically important bank receives state aid, ordered the cancellation or reduction of outstanding variable remuneration: full cancellation for the executive board, a reduction of 50 per cent for the next management level and 25 per cent for the level below. About 1,000 employees were affected and the cuts amounted to some CHF 60 million. In 2025 the Federal Administrative Court upheld the complaints of twelve former managers. It held that the legal basis for the cuts had lapsed once the bank no longer received state aid and that the reductions infringed the guarantee of property.¹⁰ The Confederation and UBS appealed. In July 2025 the Federal Supreme Court granted suspensive effect to the appeals, so that the bonuses remained unpaid pending its decision.¹¹

The case illustrates why the Federal Council wants a contractual and statutory basis for clawback in advance. A cut imposed by the state after the event collides with vested contractual rights and with the constitutional protection of property. A deferral and clawback mechanism written into remuneration plans from the outset avoids that collision, because the employee never acquires an unconditional right to the deferred part. Swiss labour law, which protects earned wages, sets limits to such clauses. The drafting of bonus plans at Zurich banks will therefore become a subject for employment lawyers as much as for supervisors.

3 Notes

1. Federal Council, press release “Too-big-to-fail regulations: Federal Council launches consultation on amendments to Banking Act and Liquidity Ordinance”, 12 August 2026, <https://www.admin.ch/en/newsb/GGQLrZYSRx3csZsqryI1F>. The consultation runs until 19 November 2026. ↩
2. CMS Switzerland, “The senior managers regime under the proposal for a revised Banking Act”, 15 September 2026,

<https://cms.law/en/che/legal-updates/the-senior-managers-regime-under-the-proposal-for-a-revised-banking-act>. ↩

3. CMS Switzerland, “The senior managers regime under the proposal for a revised Banking Act”, 15 September 2026, <https://cms.law/en/che/legal-updates/the-senior-managers-regime-under-the-proposal-for-a-revised-banking-act>. The authors note that the explanatory report refers to foreign regimes as points of reference. ↩
4. Financial Conduct Authority, “Senior Managers and Certification Regime: one year on”, 7 March 2017, <https://www.fca.org.uk/news/news-stories/senior-managers-and-certification-regime-one-year>. ↩
5. Deacons, “New senior management accountability regime for SFC licensed corporations”, 22 December 2016, <https://www.deacons.com/2016/12/22/new-senior-management-accountability-regime-for-sfc-licensed-corporations/>. ↩
6. Allen & Gledhill, “MAS issues guidelines on individual accountability and conduct to strengthen culture of responsibility and ethical behaviour in financial industry”, 2020, <https://www.allenandgledhill.com/sg/publication/articles/16772/mas-issues-guidelines-on-individual-accountability-and-conduct-to-strengthen-culture-of-responsibility-and-ethical-behaviour-in-financial-industry>. ↩
7. Central Bank of Ireland, “Individual Accountability Framework”, <https://www.centralbank.ie/regulation/how-we-regulate/individual-accountability-framework>. ↩
8. Pinsent Masons, Out-Law, “Bankers’ ‘presumption of responsibility’ removed from senior managers’ regime”, 19 October 2015, <https://www.pinsentmasons.com/out-law/news/bankers-presumption-of-responsibility-removed-from-senior-managers-regime>, reporting that a statutory duty of responsibility would replace the presumption, so that the regulators must show that a senior manager failed to take reasonable steps. The duty was enacted by section 25 of the Bank of England and Financial Services Act 2016, <https://www.legislation.gov.uk/ukpga/2016/14/section/25>, amending sections 66A and 66B of the Financial Services and Markets Act 2000. ↩
9. Federal Department of Finance, “Too Big To Fail”, overview page, <https://www.efd.admin.ch/en/tbtf-en>. The page states that variable

remuneration must be at least partly deferred and may be cancelled or reduced upon misconduct. ↩

10. Beobachter, “CS-Bonus-Streit: Warum ein Schweizer Gericht Kürzungen kippt”, 2025, <https://www.beobachter.ch/geld/warum-ein-gericht-bonuskürzungen-bei-der-cs-kippte-824750>. ↩
11. finews.ch, “Streit um Boni: Schlechte Nachricht für frühere CS-Kadermitarbeiter”, 10 July 2025, <https://www.finews.ch/news/banken/68377-cs-boni-kuerzung-bundesgericht-finanzplatz-schweiz>. ↩

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