



SWITZERLAND: An Introduction to Banking & Finance

Contributors:



[Eric Stupp](#)
[View profile](#)



[Frédéric Bétrisey](#)
[View profile](#)



[Stephanie Walter](#)
[View profile](#)



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Swiss Banking Law: Current Status and Future Outlook

Introduction

The Swiss banking industry is still an important sector of the Swiss economy, contributing to its stability, innovation and competitiveness. The industry is subject to a regulatory framework, which aims to ensure the safety and soundness of the financial system, protect the interests of depositors and investors, and maintain the reputation of the Swiss financial centre.

Swiss banking law is based on a combination of federal legislation, self-regulation and international standards. Federal

Task Force recommendations, and the OECD Common Reporting Standard, are also incorporated into Swiss banking law, either through legislation or through self-regulation.

Key regulators in banking

The regulatory architecture governing banking in Switzerland involves several key bodies and regulations.

FINMA, the supervisory authority, oversees banks, securities dealers, and other financial institutions to protect the interests of stakeholders and ensure market functioning. As part of its dual supervisory system, FINMA delegates regulatory audits of financial institutions to recognised audit firms on its behalf.

Key legislation includes the Financial Market Supervision Act, Banking Act (BankA), Financial Market Infrastructure Act and Financial Services Act (FinSA) covering licensing, prudential supervision and market conduct.

In addition to “microprudential” regulation applied at the individual institution level, the Swiss National Bank (SNB) possesses distinct authority over “macroprudential” regulation concerning the entire system. This authority includes the ability to recommend the activation of the countercyclical capital buffer. The SNB mainly concentrates on monetary policy and overall financial stability. In the realm of financial stability, the SNB typically collaborates with FINMA.

Supra-national organisations like the Financial Stability Board and regulatory regimes like Basel III significantly influence Swiss regulations. The EU’s harmonisation efforts, exemplified by MiFID II, also impact Swiss legislation. The recent Berne Financial Services Agreement between Switzerland and the UK further aims to enhance co-operation and market access.

Key regulations

Swiss banks must adhere to strict governance requirements, primarily outlined in the BankA, Banking Ordinance, and FINMA

between the board of directors and executive management, establishing diversified boards with independent members, and forming audit and risk committees for larger banks. Further requirements encompass setting up independent internal audit functions, ensuring that remuneration systems do not encourage behaviour detrimental to internal controls, regulating outsourcing of functions while retaining key decision-making within the bank, and complying with accounting rule changes mandated by FINMA.

Apart from this, Swiss banks must meet stringent capital requirements to obtain and maintain their licences. These requirements encompass maintaining a minimum share capital, adhering to regulatory capital requirements based on the Basel III Framework, including a minimum required capital and holding capital buffers such as countercyclical buffers to enhance resilience against credit risks and economic fluctuations. Large banks with significant foreign commitments or balance sheets must also maintain an extended countercyclical buffer. FINMA has the authority to require additional capital if minimum requirements and buffers are insufficient to cover specific risks. Banks are also mandated to maintain a minimum leverage ratio based on Tier 1 capital and un-risk-weighted assets. Systemically Important Banks (SIBs) must fulfil additional capital requirements, including going-concern and gone-concern capital requirements, to ensure business continuity and facilitate restructuring if necessary.

The regulations governing banks' interactions with clients and third parties in Switzerland are primarily rooted in private civil law, particularly the Swiss Code of Obligations (CO) and FinSA. Banks must adhere to principles of good faith and diligence in their dealings, with legal duties and customs further refined through court precedents and standards set by recognised self-regulatory organisations. FinSA ensures client protection, aiming for informed investment decisions and transparent services from knowledgeable professionals. Recognising varying client needs, FinSA tailors its regulations accordingly and deals with inter alia

laundering, including due diligence requirements. Strict sanctions compliance is crucial, with fines up to CHF1 million for violations.

Switzerland's sanctions regime, led by the Embargo Act, enforces international law, especially in human rights areas, with severe penalties for non-compliance, including asset freezes and service restrictions.

Upcoming trends

Swiss banking law is constantly evolving to adapt to the changing needs and challenges of the financial sector. Specifically, the recent Credit Suisse crisis prompted discussions about potential long-term regulatory changes. Some of the most relevant trends that might shape the future of the Swiss banking law are as follows.

Systemically important banks and banking stability

Following mandates from Parliament and in accordance with Article 52 BankA, the Federal Council conducted a thorough evaluation of the regulation concerning SIBs. During its session on 10 April 2024, it adopted the accompanying report on banking stability. The focus areas of the proposed measures include:

- strengthening prevention – enhancing corporate governance and risk management in SIBs through additional regulatory requirements and expanded powers for FINMA. This will involve implementing a senior managers regime, regulating bonuses, and the introduction of FINMA's fine-imposing abilities. Additionally, capital requirements for SIBs will be tightened, and FINMA's intervention capabilities broadened;
- strengthening liquidity – further, SIBs liquidity holdings will be improved and SNB's capacity to provide liquidity will be expanded; and
- strengthening the crisis toolkit – the ability of SIBs to exit the market in an orderly manner during crises will be enhanced by strengthening resolution planning and crisis organisation,

It is expected that the consultation on the measures at ordinance level will be opened in the first half of 2025 and that the key figures at legislative level will be published at the same time.

Digitalisation of banking services and fintech regulation

Swiss banks embrace digital channels for service delivery, leveraging platforms and blockchain for efficiency. However, the technological shift is challenging as it involves ensuring robust security measures, protecting customer privacy, and maintaining regulatory compliance amidst rapid digital transformation.

Switzerland has eased regulatory requirements for innovative fintech solutions and its proactive regulation in this regard, led by FINMA, fosters innovation by reducing barriers. While deregulatory measures promote efficiency and disintermediation, careful oversight seems essential to manage associated risks and ensure financial stability.

Use of Artificial Intelligence (AI)

The implementation of AI involves risks that are frequently challenging to evaluate. These encompass operational risks, particularly model risks (such as lack of robustness, accuracy, explainability or bias), data-related risks (including data security, data quality, data availability), IT and cyber risks, increased dependencies on third parties, as well as legal and reputational risks. When carrying out its supervisory activities, FINMA has observed that most financial institutions are in the nascent stages of development regarding AI and that the corresponding governance and risk management frameworks are still being established. FINMA emphasises in its Guidance 08/2024 the necessity for appropriate identification, assessment, management and monitoring of the risks associated with AI utilisation.

Further implementation of Basel III standards

adopted by the international Basel Committee on Banking Supervision (BCBS) into Swiss law. The amended CAO entered into force on 1 January 2025.

Climate-related financial risk disclosure

The sustainability of the financial system entails the integration of environmental, social and governance (ESG) factors into the risk management, the disclosure, and the product offering of financial institutions, as well as the promotion of green finance and social impact investing. In November 2022, the Swiss government released the Ordinance on Climate Disclosures detailing climate-related reporting obligations, which took effect on 1 January 2024, and mandates large Swiss corporations, public companies, banks and insurance firms to adhere to the Task Force on Climate-related Financial Disclosures (TCFD) recommendations. In December 2024, the Federal Council resolved to commence a consultation on revising the Ordinance on Climate Disclosures, aiming to align with recent international advancements. This consultation will conclude on 21 March 2025. With the TCFD's dissolution and its recommendations now part of international standards, future reporting must adhere to an internationally recognised standard or the EU's sustainability reporting standard. The revised ordinance will come into effect on 1 January 2026. In May 2021, FINMA introduced obligations requiring certain entities to report on environmental issues (with a focus on CO₂ targets), social matters, employee welfare, human rights respect, and anti-corruption measures. Moreover, the Swiss Bankers Association has issued guidelines for integrating ESG preferences and risks into investment advice and portfolio management, effective since early 2023.

These trends reflect Switzerland's efforts to enhance financial stability, protect customers, promote innovation and ensure compliance with international standards in the financial sector.

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