

# Regulations on the organisation of the Swiss Financial Market Supervisory Authority FINMA

(FINMA Organisational Regulations)

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*The Board of Directors of the Swiss Financial Market Supervisory Authority FINMA*

hereby issues the organisational rules set down below, based on Article 9 para. 1 let. i in conjunction with Article 10 para. 3 of the Federal Act on the Swiss Financial Market Supervisory Authority (Financial Market Supervision Act, FINMASA; SR 956.1) of 22 June 2007:

## **Section 1: General provisions**

### **Art. 1 Subject matter**

These rules define the framework for the organisation, role and responsibilities of the Board of Directors, the Executive Board and the Internal Audit unit, and apply in execution of and in addition to the provisions set out in FINMASA.

## **Section 2: Board of Directors**

### **Art. 2 Role and responsibilities of the Board of Directors**

<sup>1</sup> The Board of Directors is the strategic body of FINMA. It is FINMA's supreme governing body, overseeing and controlling the Executive Board.

<sup>2</sup> The Board of Directors performs the following duties in particular:

- a. It sets out FINMA's strategic goals and submits them to the Federal Council for approval.
- b. It adopts the strategy implementation report addressed to the Federal Council.
- c. It issues a communication policy, guidelines for the implementation of regulatory principles and an enforcement policy.
- d. It takes further strategic policy decisions of a general, abstract nature.
- e. It issues the ordinances delegated to FINMA, decides on the circulars to be issued and recognises self-regulatory standards. It issues the Organisational Regulations and the Rules governing the Conduct of Business.

e<sup>bis</sup>. It decides on the opening of FINMA consultations and hearings.

- f. It appoints the Chief Executive Officer (CEO) and their deputy and terminates the CEO's employment if they no longer satisfy the prerequisites for the performance of their office. The appointment of the CEO and the termination of their employment require the approval of the Federal Council.
- g. It designates the CEO ad interim.
- h. It decides on the appointment and termination of the members of the Executive Board and their deployment ad interim as well as on the appointment of division heads. The CEO has the right to submit motions.
- i. It defines the provisions for the employment of staff members in an ordinance and submits it to the Federal Council for approval.
- j. It defines the principles on which the employee pension scheme is based.
- k. It decides on petitions submitted by its committees, its members and the Executive Board.
- l. It oversees the Executive Board.
- m. It decides on the organisational structuring into divisions.
- n. It issues a code of conduct that is applicable to the Board of Directors and all staff members.
- o. It appoints an internal audit unit and oversees the internal audit process.
- p. It approves the financial planning, the budget proposals and the annual financial statements, and establishes the applicable accounting standards in accordance with the principles of Article 18 FINMASA.
- q. It prepares the annual report and submits it to the Federal Council for approval prior to publication.
- r. It approves agreements of fundamental importance with domestic authorities.

## Art. 2bis Matters of substantial importance

<sup>1</sup> The Board of Directors decides on business matters of substantial importance in individual cases.

<sup>2</sup> Business matters of substantial importance are individual cases with potentially far-reaching consequences for all creditors, investors, and insured persons or business matters which have a significant bearing on the proper functioning of the financial markets.

<sup>3</sup> In particular, these include business matters relating to supervised institutions in supervisory categories 1 and 2, where these have far-reaching consequences pursuant to paragraph 2, namely:

- a. first-time licences or licences applied for due to significant restructuring of the supervised institution;
- b. protective measures, recovery, (bankruptcy) liquidation;
- c. licence withdrawals;
- d. first approval of legally required emergency plans; and
- e. capital and liquidity requirements or limitations.

<sup>4</sup> The Board of Directors can designate a business matter as being of substantial importance at any time and deal with the case.

### Art. 3 External contacts of the Board of Directors and external communication

<sup>1</sup> The Chair and any other designated members of the Board of Directors are to maintain contact with relevant persons, authorities and organisations in Switzerland and abroad, insofar as such contacts are required for the performance of their duties and are in FINMA's interests.

<sup>2</sup> The mandate to maintain and coordinate these contacts is to be discussed and agreed between the Chair of the Board of Directors and the CEO. The Board of Directors and the CEO are to be informed of any external contacts that take place.

<sup>3</sup> As a rule, FINMA's media contacts fall within the competence of the Chair and the CEO.

<sup>4</sup> In general members of the Board of Directors may give presentations about FINMA following previous consultation with the Chair.

### Art. 4 Board of Directors Committees

<sup>1</sup> The Board of Directors shall establish from among its members an audit and risk committee, an appointments committee and a takeover and state liability committee (standing committees). Every year the Board designates the chairs and committee members. If necessary, other members of the Board of Directors may be involved.

<sup>2</sup> Unless provided for otherwise, the committees act in an advisory capacity and submit proposals to the Board of Directors. The Takeover and State Liability Committee makes decisions independently. The committees have a chairperson who liaises with the Board of Directors and the Executive Board.

<sup>3</sup> The Board of Directors may establish ad-hoc committees from among its members to prepare items of business or may delegate them to individual members, in particular to specialists in specific areas of expertise.

<sup>4</sup> The Board of Directors shall assign the mandates of the standing committees in writing.

## Art. 5 Convening Board meetings

<sup>1</sup> Board meetings shall be convened by the Chair and, if they are unavailable, by the Vice-Chair.

<sup>2</sup> Each member of the Board of Directors and the CEO are entitled to request at any time that a meeting of the Board of Directors be convened.

<sup>3</sup> The Chair of the Board of Directors sets out the items for discussion after consultation with the CEO, decides on the confidentiality or classification of each item of business, and sets the agenda for the meeting.

<sup>4</sup> As a general rule, meeting invitations shall be sent to the participants eight days prior to the meeting, stating the items of business to be dealt with and attaching the necessary documentation. The person responsible for a particular item of business is to ensure that the documentation is sent to the participants in good time.

<sup>5</sup> This period of notice may be less than ten days or the participants may waive the provision of forwarding documentation prior to the meeting provided that there are valid reasons for doing so and after consultation with the Chair.

## Art. 6 Chairing of meetings

<sup>1</sup> Board meetings shall be presided over by the Chair.

<sup>2</sup> Each Board member may request in writing up to fourteen days prior to the meeting that an item of business be placed on the agenda and is to include a written explanation for this request.

<sup>3</sup> If the Chair is unable to attend or preside over a meeting, the meeting shall be presided over by the Vice-Chair, and if they are unable to attend, by another member of the Board of Directors.

<sup>4</sup> For business requiring a decision to be taken, a motion must be tabled by the respective responsible member of the Executive Board with the CEO's approval.

## Art. 7 Attendance at Board meetings

<sup>1</sup> As a general rule, the CEO shall attend Board meetings. Generally, Executive Board members shall present in person items of business from their own areas of responsibility. Apart from this, Executive Board members may attend Board meetings on a voluntary basis.

<sup>2</sup> The Chair may, of their own accord or at the request of a Board member or the CEO, invite other persons to attend Board meetings.

## Art. 8 Quorum, voting and appointments

<sup>1</sup> The Board of Directors is deemed to constitute a quorum when the majority of its members are present.

<sup>2</sup> Resolutions are passed by a majority of the votes cast by the members present.

<sup>3</sup> In the event of a tie vote, the Chair shall cast the tie-breaking vote.

<sup>4</sup> Resolutions on business that has not been tabled on the agenda or for which the required information has not been provided ahead of the meeting may not be adopted unless all members present agree.

## Art. 9 Chair's resolutions and resolutions by circular

<sup>1</sup> In exceptional cases that do not tolerate delay and where the importance of the item of business requires it, the Chair may of their own accord or at the request of the Executive Board take the necessary decisions (Chair's resolutions) in lieu of the Board of Directors.

<sup>2</sup> The Board of Directors shall be informed of such Chair's resolutions as soon as possible.

<sup>3</sup> In urgent cases, resolutions may be passed via circular provided no member of the Board of Directors demands, within three working days of the motion in question being dispatched, that the matter be deliberated in a meeting.

<sup>4</sup> Circular resolutions may only be passed by a majority of the votes cast by all the members of the Board of Directors.

## Art. 10 Minutes

<sup>1</sup> Board meeting minutes shall be kept and contain a summary of the deliberations relevant to the resolutions and the wording of all resolutions adopted.

<sup>2</sup> The minutes shall be taken by the Secretary of the Board of Directors. If they are absent, the Chair shall designate a replacement.

<sup>3</sup> The minutes shall be signed by the Chair and the Secretary.

<sup>4</sup> The minutes shall be approved and passed by the Board of Directors and shall be subsequently sent to the Executive Board, except in cases of confidential or classified business matters.

<sup>5</sup> Circular resolutions and Chair's resolutions shall be included in the minutes of the next meeting.

## Art. 11 Incompatibility and reporting conflicts of interest

<sup>1</sup> The members of the Board of Directors must have relevant specialist knowledge and be independent of the institutions that FINMA supervises. They may not engage in activities for any supervised institutions.

<sup>2</sup> The vested interests of the members of the Board of Directors are subject to public disclosure.



<sup>3</sup> Where the legal or actual prerequisites for exercising membership of the Board of Directors no longer exist, the respective board member shall submit their resignation, even if their term of office has not yet been concluded.

<sup>4</sup> Specifications are made in the FINMA Code of Conduct. Members of the Board of Directors are to report all existing or potential conflicts of interest and incompatibilities to the heads of the Legal and Compliance group, which subsequently examines, prior to the Board meetings, whether any grounds for recusal exist.

## Art. 12 Secretary of the Board of Directors

<sup>1</sup> The Secretary of the Board of Directors reports in this function to the Chair of the Board of Directors.

<sup>2</sup> The following duties are incumbent upon the Secretary of the Board of Directors:

- a. taking minutes at the Board meetings;
- b. handling the administrative organisation of Board meetings;
- c. supporting the Chair in their preparations for meetings;
- d. performing the duties assigned to them by the Chair and the Board of Directors.

<sup>3</sup> Where the Secretary of the Board of Directors is unable to perform their duties, the Chair of the Board of Directors shall appoint a person to replace them.

## Art. 13 Right to receive information and duty to provide information

<sup>1</sup> Each member of the Board of Directors is entitled to request information from the Executive Board on all technical matters; in conflicts of interest, this is subject to compliance with the recusal rules.

<sup>2</sup> The Executive Board shall inform the Board of Directors on a regular basis about operational issues, the course of business operations and emerging developments – immediately if there is an urgent need.

<sup>3</sup> The Executive Board and its committees shall ensure:

- a. that all matters dealt with by it are submitted to the Chair and the Secretary of the Board of Directors before a resolution is passed;
- b. and that the relevant minutes are submitted to the Chair and the Secretary of the Board of Directors after a resolution is passed.

## Section 3: Executive Board

### Art. 14 Position and function

<sup>1</sup> The Executive Board performs the duties that are not reserved to the Board of Directors or the Internal Audit unit. It acts as a collective body with joint responsibility for FINMA's operating activities.

<sup>2</sup> The following main duties are incumbent upon the Executive Board:

- a. conducting FINMA's business operations;
- b. preparing the necessary materials for decisions on items of business that fall under the remit of the Board of Directors;
- c. implementing the resolutions passed by the Board of Directors and its committees;
- d. operating appropriate steering and control systems and reporting regularly to the Board of Directors on their effectiveness.

<sup>3</sup> The Executive Board issues rulings on all matters that do not fall to the Board of Directors pursuant to Art. 2bis. In a few cases of lesser importance, the Executive Board may transfer this competence to the divisions.

### Art. 15 Composition

<sup>1</sup> The Executive Board is comprised of the CEO and other members.

<sup>2</sup> The CEO is the head of the Executive Board. The members of the Executive Board report to the CEO.

<sup>3</sup> The members of the Executive Board lead one of the divisions.

### Art. 16 *Repealed*

*[repealed following amendments to the Organisational Regulations of 07 December 2017].*

### Art. 17 Committees

<sup>1</sup> The Executive Board forms standing and / or ad-hoc committees together with other experts.

<sup>2</sup> The rules governing the Conduct of Business shall define how the standing committees are convened and organised and the competence they are assigned.

## Art. 18 Organisation

<sup>1</sup> As an operating body, FINMA is divided into various divisions at the primary management level. Depending on their size and span of control, these divisions are in turn divided into sections and groups.

<sup>2</sup> The following divisions are formed:

- a. Banks
- b. Insurance
- c. Markets
- d. Asset Management
- e. Enforcement
- f. Recovery and Resolution
- g. Supervisory Policy and Legal Expertise
- h. Operations

<sup>3</sup> The Board of Directors lays down the mandate of each of these divisions.

## Section 4: Common provisions

### Art. 19 Signatory powers

<sup>1</sup> The principle of joint signature by two signatories shall apply.

<sup>2</sup> Any two members of the Board of Directors may sign jointly on behalf of the Board, provided that one of them is either the Chair or the Vice-Chair.

<sup>3</sup> Rulings of the Board of Directors shall be signed jointly by the Chair or Vice-Chair together with the CEO or the relevant member of the Executive Board.

<sup>3bis</sup> Decisions of the Takeover and State Liability Committee which are based on the Financial Market Infrastructures Act (FinMIA; SR 958.1) shall be signed jointly by its Chair and the CEO or the Head of the Enforcement division.

<sup>3ter</sup> The Takeover and State Liability Committee is authorised in individual cases to delegate decisions based on the FinMIA to a committee of the Executive Board.

<sup>3</sup>quarter Rulings of the Takeover and State Liability Committee which are based on the Liability Act (SR 170.32) shall be signed jointly by its Chair and a staff member from the Legal and Compliance section.

<sup>4</sup> Letters to Federal Councillors shall be signed as a rule by the Chair of the Board of Directors after consultation with the Board of Directors.

<sup>5</sup> Ordinances and circulars issued by FINMA shall enter into force with the joint signature of the Chair and the CEO.

<sup>5</sup>bis The recognition of self-regulation as a minimum standard shall be signed jointly by the Chair and the CEO.

<sup>6</sup> Letters written by the Board of Directors that are of minor significance may be signed by the Chair of the Board of Directors alone.

Signatory authority may be delegated in the event of prolonged absences or for reasons of urgency. Each individual case of delegation must be documented.

<sup>7</sup> The Rules governing the Conduct of Business shall establish any further provisions.

## **Section 5: Internal Audit unit**

### **Art. 20 Organisation**

<sup>1</sup> The Internal Audit unit reports directly to the Board of Directors.

<sup>2</sup> The effectiveness of the Internal Audit unit and its collaboration with external auditors shall be assessed regularly by the Audit and Risk Committee.

<sup>3</sup> It may be tasked with the performance of special audits and controls by the Chair of the Board of Directors, the Audit and Risk Committee or a majority of the Board of Directors at the request of a member of the Board of Directors or the CEO.

<sup>4</sup> Employees working in the Internal Audit unit form part of the FINMA workforce and are subject to the applicable rules.

### **Art. 21 Mandate**

<sup>1</sup> The Internal Audit unit shall draw up a risk-oriented annual plan of its audit activities in consultation with the Audit and Risk Committee. This annual plan is subject to approval by the Board of Directors.

<sup>2</sup> The Internal Audit unit shall endeavour to ensure a high level of quality in its audits by way of continuous professional development and compliance with national and international standards in the industry.

## Art. 22 Role and responsibilities

<sup>1</sup> The Internal Audit unit shall provide independent and objective audit services that are designed to create added value and improve business processes. It supports the organisation in achieving its objectives by applying a systematic and targeted approach to assess the effectiveness of risk management, internal steering and control systems, and governance processes, and helps to improve them.

<sup>2</sup> It is responsible for verifying compliance with legal, regulatory and other internal provisions. It reports on material and personal shortcomings in the operational organisation.

<sup>3</sup> It is responsible for assessing the reliability of documents, reports and other information and data collected within the supervisory authority.

<sup>4</sup> The Internal Audit unit shall have unlimited right to perform audits, provided that this is necessary to fulfil its duties. To this end, it shall be entitled to receive all information available and be allowed access to all documents and any other records.

<sup>5</sup> The role, duties and responsibilities of the Internal Audit unit are to be set out in an Audit Charter subject to approval by the Audit and Risk Committee.

## Art. 23 Reporting

<sup>1</sup> The Internal Audit unit shall maintain continuous contact with the Audit and Risk Committee and shall report to it regularly on the findings of the audits it conducts. It shall inform the Audit and Risk Committee immediately should it notice any events of particular importance.

<sup>2</sup> Units or individuals mentioned in reports shall be generally given the opportunity to comment on the reports before they are passed on.

## Section 6: Transitional and final provisions

### *Art. 24 Repealed*

*[repealed following amendments to the Organisational Regulations of 6 March 2019].*

### Art. 25 Entry into force

These regulations shall enter into force on 1 January 2009.