

GUIDELINE

for license applications for **banks and securities dealers**

Version April 2010

Purpose

This guideline is not legally binding. It is intended as a working instrument to facilitate the application procedure for both the applicant and FINMA. The guideline states the data and documents normally required. This shall not exclude the submission of additional data by the applicant or the request for additional data and documents by FINMA.

The applications are to be submitted in an official Swiss language and shall at least contain the following data / enclosures:

1. General information

- 1.1 Purpose of the foundation of the bank and/or of the acquisition of the securities dealer' status
- 1.2 Planned functional and geographical area of business activities in Switzerland
- 1.3 Place of business / domicile (incl. precise address)
- 1.4 History, activities of the parent company, and possibly the group (with the main figures: total of balance sheet, equity, managed assets, etc.)
- 1.5 For organizations wishing to convert into a bank or securities dealer: description of status and current activities (together with appendices such as articles of incorporation, extract from the commercial register, annual report)

2. Direct and indirect participation

- 2.1 Envisaged capital (see art. 4 BO / art. 22 SESTO)
- 2.2
 - List of all direct and indirect participations totaling 5% or more (up to the ultimate economic controller) with separate disclosure of voting rights allocated to the holders of these participations
 - Organization chart of the shareholders, disclosing the voting and capital rights
- 2.3 Information about any agreements (such as shareholder relationship contracts) and arrangements by which control or decisive influence can be exercised in any other way (see art. 3 par. 2 lit. c^{bis} BA / art. 23 par. 4 SESTO)
- 2.4 Information and documents about owners of qualified or decisive participations (see art. 6 par. 1 BO / art. 23 par. 1 SESTO)

- 2.5 The following declarations / undertakings (relevant forms are available from FINMA) signed by:
- the applicant, disclosing the qualified or decisive participants in the bank or securities dealer (art. 3 par. 6 BA / art. 28 par. 3 SESTO)
 - the qualified or decisive participants, including the following additional information: shareholding on own account or held on a fiduciary basis on behalf of third parties, granting of options or similar rights on these participations (see art. 6 par. 3 BO / art. 28 par. 2 SESTO)

3. Information regarding the persons in charge of the administration or the management (see art. 6 BO / art. 23 SESTO)

- 3.1 **Board of directors** (or any other body responsible for direction, supervision, overall control):
- 3.1.1 Composition, disclosing the chairman, the vice-chairman and, if any, committee members of the board of directors
- 3.1.2 Personal data (notably nationality, place of residence, date of birth) of the members of the board of directors (or similar body)
- 3.1.3 Signed curriculum vitae (minimum content: personal data; scholastic and professional education; summary employment record with short description of previous professional activities; mandates)
- 3.1.4 Certificate of good character; extract from the Central Penal Register, references
- 3.1.5 Judicial or administrative proceedings (completed or pending) if such are of commercial relevance or could adversely affect the guarantee of a proper conduct of business
- 3.1.6 Qualified (see art. 3 par. 2 lit. c^{bis} BA) or decisive participations (see art. 23 par. 4 SESTO) in other companies, particularly those operating in the financial sector

3.2 Management:

- 3.2.1 Details on the composition, organization and responsibilities of the management
- 3.2.2 Analogous information about the members of the management like those given for the members of the board of directors (see points 3.1.2-3.1.6); additionally:
- signed curriculum vitae with a complete chronological employment record detailing previous professional activities, name(s) of previous superior(s), number of subordinates at former employer (if need be at earlier employers), reason for changing job
 - Testimonials of former employers
 - Details of location where management activities will actually be carried out. For members domiciled abroad: evidence that the domicile does not affect the actual and responsible management of the bank or securities dealer (see art. 3 par. 2 lit. d BA / art. 21 par. 2 SESTO)

4. Business activity and internal organization

- 4.1 Detailed description of the planned business activities and procedures
- 4.2 Articles of incorporation, articles of association and business regulations which are tailored to the business activities of a bank or securities dealer (see art. 3 par. 2 lit. a BA / art. 10 par. 2 lit. a and par. 3 SESTA)
- 4.3 Organization chart of the applicant

4.4 Additional Information regarding the organization:

- a) personnel
- b) infrastructure, logistics, informatics
- c) outsourcing
- d) internal systems regarding controlling and risk management (with enclosure of the corresponding regulations)
- e) separation of functions (see art. 9 par. 1 BO / art. 19 par. 1 SESTO)
- f) adherence to obligations of due diligence
- g) organization, sphere of authority and activity of the internal auditor (see art. 9 par. 4 BO / art. 20 par. 2 SESTO)
- h) obligation to maintain a journal, obligation to notify and rules of conduct (only for securities dealers; see in particular art. 11 and 15 SESTA)

5. Business plan

- 5.1 Business plan for the first three financial years (development of business operations, clientele, staff and organisation etc.)
- 5.2 Budgets for the first three financial years (provisional balance sheet, profit and loss account)

6. Regulatory auditors

- 6.1 Written declaration of acceptance of the mandate (see art. 18 par. 1 BA / art. 17 par. 1 SESTA)
- 6.2 Report of the auditors on the articles of incorporation, articles of partnership, business regulations as well as the planned organization (see paragraph 4)
- 6.3 For companies wishing to convert into a bank or securities dealer: complete audit report by the regulatory auditor (see art. 43-45 BO / analogously applicable under art. 8 par. 1 SESTO-FBC). The form and content of the report must adhere to the requirements of FBC-Circular 08/41

7. Additional requirements for foreign controlled banks or securities dealers

- 7.1 Evidence of the guarantee of reciprocity or the existence of a contrary international obligation (see art. 3^{bis} par. 1 lit. a BA / art. 37 SESTA)
- 7.2 Business name; state of the procedure with the Federal Commercial Registration Office

8. Additional requirements for applicants belonging to a group operating in the financial business sector (evidence of the existence of a supervision on a consolidated basis)

- 8.1 Organization chart of the group
- 8.2 List of the consolidated participations with the indication of the competent auditor
- 8.3 List of the participations not included in the consolidation with indication of the relevant reason
- 8.4 Name(s) and address(es) of the foreign authority(-ies) entrusted with supervision of the group on a consolidated basis
- 8.5 Description of the regulatory framework of the financial sector of the foreign country(-ies) responsible for the supervision on a consolidated basis

9. Miscellaneous documents

- 9.1 Current management report of the parent company and of the qualified or decisive participants in the applicant's capital
- 9.2 Letters of reference
- 9.3 Original power of attorney (if the applicant is being represented)