

GUIDELINE

for license applications for **branches and representative offices of foreign banks and securities dealers in Switzerland**

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 branch or representative office / or the foreign securities dealer
- 1.2 Planned business activities in Switzerland
- 1.3 Place of business / domicile in Switzerland (incl. precise address)
- 1.4 History, activities, current structure and organisation of the foreign bank or the foreign securities dealer and possibly of the group

2. Direct and indirect participation

- 2.1 List of shareholders holding direct or indirect participations totaling 5% or more of the capital of the foreign bank or the foreign securities dealer
- 2.2 Chart of the shareholding structure (direct and indirect), disclosing the voting and capital rights
- 2.3 Information and documentation about owners of qualified or decisive participations (see Art. 6 par. 1 BO, Art. 23 par. 1 SESTO)
- 2.4 Information about any agreements (such as shareholder relationship contracts) and arrangements by which control or a decisive influence can be exercised in any other way (see Art. 3 par. 2 lit. c^{bis} BA / Art. 23 par. 4 SESTO)
- 2.5 The following declarations (relevant forms are available from FINMA) signed by:
 - the applicant, disclosing the qualified or decisive participators in the bank or securities dealer (Art. 3 par. 6 BA / Art. 28 par. 3 SESTO)

- the qualified participators, 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 responsible for the management of the branch or the representative office

- 3.1 Details on the composition, organization and responsibilities of the management
- 3.2 Personal data: full names, nationality, domicile and date of birth
- 3.3 Signed curriculum vitae (minimum content: personal data, scholastic and professional education, mandates, record of professional activities, information regarding previous superior(s)/manager(s) resp. number of subordinates at former employer (if need be at earlier employers), testimonials of former employers, reason for changing job)
- 3.4 Certificate of good character; extract from the Central Penal Register; references

4. Regulations and internal organization (for branches only)

- 4.1 Articles of incorporation of the bank (head office) or the foreign securities dealer
- 4.2 Regulations describing the functional and geographical area of business and a management organization tailored appropriately to the business activities (see Art. 4 par. 1 OFB / Art. 41 par. 1 lit. f SESTO)
- 4.3 Organization chart, organizational and personnel contact to head office
- 4.4 Further details regarding the organization (staff, logistics, EDP etc.)
- 4.5 Information regarding internal auditor(s) (function, list of obligations, responsibilities etc.)

5. Business plan (for branches only)

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

6. Regulatory auditors

- 6.1 General information regarding the regulatory auditor
- 6.2 For branches: written declaration of acceptance of the mandate
- 6.3 For branches: report of the auditors on the regulations and planned organization and business activities (infrastructure, staff, EDP, logistics etc.)

7. Reciprocity and (consolidated) supervision

- 7.1 Evidence of reciprocity or existence of a contrary international obligation (see Art. 3^{bis} par. 1 lit. a BA / Art. 37 SESTA)
- 7.2 Name of the representative office / business name of the branch and state of the corresponding inquiries at the Commercial Registry (see Art. 4 par. 1 lit. h OFB Art. 41 par. 1 lit. h SESTO)
- 7.3 Evidence of an adequate supervision of the foreign bank or securities dealer (Art. 4 par. 1 lit. b, Art. 14 lit. a OFB / Art. 41 par. 1 lit. b, Art. 49 par. 1 lit. a SESTO)

- 7.4 For branches of foreign banks or foreign securities dealers which form part of a group operating in the financial business sector: evidence of an appropriate consolidated supervision by the foreign supervisory authorities (see Art. 4 par. 2 OFB / Art. 41 par. 3 SESTO)
- 7.5 Written confirmation from the foreign supervisory authorities that the latter have no objections to the establishment of the branch or representative office (see Art. 4 par. 1 lit. c, Art. 14 lit. b OFB / Art. 41 par. 1 lit. c, Art. 49 par. 1 lit. b SESTO)

8. General enclosures

- 8.1 Original power of attorney (where the applicant uses a representative)
- 8.2 Annual reports on the last three financial years of the parent company or the foreign organization to be represented as well as of the main shareholders.