



Eidgenössische Bankenkommission
Commission fédérale des banques
Commissione federale delle banche
Swiss Federal Banking Commission

SFBC Commissioned Experts

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Key points

The SFBC has been making increasing use of commissioned experts in its financial market enforcement, especially since the amendment of the legal provisions governing commissioned investigators came into force in mid-2004. The experiences with this instrument described in this report are extremely positive and of great benefit to Switzerland as a financial centre. The SFBC takes pressure off its resources and profits from the special technical knowledge of these commissioned experts. The tasks they are called on to deal with are many and varied. For example the SFBC has called on commissioned experts to investigate regulatory issues and to carry out liquidations for them. If the SFBC orders investigations to be carried out at an authorised institute this should not be seen as a vote of no confidence in its auditors. However in order to avoid conflicts of interest it generally appoints third-party experts to carry out this work. (Chapters 1 and 10)

The SFBC attaches great importance to having a selection procedure for commissioned experts which uses transparent and objective criteria. There is an open tender process which ensures a steady pool of experts is available. New tenders received are dealt with according to criteria defined in advance. Existing tenders must be updated annually. At present the SFBC's pool of experts contains 52 candidates, including 29 legal firms and 7 recognised auditing firms. The SFBC arranges regular training events for them. (Chapter 2)

The selection of mandates also uses strictly defined criteria. The SFBC endeavours to spread its mandates widely among the experts in the pool. Of the 52 candidates in the pool, so far 39 of them have been given mandates. Since mid-2004 the SFBC has issued 177 mandates, 85 of them in 2007 alone. It observes the requirements of public tender law where this is applicable. (Chapter 3)

The SFBC appoints commissioned experts by means of an official order, notifying the institutions that are to be the object of their work. This also describes the task the expert is being set. The institution in question may challenge the order in the courts or (if it is a preliminary injunction) demand that the SFBC issue an order which can be challenged in the courts. The SFBC confirms the appointment in a letter to the expert, which also sets out the fee rates which have been agreed for the particular case. By accepting the mandate an expert enters into an agreement with the SFBC under public-sector law. (Chapter 4)

So far the SFBC has appointed 83 'commissioned investigators'. These look into regulatory matters and submit a report on them. These investigators are not tasked with confirming the initial suspicions of the SFBC at any price, but with providing it the clearest possible grounds for taking a decision. The SFBC may also engage a commissioned investigator to act in place of an institution's executive bodies. This has proven very helpful, especially for securing assets held abroad. (Chapter 5)



In the broadest sense of the word, the commissioned experts appointed by the SFBC act with the same authority as the SFBC itself. Unlike the SFBC, however, they may not issue official orders. Commissioned investigators' reports are not legal opinions; they restrict themselves to presenting the facts relevant in law. The investigators have to provide evidence of the facts they present, so the parties can respond to them. (Chapter 6)

The SFBC supervises the activities of the commissioned experts it appoints and, depending on the mandate, has very close contact with them. Where interim invoices are submitted frequently, this supervision will particularly include tight control of costs. The SFBC also faces internal control challenges, especially in the case of liquidations. (Chapter 7)

The institution that is the object of the SFBC proceedings bears the cost of the commissioned expert, on the grounds that the institution is responsible for having made the proceedings necessary. The SFBC assumes modest cost guarantees so that necessary initial enquiries can be carried out even in connection with unauthorised institutions in uncertain financial circumstances. Since 2004, mandates issued by the SFBC have resulted in costs of roughly CHF 21m (of which about CHF 12m in 2007 and CHF 7m in 2006). The cost of individual mandates varies significantly. Mandates covering authorised institutions are generally much larger and hence more expensive than those relating to unauthorised institutions. (Chapter 8)

So far there have been no legal proceedings arising from the liability of commissioned experts and the state in the context of any activities of commissioned experts. The statutory provisions in this regard will change on 1 January 2009, when the Financial Markets Act (FINMAG) enters into force. Under this FINMA will be liable for the activity of commissioned experts, with the Federal government having secondary liability. For this to apply, however, an expert must have breached 'significant duties of office.' (Chapter 9)