

GUIDELINES

for licence applications for **banks and securities dealers**

Version dated 20 August 2012

Purpose

These Guidelines are not legally binding. They are intended to facilitate the application procedure for both the applicant and FINMA. They list the information and documents normally required. This does not prevent the applicant from providing further information or FINMA from asking for further information and documentation. Applications are to be submitted in an **official Swiss language**. Where an application is submitted by an applicant's legal representative, the representative's power of attorney is to be submitted in the original.

The relevant legal principles on which these guidelines are based can be obtained from the Federal Office for Buildings and Logistics (FOBL) 3003 Bern (phone 031 325 50 50, Fax 031 325 50 58, Internet www.bbl.admin.ch) or downloaded on the federal authorities homepage (www.admin.ch).

Licence application

1. General information

- 1.1 Purpose of establishing the bank and / or acquiring the status of securities dealer.
- 1.2 Planned functional and geographical area of business and type of clientele.
- 1.3 Headquarters / domicile (including exact address).
- 1.4 History, parent company's activities, possibly also of the group (most important indicators: balance sheet total, equity capital, assets under management, etc.)
- 1.5 For companies that want to change status to that of a bank or a securities dealer: status description and current activities (enclosures should include the articles of association, extract from the Commercial Register and annual report).

2. Direct and indirect participations

- 2.1 Envisaged capital (see Art. 4 BO; Art. 22 SESTO).
- 2.2 - List of all shareholders holding direct or indirect participations totalling 5% or more (up to the ultimate economical controller) with separate disclosure of voting rights allocated to the holders of these participations.
- Organisation chart showing shareholder structure in terms of both voting rights and capital.

- 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 para. 2 let. c^{bis} BA; Art. 23 para. 4 SESTO).
- 2.4 Information and documents about owners of qualified or decisive participations (see Art. 6 para. 1 BO; Art. 23 para. 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 para. 6 BA; Art. 28 para. 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 para. 3 BO; Art. 28 para. 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; education, professional qualifications and further education; record of professional activities with short description of previous professional activities; mandates).
- 3.1.4 Proof of good character; extract from the criminal records, character references.
- 3.1.5 Judicial or administrative proceedings (completed or pending) if such are of commercial relevance or could adversely affect the requirement to provide assurance of proper conduct business.
- 3.1.6 Qualified (see Art. 3 para. 2 let. c^{bis} BA) or decisive participations (see Art. 23 para. 4 SESTO) in other companies, particularly those operating in the financial sector.

3.2 Management:

- 3.2.1 Details on the composition, organization and management competencies.
- 3.2.2 Analogous information about members of management similar to that given for members of the board of directors (see points 3.1.2 - 3.1.6 above); 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 para. 2 let. d BA; Art. 21 para. 2 SESTO).

4. Business activity and internal organization

- 4.1 Detailed description of the planned business activities and procedures.
- 4.2 Articles of association, partnership agreement and business regulations which are tailored to the business activities of a bank or securities dealer (see Art. 3 para. 2 let. a BA; Art. 10 para. 2 let. a and para. 3 SESTA).
- 4.3 Organisation chart of the applicant.
- 4.4 Additional Information regarding the organisation:
 - 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 para. 1 BO; Art. 19 para. 1 SESTO)
 - f) adherence to obligations of due diligence
 - g) organisation, competencies and activities of the internal auditor (see Art. 9 para. 4 BO; Art. 20 para. 2 SESTO)
 - h) requirement to maintain a journal, report and comply with the rules of conduct (only for securities dealers; see in particular Arts. 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 to conduct a regulatory audit under supervisory law (see Art. 18 para. 1 BA; Art. 17 para. 1 SESTA).
- 6.2 Completed questionnaire on the services provided by accredited auditors.

7. Audit firm in the licensing process (licensing auditor)

- 7.1 Engagement letter concerning the mandate as audit firm in the licensing process (licensing auditor).
- 7.2 Completed questionnaire on services provided by accredited audit firms.
- 7.3 - For new companies: comprehensive statement on the licence application, business plan and the fulfilment of all licensing requirements in accordance with the separate Guidelines on audit certificates submitted to FINMA regarding applications for institutions seeking authorisation.

- For existing companies wishing to convert to a bank or securities dealer: most recent regulatory audit report (Art. 18 FINMA-AO). The form and content of the audit report must comply with the requirements of FINMA Circular 08/41 "Auditing". The audit depth "audit" must be applied, and high assurances must be given. In all other matters, the provisions of the Guidelines on audit certificates submitted to FINMA regarding applications for institutions seeking authorisation apply mutatis mutandis.

8. Additional requirements for foreign controlled banks or securities dealers

- 8.1 Evidence of the guarantee of reciprocity or the existence of a contrary international obligation (see Art. 3^{bis} para. 1 let. a BA; Art. 37 SESTA).
- 8.2 Company name; status of clarifications at the Federal Commercial Registration Office.

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

- 9.1 Organisation chart of the group.
- 9.2 List of consolidated participations indicating the competent auditors.
- 9.3 List of the participations not included in the consolidation stating the reason for this.
- 9.4 Name(s) and address(es) of the competent foreign authority(-ies) entrusted with consolidated supervision.
- 9.5 Description of the regulatory framework of the financial sector of the foreign country(-ies) responsible for consolidated supervision.

10. Miscellaneous documents

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