

GUIDELINES

on preliminary reporting requirements for:

- **establishing a physical presence abroad**
- **banks and securities dealers**

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Purpose

These guidelines aim at informing companies subject to the Banking Act (BA; SR 952.0) and/or the Stock Exchange Act (SESTA; SR 954.1) about the regulations on reporting to FINMA in view of establishing a physical presence abroad (Article 3 paragraph 7 BA, 6b Banking Ordinance [BO; SR 952.02] and Article 18 paragraph 5 Stock Exchange Ordinance [SESTO; SR 954.11]).

These guidelines are not legally binding. They indicate the data and documents normally required. This does not exclude the submission of additional data by the institution concerned or the request for more data and documents by FINMA.

I. Principles of reporting requirements

The reporting requirements set down in Article 6b BO and Article 18 paragraph 5 SESTO serve to ensure FINMA that institutions subject to its supervision intending to expand their business activities by establishing a physical presence abroad are organised properly and have sufficient financial means to do so. These requirements mainly serve solid risk management under Article 9 paragraph 2 BO and Article 19 paragraph 3 SESTO. In addition, FINMA uses the information reported to evaluate the foreseen activity in terms of consolidated supervision in accordance with Article 3d et seq. BA and can thus respond to any applications or inquiries made by the local financial supervisory authorities relating to the business activities planned.

II. Scope of application

Institutions subject to the BA and/or SESTA have a duty to report if they intend initiating activities in a foreign country either by establishing a physical presence abroad (in particular, subsidiaries, branch

offices, representative offices and business offices) or by acquiring participating interests in foreign companies active in the financial sector.

Financial groups subject to FINMA group supervision are to report the acquisition of participating interests by entities shown within the scope of consolidation.

III. Items to be reported

As a rule, the following details / documents are to be submitted to FINMA:

- 1. Business plan outlining in particular the type of activities planned and the organisational structure** (Art. 6b let. a BO, Art. 18 para. 5 let. a SESTO)
 - 1.1 Details of the legal structure (subsidiaries, branch offices, representative offices) and its shareholding structure. The shareholding structure and information on other participating shareholders are to be indicated in case participating interest is acquired in existing companies.
 - 1.2 Details of the type of business planned: outline of the business activities foreseen (business-model and plan), client target group, internal organisation, especially in relation to risk management and local compliance. For parent companies, details of the existing reporting line, supervision of activities, risk management and compliance are to be included.
- 2. Institution's address abroad** (Art. 6b para. 1 let. b BO, Art. 18 para. 5 let. b SESTO)
- 3. Name of the persons responsible for administration and management** (Art. 6b para. 1 let. c BO, Art. 18 para. 5 let. c SESTO)
 - 3.1 Details of the structure of the executive management (board of directors) and of management (senior management). Information on any other functions exercised by the persons named at other group entities is to be indicated.
 - 3.2 Details of any personal licences required under the local law applicable.
- 4. Audit firms** (Art. 6b para. 1 let. d BO, Art. 18 para. 5 let. d SESTO)
 - 4.1 Details of the assigned audit firm (group audit firm in the meaning of Article 7 of the Financial Market Audit Ordinance [FINMA-PV; SR 956.161]).
- 5. Financial supervisory authority of the host country** (Art. 6b para. 1 let. e BO, Art. 18 para. 5 let. e SESTO)
 - 5.1 Details of the local financial supervisory authority and of the approval granted for the foreseen business activities. Any information on possible restrictions imposed by the local financial supervisory authority and on the possibility of using the licences granted outside Switzerland, e.g. European banking passport, is to be mentioned.

IV. Auditor's report

An auditor's statement is to be included along with the reporting details. In particular, this statement must indicate if the risk analysis of expanding business activities abroad is adequate and if these risks were considered in the institution's global risk management.

V. Changes in business terms

In accordance with Article 6b para. 2 BO, FINMA is to be notified of any closures or changes relevant to the business activities abroad, as well as any changes of audit firm and financial supervisory authority. Please refer to point 3 of these guidelines for the details to be submitted to FINMA.

VI. Which section should I contact for further information?

- the contact person responsible at the Authorisation of the Banks Division
- send an email to authorization@finma.ch or phone +41 31 327 93 40.

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