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Federal Act on the Licensing and Oversight of Auditors (Auditor Oversight Act, AOA)

of 16 December 2005 (status as at 1 January 2020)

The Federal Assembly of the Swiss Confederation,
based on Articles 95 paragraph 1, 122 paragraph 1 and 123 paragraph 1
of the Federal Constitution¹,
and having considered the Dispatch of the Federal Council of 23 June 2004²,
decrees:

Section 1 Subject Matter and Definitions

Art. 1 Subject matter and purpose

¹ This Act shall regulate the licensing and oversight of persons who provide audit services.

² Its purpose shall be to ensure the proper performance and the quality of audit services.

³ Statutory provisions of specific legislative acts take precedence over the provisions of this Act.

Art. 2 Terms and definitions

In this Act:

a.³ *audit services* means:

1. audits and confirmations which in accordance with federal regulations must be conducted by a licensed auditor, a licensed audit expert or an audit firm under state oversight,

AS 2007 3971

¹ SR 101

² BBl 2004 3969

³ Amended by No I of the FA of 20 June 2014 (Bundling of Audit Oversight), in force since 1 Jan. 2015 (AS 2014 4073, BBl 2013 6857).

2. audits which in accordance with Article. 24, paragraph 1 letter a of the Financial Market Supervision Act of 22 June 2007⁴ (FINMASA) must be conducted by a licensed audit company for regulatory audits;
- b. *audit firm* means a sole proprietorship, partnership or legal entity that is entered in the Commercial Register and provides audit services;
- c.⁵ *public interest entities* means:
 1. publicly traded companies in accordance with Article 727 paragraph 1 number 1 of the Code of Obligations (CO)⁶,
 2. supervised persons and entities within the meaning of Article 3 FINMASA which in accordance with Article 9a of this Act must mandate a licensed audit company for regulatory audit with an audit in accordance with Article 24 FINMASA.

Section 2

General Provisions on the Licensing of Providers of Audit Services

Art. 3 Principle

¹ Individuals and audit firms providing audit services as defined in Article 2 letter a shall require a licence.

² Individuals shall be licensed for an unlimited period and audit firms for a period of five years.

Art. 4 Requirements for audit experts

¹ An individual shall be licensed as an audit expert if he or she satisfies the requirements relating to education and professional experience and has a spotless record.

² The following persons satisfy the requirements relating to education and professional experience:

- a. Swiss certified accountants;
- b. Swiss certified fiduciary experts, Swiss certified tax consultants and accounting and controlling experts who hold the federal diploma, provided they each have at least five years' professional experience;
- c. graduates in business, economics or law followed from a Swiss university or university of applied sciences, specialists in finance and accounting who hold a federal certificate and fiduciaries who hold a federal certificate, provided they each have at least twelve years' professional experience;

⁴ SR 956.1

⁵ Amended by No I of the FA of 20 June 2014 (Bundling of Audit Oversight), in force since 1 Jan. 2015 (AS 2014 4073; BBl 2013 6857).

⁶ SR 220

- d. persons who hold foreign qualifications comparable to those stated under letter a, b or c, have corresponding professional experience and can demonstrate the necessary knowledge of Swiss law, in so far as this is provided for in a treaty with the country of origin or the country of origin grants reciprocity.

³ The Federal Council may recognise other equivalent qualifications and determine the period of the required professional experience.

⁴ The professional experience must have been acquired primarily in the fields of accounting and auditing, with at least two thirds under the oversight of a licensed audit expert or a foreign specialist with comparable qualifications. Professional experience acquired while training shall be taken into account, provided that these requirements have been met.

Art. 5 Requirements for auditors

¹ An individual shall be licensed as an auditor if he or she:

- a. has a spotless record;
- b. is qualified in accordance with Article 4 paragraph 2;
- c. can demonstrate one year's professional experience.

² The professional experience must have been acquired primarily in the fields of accounting and auditing under the oversight of a licensed auditor or a foreign specialist with comparable qualifications. Professional experience acquired while education shall be taken into account, provided that these requirements have been met.

Art. 6 Requirements for audit firms

¹ An audit firm shall be licensed as an audit expert or auditor if:

- a. the majority of the members of its highest supervisory or governing body and of its executive body hold the relevant licence;
- b. at least one fifth of the persons involved in providing audit services hold the relevant licence;
- c. it is ensured that all lead auditors hold the relevant licence;
- d. the management structure guarantees that individual engagements will be supervised sufficiently.

² Public-sector audit offices shall be licensed as audit firms if they satisfy the requirements in accordance with paragraph 1. It shall not be possible for them to be licensed as audit firms under state oversight.

Section 3 Special Provisions on the Licensing of Providers of Audit Services for Public Interest Entities⁷

Art. 7 Principle

¹ Audit firms that provide audit services for public interest entities require a special licence and are subject to state oversight (audit firms under state oversight).

² Other audit firms shall also be licensed as audit firms under state oversight, on application, if they satisfy the statutory requirements.

³ The licence is valid for an unlimited period.⁸

Art. 8 Special cases of international relevance

¹ A licence as an audit firm under state oversight is also required for audit firms providing auditing services as defined in Article 2 letter a number 1 or comparable services under foreign law for:⁹

- a. companies incorporated under foreign law whose shares are listed on a Swiss stock exchange;
- b.¹⁰ companies incorporated under foreign law whose bonds are listed on a Swiss stock exchange;
- c. and d.¹¹...

² The licensing obligation does not apply if the audit firm is subject to the oversight of a foreign audit oversight authority that is recognised by the Federal Council.

³ Moreover, the licensing obligation does not apply to audit firms providing audit services to a company under paragraph 1 letter b if:

- a. the relevant bonds are guaranteed by company that has an audit firm meeting the criteria in either paragraph 1 or 2; or
- b. investors have been explicitly informed that the audit firm is not under state oversight.¹²

⁷ Expression according to paragraph I of the FA of 20 June 2014 (Bundling of Audit Oversight), in force since 1 Jan. 2015 (AS **2014** 4073; BBl **2013** 6857). The change was made throughout the text.

⁸ Inserted by Annex No II 3 of the Financial Institutions Act of 15 June 2018, in force since 1 Jan. 2020 (AS **2018** 5247, **2019** 4631; BBl **2015** 8901).

⁹ Amended by No I of the FA of 20 June 2014 (Bundling of Audit Oversight), in force since 1 Oct. 2015 (AS **2014** 4073, **2015** 2437; BBl **2013** 6857).

¹⁰ Amended by No I of the FA of 30 Sept. 2016 (Extra-territorial Scope of Audit Oversight), in force since 1 Oct. 2017 (AS **2017** 4859; BBl **2015** 5717).

¹¹ Never came into force / irrelevant.

¹² Amended by No I of the FA of 30 Sept. 2016 (Extra-territorial Scope of Audit Oversight), in force since 1 Oct. 2017 (AS **2017** 4859; BBl **2015** 5717).

⁴ Audit firms to which the licensing obligation does not apply in accordance with paragraph 2 are required to register with the Oversight Authority. The Federal Council shall stipulate the relevant requirements.¹³

⁵ The Oversight Authority shall lay down rules governing the disclosure of audit firms that are not subject to state oversight.¹⁴

Art. 9 Requirements

¹ Audit firms shall be licensed to provide audit services for companies of public interest if they:

- a. satisfy the requirements for licensing as an audit expert;
- b. guarantee compliance with statutory provisions¹⁵;
- c. are sufficiently insured against liability risks.

² The Oversight Authority may grant a licence to an audit firm on the basis of a foreign licence if the requirements of this Act have been met.

Art. 9a¹⁶ Requirements for the licence for audits under the financial market acts

¹ An audit firm shall be licensed as an audit company for regulatory audits in accordance with Article 2 letter a number 2 if it:

- a. is licensed in accordance with Article 9 paragraph 1;
- b. is sufficiently organised for these audits; and
- c. does not exercise any other activity subject to licensing in accordance with the financial market acts (Article 1 paragraph 1 FINMASA¹⁷).

² A person is licensed to lead audits in accordance with Article 2 letter a number 2 (lead auditor) if the person:

- a. is licensed as an audit expert in accordance with Article 4; and
- b. has the necessary expertise and practical experience for the audit under the financial market acts (Art. 1 paragraph 1 FINMASA).

³ For licensing in accordance with paragraph 2 letter a, technical experience deviating from Article 4 paragraph 4 but deriving from audits in accordance with Article 24 paragraph 1 letters a and b FINMASA may also be credited.

¹³ Inserted by No I of the FA of 30 Sept. 2016 (Extra-territorial Scope of Audit Oversight), in force since 1 Oct. 2017 (AS 2017 4859; BBl 2015 5717).

¹⁴ Inserted by No I of the FA of 30 Sept. 2016 (Extra-territorial Scope of Audit Oversight), in force since 1 Oct. 2017 (AS 2017 4859; BBl 2015 5717).

¹⁵ Expression according to paragraph I of the FA of 20 June 2014 (Bundling of Audit Oversight), in force since 1 Jan. 2015 (AS 2014 4073; BBl 2013 6857). The change was made throughout the entire text.

¹⁶ Inserted by No I of the FA of 20 June 2014 (Bundling of Audit Oversight), in force since 1 Jan. 2015 (AS 2014 4073; BBl 2013 6857).

¹⁷ SR 956.1

⁴ ...¹⁸

^{4bis} The Federal Council may provide for simplified requirements for licensing audit companies and lead auditors for the auditing of persons under Article 1*b* of the Banking Act of 8 November 1934^{19,20}

⁵ ...²¹

Art. 10²²

Section 4 Duties of Audit Firms under State Oversight

Art. 11 Independence

¹ In addition to the general statutory provisions on the independence of auditors (Article 728 CO²³), audit firms under state oversight must observe the following principles when providing audit services to public interest entities:

- a. The annual fees arising from auditing and other services provided for a single company and the companies affiliated to it as a result of unified management (group) must not exceed 10 percent of the audit firm's total fees.
- b. If persons who held a decision-making or senior accounting position at a company transfer to an audit firm and take up a senior position there, this audit firm may not provide any audit services to the company concerned for two years from the time of the transfer.
- c. If persons who have been involved in the accounting at a company transfer to an audit firm, they may not take charge of any audit services for this company for two years from the time of the transfer.

² A public interest entity may not employ any persons who have been in charge of audit services for this company or have held a decision-making position at the audit firm concerned over the two preceding years.

Art. 12 Quality control

¹ Audit firms under state oversight shall take all measures necessary to ensure the quality of their audit services.

¹⁸ Repealed by Annex No II 3 of the Financial Institutions Act of 15 June 2018, with effect from 1 Jan. 2020 (AS **2018** 5247, **2019** 4631; BBl **2015** 8901).

¹⁹ SR **952.0**

²⁰ Inserted by Annex No II 3 of the Financial Institutions Act of 15 June 2018, in force since 1 Jan. 2019 (AS **2018** 5247; BBl **2015** 8901)

²¹ Repealed by Annex No II 3 of the Financial Institutions Act of 15 June 2018, with effect from 1 Jan. 2020 (AS **2018** 5247, **2019** 4631; BBl **2015** 8901).

²² Repealed by No I of the FA of 20 June 2014 (Bundling of Audit Oversight), with effect from 1 Jan. 2015 (AS **2014** 4073; BBl **2013** 6857).

²³ SR **220**

² They shall ensure that a suitable organisational structure is in place and shall issue written instructions on the following in particular:

- a.²⁴ the appointment, basic and continuing education and training, assessment, sig-natory powers and required conduct of employees;
- b. the acceptance of new and the continuation of existing assignments for audit services;
- c. the ongoing control of measures to ensure independence and quality.

³ With regard to individual audit services, they shall guarantee, in particular, that:

- a. tasks are allocated appropriately;
- b. work is supervised;
- c. the applicable regulations and standards on auditing and independence are ob-served;
- d. the results of audits are subject to a qualified and independent monitoring.

Art. 13 Granting of access²⁵

¹ ...²⁶

² Audit firms under state oversight must grant the Oversight Authority access to their business premises at all times.

Art. 14 Notifications to the Oversight Authority

¹ Audit firms under state oversight must update their licensing documents as of 30 June each year and submit them to the Oversight Authority by 30 September. Valid documents that remain unchanged do not have to be resubmitted.

² ...²⁷

Section 5 Licensing and Oversight

Art. 15 Licensing and registration

¹ The Oversight Authority shall decide, on application, on the licensing of:

- a. auditors;
- b. audit experts;

²⁴ The amendment in accordance with the FA of 20 June 2014 on Continuing Education and Training, in force since 1 Jan. 2017, concerns the French and Italian texts only (AS 2016 689; BBl 2013 3729).

²⁵ Amended by No I of the FA of 20 June 2014 (Bundling of Audit Oversight), in force since 1 Jan. 2015 (AS 2014 4073; BBl 2013 6857).

²⁶ Repealed by No I of the FA of 20 June 2014 (Bundling of Audit Oversight), with effect from 1 Jan. 2015 (AS 2014 4073; BBl 2013 6857).

²⁷ Repealed by No I of the FA of 20 June 2014 (Bundling of Audit Oversight), with effect from 1 Jan. 2015 (AS 2014 4073; BBl 2013 6857).

- c. audit firms under state oversight;
- d.²⁸ audit companies and lead auditors for the audit under the financial market acts (Article 1 paragraph 1 FINMASA²⁹) in accordance with Article 9a.

^{1bis} It may restrict licensing to the provision of certain kinds of auditing services to certain public interest entities.³⁰

² It shall maintain a register of licensed individuals and audit firms. This register shall be public and shall be published on the Internet. The Federal Council shall determine the content of the register.

³ Registered individuals and audit firms must inform the Oversight Authority of any change to the details entered in the register.

Art. 15a³¹ Duty to inform and notify

¹ The following persons and companies must provide the Oversight Authority with all the information and documents that it requires to fulfil its tasks:

- a. licensed individuals and audit firms;
- b. individuals who are members of the highest supervisory and governing bodies or the executive body of an audit firm and are not licensed by the Oversight Authority;
- c. employees of the audit firm and all persons it calls upon for auditing services;
- d. audited companies;
- e. all companies forming a group with the audited company and whose annual financial statements must be consolidated, together with their auditors.

² Furthermore, persons and companies in accordance with paragraph 1 letters a and b must notify the Oversight Authority immediately in writing of incidents relevant to the licence or the oversight.

Art. 16 Inspection of audit firms under state oversight

¹ The Oversight Authority shall subject audit firms under state oversight to a detailed inspection at least once every three years.³²

^{1bis} ...³³

²⁸ Inserted by No I of the FA of 20 June 2014 (Bundling of Audit Oversight), in force since 1 Jan. 2015 (AS 2014 4073; BBl 2013 6857).

²⁹ SR 956.1

³⁰ Inserted by No I of the FA of 20 June 2014 (Bundling of Audit Oversight), in force since 1 Jan. 2015 (AS 2014 4073; BBl 2013 6857).

³¹ Inserted by No I of the FA of 20 June 2014 (Bundling of Audit Oversight), in force since 1 Jan. 2015 (AS 2014 4073; BBl 2013 6857).

³² Amended by No I of the FA of 20 June 2014 (Bundling of Audit Oversight), in force since 1 Jan. 2015 (AS 2014 4073, BBl 2013 6857).

³³ Inserted by No I of the FA of 20 June 2014 (Bundling of Audit Oversight), in force since 1 Jan. 2015 (AS 2014 4073; BBl 2013 6857). Repealed by Annex No II 3 of the Financial Institutions Act of 15 June 2018, with effect from 1 Jan. 2020 (AS 2018 5247, 2019 4631; BBl 2015 8901).

¹^{er} In the event of suspected violations of legal duties, the Oversight Authority shall conduct a corresponding inspection independent of the inspection cycle in accordance with paragraph 1.³⁴

² It shall verify:

- a. the accuracy of the details contained in the licensing documents;
- b.³⁵ compliance with legal duties, audit and quality control standards recognised by it, professional standards, codes of ethics and, if applicable, listing rules;
- c. the quality of the audit services provided by means of individual control samples;
- d. compliance with and implementation of the instructions it has issued.

³ It shall issue a written report on the results of the inspection for the attention of the audit firm's highest supervisory or governing body.

⁴ If it identifies infringements of statutory duties, it shall issue a written reprimand to the audit firm under state oversight, provide instructions on how to rectify the situation and set the firm a maximum period of twelve months in which to do this. It may extend this period appropriately if there are compelling reasons for doing so.

Art. 16a³⁶ Standards for audits and quality control

¹ Audit firms under state oversight must comply with standards for audits and quality control when providing auditing services in accordance with Article 2 letter a number 1.

² The Oversight Authority determines the applicable nationally or internationally recognised standards. If there are no standards or are they insufficient, the Oversight Authority may enact its own standards, or complement or modify existing ones.

Art. 17 Withdrawal of licence

¹ If a licensed auditor or audit firm no longer satisfies the licensing requirements under Articles 4–6 or 9a, the Oversight Authority may withdraw the licence for a limited or unlimited period. If it is possible for compliance with the licensing requirements to be restored, a warning must be given prior to such withdrawal. The Oversight Authority issues a written reprimand if the withdrawal of the licence is disproportionate.³⁷

² If an audit firm under state oversight no longer satisfies the licensing requirements or commits repeated or serious infringements of the statutory provisions, the Over-

³⁴ Inserted by No I of the FA of 20 June 2014 (Bundling of Audit Oversight), in force since 1 Jan. 2015 (AS 2014 4073; BBl 2013 6857). Amended by Annex No II 3 of the Financial Institutions Act of 15 June 2018, in force since 1 Jan. 2020 (AS 2018 5247, 2019 4631; BBl 2015 8901).

³⁵ Amended by No I of the FA of 20 June 2014 (Bundling of Audit Oversight), in force since 1 Jan. 2015 (AS 2014 4073, BBl 2013 6857).

³⁶ Inserted by No I of the FA of 20 June 2014 (Bundling of Audit Oversight), in force since 1 Jan. 2015 (AS 2014 4073; BBl 2013 6857).

³⁷ Amended by No I of the FA of 20 June 2014 (Bundling of Audit Oversight), in force since 1 Jan. 2015 (AS 2014 4073, BBl 2013 6857).

sight Authority may withdraw its licence for a limited or unlimited period. A warning must be given prior to such withdrawal, unless the matter involves a serious infringement of the law.

³ The Oversight Authority shall inform the companies concerned and the stock exchange of the withdrawal of the licence.

⁴ During the limited withdrawal period, the concerned individual or audit firm remains subject to the information and notification duty in accordance with Article 15a.³⁸

Art. 18 Actions against individuals working for audit firms under state oversight

If an individual who is working for an audit firm under state oversight infringes the statutory provisions, he or she shall be issued with a written reprimand by the Oversight Authority. In the event of repeated or serious infringements, the Oversight Authority may prohibit this person from exercising his or her function for a limited or unlimited period and, if applicable, withdraw the licence in accordance with Article 17 paragraph 1.

Art. 19 Informing the public

¹ The Oversight Authority shall publish an annual report on its activities and practices.

² It shall only provide information about ongoing and concluded proceedings if this is necessary for reasons of overriding public or private interests.

Art. 20 Engagement of third parties

¹ The Oversight Authority may engage third parties in order to carry out its tasks.

² The third parties engaged must be independent from the audit firm under state oversight and from companies for which they provide audit services.

³ They must maintain confidentiality with regard to matters that come to their attention within the context of their work.

Art. 21 Financing

¹ The Oversight Authority shall charge fees for its decisions, inspections and services.

² To cover the oversight costs that are not covered by fees, the Oversight Authority shall charge an annual oversight levy to audit firm under state oversight. This shall be levied on the basis of the costs incurred in the accounting year in question and shall take account of the economic significance of the audit firms under state oversight.

³ The Federal Council shall determine the details, in particular the rates for fees, the assessment of the oversight levy and the allocation of this levy to the audit firms under state oversight.

³⁸ Inserted by No I of the FA of 20 June 2014 (Bundling of Audit Oversight), in force since 1 Jan. 2015 (AS 2014 4073; BBl 2013 6857).

Section 6 Administrative and Legal Assistance

Art. 22 Swiss regulatory bodies³⁹

¹ The Oversight Authority and other Swiss regulatory bodies must exchange any information and documents that may be required for the purpose of enforcing the relevant legislation.⁴⁰ They shall coordinate their oversight activities to avoid any duplication.

² They shall inform each other about pending proceedings and decisions that may be important with regard to their respective oversight activities.

Art. 23 Stock exchanges

¹ The stock exchange and the Oversight Authority shall coordinate their oversight activities to avoid any duplication.

² They shall inform each other about pending proceedings and decisions that may be important with regard to their respective oversight activities.

³ If sanctions of the Oversight Authority resulting from infringements of Articles 7 and 8 cannot be enforced, the stock exchange shall impose the necessary sanctions.

Art. 24 Criminal prosecution authorities

¹ The Oversight Authority and criminal prosecution authorities must provide each other with all the information and documents they require to enforce this Act.

² The criminal prosecution authority may only use information and documents received from the Oversight Authority within the context of the criminal proceedings for which legal assistance has been granted. It may not pass information and documents on to third parties.

³ If criminal offences come to the attention of the Oversight Authority during the performance of its official duties, it shall inform the competent criminal prosecution authorities.

⁴ The criminal prosecution authorities shall notify the Oversight Authority of all proceedings that are connected with an auditing service provided by an audit firm under state oversight; they shall pass on judgments and orders to dismiss cases to the Oversight Authority. Notification shall be provided, in particular, of proceedings relating to the following provisions:

- a. Articles 146, 152, 153, 161, 166, 251, 253–255 and 321 of the Swiss Criminal Code⁴¹;

³⁹ Amended by Annex No 1 of the Health Insurance Oversight Act of 26 Sept. 2014, in force since 1 Jan. 2016 (AS 2015 5137; BBl 2012 1941).

⁴⁰ Amended by Annex No 1 of the Health Insurance Oversight Act of 26 Sept. 2014, in force since 1 Jan. 2016 (AS 2015 5137; BBl 2012 1941).

⁴¹ SR 311.0

- b. Article 47 of the Banking Act of 8 November 1934⁴²;
- c.⁴³ Article 69 of the Financial Institutions Act of 15 June 2018⁴⁴;
- d.⁴⁵ Article 147 of the Financial Market Infrastructure Act of 19 June 2015⁴⁶.

Art. 25 Civil courts

The cantonal civil courts and the Federal Supreme Court shall notify the Oversight Authority of all proceedings relating to auditors' liability (Article 755 CO⁴⁷) that are connected with an auditing service provided by an audit firm under state oversight. They shall supply it with the judgments and other decisions that conclude such proceedings.

Art. 25a⁴⁸ Self-regulatory organisations

Self-regulatory organisations (SRO) under the Anti-Money Laundering Act of 10 October 1997⁴⁹ shall notify the Oversight Authority of any incidents in connection with an audit company or a lead auditor and provide it with all the information and documents that the Oversight Authority requires to fulfil its tasks.

Art. 26 Cooperation with foreign audit oversight authorities

¹ In order to enforce this Act, the Oversight Authority may ask foreign audit oversight authorities for information and documents.

² It may transfer information and documents that are not publicly accessible to foreign audit oversight authorities, provided that these authorities:

- a. only use the information supplied for the direct oversight of individuals and firms providing audit services;
- b.⁵⁰ are bound by official or professional secrecy, notwithstanding provisions on the public nature of proceedings and the notification of the general public about such proceedings;
- c. pass on the information to authorities and bodies that perform oversight tasks in the public interest and are bound by official and professional secrecy only if this is done on the basis of authorisation conferred by a treaty or with the Oversight Authority's prior consent.

⁴² SR **952.0**

⁴³ Amended by Annex No II 3 of the Financial Institutions Act of 15 June 2018, in force since 1 Jan. 2020 (AS **2018** 5247, **2019** 4631; BBl **2015** 8901).

⁴⁴ SR **954.1**

⁴⁵ Inserted by Annex No 2 of the Financial Market Infrastructure Act of 19 June 2015, in force since 1 Jan. 2016 (AS **2015** 5339; BBl **2014** 7483).

⁴⁶ SR **958.1**

⁴⁷ SR **220**

⁴⁸ Inserted by Annex No II 3 of the Financial Institutions Act of 15 June 2018, in force since 1 Jan. 2020 (AS **2018** 5247, **2019** 4631; BBl **2015** 8901).

⁴⁹ SR **955.0**

⁵⁰ Amended by No I of the FA of 20 June 2014 (Bundling of Audit Oversight), in force since 1 Jan. 2015 (AS **2014** 4073, BBl **2013** 6857).

³ The Oversight Authority shall refuse to give its consent if the information is to be passed on to criminal prosecution authorities or authorities and bodies with powers to impose sanctions under administrative law and, due to the nature of the offence, mutual legal assistance in criminal matters would be excluded. The Oversight Authority shall reach its decision in agreement with the Federal Office of Justice.

⁴ Within the context of paragraph 2, the Federal Council shall be authorised to regulate the cooperation with foreign audit oversight authorities in treaties.

Art. 27 Cross-border oversight activities

¹ In order to enforce this Act, the Oversight Authority may ask foreign audit oversight authorities to perform oversight activities abroad. It may perform oversight activities abroad itself on the basis of authorisation conferred by a treaty or with the foreign audit oversight authority's prior consent.

² At the request of foreign audit oversight authorities, the Oversight Authority may perform oversight activities in Switzerland on behalf of these authorities, if the requesting state grants reciprocity. Article 26 paragraphs 2 and 3 apply by analogy.⁵¹

³ On the basis of authorisation conferred by a treaty or with the Oversight Authority's prior consent, foreign audit oversight authorities may perform oversight activities in Switzerland themselves, if the requesting state grants reciprocity. Article 26 paragraphs 2 and 3 apply by analogy.

⁴ The Oversight Authority may accompany foreign audit oversight authorities during their oversight activities in Switzerland. The person or company concerned may request that it does so.

^{4bis} For oversight activities on behalf of foreign audit oversight authorities (paragraph 2) and accompanying foreign audit oversight authorities in their oversight activities in Switzerland (paragraph 4), the Oversight Authority has the same powers over the audit firms and audited companies concerned as they have over audit firms under state oversight and the companies audited by them.⁵²

⁵ Within the context of paragraph 2 and 3, the Federal Council shall be authorised to regulate the cooperation with foreign audit oversight authorities in treaties.

Section 7 Organisation of the Oversight Authority

Art. 28 Oversight Authority

¹ Oversight in accordance with this Act shall be the responsibility of the Federal Audit Oversight Authority (the Oversight Authority).

⁵¹ Amended by No I of the FA of 20 June 2014 (Bundling of Audit Oversight), in force since 1 Jan. 2015 (AS 2014 4073; BBl 2013 6857).

⁵² Inserted by No I of the FA of 20 June 2014 (Bundling of Audit Oversight), in force since 1 Jan. 2015 (AS 2014 4073; BBl 2013 6857).

² The Oversight Authority is a public law institution with its own legal personality. It carries out its oversight independently (Article 38).⁵³

³ It is independent with regard to its organisation and management and keeps its own accounts.

⁴ The Oversight Authority is managed in accordance with business management principles.⁵⁴

⁵ Within the scope of this Act, the Oversight Authority is entitled to file appeals with the Federal Supreme Court.⁵⁵

Art. 29 Governing Bodies

The governing bodies of the Oversight Authority are:

- a. the Board of Directors;
- b.⁵⁶ the Executive Board;
- c. the Auditor.

Art. 30⁵⁷ Board of Directors

¹ The Board of Directors is the highest supervisory body comprising a maximum of five expert members independent of the audit profession.

² The members are elected for a term of office of four years. Each member may be re-elected twice.

³ The Federal Council elects the members of the Board of Directors and designates the chairwoman or the chairman.

⁴ The members of the Board of Directors must fulfil their tasks and duties with due diligence and protect the interests of the Oversight Authority in good faith.

⁵ The Federal Council may recall a member or several members of the Board of Directors for important reasons.

⁶ It determines the remuneration of the members of the Board of Directors. Article 6a paragraphs 1-4 of the Federal Personnel Act of 24 March 2000⁵⁸ (FPA) applies to the fee paid to the members of the Board of Directors and the other contractual terms and conditions agreed with these persons.

⁵³ Amended by No I of the FA of 20 June 2014 (Bundling of Audit Oversight), in force since 1 Jan. 2015 (AS **2014** 4073, BBI **2013** 6857).

⁵⁴ Inserted by No I of the FA of 20 June 2014 (Bundling of Audit Oversight), in force since 1 Jan. 2015 (AS **2014** 4073; BBI **2013** 6857).

⁵⁵ Inserted by No I of the FA of 20 June 2014 (Bundling of Audit Oversight), in force since 1 Jan. 2015 (AS **2014** 4073; BBI **2013** 6857).

⁵⁶ Amended by No I of the FA of 20 June 2014 (Bundling of Audit Oversight), in force since 1 Jan. 2015 (AS **2014** 4073, BBI **2013** 6857).

⁵⁷ Amended by No I of the FA of 20 June 2014 (Bundling of Audit Oversight), in force since 1 Jan. 2015 (AS **2014** 4073, BBI **2013** 6857).

⁵⁸ SR **172.220.1**

Art. 30a⁵⁹ Tasks of the Board of Directors

The Board of Directors has the following tasks:

- a. It issues the organisational rules of the Oversight Authority.
- b. It issues the strategic goals of the Oversight Authority, submitting them to the Federal Council for approval and reporting on their fulfilment to the Federal Council.
- c. It issues the ordinances delegated to the Oversight Authority.
- d. It makes organisational arrangements to preserve the interests of the Oversight Authority and preventing conflicts of interests.
- e. It concludes the affiliation contract with the Swiss Federal Pension Fund (PUBLICA) and submitting it to the Federal Council for approval.
- f. It regulates the composition, the election procedure and the organisation of the parity commission for the pension fund.
- g. It decides on the reasons, modification and termination of the employment relationship with the Chief Executive; the reasons and termination of the employment relationship with the director require the Federal Council's approval.
- h. It decided on the reasons, modification and termination of the employment relationship of the other executive board members upon request of the Chief Executive.
- i. It supervises the Executive Board.
- j. It provides an internal control system and risk management adapted for the Oversight Authority.
- k. It determines the appropriation of reserves.
- l. It approves the budget.
- m. It drafts and approves an annual report for each fiscal year; it submits the revised annual report to the Federal Council for approval; simultaneously it requests discharge from the Federal Council and publishes the annual report following approval.

Art. 31⁶⁰ Executive Board

¹ The Executive Board is the operative body headed by the Chief Executive.

² In particular, it has the following tasks:

- a. It manages the business.

⁵⁹ Inserted by No I of the FA of 20 June 2014 (Bundling of Audit Oversight), in force since 1 Jan. 2015 (AS 2014 4073; BBl 2013 6857).

⁶⁰ Amended by No I of the FA of 20 June 2014 (Bundling of Audit Oversight), in force since 1 Jan. 2015 (AS 2014 4073, BBl 2013 6857).

- b. It issues decisions in accordance with the organisational regulations of the Board of Directors.
- c. It prepares the documentation on which the Board of Directors bases its decisions.
- d. It reports to the Board of Directors regularly and without delay in the event of special incidents.
- e. It represents the Oversight Authority externally.
- f. It decides on establishing, modifying and terminating employment relationships with the employees of the Oversight Authority, Article 30a letters g and h remain reserved.
- g. It participates in international organisations and bodies, addressing matters of audit oversight.
- h. It fulfils all tasks not assigned to another body by this Act.

Art. 32⁶¹ Auditor

¹ The Swiss Federal Audit Office is the external auditor.

² The provisions of the law on companies limited by shares apply to the auditor and the audit by analogy.

Art. 33 Staff

¹ The Oversight Authority shall employ its staff in accordance with private law.

² ...⁶²

³ Article 6a paragraphs 1-4 FPA⁶³ applies to the salary of the Chief Executive and of the members of the Executive Board and other personnel remunerated in comparable ways and to the other contractual provisions agreed with these persons.⁶⁴

Art. 33a⁶⁵ Pensions Fund

¹ The Executive Board and the other personnel are insured with PUBLICA in accordance with Articles 32a-32m FPA⁶⁶.

² The Oversight Authority is the employer in accordance with Article 32b paragraph 2 FPA.

⁶¹ Amended by No I of the FA of 20 June 2014 (Bundling of Audit Oversight), in force since 1 Jan. 2015 (AS 2014 4073, BBI 2013 6857).

⁶² Repealed by No I of the FA of 20 June 2014 (Bundling of Audit Oversight), with effect from 1 Jan. 2015 (AS 2014 4073; BBI 2013 6857).

⁶³ SR 172.220.1

⁶⁴ Amended by No I of the FA of 20 June 2014 (Bundling of Audit Oversight), in force since 1 Jan. 2015 (AS 2014 4073, BBI 2013 6857).

⁶⁵ Inserted by No I of the FA of 20 June 2014 (Bundling of Audit Oversight), in force since 1 Jan. 2015 (AS 2014 4073; BBI 2013 6857).

⁶⁶ SR 172.220.1

Art. 34⁶⁷ Official secrecy

¹ The bodies of the Oversight Authority and its staff are bound by official secrecy.

² The duty of secrecy remains after termination of the employment relationship or membership in a body of the Oversight Authority.

³ In hearings and court procedures, the employees and members of the Oversight Authority bodies may not without the authorisation of the Oversight Authority speak about impressions they have formed while fulfilling their tasks and which relate to their official tasks as parties, witnesses or technical experts.

Art. 34^{a68} Reporting duties, reporting rights and protection

¹ Employees are required to report all felonies and misdemeanours that are prosecuted ex officio that are related to internal cases and which they observe during their official activities or which have been reported to them, to their superiors, the Board of Directors, the Swiss Federal Audit Office or to the law enforcement agency.

² The duty to report does not apply to persons who are entitled to refuse to testify or to give evidence under Articles 113 paragraph 1, 168 and 169 of the Criminal Procedure Code⁶⁹.

³ Employees are entitled to report to their superiors, the Board of Directors or the Swiss Federal Audit Office other irregularities which they observe during their internal official activity or which have been reported to them.

⁴ Persons having filed charges or made a report in good faith must not be disadvantaged in their professional position.

⁵ The duty to report in relation to external circumstances is based on Article 24 paragraph 3.

Art. 34^{b70} Annual report

¹ The annual report includes the activity report (Article 19 paragraph 1), the annual financial statements and the audit report.

² The annual financial statements consist of the balance sheet, the profit and loss statement and the notes.

Art. 35 Accounting

¹ The budget and annual financial statements of the Oversight Authority shall be managed independently of the budget and accounts of the Confederation.

⁶⁷ Amended by No I of the FA of 20 June 2014 (Bundling of Audit Oversight), in force since 1 Jan. 2015 (AS 2014 4073; BBl 2013 6857).

⁶⁸ Inserted by No I of the FA of 20 June 2014 (Bundling of Audit Oversight), in force since 1 Jan. 2015 (AS 2014 4073; BBl 2013 6857).

⁶⁹ SR 312.0

⁷⁰ Inserted by No I of the FA of 20 June 2014 (Bundling of Audit Oversight), in force since 1 Jan. 2015 (AS 2014 4073; BBl 2013 6857).

² For accounting, the provisions on commercial bookkeeping and accounting of the CO⁷¹ apply by analogy.⁷²

³ The Oversight Authority shall create the reserves it requires to perform its oversight activities. These shall not exceed the amount of one year's budget.

Art. 36 Treasury

¹ The Oversight Authority shall have a current account with the Confederation and shall invest surplus funds with the Confederation at market interest rates.

² The Confederation shall grant the Oversight Authority loans at market interest rates for the purposes of its establishment and to ensure its solvency.

Art. 36a⁷³ Responsibility

¹ The Oversight Authority, its bodies, its personnel and third parties engaged by the Oversight Authority are responsible under the Government Liability Act of 14 March 1958⁷⁴ with the reservation of paragraph 2.

² The Oversight Authority is liable only if:

- a. it has violated essential official duties; and
- b. the loss or damage is not attributable to the breach of duty by an auditor, an audit expert or an audit firm.

^{2bis} The mandated audit company in accordance with Article 24 paragraph 1 letter a of the FINMASA⁷⁵ is responsible under the provisions of the Stock Company Law (Articles 752-760 CO⁷⁶).⁷⁷

Art. 37 Tax exemption

The Oversight Authority is exempt from any taxation by the Confederation, cantons or communes.

Art. 38⁷⁸ Professional independence and oversight

¹ The Oversight Authority fulfils its tasks professionally independently.

² It is subject to the administrative supervision of the Federal Council. The latter exercises its supervision primarily by:

⁷¹ SR 220

⁷² Amended by No I of the FA of 20 June 2014 (Bundling of Audit Oversight), in force since 1 Jan. 2015 (AS 2014 4073, BBI 2013 6857).

⁷³ Inserted by Annex No 3 of the Federal Act of 23 Dec. 2011 (Accounting Law), in force since 1 Jan. 2013 (AS 2012 6679; BBI 2008 1589).

⁷⁴ SR 170.32

⁷⁵ SR 956.1

⁷⁶ SR 220

⁷⁷ Inserted by No I of the FA of 20 June 2014 (Bundling of Audit Oversight), in force since 1 Jan. 2015 (AS 2014 4073; BBI 2013 6857).

⁷⁸ Amended by No I of the FA of 20 June 2014 (Bundling of Audit Oversight), in force since 1 Jan. 2015 (AS 2014 4073, BBI 2013 6857).

- a. electing and recalling the members of the Board of Directors and its chairwoman or chairman;
- b. approving the reasons and termination of the employment relationship with the Chief Executive;
- c. approving the affiliation contract with PUBLICA;
- d. approving the annual report;
- e. approving the strategic goals;
- f. annually verifying the fulfilment of the strategic objectives;
- g. granting discharge to the Board of Directors.

³ The Oversight Authority regularly discusses its strategic goals and the fulfilment of its tasks with the Federal Council.

Section 8 Criminal Provisions

Art. 39 Contraventions

¹ Any person who contravenes:

- a. the principles of independence in accordance with Articles 11 and 728 of the CO⁷⁹;
- b.⁸⁰ the duties to notify in accordance with Article 15a paragraph 2;
- c. the duty to inform in accordance with Article 15 paragraph 3;
- d. an implementing provision of this Act, the contravention of which is declared by the Federal Council to be an offence;
- e. a decision or measure of the Oversight Authority that has been issued with a reference to the penalties set out in this Article,

shall be liable to a fine not exceeding 100 000 francs.

² If the offence is committed through negligence, the fine shall not exceed 50 000 francs.

³ The Oversight Authority shall prosecute and judge such contraventions in accordance with the provisions of the Federal Act of 22 March 1974⁸¹ on Administrative Criminal Law.

⁴ The right to prosecute contraventions is limited to seven years.

⁷⁹ SR 220

⁸⁰ Amended by No I of the FA of 20 June 2014 (Bundling of Audit Oversight), in force since 1 Jan. 2015 (AS 2014 4073, BBl 2013 6857).

⁸¹ SR 313.0

Art. 39^{a82} Contraventions in business operations

The identification of the specific offenders in accordance with Article 39 may be dispensed with and the business establishment may be ordered to pay the fine if:

- a. the identification of the offenders under Article 6 of the Federal Act of 22 March 1974⁸³ on Administrative Criminal Law requires investigation measures which would be disproportionate to the penalty that may be imposed; and
- b. a fine of no more than 20 000 francs comes into consideration for the contraventions of the provisions of this Act.

Art. 40 Misdemeanours

¹ Any person who commits any of the following offences shall be liable to a custodial sentence not exceeding three years or a monetary penalty:⁸⁴

- a. providing an auditing service without the necessary licence or despite being prohibited from practising his or her profession;
- a^{bis}.⁸⁵ providing false information in the audit report or in the audit report or audit confirmation about essential facts or withholds essential facts;
- b.⁸⁶ failing to grant the Oversight Authority access to his or her business premises (Article 13 paragraph 2), fails to provide it with the requested information or fails to submit the requested documents (Art. 15a para. 1) or provides it with false or incomplete information;
- c. failing to comply with the duties to document and retain records as an audit firm under state oversight (Art. 730c CO⁸⁷);
- d. as a third party engaged by the Oversight Authority (Article 20), disclosing a secret, during or after completion of the activity, that was entrusted to it in this capacity or that came to its attention in this capacity (the federal and cantonal provisions on the duty to testify and the duty to inform an authority shall continue to apply).

² If the offence is committed through negligence, the fine shall not exceed 100 000 francs.

³ Prosecution and judgment shall be the responsibility of the cantons.

⁸² Inserted by No I of the FA of 20 June 2014 (Bundling of Audit Oversight), in force since 1 Jan. 2015 (AS 2014 4073; BBl 2013 6857).

⁸³ SR 313.0

⁸⁴ Amended by Art. 333 of the Swiss Criminal Code in the wording of the FA of 13 Dec. 2002, in force since 1 Jan. 2007 (AS 2006 3459; BBl 1999 1979).

⁸⁵ Inserted by No I of the FA of 20 June 2014 (Bundling of Audit Oversight), in force since 1 Jan. 2015 (AS 2014 4073; BBl 2013 6857).

⁸⁶ Amended by No I of the FA of 20 June 2014 (Bundling of Audit Oversight), in force since 1 Jan. 2015 (AS 2014 4073, BBl 2013 6857).

⁸⁷ SR 220

Section 9 Final Provisions

Art. 41 Execution

The Federal Council shall issue the implementing provisions. It may authorise the Oversight Authority to issue additional implementing provisions.

Art. 42 Amendment of current legislation

The amendment of current legislation is regulated in the Annex.

Art. 43 Transitional provisions

¹ If an individual or an audit firm carries out the tasks of auditors, the provisions of this Act apply as soon as the new provisions on auditors of 16 December 2005 become applicable to the legal entity to be audited.

² If individuals or audit firms provide other audit services, the new law shall apply from the moment this Act comes into force.

³ Individuals and audit firms that submit an application to be licensed as an auditor, audit expert or audit firm under state oversight to the Oversight Authority within four months following the commencement of this Act may provide audit services in the sense of Article 2 letter a until the decision on the licence is taken. The Oversight Authority shall confirm timely receipt of the application to the applicant in writing. It shall notify the stock exchange of applications that are submitted for licensing as an audit firm under state oversight.

⁴ Professional experience that has been acquired up to two years following the commencement of this Act under the oversight of persons who satisfy the requirements in accordance with the Ordinance of 15 June 1992⁸⁸ on the professional requirements for specially qualified auditors shall be regarded as professional experience in the sense of Article 4.

⁵ Professional experience that has been acquired up to two years following the commencement of this Act under the oversight of persons who satisfy the requirements relating to education in accordance with Article 4 paragraph 2 shall be regarded as professional experience in the sense of Article 5.

⁶ In cases of hardship, the Oversight Authority may also recognise professional experience that does not meet the statutory requirements, provided that it can be demonstrated, on the basis of many years of practical experience, that audit services are provided faultlessly.

88 [AS 1992 1210]

Art. 43a⁸⁹ Transitional provisions to the amendment of 20 June 2014

¹ Auditing services the conduct of which requires a licence from the Oversight Authority under the new law may be performed up to one year after the commencement of the amendment of 20 June 2014 with the FINMA licence under former law.

² The Oversight Authority takes over all proceedings from FINMA which were initiated against audit companies performing audits under the financial market acts (Article 1 paragraph 1 FINMASA⁹⁰) as well as against lead auditors of such audits and which by the enactment of the amendment of 20 June 2014 have not yet been legally decided.

Art. 43b⁹¹ Transitional provisions to the amendment of 30 September 2016

The following applies to audit firms that provide audit services to the companies described in Article 8 paragraph 1 letter b and that have bonds listed on a Swiss stock exchange on the date on which the amendment of 30 September 2016 comes into force:

- a. Any audit firm not exempted from the licensing obligation must be licensed as an audit firm under state oversight at the latest within six months of the amendment of 30 September 2016 coming into force.
- b. Any audit firm exempted from the licensing obligation must register with the Oversight Authority or ensure that investors are explicitly informed that the audit firm is not under state oversight at the latest within six months of the amendment of 30 September 2016 coming into force.

Art. 44 Transitional provision on rights of appeal

Until the Administrative Court Act of 17 June 2005⁹² comes into force, rights of appeal shall be regulated as follows, supplementing the general provisions on the administration of federal justice: the Appeals Commission of the Federal Department of Economic Affairs shall decide on appeals against decisions of the Oversight Authority.

⁸⁹ Inserted by No I of the FA of 20 June 2014 (Bundling of Audit Oversight), in force since 1 Jan. 2015 (AS **2014** 4073; BBl **2013** 6857).

⁹⁰ SR **956.1**

⁹¹ Inserted by No I of the FA of 30 Sept. 2016 (Extra-territorial Scope of Audit Oversight), in force since 1 Oct. 2017 (AS **2017** 4859; BBl **2015** 5717).

⁹² SR **173.32**, in force since 1 Jan. 2007.

Art. 45 Referendum and commencement

¹ This Act is subject to an optional referendum.

² The Federal Council shall determine the commencement date.

Commencement date:⁹³ 1 September 2007

Articles 28, 29, 30 paragraphs 1, 2, 3 letter a–c and e and 4, 31, 32, 33 paragraphs 1 and 3, 34, 35 paragraphs 1 and 2, 36, 37 and 38 paragraph 1: 1 November 2006

Article 8 paragraph 1 letter a and 2: 1 October 2015⁹⁴

Article 8 paragraph 1 letter b and 3: 1 October 2017⁹⁵

Article 8 paragraph 1 letters c and d: irrelevant and do not come into force⁹⁶

⁹³ O of 22 Aug 2007 (AS **2007** 3969).

⁹⁴ O of 1 July 2015 (AS **2015** 2437).

⁹⁵ FA of 30 Sept. 2016 (AS **2017** 4859; BBl **2015** 5717).

⁹⁶ FA of 30 Sept. 2016 (AS **2017** 4859; BBl **2015** 5717).

Annex
(Art. 42)

Amendment of existing legislation

The federal acts listed below are amended as follows:

...⁹⁷

⁹⁷ The amendments may be consulted under AS **2007** 3971.