

## POSITION

### Remuneration and responsibility

#### In brief

The crisis surrounding Credit Suisse led to criticism of a **lack of personal responsibility on the part of senior management** and a **mismatch between remuneration and long-term business performance**. It is crucial to a bank's risk management that the responsibilities of decision-makers be clearly defined and their remuneration aligned with the risk policy, the bank's long-term performance and compliance with codes of conduct.

We therefore recommend targeted measures by the legislature:

- 1) **Remuneration:** FINMA Circular 2010/1 "Remuneration schemes"<sup>1</sup> already sets out the key principles of a sustainable remuneration policy. To add greater weight to the circular's content and make it more binding, a **duty to implement a remuneration policy geared to the long term** should be **written into law**. The details can then be set out in an ordinance.
- 2) **Responsibility:** To complement the existing proper business conduct requirements, we support the **introduction of an appropriate accountability framework ("senior manager regime")**. This would explicitly define the responsibilities of decision-makers and establish a **link between risk-taking and personal responsibility**.

#### 1. Remuneration

To add extra weight to the provisions on remuneration and facilitate enforcement, we believe it would be advisable to incorporate the key principle of the board of directors<sup>2</sup> responsibility for remuneration into the Banking Act (BankA). This should be in tune with the principles set out in the FINMA circular and worded as follows:

*"The board of directors or, depending on the legal form, other most senior management body shall be responsible for formulating and implementing a remuneration policy that is geared to the long term and appropriate to the bank's risk policy. FINMA shall regulate essential aspects in an ordinance."*

FINMA can then set out the precise details in an ordinance, which could also tighten up the provisions contained in the current remuneration circular in two areas. First, the provisions requiring the repayment of remuneration ("clawback") in the context of the public liquidity backstop (PLB) would have to be incorporated. Second, an amendment to the existing provisions may be needed in light of the investigations into Credit Suisse. This may for example involve mandatory deferrals of variable remuneration or principles on remuneration at board level.

<sup>1</sup> <https://www.finma.ch/en/~media/finma/dokumente/dokumentencenter/myfinma/rundschreiben/finma-rs-2010-01-01-07-2017.pdf?la=en>.

<sup>2</sup> Depending on the legal form, the most senior management body may be different.

## 2. Responsibility

Decision-makers should be accountable to the relevant stakeholder groups in respect of their defined responsibilities. The SBA recognises the need for clear rules to ensure this is implemented, especially at larger institutions where a correspondingly higher number of persons hold such responsibilities. That said, an accountability framework must not lead to the creation of a new bureaucracy. It must be lean and be superimposed on the existing legal framework in such a way that no fundamental restructuring of the legal and regulatory basis in Switzerland is required. In particular, new authorisation requirements and processes for individuals are to be avoided. The obvious way to do this is to build on the existing proper business conduct requirement such that, in every bank, the key responsible persons and their specific responsibilities should be clearly identified.

The requirement stipulates that the persons in charge of the bank's administration and management must enjoy a good reputation and thereby guarantee proper business conduct (Art. 3 para. 2 let. c BankA). This means their fundamental fitness for a specific function must be assessed. Until now, however, their individual responsibilities have not yet been adequately notified to FINMA. Moreover, as an institution grows more complex, it becomes increasingly difficult to define the relevant decision-makers – some of whom may not be subject to the proper business conduct requirement – and hold them to account where necessary. The requirement itself is not up for debate; however, it needs to be extended and made more specific in order to clarify the identities of those subject to it along with the other relevant decision-makers, and what exactly is expected of them.

A wide-ranging bureaucratic regime such as exists in the United Kingdom<sup>3</sup> does not make sense. An accountability framework should be effective but balanced, lean and problem-oriented; the key responsible persons should be identified as is appropriate to the individual bank's complexity and business model, and their specific responsibilities documented.

We therefore conclude that the Swiss proper business conduct requirement needs to be extended and made more specific, so that each bank defines its population of individual responsible persons based on risk and assigns them clearly defined responsibilities. Applying the principle of proportionality, FINMA will approve the bank's responsibility system as a whole and acknowledge the list of designated responsible persons over and above those subject to the proper business conduct requirement. Those subject to the requirement under existing law will continue to be bound by the current rules on the fitness and propriety assessment. In its role as supervisory authority, FINMA will also review implementation; regular reporting requirements in this regard should be stipulated.

This would give Switzerland an effective and flexible system that builds on its existing basis and enables responsible persons to be defined more quickly and more clearly.

---

<sup>3</sup> <https://www.fca.org.uk/firms/senior-managers-and-certification-regime/senior-managers-regime>