Insolvency of banks and other financial institutions in Switzerland

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Switzerland's financial services industry attracts worldwide interest and investment. For that reason, the laws relating to the insolvency of Swiss banks and other financial institutions are of considerable international interest.

In mid-2004, Switzerland introduced a new special insolvency regime for banks and securities dealers. This chapter considers the rules concerning the insolvency of banks and other financial institutions in Switzerland, with particular focus on the following:

- The legislative structure of the revised insolvency regime.
- Key characteristics of the new regime.
- Overview of restructuring and liquidation proceedings for banks and securities dealers.
- Set-off and netting agreements in insolvency proceedings.
- System protection: finality of payment and settlement instructions.
- Co-ordination with foreign procedures.
- Recognition of foreign insolvency orders.

Before the financial crisis, the vast majority of the liquidation proceedings conducted under the new insolvency regime for banks and securities dealers related to financial institutions that had not been licensed (in which case the law applies as well). With the financial crisis, the need for legal advice regarding the insolvency laws concerning banks and securities dealers increased dramatically. The most noteworthy case where the insolvency provisions of the Federal Statute on Banks and Saving Banks (8 November 1934) (Banking Statute) were applied is the liquidation of Lehman Brothers Finance SA, Zurich and of the Zurich branch of Lehman Brothers International (Europe), London.

LEGISLATIVE STRUCTURE OF THE REVISED INSOLVENCY REGIME

This section will consider the legislative history and applicable laws, together with their scope.

Legislative history and applicable laws

In 2003, the Swiss Parliament passed a bill to introduce a special insolvency regime for banks and securities dealers. The amendments focused on:

- Measures to be adopted where there was a justified concern that a bank or security dealer would become insolvent.
- Liquidation (that is, bankruptcy).
- Deposit protection.

These changes where incorporated into the Banking Statute. On 1 August 2005, an implementing ordinance came into force (Ordinance on the Bankruptcy of Banks and Securities Dealers) (13 June 2005) (Ordinance). This was issued by the Swiss Federal Banking Commission, which on 1 January 2009, became the Swiss Financial Market Supervisory Authority (*Eidgenössische Finanzmarktaufsicht*) (FINMA).

Insolvency proceedings concerning banks and securities dealers in Switzerland are now primarily governed by the Banking Statute and Ordinance (*see below, Scope of the laws*).

Scope of the laws

The Banking Statute and the Ordinance cover the following:

- Banks.
- Securities dealers, as defined by the Swiss Federal Statute on Stock Exchanges and Securities Dealers of 24 March 1995. Generally, this term covers:
  - brokers and market-makers;
  - own-account dealers, issuing houses and derivatives firms, provided they are active mainly in the financial sector.

  However, the following are not considered to be securities dealers:
  - the Swiss National Bank;
  - fund management companies;
  - insurance companies;
  - occupational pension funds.

The provisions of the Banking Statute and Ordinance now take precedence over the ordinary Swiss insolvency law provisions of the Federal Statute on Debt Prosecution and Bankruptcy (DPB) in relation to banks and securities dealers. However, certain of the DPB's provisions are incorporated into the Banking Statute and Ordinance by reference (*see below, Key characteristics of the new regime*).

KEY CHARACTERISTICS OF THE NEW REGIME

The liquidation (bankruptcy) provisions under the Banking Statute and the Ordinance are more flexible than those under the DPB. They are intended to ensure that the liquidation is more time-efficient. They are also specifically tailored to banks and securities dealers, which have numerous creditors.

The new regime has the following key characteristics:

- **FINMA has exclusive competence.** FINMA has sole responsibility for the restructuring and liquidation of banks and securities dealers. FINMA can, in relation to banks and securities dealers:
  - adjudicate in liquidation proceedings (*Bankenkonkurs*);
  - open restructuring proceedings (*Sanierungsverfahren*);
  - appoint and supervise a liquidator or a restructuring administrator;
  - order protective measures (*Schutzmassnahmen*) (*see below*).
- **Early intervention through protective measures.** FINMA can make an early intervention, where there are concerns over the financial status of a bank or securities dealer, through protective measures. The regulator can take a variety of appropriate actions, including, in particular, appointing an investigator. This is one of the most important of FINMA's roles (*see box, Protective measures*).
- **Special regime for restructuring.** FINMA can allow restructuring, provided there are realistic chances of recovery (*see below, Overview of the insolvency proceedings: Restructuring proceedings*).
- **Universality of the proceedings.** Bankruptcy proceedings relating to a bank or a securities dealer extend to all assets owned by the financial institution at the time of the opening of bankruptcy proceedings, whether they are located in Switzerland or another jurisdiction.
- **Recognition of foreign insolvency proceedings.** The Banking Statute expressly considers the issue of recognising foreign insolvency orders in relation to a foreign bank or securities dealer with a subsidiary, branch, or assets located in Switzerland (*see below, Recognition of foreign insolvency orders*).
- **Principle of equal treatment of all creditors.** Creditors should be treated equally, whether they are located in Switzerland or any other jurisdiction. However, proceeds obtained in foreign proceedings must be taken into account.
- **System protection.** The Banking Statute has introduced specific rules relating to system protection (for example, relating to FINMA informing operators of domestic and foreign payment systems and securities settlement systems in advance of certain measures it intends to take (*see box, System protection*)).

The Banking Statute expressly authorises FINMA to issue orders and regulations that provide for consequences and procedures that differ from those that generally apply.

OVERVIEW OF THE INSOLVENCY PROCEEDINGS

FINMA can act where there is a justified concern that a bank or securities dealer (*Article 25, Banking Statute*):

- Is over-indebted.
- Has incurred serious liquidity problems.
- Does not fulfil the capital adequacy requirements.

FINMA can:

- Open restructuring proceedings.
- Open liquidation/bankruptcy proceedings.
- Impose protective measures, regardless of whether this is:
  - in combination with restructuring proceedings or liquidation proceedings; or
  - without any of those proceedings having been opened.

  FINMA is not required to publicly announce protective measures. It must publicise protective measures that it imposes only to the extent that this is necessary to implement them and to protect third parties. For the purpose of system protection, it must specifically inform (where possible) operators of domestic and foreign payment or security settlement systems before particularly severe measures (such as prohibition from making or receiving payments or effecting securities transactions or the closure of the bank or securities dealer) take effect (*Article 27(1), Banking Statute*).

  (*See box, Protective measures.*)

This section will briefly consider the rules relating to restructuring and will then focus on liquidation proceedings.

PROTECTIVE MEASURES

FINMA can impose a number of protective measures. In particular, it can (*Article 26(1)(a)-(e), Banking Statute*):

- Give instructions to a bank's corporate bodies (such as the bank or securities dealer's board of directors).
- Appoint an investigator (*Untersuchungsbeauftragter*) (*Article 23 quarter, Banking Statute*). This is one of FINMA's most important measures in practice. That investigator can be authorised to act instead of the corporate bodies and can be given control of the financial institution. The appointment of an investigator is frequently FINMA's first action.
- Withdraw from corporate bodies the power to act on the bank or securities dealer's behalf, or remove them from office.
- Remove from office the auditors.
- Restrict the bank's business activities.

It can also impose the following, particularly severe measures (*Article 26(1)(f)-(h), Banking Statute*):

- Prohibit the bank from:
  - making or receiving payments; or
  - effecting securities transactions.
- Close the bank.
- In relation to a debt, order a:
  - deferment of payment (moratorium (*Stundung*)); or
  - postponement of maturity *(Fälligkeitsaufschub)*.

This does not apply to debts owed to mortgage bond issuing houses (*Pfandbriefzentralen*) which are secured by a pledge.

Restructuring proceedings

The main objective of restructuring proceedings is to enable the business or securities dealer to continue its business as agreed in a restructuring plan. FINMA can allow restructuring, provided there are realistic chances of recovery. In that case, the regulator will appoint a restructuring administrator (*Sanierungsbeauftragter*) and regulate the business activities of the bank or securities dealer during the restructuring procedure (*Article 28, Banking Statute*).

The restructuring plan of the restructuring administrator is subject to FINMA's approval, but not the approval of the shareholders' meeting. The restructuring plan can provide that corporate acts such as a share capital increase, which otherwise would have to be submitted to the shareholders' meeting for approval, do not require a shareholders' resolution. Creditors who represent more than one-half of the claims recorded in the books of the bank or the securities dealers that are not privileged can reject the proposed restructuring plan. In that case, the financial institution will be liquidated (*see below, Liquidation proceedings*).

The Federal Government is preparing a bill which will propose an amendment to the Parliament of the provisions of the Banking Statute on the restructuring of banks and securities dealers. The core elements of the proposed amendments are likely to include the following:

- The restructuring plan can propose that certain bank activities are continued regardless of whether that particular bank or securities dealer continues to operate.
- The restructuring plan can provide for the transfer, to another entity, of all or certain of the bank or securities dealer's:
  - assets and liabilities;
  - contracts.
- That a change in the ownership of a bank or securities dealer or a transfer of contracts on the basis of a restructuring plan will not trigger contractual termination clauses (or similar provisions). Such clauses will be deemed to be without effect in those cases.

Liquidation proceedings

Opening of proceedings. Where a restructuring appears to be without any chance of success or has failed (*see above, Restructuring proceedings*), FINMA will:

- Withdraw the licence of the bank or securities dealer to conduct its business.
- Order the liquidation of the bank or securities dealer.
- Appoint a liquidator, where appropriate.
- Make the relevant announcement.

FINMA and the bankruptcy liquidator, if any, are given broad powers and responsibilities.

Protective measures. The liquidation (that is, opening of bankruptcy) will usually mean that the financial institution is closed. Therefore, it is often (but not necessarily):

- Preceded by protective measures under Article 26(1) (*see box, Protective measures*).
- Combined with protective measures.

SYSTEM PROTECTION

Article 27 of the Banking Statute imposes specific measures, intended to ensure that the financial system is protected by:

- Providing for an obligation on FINMA to inform in advance, whenever possible, the operators of domestic and foreign payment systems and securities settlement systems of (*Article 27(1), Banking Statute*):
  - certain severe measures it intends to take;
  - the exact time when the measures will become effective.

  These severe measures refer to the measures set out under Article 26(1)(f) to (h) which include forbidding the bank from making or accepting payments or undertaking security trades, closing the bank, and decreeing a stay of enforcement and postponement of maturity.
- Providing that payment instructions and security transactions entered into a system are irrevocable if the rules of that system provide that they are irrevocable, and if they were made before (*Article 27(2), Banking Statute*):
  - FINMA ordered measures; or
  - the operator of the system had or should have had knowledge of those measures.

  Legal scholars (and the authors) consider that this applies not only to protective measures ordered by FINMA but also in the case of a withdrawal of a licence or the liquidation of a bank or securities dealer.
- Providing that the legally binding effect of the following will not be affected by protective measures taken by FINMA, if they have been agreed on in advance and take the form of (*Article 27(3), Banking Statute*):
  - netting agreements; or
  - agreements on the private sale of security in the form of securities which are traded on a representative market.

No zero-hour rule. Generally speaking, the opening of the liquidation proceedings has the effects of Articles 197 to 220 of the DPB that apply also in ordinary bankruptcy proceedings. Immediately on the opening of liquidation becoming effective, the bankrupt debtor can no longer dispose of its assets. FINMA expressly states in its order the point in time when the opening of the liquidation proceedings will become effective. There is no zero-hour rule under Swiss law that would retroactively render invalid transactions which have been entered into after 00.00 am on the date of the opening of the liquidation, where the liquidation is opened only later in the day.

Filing of claims. The bankrupt debtor's creditors must file their claims with the liquidator within the deadline specified by the liquidator. Special rules apply to holders of pledged assets and rights of set-off (*see below, Duty to report*).

Principle of universality. This provides that:

- The liquidation of a bank or securities dealer covers all of its worldwide assets, regardless of whether they are located in Switzerland or abroad (*Article 3, Ordinance*).
- All creditors, including creditors of foreign branches of the bank or securities dealer, are entitled to file their claims in Swiss liquidation proceedings (*Article 3(2), Ordinance*).

Conversion into Swiss francs. If a bank or securities dealer is declared bankrupt (or where there is debt enforcement or a composition agreement with an assignment of assets), all claims made against the bankrupt and filed in the proceedings, for the purposes of debt enforcement in Switzerland, must be converted into Swiss francs at the exchange rate applicable on the day of the opening of bankruptcy proceedings. In the case of debt-enforcement proceedings, this will be the day of the request for the issue of the payment order, or in the case of a composition agreement, the day the agreement is approved. This is regardless of any contractual agreement to the contrary.

Payables by the bankrupt and interest on payables. All of the debts owed by the bankrupt bank or securities dealer (except for a debt secured by a mortgage relating to real estate owned by the bankrupt) become due on the opening of bankruptcy proceedings (*Article 208(1), DPB*). A creditor can claim:

- The nominal amount of its claim.
- Interest up to the date of the opening of liquidation proceedings.
- The costs of enforcement.

Interest payable by the insolvent debtor ceases to accrue on the opening of liquidation proceedings, except for interest on claims secured by a pledge. Interest and claims secured by a pledge continue to accrue up to realisation of the pledge, provided the proceeds of realisation exceed the combined amount of principal and interest which had accrued by the date of the opening of liquidation proceedings.

Interest on receivables. Interest on receivables of the bankrupt debtor continues to accrue after the opening of liquidation proceedings.

Legal fees and costs. In all liquidations, the legal fees incurred in connection with liquidation proceedings must not be charged to the bankrupt debtor, but must be paid by the creditor (*Article 27(3), DPB*). This provision is mandatory and can override any contractual agreement to the contrary. The DPB does not apply to legal costs and expenses imposed by a Swiss court which are based on procedural laws, according to the practice of the Swiss Federal Tribunal.

Creditors' committee and creditors' meeting. FINMA can (but does not have to) appoint a creditors' committee if the bankruptcy liquidator requests. A creditors' meeting will only be held if the bankruptcy liquidator decides this. In that event, FINMA, on the bankruptcy liquidator's request, will determine the areas in which the creditors' meeting has competence and the required quorum, and majority for its decisions.

Duty to report

Creditors of an insolvent debtor must file their claims with the liquidator within the deadline specified by that liquidator. This also applies to persons who are in possession of assets pledged by the insolvent debtor, unless they are entitled to realise the pledged assets through a pre-agreed private sale.

The holders of pledged assets must (*Articles 15(1), 16(2) and (3), Ordinance*):

- Report these assets to the liquidator and provide evidence of the right of private sale.
- Provide an account of the proceeds of sale to the liquidator.

In addition, a duty to report applies to a debt the creditor owes the insolvent debtor that is set off against claims. Such debts must be reported to the liquidator (*Article 15(2), Ordinance*) (*see below*).

The creditor can risk forfeiting its preferential rights to the pledge or right of set-off if it fails to comply with these notification requirements (*Article 15(3), Ordinance*).

SYSTEM PROTECTION: NETTING AGREEMENTS AND PRIVATE SALE IN INSOLVENCY PROCEEDINGS

The Banking Statute specifically provides that pre-agreed netting agreements or agreements on the private sale (rather than a realisation by the liquidator) of securities or other financial instruments, which are traded on a representative market, are not affected by "severe measures" introduced by FINMA under Article 26(f) to (h) (*Article 27(3), Banking Statute*) (*see box, Protective measures* and *box, System protection*). (However, this does not apply to pledged assets (other than financial instruments or securities traded on a representative market) which, regardless of a pre-agreed right of private sale, must be handed over to the bankruptcy liquidator for realisation. The proceeds are made available to the pledgee, up to the amount of its claim.)

It is clear that Article 27(3) applies to standard netting master agreements such as the International Swaps and Derivatives Association (ISDA) Master Agreements, the Global Master Repurchase Agreement and the securities lending master agreements. It is not clear, however, whether it applies to the set-off provisions of other agreements. Although there is no specific authority on this point, it is the view of the authors that Article 27(3) does apply to those agreements, as it was not intended to make set-off more restrictive than under the regime of the DPB (*see below*).

Rules on set-off under the DPB

The basic principle under the DPB is that the right of any creditor to set off his claim against the bankrupt debtor with a counterclaim remains valid. However, set-off is excluded where:

- The bankrupt's debtor became its creditor only after the opening of bankruptcy or after the publication of a moratorium. This does not apply where the bankrupt's debtor's counterclaim relates to the fulfilment of a pre-existing obligation or the redemption of a pledged object of which the bankrupt's debtor is the owner or over which he has a restricted right (*in rem*).
- The bankrupt's creditor became its debtor only after the opening of bankruptcy or the publication of the moratorium.

In addition, set-off can be challenged if the bankrupt's debtor acquired the claim prior to the opening of bankruptcy proceedings or the publication of a moratorium where this claim is acquired (set-off Pauliana) (*Article 214, DPB*):

- In awareness of the bankrupt's insolvency.
- To gain an advantage for the debtor or a third party to the detriment of the bankrupt estate.

SYSTEM PROTECTION: FINALITY OF PAYMENT AND SETTLEMENT INSTRUCTIONS

To avoid system risks, a new provision was incorporated into the revised Banking Statute regarding the finality of payment instructions and securities settlement instructions entered into a system (*see box, Protective measures*). Article 27(2) provides that a payment or securities settlement instruction that was entered into a system before FINMA ordered measures, or before the operator of the system had or should have had knowledge of those measures, can only be revoked if the instruction is revocable according to the system's regulations. Some legal scholars (and the authors) consider that this applies not only to protective measures under Article 26 but also to cases of a withdrawal of the licence or the liquidation of a bank or securities dealer.

Currently, legislative amendments to Article 27 are being discussed. It is unclear whether the proposed amendment will be submitted to Parliament and, if so, when. The initial proposal was that payment instructions and securities settlement instructions remain valid and effective even where measures have been imposed, provided that either:

- They were entered into the system before the measure was ordered.
- If they were entered into the system after the measure had been ordered:
  - they were executed on the same day on which the measure was ordered;
  - the operator of the system did not and should not have known of the order.

The effect of this proposal would be to clarify the application of the finality rule.

CO-ORDINATION WITH FOREIGN PROCEDURES

FINMA is given broad discretion to co-ordinate Swiss insolvency proceedings concerning banks or securities dealers with relevant foreign bodies, to the extent that this is possible. On this basis, FINMA consented to Lehman Brothers Finance SA in Liquidation, Zurich, represented by the bankruptcy liquidator, becoming a party to the Cross-Border Insolvency Protocol for the Lehman Brothers Group of Companies, as of 12 May 2009. The objective of the Protocol is the sharing of relevant information among the parties and the international co-ordination of related activities in the various insolvency proceedings (*see www.globalturnaround.com/cases/Lehman%20Protocol.pdf*).

RECOGNITION OF FOREIGN INSOLVENCY ORDERS

In the event that a foreign authority issues an insolvency order, the provisions of the Banking Statute and of the Swiss Federal Statute on Private International Law of 18 December 1987 (the Swiss conflict-of-law rules) on the recognition, procedure and effects of foreign bankruptcy orders, foreign compositions with creditors and similar procedures apply.

Effective date of recognition

Under Swiss law, foreign insolvency proceedings do not automatically extend to Switzerland and to assets of foreign financial institutions located in Switzerland. Foreign insolvency proceedings only become effective in Switzerland on the recognition of a foreign insolvency order by the competent authority (FINMA, in the case of banks and securities dealers). A foreign order in bankruptcy will be recognised in Switzerland at the request of:

- The foreign bankruptcy administrator.
- In certain circumstances, a creditor of the bankrupt estate.

Therefore, the effective date is the date of recognition or the time specified by FINMA (if later). To the extent that Swiss law applies, the foreign financial institution is only deprived of its authority to dispose of assets located in Switzerland on that recognition, and not at the time when insolvency proceedings began in the foreign jurisdiction.

Swiss mini-bankruptcy proceedings

General rules. Recognising the foreign insolvency will result in the debtor's Swiss-located property becoming the subject of separate summary bankruptcy proceedings governed by the laws of Switzerland (mini-bankruptcy proceedings). After these proceedings are concluded, the remainder of the estate will be made available to the foreign bankruptcy administrator or to the creditors of the bankrupt estate, if any, that are entitled to it.

Recognition does not result in the direct applicability of the foreign insolvency laws. Rather, for the purposes of the Swiss mini-bankruptcy proceedings, the effects of the foreign insolvency laws are limited to the effects under the Swiss insolvency laws. For example:

- The Swiss legal provisions on finality of payment and settlement procedures apply also if the foreign laws do not provide for finality (*see above, System protection: finality of payment and settlement instructions*).
- The insolvent debtor is bound to the contractual arrangements it has entered into prior to the insolvency, such as netting arrangements and rights of set-off (*see above, System protection: netting agreements and private sale in insolvency proceedings*).

According to a legal academic opinion, the effects under Swiss law cannot go beyond the legal consequences of the foreign law. For example, if the foreign insolvency laws do not have the effect that the insolvent debtor is deprived of its authority to dispose of its assets, then, in principle, the recognition will not have this effect.

The Swiss Federal Government is likely to propose to the Parliament an amendment of the provisions on the recognition of foreign insolvency orders and measures. Most importantly, FINMA will be authorised in certain circumstances to transfer assets located in Switzerland to the foreign insolvency estate without needing to conduct Swiss insolvency proceedings.

Order of priority. For the purpose of the Swiss mini-bankruptcy proceedings, a schedule of admitted claims will be drawn up, which will include:

- Claims secured by a pledge.
- Claims not secured by a pledge, which are privileged claims within the meaning of the DPB and the Banking Statute (*see below*). In relation to banks and securities dealers, this includes privileged claims of creditors domiciled in jurisdictions other than Switzerland.

Under the DPB, unsecured claims are divided into three separate categories (classes). The first two classes are considered privileged under Swiss law (*see box, Privileged claims*). An amendment is currently being discussed under which the schedule of claims in mini-bankruptcy proceedings will no longer be limited to the first two classes but can also include claims in the third class.

Credit for satisfaction in foreign proceedings. If a creditor has been partially satisfied in foreign proceedings which are connected with the bankruptcy, the amount that creditor has received must, after deduction of associated costs, be credited against the amount due to that creditor in the Swiss mini-bankruptcy proceedings.

Transfer of the remainder to the foreign bankruptcy administrator. Any surplus remaining after satisfying creditors admitted to the mini-bankruptcy procedure must be made available to the foreign receiver in bankruptcy or to the duly admitted creditors of the bankrupt estate. However, the surplus must not be made available until the foreign schedule of admitted claims has been recognised in Switzerland. For this purpose, FINMA will examine, in particular, whether the claims of creditors with a domicile in Switzerland were adequately considered in the foreign schedule of admitted claims.

Foreign compositions with creditors and similar procedures. The principles concerning foreign bankruptcy orders and Swiss mini-bankruptcy proceedings apply, by analogy, to foreign compositions with creditors and similar procedures.

Swiss branch of a foreign financial institution. If foreign insolvency proceedings relating to a financial institution incorporated in a jurisdiction other than Switzerland are pending, the following insolvency proceedings relating to a Swiss branch of that financial institution are of particular importance:

- FINMA can open separate insolvency proceedings under the Swiss insolvency laws, extending to the assets of the branch, and separate from insolvency proceedings in the jurisdiction of the head or home office.
- Alternatively, FINMA, on recognition of the foreign insolvency proceedings, can open mini-bankruptcy proceedings (*see above*).

PRIVILEGED CLAIMS

The following claims are privileged:

- **First class.** These are claims:
  - of employees derived from the employment relationship which arose during the six months before the opening of bankruptcy proceedings;
  - which arose from the premature dissolution of the employment relationship due to the opening of bankruptcy proceedings against the employer and the restitution of deposit security;
  - derived from accident insurance, non-compulsory pension schemes and claims of pension funds against employers; or
  - for maintenance and assistance derived from family law which arose during the six months before the opening of bankruptcy proceedings and which are to be performed by payments of money.
- **Second class.** These are claims:
  - for deposits not payable to the originator, including medium-term bonds that are deposited with the bank in the investor's name of up to CHF100,000 (about US$94,220) per creditor;
  - made under certain regulations, from bank foundations as benefit contracts, and from vested benefits foundations as vested benefits schemes, of up to CHF100,000; or
  - of persons whose assets were entrusted to the debtor as holder of parental power.

SUMMARY

Probably the most important aspect of the revised laws on insolvency for banks and securities dealers is the role for FINMA. Subject to appeal, it has become the sole authority that is responsible for ordering and supervising the restructuring and insolvency of banks and securities dealers, and can:

- Order protective measures, particularly at an early stage of financial difficulties affecting a bank or securities dealer (*see above, Key characteristics of the new regime*).
- Open restructuring proceedings or liquidation proceedings (*see above, Overview of the insolvency proceedings*).

As has been seen, the law expressly deals with other subjects, such as the protection of the financial system, and the legal validity of netting agreements (*see above, System protection: finality of payment and settlement instructions* and *System protection: netting agreements and private sale in insolvency proceedings*).

In theory, the Swiss bankruptcy proceedings relating to banks and securities dealers extend to all assets of the insolvent bank or security dealer, regardless of whether they are located in Switzerland or in another jurisdiction (*see above, Overview of*

the insolvency proceedings: Liquidation proceedings). FINMA can recognise foreign insolvency orders or measures, and must, to the extent possible, co-ordinate Swiss insolvency proceedings with the competent bodies of insolvency proceedings relating to foreign financial institutions. As the financial crisis shows co-ordination is not sufficient. The Swiss National Bank as well as FINMA are co-operating with institutions such as the Bank for International Settlement regarding internationally agreed principles relating to the insolvency of a multinational group of companies aiming at reducing the risks of insolvency and mitigating the impact of insolvency.

On the domestic level, reforms are still ongoing. The Swiss Federal Government has appointed a working group which must submit proposals regarding the too-big-to-fail issue. Their findings are not yet available. As this chapter has demonstrated, there are more advanced discussions on proposed amendments to the current law regarding depositor protection, restructuring proceedings, recognition of foreign insolvency orders and measures, the insolvency of insurance companies and the finality of payment instructions and securities settlement instructions. When these reforms will be brought into effect, and the changes that they will bring, remain to be determined.

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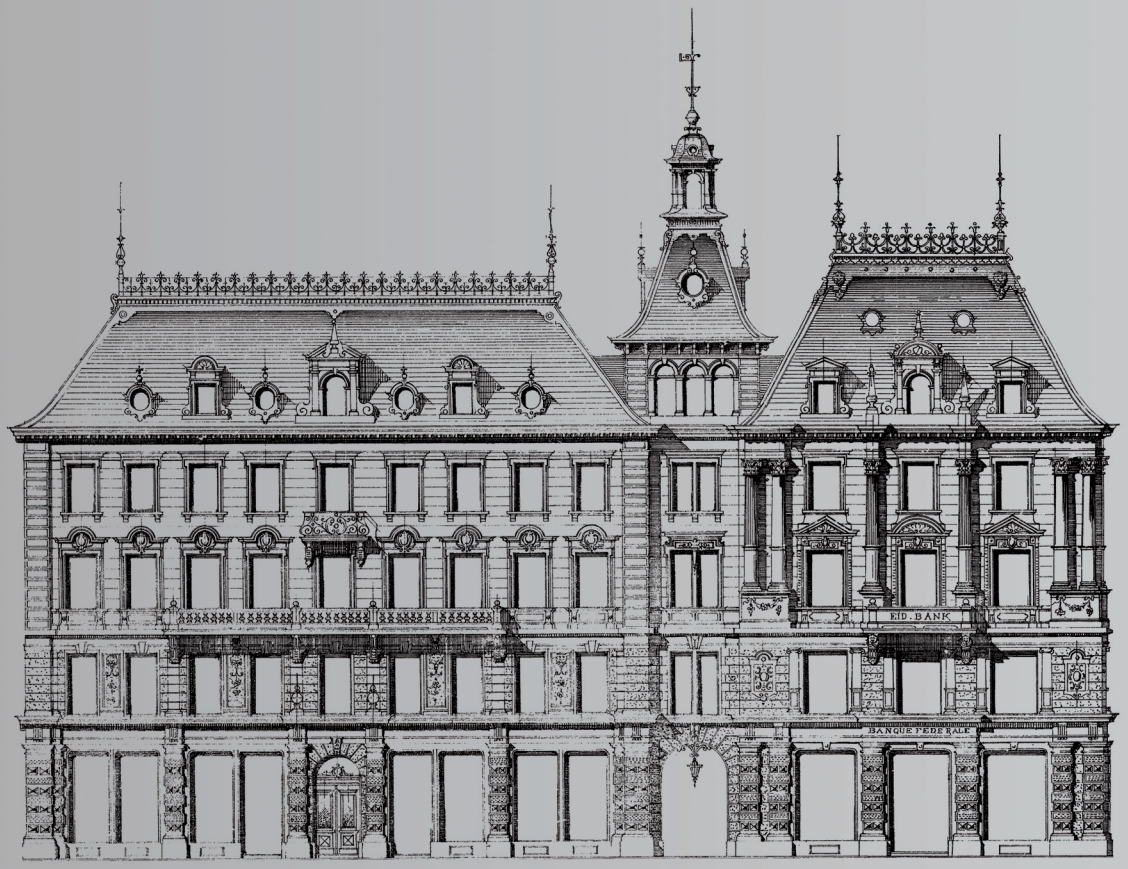

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