**Audit points for other risks in connection with legal and litigation risks**

**Overview**

|  |  |
| --- | --- |
| **Subject:** | **Business risks – risk management / Other risks in connection with legal and litigation risks** |
| **Audit depth:** | [Audit/critical assessment] |
| **Regulations**  (non-exhaustive list) | Art. 3 para. 2 let. a Banking Act (BA)  Art. 9 Financial Institutions Act (FinIA)  Art. 12 Banking Ordinance (BO)  Arts. 12 and 66-68 Financial Institutions Ordinance (FinIO) |
| **Sign-offs:** | |  |  |  |  | | --- | --- | --- | --- | | **Sign-offs:** | **Name:** | **Function:** | **Date:** | | Prepared by: | [Name] | [Assistant / Senior / Manager / Senior Manager / Partner] | [DD MM YYYY] | | Reviewer: | [Name] | [Senior / Manager / Senior Manager  / Partner] | [DD MM YYYY] | |

**This is the standard work programme that is to be implemented for every audit in this field, under the terms of the audit strategy (margin no. 28ff FINMA Circ. 13/3). It is the audit team’s responsibility to adapt the standard work programme to the audited institution’s specific situation (size, business model, organisation, processes, risk exposure etc.). If the specified audit procedures are not carried out in full, the underlying rationale must be explained in the working paper. Audit points marked with an asterisk are not applicable to Category 4 or 5 banks.**

**Overall conclusion**

| **Topic:** | **Information/description:** |
| --- | --- |
| Overall conclusion | |  |  | | --- | --- | | **Confirmation in audit report:** | **Conclusion:** | | Confirmation that the methods/processes used to identify, measure, manage and monitor the other risks in connection with legal and litigation risks were adequate and, in the case of the audit depth “audit”, were applied effectively. | ***Yes*** *(Audit/critical assessment) /* ***No*** | |
| Summary of significant findings (For details, see below.) | [Summary of significant findings] |
| Audit areas, results and work performed by Internal Audit relied on by the audit firm (including audit firm’s own assessment). | [Description] |

**Work programme – Other risks in connection with legal and litigation risks**

| **No.** | **Topic:** | **Procedures for audit depth  “critical assessment”:** | **Additional procedures for audit depth “audit”:** | **Procedures performed/findings** | **WP ref.:** |
| --- | --- | --- | --- | --- | --- |
| *“Confirmation that the methods/processes used to identify, measure, manage and monitor the other risks in connection with legal and litigation risks were adequate and, in case of the audit depth “audit”, were applied effectively.“*  *“Bestätigung, dass die Methoden / Prozesse zur Identifikation, Messung, Bewirtschaftung und Überwachung von anderen Risiken aus Rechts- und Prozessrisiken angemessen waren und im Falle der Prüftiefe „Prüfung“ zusätzlich effektiv angewendet wurden“.*  *“Confirmation que les méthodes / processus relatifs à l’identification, la mesure, la gestion et la surveillance des autres risques provenant des risques juridiques et de procès ont été appropriés, et en cas d’étendue d’audit « audit », ont été effectivement appliqués.“* | | | | | |
|  | **Process to manage legal risks in general** | *Assess the adequacy of the methods/processes for the identification, measurement, management, monitoring and reporting of legal risk in general, considering the size, business and organisational complexity of the institution, specifically:* |  |  |  |
|  |  | Assess through inquiry and review of relevant documents (policies, internal directives and procedures) the adequacy of the institution’s processes (design) for:   * preparing, continuous monitoring and updating standardised contracts, including general terms & conditions; * ensuring legal and regulatory changes are adequately and timely reflected in the institution’s standard contracts; * updating standardised contracts (e.g. due to legal and regulatory changes); * deviations from and changes to standardised contracts; * involving the appropriate competencies and control functions in the preparation of standard contracts (and deviations therefrom); * setting and monitoring deadlines. | Test for a risk-based sample if internal guidelines for changes in or deviations from standardised contracts have been adhered to. |  |  |
|  |  | Assess if the proper use of up-to-date standardised contracts is ensured. | Test using risk-based samples whether up-to-date standardised contracts are used. |  |  |
|  |  | Assess the adequacy of the reporting to and monitoring by the Executive Board and the Board of Directors in terms of managing legal risks in general terms. |  |  |  |
|  | **Organisation** | *Assess through inquiry and review of relevant documents the adequacy of the institution’s internal organisation to manage client claims, litigation cases and legal risk, specifically:* |  |  |  |
|  |  | Obtain risk policy, internal regulations, guidelines, manuals or job descriptions and assess their adequacy with respect to the coverage of the management of client claims, litigation cases and legal risk. |  |  |  |
|  |  | **\*** Assess the adequacy of   * skills, know-how and expertise * competences * allocation of responsibilities * monitoring of deadlines   to handle client claims, litigation cases and legal risk. |  |  |  |
|  |  | Assess the adequacy of the involvement of the Board of Directors and Executive Board in the handling of client claims, litigation cases and legal risk by reviewing minutes and respective reporting. |  |  |  |
|  |  | Assess the appropriateness of the institution’s procedures to engage external counsel, including:   * selection of, commissioning of and collaborating with external counsel * **\*** existence of a list of authorised counterparties. |  |  |  |
|  | **Identification, assessment and monitoring of client claims, legal and litigation cases** | *Assess the adequacy of the methods/processes for the identification, measurement, management, monitoring and reporting of client claims, legal and litigation cases, considering the size, business and organisational complexity of the institution, specifically:* |  |  |  |
| Assess the adequacy of the institution processes (design) for managing client claims, legal and litigation cases including:   * **\*** appropriate segregation and allocation of duties * **\*** adequacy of competencies and skills * identification, assessment and monitoring of client claims, legal and litigation cases * **\*** process for handling claims, legal and litigation cases (centralised/decentralised, allocation of responsibilities) * setting and monitoring of deadlines * ensuring completeness of claims, legal and litigation cases monitored * **\*** process to determine provisions * **\*** process to select, determine and collaborate with external litigation specialists * internal reporting and escalation procedures.   obtain policies, internal directives and procedures. | Test operating effectiveness of controls identified on a sample basis.  Assess, using a risk-based selection of client claims, legal and litigation cases, the adequacy of procedures and reasonableness of the decisions by the responsible bodies.  Test specific litigations including:   * review correspondence on selected cases (with lawyers, client, courts, etc.) * obtain and review external legal counsel and/or lawyer’s confirmation letter. |  |  |
| Assess the adequacy of the reporting to and monitoring by the Executive Board and the Board of Directors in terms of client claims, legal and litigation cases. | Assess, using a risk-based selection of client claims, legal and litigation cases, if these are adequately reflected in reporting addressed to the Executive Board and the Board of Directors.  Inspect minutes of Board of Directors/Executive Board meetings to assess on a sample basis whether these risks were monitored. |  |  |
|  | **\* Compliance with existing policies and procedures** | **\*** *Assess whether an adequate process is in place to ensure that risk policy/procedures and guidelines relating to the management of client claims, litigation cases and legal risk have been effectively applied and complied with, specifically:* |  |  |  |
|  |  | **\*** Through inquiry with management and review of internal reports, obtain an understanding and identify and document the internal controls relating to the management of   * client claims * litigation risks * legal risks.   and assess their design effectiveness. | **\*** Perform test of controls to confirm the operating effectiveness of the internal controls for the management of client claims, litigation risks and legal risks with regard to internal policies and procedures.  Select at least one major client claim/litigation case to perform substantive testing of compliance with internal rules. |  |  |
|  |  | **\*** Read the minutes and the reporting and assess if the monitoring by the Executive Board and the Board of Directors and the consequential decisions on the business was adequate. | **\*** Verify on a sample basis if the decisions of governing bodies have been effectively implemented. |  |  |

\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*