
***Synopsis of the most
important regulatory
developments in insurance***

Status as at 1 January 2018

Swiss insurance industry –
what counts

Introduction

Given the paramount importance for financial market participants in Switzerland to comprehensively implement the relevant legal regulations, it's crucial to always have an overview of relevant regulatory changes in insurance. To help you keep track, we have prepared this brochure, ***Synopsis of the most important regulatory developments in insurance***. It contains an introductory presentation in graphical form and a brief description of selected projects in financial market regulation and other areas. The projects are structured according to the respective addressees and are presented in the chapters "Interdisciplinary projects" and "Insurance".

In particular, the new FINMA circular on outsourcing will have a major impact on financial market participants and thus also on insurance companies. It will also be important to plan steps in connection with changes that have already been published, such as implementing the new requirements of FINMA circular 2017/02 on "Corporate Governance – Insurance" concerning the board of directors, which will enter into force on 31 December 2019.

We will be happy to help if you need support with projects or would like to gain further insights in the area of supervisory regulation.

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Synopsis of the most important developments

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Interdisciplinary issues

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	Hearing/consultation		Publication of final regulation		Full application
	Publication of results of hearing/consultation/dispatch		Referendum deadline		Estimated/approximately

Insurance

	page	2017						2018												2019						2019	2020	2021	2022	2023	2024
		Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun						
Insurance																															
FINMA Circular 17/5 “Business plans – insurers”	9	31	1																												
FINMA Circular 17/3 “SST”	10						31	1																							
FINMA Circ. 17/2 “Corporate governance – insurers”	10						31	1																							
FINMA-Circ. 16/7 “Video and online identification”	10																														
FINMA Circ. 16/2 “Disclosure – insurers”	10																														
Control, Audit and Sanction guideline of SRB-SIA	10						31	1																							
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Insurance Contract Law (ICA)	9																	2													

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Most important aspects and changes

Interdisciplinary projects

Regulation	Most important aspects/changes	Status
<i>Auditing</i>		
Circular 13/3 “Auditing”	<ul style="list-style-type: none">• FINMA-RS 13/3 is interdisciplinary• Whilst the impact on banks and asset managers is significant (relaxation of audit cycles, focus of regulatory audit for banks with no issues every 3 years/2 years, increased FINMA interventions, etc.), the impact on insurance companies is less significant• Greater reliance on the work performed by internal audit• New reporting obligations for the regulatory auditor	Hearing until 31 January 2018 <ul style="list-style-type: none">• Expected entry into force: 1 January 2019
<i>Anti-money laundering/compliance</i>		
Federal act to increase the effectiveness of efforts to combat money laundering and terrorist financing	<ul style="list-style-type: none">• Implementation of recommendations from the 2016 FATF mutual evaluation report of Switzerland• Improving conformity with FATF standards	Hearing expected from April to July 2018
Anti-Money Laundering Ordinance-FINMA (AMLO-FINMA)	<ul style="list-style-type: none">• Verification of the information on the beneficial owner using a risk-based approach even for ‘normal’ risk clients• Duty to regularly update client information for all business relationships• Extension and specification of the criteria that indicate business relationships involving higher risks• Specification of the requirements relating to group-wide compliance with the fundamental principles of money-laundering prevention and the overall monitoring of legal and reputation risks by financial intermediaries engaged in activities abroad• Threshold for cash transactions with occasional clients and subscription to unlisted collective investment schemes lowered from CHF 25,000 to CHF 15,000.• Duty to check the information about the client and the beneficiary involved in a payment transaction	Consultation until 16 October 2017 Expected entry into force: 2019

Regulation	Most important aspects/changes	Status
Organisation of financial market		
Financial Services Act (FinSA)	<ul style="list-style-type: none"> Behaviour and product rules adjusted to the client segment (private clients/professional clients): <ul style="list-style-type: none"> Information on financial services provider, services and product, among other things by means of a basic information sheet Suitability check before transactions with financial instruments (except 'execution-only') Suitability check if providing advice and asset management Obligation for client advisors (relationship managers) to be entered in a public register and to undertake initial and further training Extension of legal means in favour of customers, including right to demand publication of documents 	<p>Considered by the Council of States on 14 December 2016 and by the National Council on 13 September 2017; next consideration probably in the 2018 spring session (26 February to 16 March 2018)</p> <p>Expected entry into force: 2019</p>
Financial Services Ordinance (FinSO)	<ul style="list-style-type: none"> Specification of the implementation provisions relating to the Financial Services Act Regulations relating to the offering of financial services 	Hearing expected from June to September 2018
Financial Market Infrastructure Ordinance (FMIO) (revised risk mitigation duties)	<ul style="list-style-type: none"> Alignment of the obligations set out in the FMIA relating to the exchange of collateral for OTC derivative transactions not cleared by a central counterparty Extension of the exceptions to the collateral duties 	In force since 1 August 2017
FINMA Financial Market Infrastructure Ordinance (FMIO-FINMA) (introduction of a clearing obligation)	<ul style="list-style-type: none"> New clearing obligation will apply to standardised interest rate and credit derivatives traded over the counter (OTC) Obligation applies to financial and non-financial counterparties whose positions in OTC derivative transactions exceed the clearing thresholds set forth under Art. 88 FMIO (credit/equity derivatives: CHF 1.1 billion; interest rate/currency/commodity and other derivatives: CHF 3.3 billion) FMIO-FINMA will enter into force only after FINMA has authorised or recognised the key CCPs for Swiss market participants After the entry into force of Annex 1 of FMIO-FINMA, transitional periods ranging from 6 to 18 months will apply to the market participants affected (depending on their classification) before compliance with the clearing obligation becomes mandatory 	<p>Consultation until: 12 February 2018</p> <p>Publication of final regulation expected in Q3 2018</p>

Regulation	Most important aspects/changes	Status
FINMA guidance 02/2017 and 05/2017 (FMIA: reporting requirements/trade repositories)	<ul style="list-style-type: none"> • The authorisation of a Swiss trade repository (SIX Trade Repository AG) and the recognition of a foreign trade repository (Regis-TR S.A.) trigger the requirement for Swiss market participants to report derivatives transactions • Open derivatives transactions must be reported from the following dates at the latest: <ul style="list-style-type: none"> – From 1 October 2017, if the counterparty which is required to report is a central counterparty (CCP) or a financial counterparty (FC) which is not small – From 1 January 2018, if the counterparty which is required to report is a small financial counterparty (FC-)2 or a non-financial counterparty (NFC) which is not small • From 1 January 2019, in all other cases; however, transactions between two small non-financial counterparties (NFC-) do not have to be reported 	Reports have to be made (depending on the type and size of the persons subject to the reporting requirement) by 1 January 2019 at the latest
Other topics		
Amendment of the Code of Obligations (law on companies limited by shares)	<ul style="list-style-type: none"> • Transfer of the provisions of the Ordinance against Excessive Remuneration in Listed Companies Limited by Shares (ERCO) to federal law • Establishes guidelines for signing-on bonuses and compensation for prohibition of competition • Liberalisation of the incorporation and capital provisions • Better alignment of company law with the new accounting law, e.g. in terms of a company's own shares and the use of foreign currencies in accounting and financial reporting • Gender quotas for the board of directors (min. 30% each) and executive board (min. 20%) of large listed companies, 'comply or explain' clause. • Proposed solutions with regard to shares held that are not recorded in the stock register (so-called 'dispo shares'). • Increased transparency requirements applicable to the commodities sector through the disclosure of payments to state-owned entities 	Federal dispatch to parliament published on 23 November 2016 Consideration by parliament pending

Regulation	Most important aspects/changes	Status
Amendment of the Gender Equality Act (EqA) (introduction of regular pay analyses)	<ul style="list-style-type: none"> • Employers with at least 50 employees must perform a pay analysis every 4 years • Pay analyses performed using standard analysis model provided by the federal government or using a scientific and legally compliant method • Review of internal pay analysis by an independent body: <ul style="list-style-type: none"> – Authorised audit firm – Recognised equal pay experts, or – Organisations for the representation of employees or the promotion of gender equality • Duty to provide information to shareholders of listed companies and to employees 	Federal dispatch published 5 July 2017 Consideration by parliament pending
Federal Act on Data Protection (FADP) (total revision)	<ul style="list-style-type: none"> • Extended duties to provide information and keep records • Strengthening of the supervisory body and tighter sanctions • Takes into consideration the EU's General Data Protection Regulation (GDPR), which applies as of 25 May 2018, and the Council of Europe's Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS 108) • Companies that have cross-border business in the EU must observe the provisions of GDPR 	Federal dispatch published 15 September 2017 Consideration by parliament pending

Insurance

Regulation	Most important changes	Status
Licensing requirements		
Circular 2017/05 “Business plans – Insurers”	<ul style="list-style-type: none"> • The circular summarises the practice rules that need to be observed when elaborating the business plan forms • The list of business categories concerned has been simplified and reduced from six to four • Changed guidance was introduced in isolated cases, e.g. insurance activities abroad must no longer be assessed on the basis of the degree of active market development, but on the basis of risk location 	In force as of 1 January 2017 Applicable to initial licensing and approval of changes to business plans as of the date when the change of business plan is submitted to FINMA
Changes in laws		
Partial revision of the Insurance Contract Act (ICA)	<ul style="list-style-type: none"> • Draft included measures to facilitate electronic transactions. • Other changes concern the right of cancellation, temporary cover during the limited period, right of termination and large risks. 	Federal dispatch published on 28 June 2017 Expected entry into force: 2019
Entry into force of new FINMA circulars		
Circular 18/03 “Outsourcing at banks and insurers”	<ul style="list-style-type: none"> • Applicable to insurance companies subject to ISA, as well as branches of foreign insurance companies (and also banks and securities dealers) • Stipulates some of the practices already applied and simplifies some of them, but also introduces some additional requirements • Outlines regulatory framework and requirements for outsourcing arrangements (among other things with respect to content) • Duty to maintain an inventory of outsourced services (for insurance companies: form J for business plans) • Requirements of the circular apply to intra-group outsourcing; however, rules may be relaxed if risks are proven not to exist or requirements are not relevant • For outsourcing arrangements abroad, access to all relevant information necessary in the event of restructuring, resolution and liquidation must be guaranteed at all times in Switzerland • Further, the insurance company has to guarantee the right to inspect and audit information in the case of outsourcing abroad 	Applicable as of 1 April 2018 After entry into force: immediate application to new or amended outsourcing arrangements

Regulation	Most important changes	Status
Circular 2016/07 “Video and online identification”	<ul style="list-style-type: none"> • Interpretation of the duty of due diligence according to the Anti-Money Laundering Act and its implementing provisions • Sets out specific criteria that must be fulfilled when conducting video or online identification of a contracting party 	Circular applies to financial intermediaries in accordance with Art. 2 para. 2 AMLA
Circular 2016/02 “Dis-closure – insurers”	<ul style="list-style-type: none"> • Applicable to all insurance companies subject to the ISA as well as insurance groups and conglomerates • Implementing regulations for the new ISO provisions (EU equivalence requirement) 	<p>Applicable as of 1 January 2016.</p> <p>Transition rules: first-time submission to FINMA by 30 June 2017 at the latest; and as of the 2017 reporting period, publication as of 30 April</p>
Swiss Insurance Association (SIA) self-regulation		
Control, Audit and Sanction guideline of the SRB-SIA under the Anti-Money Laundering Act (AMLA)	<ul style="list-style-type: none"> • Revision of the existing guideline • Defines the required control, audit and sanction procedures under AMLA, applicable to financial intermediary members of SRO-SIA • Describes the tasks and responsibilities of the individuals and functions involved 	<p>In force since 1 January 2017.</p> <p>Implementation by 31 December 2017.</p>
Entry into force of amendments to existing circular letters		
Circular 2017/03 “SST”	<ul style="list-style-type: none"> • Applicable to all insurance companies subject to the ISA • Calculation of SST also applicable to captives • New interpretation of the run-off perspective in the SST leads to an amended implementation of the run-off principle • Calculation of SST no longer considers expected contract renewals or new business; the application of the new requirement to occupational pension plan account-related business is not clear yet 	Implementation of the required changes by 1 January 2020
Circular 2017/02 “Corporate governance – insurers”	<ul style="list-style-type: none"> • Applicable to all insurance companies subject to the ISA • Complete revision and streamlining of the circular, including additional clarifications and new requirements • Implementation of the circular adopted to the size, complexity and risks of an insurance company (principle of proportionality) • For example, the following areas were revised: <ul style="list-style-type: none"> – Composition of the board of directors (BoD) and its standing committees – Internal audit – Risk management and internal control system with regard to outsourcing 	<p>Applicable immediately.</p> <p>Transitional period up to 31 December 2019 for requirements regarding the independence of BoD members and BoD standing committees</p>

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