

# Synopsis of the most important regulatory developments

Swiss insurance industry – what counts

Status: 1 October 2019



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# 1. Introduction

As a financial market participant in Switzerland the comprehensive implementation of legal regulations is of great importance. Accordingly, it is important to always have an overview of relevant regulatory changes for Insurance. To help you with this task, we have prepared the brochure **“Synopsis of the most important regulatory developments for Insurance”**, which contains an introductory graphical presentation and a brief description of selected projects in the area of financial market regulation and other areas. The projects are structured according to the addressees and are presented in the chapters “Interdisciplinary projects” and “Insurance”.

The consultation period on a partial revision of the Insurance Supervision Act (ISA) lasted until 28 February 2019. Next steps are the drawing up of the consultation report and the Federal Council's dispatch. The amended law is expected to entry into force as of 1 January 2021 at the earliest. The law is to include new provisions on restructuring with the aim to be able to restructure insurance companies in the event of a crisis. In addition, a new client categorization and regulatory alleviations for insurance companies with certain business models (e.g. insurers with “professional clients” only or captives) will be introduced as well as conduct obligations for the insurance industry and the distribution of qualified life insurance products, equivalent to those for financial service providers under the Financial Services Act (FinSA).

At the same time the partial revision of the Insurance Contract Act (ICA) is considered by the parliament. The law shall include measures to facilitate electronic transactions. In addition, matters such as the right of cancellation, temporary cover during a limited period, protection of policyholders in the event of large risks resp. professional clients or the termination of the insurance contract shall be adapted resp. newly regulated.

We would be pleased to support you with your projects and developing further insights in the area of supervisory regulation.

PwC Switzerland - Insurance Technical Office and PwC Legal Switzerland

## 1.1. Your contact persons

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## 2.2. Insurance

	2019									2020												2021								
	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	2021	2022	2023	2024	2025	2026
Partial Revision Insurance Contract Law (ICA)							9.																							
Federal Insurance Supervision Act (ISA)																														
FINMA circ. 18/3 "Outsourcing at banks and insurers"																														
FINMA Circular 17/3 "SST"																														
FINMA Circ. 17/2 "Corporate governance – insurers"																														
FINMA circ. 18/4 "Tarifierung - berufliche Vorsorge"																														

	Development		Consideration by Parliament		In force, end of final transition period
	Hearing/consultation		Publication of final regulation		Full application
	Estimated/approximately		Referendum deadline		Publication results of hearing/consultation/dispatch

## 3. Interdisciplinary projects

### 3.1. Auditing

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#### FINMA circular 13/3 'Auditing' | Fintech licence partial revision

**Status:** • Entry into force: 1 July 2019

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- New provisions issued for the regulatory audit of institutions under art. 1b BankA.
- Based on the auditing of banks and securities dealers.
- Takes into account the relaxation of the rules for institutions with a Fintech licence by reducing the audit scope.

### 3.2. Anti-money laundering/compliance

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#### Federal Act on Combating Money Laundering and Terrorist Financing (Anti-Money Laundering Act, AMLA)

**Status:** • Federal Dispatch to Parliament published on 26 June 2019  
• Pending parliamentary debate  
• Expected entry into force as of beginning of 2021, at the earliest

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- Stipulates the explicit duty of financial intermediaries to check the details of the beneficial owner.
- Duty to perform a regular risk-based review of whether the client documentation is up to date.
- Advisory services (foundation, acquisition, disposal, administration and funding) of
  - domiciliary companies with registered offices in Switzerland, and
  - trustsare subject to the requirements of the ALMA, and introduction of the duty of due diligence, auditing and reporting obligations for advisors.
- Extension of the duty of due diligence for traders to cover traders in precious metals and precious stones for transactions above CHF 15,000.
- Associations that collect or distribute assets abroad for charitable purposes must be entered in the commercial register.

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#### Anti-Money Laundering Ordinance (AMLO-FINMA)

**Status:** • Entry into force: 1 January 2020

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- 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 customers and the subscription of 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.
- Due to the disputed legal basis, the duties concerning the regular update of client documentation and checks of the information on beneficial owners are no longer part of the AMLO-FINMA.

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## FINMA guidance 02/2019 | Payments on the blockchain

**Status:** • Published 26 August 2019

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- Technology-neutral interpretation of the provision according to art. 10 AMLO-FINMA.
- For services based on blockchain technology, payment orders and token transfers also require information on the ordering party and the beneficiary.
- It is not necessary for the information to be transmitted on the blockchain. Transmission can take place via other communication channels.

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## Federal Act to Implement the Recommendations of the Global Forum on the Transparency of Legal Entities and the Exchange of Information for Tax Purposes

**Status:** • Entry into force as of 1 November 2019  
• Transitional period for conversion to registered shares: 1 May 2021

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- Conversion of bearer shares into registered shares for non-listed companies and companies that do not issue shares as intermediated securities.
- Introduction of a system of sanctions for breaches of the following duties:
  - Reporting by the shareholders of the beneficial owners; and
  - Keeping registers of shareholders and beneficial owners.
- Right of inspection of authorities and financial intermediaries.
- Amendments to various laws: Code of Obligations, Criminal Code, Tax Administrative Assistance Act and Intermediated Securities Act.

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## FINMA circular 16/7 'Video and online identification'

**Status:** • In force since: 1 August 2018  
• Transitional period until 1 January 2020

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- Amendment of the circular to take into consideration rapid technological change.
- Video identification:
  - Verification using a one-time transaction number (TAN) is no longer required;
  - At least two security features contained in the identification documentation should now be verified;
- Online identification:
  - Customer due diligence no longer requires payment transfer from a Switzerland-based bank. Under specific rules, a payment transfer from a bank based in a Financial Action Task Force (FATF) member country will now suffice.
- Using liveness detection to check photos.
- Identification documents are compared with reference data if the financial intermediary is not familiar with the documents submitted.

## 3.3. Organisation of financial market

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### Financial Services Act (FinSA)

- Status:**
- Adopted by Parliament on 15 June 2018
  - Referendum deadline: 4 October 2018
  - Expected entry into force: 1 January 2020
  - Transition periods up to 2 years after entry into force
- 
- Adjustment of code of conduct and product rules in the customer segment concerned (private customers/professional customers):
    - Information on financial services provider, service and product, incl. by means of a key information document;
    - Suitability check before transactions involving financial instruments (except 'execution-only');
    - Suitability check for advisory and asset management services.
  - Guidelines regarding the organisation of financial services providers and the avoidance of conflicts of interest.
  - Duty to inform about accepting compensation from third parties or obligation to pass on compensation from third parties.
  - Obligation to enter client advisers in the register of client advisers if financial service providers are not supervised in accordance with FINMASA, and to engage in continuing professional education and training.
  - Extension of legal means in favour of customers, including the right to demand the issuance of documents.
  - Transitional periods after entry into force:
    - 6 months for the registration of client advisers and affiliation of financial services providers with an ombudsman;
    - 2 years for the introduction of the duties relating to the provision of financial services (e.g. duty to publish a prospectus for securities, key information document for financial instruments, publication).

### Financial Services Ordinance (FinSO)

- Status:**
- Hearing until 6 February 2019
  - Expected entry into force: 1 January 2020
  - Transitional period until 1 January 2021 to comply with the duties regarding client segmentation, expertise, code of conduct, organisation
  - Various other transitional periods for the publication of prospectuses and key information documents
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- Specification of financial service providers' duties to provide advice and information.
  - Implementing regulations for the provisions of the FinSA:
    - Organisation of financial services providers;
    - New register of client advisers;
    - Client documentation;
    - Ombudsman services;
    - Prospectus when offering securities;
    - Key information document

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## Financial Market Infrastructure Ordinance (FMIO) | extended transitional period for small non-financial counterparties

- Status:**
- In force since: 1 January 2019
  - Transitional period until 1 January 2024

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- Extension of transitional period to 1 January 2024 for small non-financial counterparties to report derivatives transactions.
  - No change in transitional deadlines for financial counterparties and for non-financial counterparties which are not small.
  - Review of FMIO to be initiated as of 2019 in light of international and technological developments.

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## Ordinance to the Financial Market Supervision Act (FINMASA)

- Status:**
- Consultation closed on 22 August 2019
  - Expected entry into force: as of 1 January 2020, at the earliest
  - Expected transition period until the end of 2024

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- Specification of the role and competences of the financial market authorities with regard to regulation and international standard setting.
  - Regulation of the cooperation between the FDF and FINMA.
  - Specification of the requirements, principles and process for FINMA regulations.
  - Check all regulations in terms of their fairness at all levels and make any necessary adjustments within five years of their entry into force.

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## FINMA guidance 03/2019 | Recognition of equivalence of CFTC risk mitigation obligations for transactions in OTC derivatives that are not cleared centrally

- Status:**
- Published 24 September 2019

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- Recognition of the equivalence of United States law with regard to risk mitigation obligations, including initial and variation margin for transactions in non-centrally cleared OTC derivatives subject to CFTC regulation and supervision.

## 3.4. Other topics

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### Amendment of the Code of Obligations | law on companies limited by shares

- Status:**
- Last considered by the National Council on 13 June 2019 and by the Council of States on 19 June 2019,
  - Expected entry into force: beginning of 2021, at the earliest

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- Implementation of the provisions of the Ordinance against excessive remuneration in listed companies limited by shares (ERCO) in federal law.
  - Establishes guidelines for signing-on bonuses and compensation for prohibition of competition.
  - Liberalisation of the incorporation and capital provisions.
  - Better alignment of the law on companies limited by shares (Company Law) to the new Accounting Law, e.g. regarding 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.

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### Amendment of the Code of Obligations | indirect counter-proposal to the 'Responsible Business Initiative'

- Status:**
- Considered by the Council of States on 12 March 2019 and by the National Council for the last time on 13 June 2019

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- Duty to comply with regulations for the protection of human rights and the environment, including abroad, for companies that exceed two of the following thresholds:
    - Total assets: CHF 40 Million;
    - Turnover: CHF 80 Million;
    - 500 full-time employees on average per year.
  - Potential extension to cover business relationships with third parties.
  - Obligation to publish an accountability report.
  - At its meeting on 14 August 2019, the Federal Council reaffirmed its adherence to the obligation to observe human rights and environmental protection standards abroad. It maintains the sustainability reporting requirement for larger companies with more than 500 employees but wants to allow the possibility to waive individual reporting aspects, provided this is explained ('comply or explain' approach).

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## Amendment of the Gender Equality Act (EqA) | introduction of regular pay analyses

**Status:** • Entry into force: 1 July 2020

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- Employers must conduct a pay analysis every 4 years if they have more than 100 employees.
- Employer is exempted if the analysis shows pay is equal.
- Pay analyses performed using a standard analysis tool provided by the Federal Government or using a scientific and legally compliant method.
- Review of internal pay analysis by an independent body:
  - Authorised audit firm; or
  - Organisations for the representation of employees or the promotion of gender equality.
- Duty to provide information about the results of the equal pay analysis
  - to the shareholders of listed companies in the notes to the financial statements, and
  - to the employees.
- Measures limited to a period of 12 years until 30 June 2032.

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## Ordinance on the Equal Pay Analysis Review

**Status:** • Entry into force: 1 July 2020  
• First equal pay analysis for companies with at least 100 employees to be carried out by 30 June 2021, at the latest.

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- Regulation of the training of lead auditors who carry out equal pay analyses on behalf of employers.
- Determining the subject of the audit.
- Limitation of the period of application of the Ordinance until 30 June 2032.

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## Federal Act on Data Protection (FADP) | total revision

**Status:** • Considered by the National Council for the last time on 25 September 2019 and by the Council of States on 11 September 2018

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- 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 (EU-GDPR), which applies as of 25 May 2018, and the Council of Europe's Convention for the Protection of Individuals with regard to the Automatic Processing of Personal Data (ETS 108).
- Companies that have cross-border business in the EU must observe the provisions of EU-GDPR.
- In September 2018, Parliament approved a phased approach to the bill
  - 1. Implementation of EU Directive 2016/680 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties (further development of the Schengen acquis);
  - 2. Total revision of the Federal Data Protection Act (FDPA) by approx. end of 2019.

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## FINMA guidance 03/2018 | LIBOR: risks of potential replacement

**Status:** • Replacement of LIBOR by the end of 2021 at the latest

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- Banks currently participating in fixing the LIBOR no longer compelled to contribute rates from 2021 onwards.
- The National Working Group on Swiss Franc Reference Rates (NWG) is developing reform proposals to replace LIBOR.
- Established a basis for replacing the CHF LIBOR with the introduction of the Swiss Average Rate Overnight (SARON).
- Risks for the institutions:
  - Legal risks relating to contracts for financial products that have a final maturity date after 2021;
  - Valuation risks relating to derivatives and lending contracts that reference LIBOR;
  - Operational readiness.
- FINMA recommends that the supervised institutions address the challenges of a potential replacement of LIBOR in good time.

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## Federal Act on the Adaptation of Federal Law to Developments in Distributed Ledger Technology

**Status:** • Consultation until 28 June 2019

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Legal framework for the amendments to several laws in connection with blockchain/distributed ledger technology (DLT):

- In the Code of Obligations: Increase legal certainty for the transfer of DLT-based assets by creating the possibility of digital registers of rights, which can guarantee the functions of securities.
- In the Federal Act on Debt Collection and Bankruptcy: Increase legal certainty by explicitly regulating the segregation of crypto-based assets in the event of bankruptcy.
- In the Financial Market Infrastructure Act: Create a new authorisation category for DLT-based trading systems.
- In the Financial Institutions Act: Create the possibility of authorisation as a securities house for the operation of a trading system.

# 4. Insurance

## 4.1. Changes in laws

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### Partial revision Insurance Contract Act (ICA)

- Status:**
- Federal Dispatch published on 28 June 2017
  - Considered by the National Council on 9 Mai 2019 and by the Council of States on 18 September 2019
  - Expected entry into force: open
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- 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.
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### Insurance Supervision Act (ISA)

- Status:**
- Consultation period ended on 28 February 2019
  - Entry into force: at the earliest as of 1 January 2021
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- Introduction of a customer protection focused regulatory and supervisory concept.
- Expansion of conduct and due diligence obligations when providing financial services analogue to FinSA and FinIA
- Introduction of a recapitalisation concept for insurance companies
- Insurance companies domiciled abroad with a Swiss branch underwriting reinsurance will be new in scope of ISA
- Selective adjustments e.g. consideration of innovative business models or provisions for group supervision

## 4.2. In force circular letters of FINMA

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### FINMA Circular 18/03 'Outsourcing at banks and insurers'

- Status:**
- Applicable as of 1 April 2018
  - After entry into force: Immediate application to new or amended outsourcings
  - Transition period of five years to amend pre-existing outsourcing arrangements
  - Hearing until 12 July 2019
- 
- Hearing with respect to adjustments to the regime for small banks. In particular adjustments to the circular to take the size, complexity, structure and risk profile of the financial institution into consideration.
  - Applicable to insurance companies subject to ISA, as well as branches of foreign insurances (and also banks as well as 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 of outsourcing arrangements (i.a. 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 outsourcings abroad access to all relevant information, which is 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 case of outsourcing abroad.

## 4.3. In force amendments to existing circular letters of FINMA

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### FINMA Circular 2017/03 'SST'

- Status:**
- Implementation of the required changes until 1 January 2020.
- 
- 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.

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### FINMA Circular 2017/02 'Corporate governance – insurers'

- Status:**
- Applicable immediately.
  - Transitional period up to 31 December 2019 for requirements regarding the independence of BoD members and BoD standing committees.

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- 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:
    - Composition of the Board of Directors and the BoD standing committees
    - Internal audit
    - Risk management and internal control system with regards to outsourcing

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### FINMA Circular 2018/4 'Tarifizierung – berufliche Vorsorge'

- Status:**
- Hearing in 2nd Quarter 2018
  - Expected entry into force: 1 December 2018
  - Applicable for all rates as of 1 January 2020
  - Transition period for conversion rates until 1 January 2024 and for discounts not justifiable on an actuarial basis until 1 January 2022
  - Ex-post evaluation expected in 2022

- 
- Update and compilation of FINMA Circular 2008/12 'Drehtürprinzip berufliche Vorsorge' and FINMA Circular 2008/13 'Tarifizierung Risikoversicherung berufliche Vorsorge' in only one circular
  - Abolishment of limits respectively of the ratio between highest and lowest premium applying experience rating
  - Application of discounts, strictly only if these can be justified on an actuarial basis.