

Regulatory development

Synopsis of the most important regulatory developments in the banking and asset management industry

Status: 1 June 2021



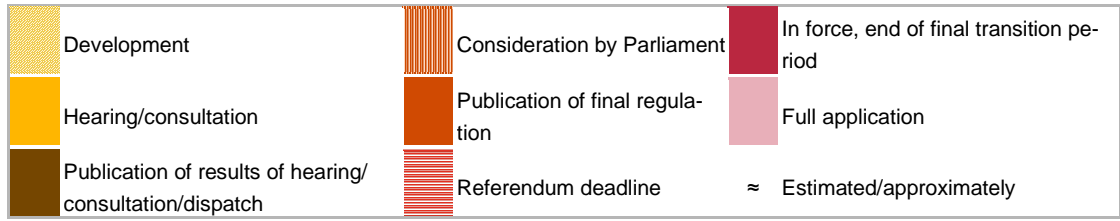
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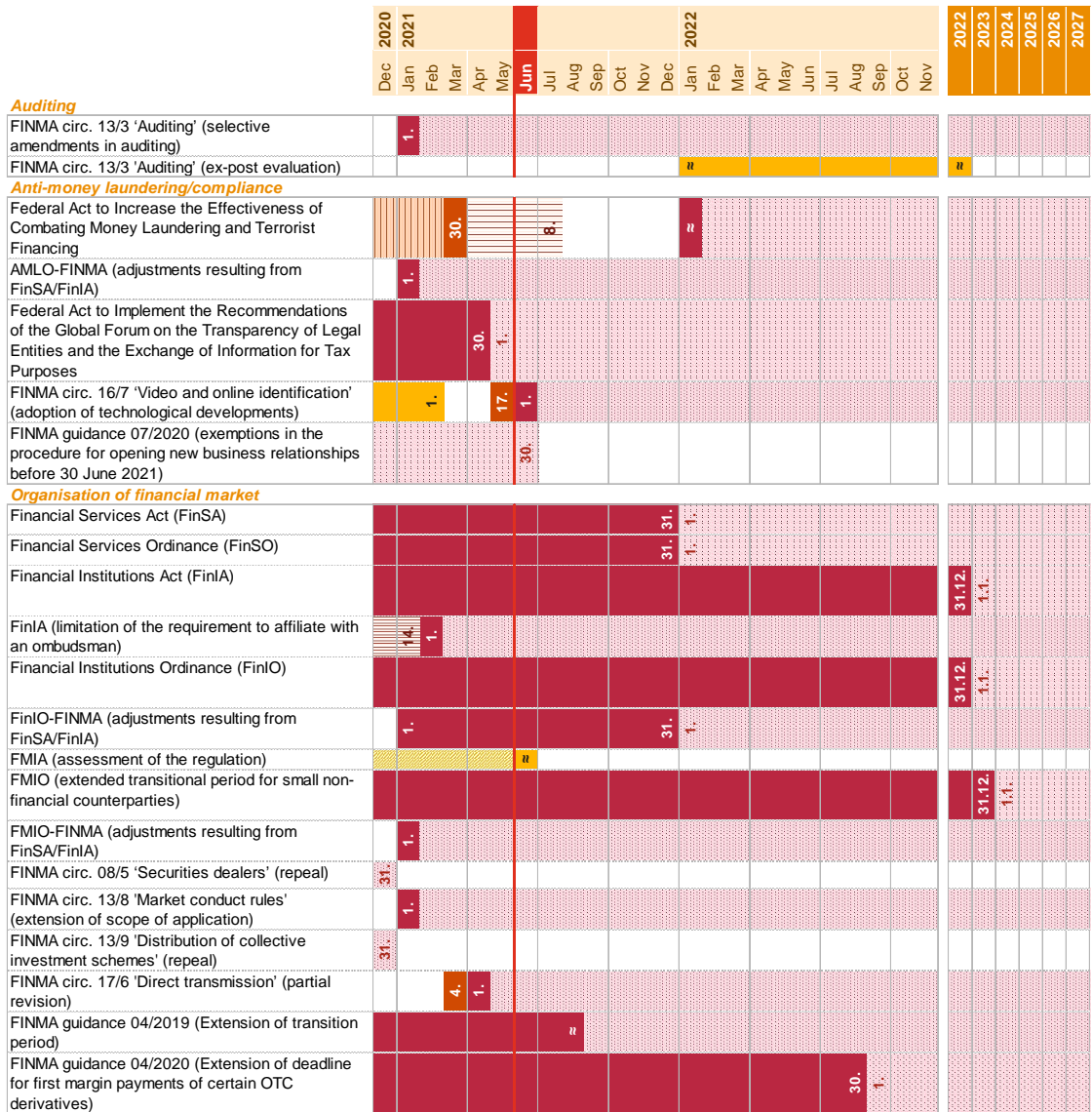
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1. Chronological project overview



1.1. Interdisciplinary projects



	2020		2021					2022											2022	2023	2024	2025	2026	2027					
	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov					
Other topics																													
SCO (gender quota and transparency rules for the commodity trading sector)							1.																						
SCO (overall revision of company law)																													
SCO (indirect counter-proposal to the 'Responsible Business' initiative)																													
Gender Equality Act (EqA) (introduction of regular pay analyses)																													
Gender Equality Act (GEA) (communication of results of analysis to the Confederation)																													
Ord. on the Equal Pay Analysis Review																													
Federal Act on Data Protection (FADP) (total revision)																													
Ord. to the Federal Act on Data Protection (OFADP) (total revision)																													
FINMA guidance 03/2018 (LIBOR: risks of potential replacement)																													
Federal Act on the Adaptation of Federal Law to Developments in Distributed Ledger Technology (adjustments in SCO, FISA and IPLA)																													
Federal Act on the Adaptation of Federal Law to Developments in Distributed Ledger Technology (other adjustments)																													
Ord. on the implementing regulations relating to the Federal Act on the Adaptation of Federal Law to Developments in Distributed Ledger Technology																													
Sustainability in the Swiss financial sector																													

1.2. Banks/securities firms

	2020		2021					2022											2022	2023	2024	2025	2026	2027					
	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov					
Accounting																													
FINMA Ord. on accounting and total revision of FINMA circ. 'Accounting – banks'																													
FINMA circ. 20/1 'Accounting – banks' (disclosure rules for account-holding securities firms)																													
Disclosure																													
FINMA circ. 16/1 'Disclosure' (phase III)																													
FINMA circ. 16/1 'Disclosure' (climate-related financial risks)																													
Capital adequacy/risk diversification																													
CAO (gone concern requirements)																													
FINMA circ. 13/1 'Eligible equity capital' (recognition of allowances for past due receivables not considered to be impaired)																													
FINMA guidance 02/2020 (temporary exemptions for banks due to the COVID-19 crisis)																													
Basel III framework revision (post-crisis reforms)																													
FINMA circ. 19/1 'Risk diversification' (ex-post evaluation)																													
Liquidity																													
LiqO (partial revision of NSFR)																													
FINMA circ. 15/2 'Liquidity risks' (adjustments NSFR)																													
Asset management/crossborder																													
SBA Portfolio management guidelines 2020																													

	2020		2021					2022												2022	2023	2024	2025	2026	2027				
	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov					
Credit business																													
COVID-19 Joint and Several Guarantees Ordinance							19.																						
COVID-19 Joint and Several Guarantees Act							19.																						
Organisation/risk management																													
FINMA circ. 18/3 'Outsourcing'																													
Other topics																													
BankA (insolvency, deposit insurance, segregation)																													
FINMA Bank Insolvency Ordinance (adjustments resulting from FinSA/FinIA)							1.																						
FINMA circ. 08/14 'Supervisory reporting' (repeal of statement)							1.																						
FINMA circ. 10/2 'Repo/SLB' (repeal)							31.																						

1.3. Fund management companies/investment funds/ representatives of foreign collective investment schemes

	2020		2021					2022												2022	2023	2024	2025	2026	2027				
	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov					
CISA (introduction of funds not subject to authorisation)							9.																						
CISO-FINMA (adjustments resulting from FinSA/FinIA)							1.																						
FINMA Collective Investment Schemes Bankruptcy Ordinance (CISBO-FINMA)(adjustments resulting from FinSA/FinIA)							1.																						
FINMA circ. 18/3 'Outsourcing' (extension of scope of application)							1.																						
SFAMA guidelines							2.																						

2. Interdisciplinary projects

2.1. Auditing

FINMA circular 13/3 'Auditing' | Selective amendments in auditing

Status: • In force since 1 January 2021

- Current practice confirmed in the circular: After a change of mandate, the new audit firm may base its assessment of control risks on the audit results of the previous audit firm.
- Audit of banks: Introduction of a new audit area: risk-weighted assets calculated using internal models approved by FINMA.
- Audit of collective investment schemes:
 - Introduction of a deadline for the submission of risk analysis and audit strategy by newly approved institutions of three months after the licence is granted;
 - Adjustment of the deadline for the submission of the audit report for custodian banks from three months (after the end of the financial year of the fund management company/SICAV) to four months (after the end of the financial year of the custodian bank).

FINMA circular 13/3 'Auditing' | Ex-post evaluation

Status: • Ex-post evaluation expected in 2022

- Assessment of the effectiveness of the originally enacted regulation.

2.2. Anti-money laundering/compliance

Anti-Money Laundering Act (AMLA)

Status: • Adopted by Parliament on 19 March 2021
• Referendum deadline: 8 July 2021
• Expected entry into force as of beginning of 2022, at the earliest

- 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.
- Associations that collect or distribute assets abroad for charitable purposes must be entered in the commercial register.
- The law does not include the subordination of advisors (such as lawyers or trustees), which was highly contested in Parliament.

FINMA Anti-Money Laundering Ordinance (AMLO-FINMA) | Adjustments resulting from FinSA/FinIA

Status: • In force since 1 January 2021

- Repeal of the status of directly subordinated financial intermediary (DSFI).
- Threshold for cash transactions requiring identification of the customer in spot transactions lowered from CHF 5,000 to CHF 1,000.
- Simplification of the due diligence requirements for granting consumer credit.
- Obligation for asset managers to make enquiries about the identity of the policyholder or the actual premium payer in the case of life insurance policies with separate account or custody account management (insurance wrapper).

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: • In force since 1 November 2019
• Transitional period for conversion to registered shares ends 1 May 2021

- 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.

FINMA circular 16/7 'Video and online identification' | Adoption of technological developments

Status: • In force since 1 June 2021

- Enable fully automated online identification by waiving the need for a bank transfer when scanning the data of a biometric passport chip.
- Security requirements to enable secure data transfer in the case of online identification.
- The need for accompanying security requirements for online identification is upheld.
- Geolocation may be used to confirm the home address for automatic online identification.

FINMA guidance 07/2020 | Exemptions in the procedure for opening new business relationships with clients domiciled abroad before 30 June 2021

Status: • In force since 2 October 2020
• Valid until 30 June 2021

- Continuation of exemptions in the procedure for opening new business relationships with clients domiciled abroad before 30 June 2021: extension under certain conditions of the 30-day period provided for in art. 45 Swiss banks' code of conduct with regard to the exercise of due diligence (CDB 20) to 120 days in cases where the identification document's authenticity has not been confirmed.

2.3. Organisation of financial market

Financial Services Act (FinSA)

- Status:**
- In force since 1 January 2020
 - Transition periods up to two years after entry into force
-
- Adjustment of the code of conduct and product rules in the customer segment concerned (private customers/professional customers):
 - Information on financial services provider, service and product, including by means of a key information document;
 - Suitability check before transactions involving financial instruments (except 'execution-only');
 - Suitability check if providing advice 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 right to the publication of documents.
 - Transitional periods after entry into force:
 - Six months for the registration of client advisers and affiliation of financial services providers with an ombudsman;
 - Two 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:**
- In force since 1 January 2020
 - Transitional period until 31 December 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
-
- 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.
 - If a financial service provider wants to comply with the requirements for the organisation and rules of conduct before the expiry of the transitional period of two years, it must irrevocably notify its auditor of the selected transition date. Until then, the previous regulations of the Stock Exchange Act (SESTA) or the Collective Investment Schemes Act (CISA) shall continue to apply.

Financial Institutions Act (FinIA)

- Status:**
- In force since 1 January 2020
 - Transition periods up to three years after entry into force

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- Regulation of the licensing obligation and the supervision of all financial service providers that operate an asset management business, i.e. asset managers, trustees, fund administrators, fund managers and securities firms.
 - Banks, insurance companies and pension funds, among others, are not subject to the Financial Institutions Act.
 - Definition of the licensing requirements with regulations concerning the organisation, assurance of proper conduct of business, legal form, risk management, internal controls and capital requirements.
 - Transitional periods:
 - *Financial institutions that have a licence in accordance with FINMASA when FinIA enters into force:* These institutions do not require a new licence, but must comply with the requirements of FinIA by 31 December 2020.
 - *Financial institutions newly subject to a licensing obligation:* Must notify FINMA within six months of entry into force and must satisfy the requirements of this act and submit a licence application within three years of the act's entry into force;
 - *Asset managers and trustees:* Must notify FINMA immediately if business activities are started within one year of FinIA entering into force, with affiliation and submission of a licence application to the supervisory organisation within one year of approval by the supervisory organisation.

Financial Institutions Act (FinIA)

- Status:**
- In force since 1 February 2021

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- Limitation of the requirement to affiliate with an ombudsman only to those financial service providers serving private retail clients.
 - This requirement no longer applies to financial services providers who provide financial services exclusively to institutional or professional clients (excluding affluent private clients who have opted-out and declared themselves as professional investors).

Financial Institutions Ordinance (FinIO)

- Status:**
- In force since 1 January 2020
 - Individual transition periods up to three years after entry into force

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- Specification of the implementing provisions relating to the Financial Institutions Act (FinIA).
 - Regulations relating to authorisation and organisational requirements for supervised financial institutions.

FINMA Financial Institutions Ordinance (FinIO-FINMA) | Adjustments resulting from FinSA/FinIA

- Status:**
- In force since 1 January 2021
 - Transitional period until 31 December 2021 for managers of collective investment schemes and fund management companies that have a licence at the time of entry into force

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- Requirements concerning professional liability insurance for asset managers and trustees.
 - Detailed regulations for fund administrators: Regulation of the assets to be taken into account for the calculation of the de minimis threshold.
 - Detailed regulations for fund administrators and fund management companies:
 - Requirements concerning risk management, compliance and internal control system;
 - Requirements concerning professional liability insurance;
 - Requirements concerning the regulatory audit and financial audit.
 - Regulation of the capital adequacy reporting form for securities firms that do not hold accounts.

Financial Market Infrastructure Act (FMIA) | Assessment of the regulation

- Status:**
- Carried out by the Federal Department of Finance

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- Assessment of FMIA as of 2019 in light of international and technological developments.

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.

FINMA Market Infrastructure Ordinance (FMIO-FINMA) | Adjustments resulting from FinSA/FinIA

- Status:**
- In force since 1 January 2021

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- Adoption in the FINMA regulations of newly created regulations in the superordinate legislation (FinSA and FinIA).

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- Status:**
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FINMA circular 08/5 'Securities dealers' | Repeal

Status: • Repealed as of 31 December 2020

- Repeal of the circular, as its provisions are largely contained in the Financial Institutions Act (FinIA) and the Financial Institutions Ordinance (FinIO).

FINMA circular 13/8 'Market conduct rules' | Extension of scope of application

Status: • In force since 1 January 2021

- Extension of the scope of application to include asset managers and trustees.
- Addition to examples of market manipulation of 'painting the tape' involving sell-side and buy-side.

FINMA circular 13/9 'Distribution of collective investment schemes' | Repeal

Status: • Repealed as of 31 December 2020

- Repeal of the circular, as the offering of financial instruments is regulated definitively by the Financial Services Act (FinSA).

FINMA circular 17/6 'Direct transmission' | Partial revision

Status: • In force since 1 April 2021

- Specific amendments to the circular based on the ex-post evaluation carried out.
- Extension of the list of foreign authorities qualifying for treaty assistance.
- Details of the reporting process for planned exchanges of information with foreign authorities.

FINMA guidance 04/ 2019 and 09/2020 | Extension of transition period

Status: • Published 13 December 2019 and 12 November 2020, respectively
• Extension of the transitional period until the entry into force of the DLT Ordinance, but not later than 1 January 2022

- Basic obligation, as of 4 January 2020, in accordance with the transitional provisions set out in art. 131 para. 5^{bis} FMIO for the exchange of securities relating to OTC derivative transactions that are not settled centrally, which involve share options, index options or similar equity derivatives, such as derivatives based on a basket of shares.
- FINMA guidance 4/2019 extends the transitional period to 4 January 2021.
- Extension of the transitional period until the entry into force of the DLT Ordinance (Ordinance on the implementing provisions concerning the Federal Act on the Adaptation of Federal Law to Developments in the Distributed Ledger Technology expected to enter into force as of 1 August 2021), but not later than 1 January 2022

FINMA guidance 04/2020 | Extension of the timeframe to exchange initial margins for certain OTC derivatives

- Status:**
- In force since 14 April 2020
 - Extension of transitional period until 1 September 2022

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- Extension of the deadlines according to art. 131 para. 5 lit. d^{bis} and lit. e FMIO for completing the final two implementation phases of the margin requirements for non-centrally cleared OTC derivatives by one year.
 - Duty to exchange initial margins applies to counterparties whose aggregated month-end average gross position of non-centrally-cleared OTC derivatives at group or financial or insurance group level:
 - is greater than CHF 50 billion for each of the months of March, April and May 2021: from 1 September 2021;
 - is greater than CHF 8 billion for each of the months of March, April and May 2022: from 1 September 2022.

2.4. Other topics

Code of Obligations | Amendment to the Law on companies limited by shares (gender quota and transparency rules for the commodity trading sector)

- Status:**
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 - In force since 1 January 2021
 - Transitional periods up to 31 December 2030 at the latest

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- Gender quotas for the Board of Directors (min. 30% each) and Executive Board (min. 20%) of large listed companies (>250 employees), 'comply or explain' clause, with transitional period for reporting in the remuneration report for:
 - Board of Directors: at the latest for the financial year beginning 5 years after entry into force;
 - Board of Executive Board: at the latest for the financial year beginning 10 years after entry into force.
 - Increased transparency requirements applicable to the commodities sector through the disclosure of payments to state-owned entities.
 - Applicable for the first time for the financial year beginning 1 year after entry into force.

Code of Obligations | Amendment to the Law on companies limited by shares (overall revision of company law)

- Status:**
- Adopted by Parliament on 19 June 2020
 - Revisions to the Law published on 30 June 2020 and on 27 April 2021
 - Referendum deadline: 8 October 2020
 - Expected entry into force: 2022 or 2023

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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.
 - Revision of the provisions relating to impending illiquidity, capital impairment and over-indebtedness (art. 725 et seq CO).
 - 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.
 - Proposed solutions with regard to shares held that are not recorded in the stock register (so-called 'dispo shares').
 - More flexibility for conducting general meetings by electronic means.

Code of Obligations | Indirect counterproposal to the 'Responsible Business Initiative'

- Status:**
- Adopted by Parliament on 19 June 2020
 - Revisions to the Law published on 30 June 2020 and 27 April 2021
 - Referendum deadline: 5 April 2021
 - Expected entry into force: 2022 or 2023

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- Obligation to publish a report on non-financial matters, in particular on CO₂ objectives, social issues, human rights, employee concerns and the fight against corruption, applicable to:
 - Public Interest Entities,
 - with at least 500 full-time positions on an annual average on a group basis, and
 - which exceed one of the following criteria in two consecutive financial years:
 - Total assets: CHF 20 million,
 - Turnover: CHF 40 million.
 - Introduction of due diligence and transparency requirements in relation to minerals and metals from conflict zones and to child labour
 - Compliance with duties of due diligence regarding the supply arising from the trade and processing of specified metals from conflict zones and high-risk areas;
 - Compliance with duties of due diligence when offering products or services that are under reasonable suspicion of being produced or supplied using child labour.
 - Reporting on the fulfilment of the duties of due diligence.

Gender Equality Act (GEA) | Introduction of regular pay analyses

Status: • In force since 1 July 2020

- Employers must conduct a pay analysis every four 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 twelve years until 30 June 2032.

Gender Equality Act (GEA) | Communication of results of analysis to the Confederation

Status: • Considered by the National Council on 17 December 2020
• Expected to be considered by the National Council on 15 June 2021

- Parliamentary initiative to introduce the obligation to communicate the results of the equal pay analysis performed by a company to the Confederation within one year.

Ordinance on the Equal Pay Analysis Review

Status: • In force since 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.

- 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.

Federal Act on Data Protection (FADP) | Total revision

- Status:**
- Adopted by Parliament on 25 September 2020
 - Referendum deadline: 14 January 2021
 - Expected entry into force: 2021

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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 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 Act on Data Protection (FADP) approved by Parliament on 25 September 2020.

Ordinance to the Federal Act on Data Protection (OFADP) | Total revision

- Status:**
- Hearing expected: June 2021
 - Expected entry into force: 2021

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- Total revision of the ordinance on the basis of the amended Federal Act on Data Protection.
 - Specification of the implementing regulations regarding the Federal Act on Data Protection.

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 will be 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.
 - Establish 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 addressing the challenges of a potential replacement of LIBOR in good time.

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

- Status:**
- Adopted by Parliament on 25 September 2020
 - Referendum deadline: 14 January 2021
 - Entry into force: 1 February 2021 for amendments to the Code of Obligations, the Federal Intermediated Securities Act and the Federal Act on International Private Law.
 - Expected entry into force: 1 August 2021 for other amendments

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 Banking Act: Regulation of the treatment of crypto-based assets as custodial assets and on the segregation of public deposits.
- In the Financial Market Infrastructure Act: Create a new licence category for DLT-based trading systems.
- In the Financial Institutions Act: Create the possibility to obtain a licence to operate an organised trading facility as a securities firm.

Ordinance on the implementing regulations relating to the Federal Act on the Adaptation of Federal Law to Developments in Distributed Ledger Technology

- Status:**
- Hearing until 2 February 2021
 - Expected entry into force: 1 August 2021

Implementation of the adaptations of the Federal Act on the Adaptation of Federal Law to Developments in Distributed Ledger Technology in relevant ordinances and implementing decrees. The following ordinances relevant to the financial market will be subject to substantial amendments:

- Banking Ordinance (BankO):
 - Definition of cryptographic-based assets subject to approval; and
 - Establish the authorisation requirements.
- Financial Institutions Ordinance (FinIO):
 - Extension of the recording and reporting duties of securities firms to DLT securities authorised for trading on a DLT trading facility;
 - New provisions on the eligible capital for non-account-holding securities firms;
 - Establish the duties of representatives of foreign financial institutions that provide financial services to comply with the FinSA regulations and to enter their client advisors in a register of advisors if services are provided to private customers.
- Anti-Money Laundering Ordinance (AMLO):
 - Establish the requirement to subject financial intermediaries to the AMLO, to permit the transfer of virtual currencies to third parties and to maintain a lasting business relationship with the contracting party.
- Financial Market Infrastructure Ordinance (FMIO):
 - Precise definition of the authorisation requirements and obligations of DLT trading facilities newly provided for in the FMIA.
- Audit Oversight Ordinance (AOO)
 - Simplified licensing requirements for the auditor in charge (lead auditor) of FinTech companies.

Sustainability in the Swiss financial sector

- Status:**
- Publication of the report of the Federal Council of 24 June 2020 on sustainability in the financial sector
 - Announcement of further steps by the Federal Council on 11 December 2020

Federal Council measures regarding the framework conditions to improve the competitiveness of the Swiss financial centre.

- Preparation of the binding implementation of the recommendations of the Task Force on Climate-related Financial Disclosures (TCFD) by Swiss companies in all sectors of the economy.
- Preparation by autumn 2021 of proposed adjustments to financial market legislation in order to prevent feigned sustainable business activities in terms of their environmental impact (greenwashing).
- Recommendation of the Federal Council that financial market players publish their methods and strategies in relation to climate and environmental risks when managing clients' assets.
- Stepping up Switzerland's commitment to international environmental conferences and initiatives, focussing on the disclosure of environmental information and the internalisation of environmental costs.

3. Banks/securities firms

3.1. Accounting and reporting

FINMA Accounting Ordinance and total revision of FINMA circular 20/1 'Accounting – banks'

- Status:**
- In force since 1 January 2020
 - Application of the provisions for the creation of value adjustments for default risks in the financial statements for the 2021 financial year, at the latest
 - Transitional periods for the creation of value adjustments for expected losses and for inherent default risks until 31 December 2025, at the latest
-
- Enactment of the FINMA ordinance on accounting, which contains the fundamental provisions on valuation and recognition, and the integration of accounting and disclosure practice and the existing FAQs in the total revision of FINMA circ. 20/1.
 - Introduction of an approach for calculating allowances for past due receivables not considered to be impaired in addition to the specific allowances for doubtful accounts receivable:
 - Category 1 and 2 banks:
 - Expected loss approach in accordance with the international accounting standard used;
 - If no international accounting standard is used, the expected losses are determined on the basis of:
 - Model-based expected loss approach for all portfolios using the IRB approach;
 - a simplified approach for other holdings.
 - Category 3 banks with significant activities in the interest rate spreads business:
 - Creation of value adjustments for inherent default risks
 - Other banks:
 - Creation of value adjustments for latent default risks.
 - Banks can voluntarily apply a stronger, more comprehensive approach.
 - Value adjustments for expected and inherent losses may be used for specific allowances for doubtful accounts unless international accounting standards are applied.
 - Disclosure of:
 - Methods, data and assumptions for the recognition of allowances for past due receivables not considered to be impaired;
 - Parameters relating to the use, underfunding and rebuilding of value adjustments for expected and inherent losses.

FINMA circular 20/1 'Accounting – banks' | Disclosure rules for account-holding securities firms

- Status:**
- In force since 1 January 2021

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- Regulation of the equal treatment of disclosures by account-holding securities firms and banks.

3.2. Disclosure

FINMA circular 16/1 'Disclosure – banks' | Phase III

- Status:**
- Basel Committee standard published on 11 December 2018
 - Implementation in Swiss law pending, expected entry into force: approx. 2023

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- Extension of the duties of disclosure in the areas of:
 - Credit valuation adjustment (CVA);
 - Regulatory treatment of problematic activities;
 - Qualitative and quantitative information on operational risks;
 - Comparison of risk-weighted assets calculated using model-based and standardised approaches;
 - Encumbered/ceded assets;
 - Dividend restrictions.
 - Adaptation of the other current disclosure templates and tables from Phase II.

FINMA circular 16/1 'Disclosure – banks' | Climate-related financial risks

- Status:**
- Entry into force: 1 July 2021
 - Initial disclosure of details of climate-related risks in the annual report for the 2021 financial year, i.e. usually by 30 April 2022

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- Annual disclosure of climate-related financial risk management information:
 - Key features of the governance structure for climate-related financial risks;
 - Description of the climate-related financial risks affecting the business and risk strategy;
 - Risk management structures and processes to identify, assess and manage climate-related financial risks;
 - Criteria and methods for assessing the significance of climate-related financial risks;
 - Quantitative information and methodology.
 - Limited application to category 1 and 2 banks only. A number of associations participating in the public consultation called for an extension of the climate-related disclosure requirements to banks in all supervisory categories. This will be examined further by FINMA in an ex-post evaluation.

3.3. Capital adequacy/risk diversification

Capital Adequacy Ordinance (CAO) | Gone-concern capital, deduction of financial interests in subsidiaries and other amendments

- Status:**
- In force since 1 January 2019
 - Transitional periods for additional gone-concern minimum capital requirements until 2025

-
- Introduction of gone-concern minimum capital for domestic systemically important banks (D-SIBs).
 - Investments in group companies active in financial services: deduction of financial interests from capital (from an individual company perspective) replaced by a financial interest risk-weighting for group companies based in:
 - Switzerland: 250%
 - Abroad: 400%
 - Group companies that provide the services necessary for the continuation of a bank's business processes are subject to consolidated supervision by FINMA.

FINMA circular 13/1 'Eligible equity capital – banks' | Recognition of allowances for receivables not considered to be impaired

- Status:**
- In force since 1 January 2020
 - The previous requirements may continue to be applied for the 2020 financial statements

- Regulation for the recognition of allowances for past due receivables not considered to be impaired and provisions for off-balance-sheet transactions past due but not considered to be impaired in the supplementary capital T2.

FINMA guidance 02/2020 | Temporary exemptions for banks due to the COVID-19 crisis

- Status:**
- In force since 31 March 2020
 - Valid until 1 July 2020, with the possibility of an extension, if necessary
 - Exemptions relating to the leverage ratio extended until 1 January 2021

- Clarifications for dealing with the COVID-19 credits with federal guarantees within the framework of the capital and liquidity requirements.
- Temporary exemptions relating to risk diversification:
 - The exemptions applied to risk diversification will not be continued due to lack of demand and will end on 1 July 2020.
- Temporary relief relating to the leverage ratio:
 - Reduction of the relief in the leverage ratio calculation in the event of dividend distributions in accordance with FINMA guidance 03/2020 dated 7 April 2020.
 - FINMA guidance 06/2020 extended the leverage ratio relief until 1 January 2021. This also applies to the reduction in leverage ratio relief in the event of dividend distributions.
- FINMA shall extend the exemptions, if required.

Basel III framework revision | Post-crisis reforms

- Status:**
- Consultation for transposition into national regulation: expected March 2022 earliest
 - Implementation of most of the Basel Committee's reforms by 1 January 2023
 - Phased increase of output floors for internal model-based approaches from 2023 to 2028

- Revisions to the standardised approach for weighting credit risks through:
 - Greater differentiation of risk weights rather than using flat rates, especially for exposures secured by residential or commercial property depending on the loan-to-value ratio; and
 - Further assessment requirements for the application of external ratings.
- Use of the advanced IRB approach not allowed for certain exposure classes, especially exposures to corporates and to financial institutions.
- Revisions to the calculation methodology of credit valuation adjustments (CVAs).
- Replacement of previous approach to minimum capital requirements for operational risk (basic indicator, standardised and advanced measurement approaches) by a standardised approach based on earnings and historical losses.
- Revision of the calculation methodology of the leverage ratio and introduction of a leverage ratio buffer for global systemically important banks (G-SIBs).
- Output floor set for the internal model-based approaches at a minimum of 72.5% of risk-weighted assets calculated using the standardised approaches.
- Entry into force of the requirements for calculating minimum capital requirements for market risks (FRTB) postponed from 2019 to 1 January 2023.
- Simplified implementation of the rules for category 3 to 5 banks.

FINMA circular 19/1 'Risk diversification – banks' | Ex-post evaluation

Status: • Ex-post evaluation expected in 2023

- Assessment of the effectiveness of the originally enacted regulation.

3.4. Liquidity

Liquidity Ordinance (LiqO) | Partial revision of NSFR

Status: • Publication of the final legislative bills: 11 September 2020
• Entry into force: 1 July 2021

- Enactment of mandatory requirements relating to the Net Stable Funding Ratio (NSFR).
- The requirement is met if the weighted Available Stable Financing (ASF) is greater than the weighted Required Stable Financing (RSF).
- Exemptions possible for individual institutions belonging to a financial group.
- Banks subject to the regime for small banks are exempt from compliance with the NSFR requirements.

FINMA circular 15/2 'Liquidity risks – banks' | Adjustments to the NSFR

Status: • Entry into force: 1 July 2021

- Requirements for the introduction of the net stable funding ratio (NSFR) were already the subject of a consultation or hearing in 2017. Adjustments to the requirements, which have become necessary since then.
- Technical implementing regulations and specifications of the new NSFR requirements according to art. 17f-s LiqO.
- Qualitative requirements and LCR: clarifications, further details and additions in certain areas.

3.5. Asset management/cross-border

SBA Portfolio Management Guidelines 2020

Status: • Entry into force on 1 January 2022 at the latest

- Ensuring the content of the additional rules is compatible with the Financial Services Act (FinSA).
- Better consideration of current investment strategies.
- Guidelines adopted in the form of voluntary self-regulation, without recognition by FINMA and thus not generally binding.
- Institutions that adopt FinSA before the end of the transitional period, i.e. before 1 January 2022, and notify their auditors of the change may apply the Guidelines as of that date.

3.6. Credit business

Ordinance on granting of credits with joint and several federal guarantees as a result of the coronavirus pandemic (COVID-19 Joint and Several Guarantees Ordinance)

- Status:**
- In force since 26 March 2020
 - Repealed as of 19 December 2020 with the entry into force of the COVID-19 Joint and Several Guarantee Act.

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- Package of measures to cushion the economic impact of the coronavirus pandemic.
 - Requirements for the granting and assessment of joint and several guarantees of the Federal Government:
 - Quick and straightforward process for credits up to CHF 500,000 ('COVID-19 Credit');
 - Process for credits from CHF 500,000 to CHF 20,000,000 ('COVID-19 Credit Plus').
 - Maximum term of the joint and several guarantee is five years, with the possibility of extending the repayment period by two years in cases of hardship and subject to approval by the Guarantee Organisation.
 - Regulates the duties of the participating banks and the interest charged on the loans.

Federal Act on COVID-19 Credits with Joint and Several Guarantee (COVID-19 Joint and Several Guarantee Act, COVID-19 JSGA)

- Status:**
- In force since 19 December 2020
 - Referendum deadline: 10 April 2021

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- Incorporation of the emergency COVID-19 Joint and Several Guarantee Ordinance into ordinary law.
 - Regulates the rights and obligations of the four recognised guarantee organisations.
 - Regulates all important aspects over the lifetime of the credits, but not the ongoing granting of credits until 31 July 2020.
 - Provides for instruments to combat abuse and deal with cases of hardship:
 - Possibility to extend existing five-year repayment period not only by two years, but by another five years to a maximum total of ten years.
 - Guaranteed credit of up to CHF 500,000 not regarded as debt for the whole term of the credit, in order to avoid over-indebtedness in accordance with the Code of Obligations.
 - Federal Council will adjust the interest rate annually according to market developments.
 - The statutory auditors of the borrower must set a deadline in the event of violations of the COVID-19 Joint and Several Guarantee Act and, if necessary, inform the guarantee organisation of any other violations of the law.
 - Extension of the validity of the COVID-19 Joint and Several Guarantee Ordinance until the entry into force of the replacement act.

3.7. Organisation/risk management

FINMA circular 18/3 'Outsourcing – banks and insurers' | Total revision

- Status:**
- In force since 1 April 2018
 - After entry into force: immediate application to new or modified outsourcing arrangements
 - Transition period of five years to amend pre-existing outsourcing arrangements
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- Replaces FINMA circular 08/7 'Outsourcing – banks'.
- Obligation to maintain a record of all outsourced services.
- 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.
- In case of outsourcing abroad, all the necessary data required in the event of restructuring, resolution and liquidation must be accessible in Switzerland at all times.
- Extension of the area of application to include insurance companies.

3.8. Other topics

Banking Act (BankA) | Insolvency, deposit insurance, segregation

- Status:**
- Federal Dispatch to Parliament published on 19 June 2020
 - Considered by the National Council on 19 March 2021. Consideration by the Council of States pending
 - Expected entry into force as of beginning of 2022, at the earliest
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- Measures to improve depositor and customer protection:
 - Period in which insured deposits are paid out in the event of bankruptcy shortened to seven working days;
 - Banks may deposit securities with a secure third-party custodian or grant cash loans to the deposit insurance institution amounting to 50% of the contribution obligation;
 - No requirement to hold liquidity for potential cash outflows to the depositor protection scheme;
 - The scheme's systemic upper limit is to be increased to 1.6% of the total amount of insured deposits and at least CHF 6 billion.
 - Obligation of each bank to make preparations rapidly to draw up payment schedules, contact depositors and execute payments on the basis of the lists of depositors.
- Legal basis of instruments for restructuring banks which affect the rights of owners and creditors and were previously only regulated in the FINMA Banking Insolvency Ordinance (BIO-FINMA).
- Introduction in the Federal Intermediated Securities Act (FISA) of the obligation to segregate proprietary assets and customers' assets recorded in custody accounts throughout the entire domestic 'custody chain' and for the first 'link' in the custody chain abroad.
- Improving the function of the Swiss mortgage bond system in the event of the insolvency of a member bank by amending the Mortgage Bond Act (MBoA).

FINMA Bank Insolvency Ordinance (BIO-FINMA) | Adjustments resulting from FinSA/FinIA

- Status:**
- In force since 1 January 2021
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- Adoption in the FINMA regulations of newly created regulations in the superordinate legislation (FinSA and FinIA).

FINMA circular 08/14 'Supervisory reporting – banks' | Repeal of statement

Status: • In force since 1 January 2021

- Repeal of the 'Statement on qualified or significant equity interests'.

FINMA circular 10/2 'Repurchase and reverse repurchase transactions and securities lending and borrowing transactions (Repo/SLB)' | Repeal

Status: • Repealed as of 31 December 2020

- Repeal of the circular, as its provisions are largely contained in the Financial Institutions Act (FinIA) and the Financial Institutions Ordinance (FinIO).

4. Fund management companies/investment funds/representatives of foreign collective investment schemes

Collective Investment Scheme Act (CISA) | Introduction of funds not subject to authorisation

- Status:**
- Federal Dispatch to Parliament published on 19 August 2020
 - Initial consultation in the Council of States expected on 9 June 2021
 - Expected entry into force: 2022 earliest

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- Introduction of a category of funds that are not subject to authorisation by FINMA.
 - Limited Qualified Investment Funds (L-QIF) would be reserved for qualified investors such as pension funds and insurers.

FINMA Collective Investment Schemes Ordinance (CISO-FINMA) | Adjustments resulting from FinSA/FinIA

- Status:**
- In force since 1 January 2021

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- Transfer of the requirements for fund management companies and asset managers of collective investment schemes into the FINMA Financial Institutions Ordinance (FinIO-FINMA).
 - Regulation of publication and reporting obligations for representatives of foreign collective investment schemes.

FINMA Collective Investment Schemes Bankruptcy Ordinance (CISBO-FINMA) | Adjustments resulting from FinSA/FinIA

- Status:**
- In force since 1 January 2021

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- Adoption in the FINMA regulations of newly created regulations in the superordinate legislation (FinSA and FinIA).

FINMA circular 18/3 'Outsourcing' | Extension of scope of application

- Status:**
- In force since 1 January 2021

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- Extension of the scope of the circular to include fund management companies, SICAVs and fund administrators.
 - The circular does not apply to asset managers and trustees.
 - Definition of tasks that shall not be outsourced.

SFAMA guidelines

Status: • Expected entry into force as of beginning of 2021, at the earliest

- Revision of the SFAMA self-regulation (guidelines, technical recommendations, model documents) based on the newly enacted FinSA and FinIA legislation, the amended CISA, the corresponding ordinances of the Federal Council and FINMA regulations.

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