

Synopsis of the most important regulatory developments

Swiss insurance industry – what counts

Status: 1 February 2022



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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”.

After the publication of the dispatch of the Federal Council for the Insurance Supervision Act (ISA) on 21 October 2020, the National Council considered it for the first time on 3 May 2021 and the Council of States on 13. December 2021. 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). The supervision of Swiss branches of insurance companies domiciled abroad and underwriting reinsurance only, which has been envisaged in the consultation draft, has been weakened in the dispatch insofar, as the Federal Council may subject those branches to supervision. The National Council intends to alleviate this provision further. Accordingly, the Federal Council may subject those branches to supervision only, as far as this is required to comply with recognized international standards. In addition, if the foreign reinsurance company is subject to reasonable supervision abroad, a lightened supervision shall be applicable. Unlike the National Council, the Council of States supports the general ombudsman obligation introduced by the Federal Council for the settlement of disputes between policyholder and insurance companies or insurance intermediary but spoke out against the adoption of lower international capital standards for insurers.

The ongoing revision of the ISA also necessitates revisions to the Insurance Supervision Ordinance (ISO), the FINMA Insurance Supervision Ordinance (ISO-FINMA) and various FINMA circulars related to insurance. The content of these revisions will substantiate during considerations of the ISA revision by the Parliament.

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

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2. Chronological project overview

2.1. Interdisciplinary projects










	2021					2022												2023																
	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	2023	2024	2025	2026	2027	2028				
Anti-money laundering/compliance																																		
Federal Act to Increase the Effectiveness of Combating Money Laundering and Terrorist Financing																																		
Anti-Money Laundering Ordinance (AMLO)			1.			17							≈																					
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FMIO (extended transitional period for small non-financial counterparties)																																		
FINMA guidance 04/2020 (extension of deadline for first margin payments of certain OTC derivatives)													30.	1.																				
Other topics																																		
SCO (gender quota and transparency rules for the commodity trading sector)																																		
SCO (overall revision of company law)																																		
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Ordinance on transparency on non-financial matters										≈			≈																					
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 (other adjustments)																																		
Ord. on the implementing regulations relating to the Federal Act on the Adaptation of Federal Law Sustainability in the Swiss financial sector																																		

	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



2.2. Insurance

	2021				2022												2023												
	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	2023	2024	2025	2026	2027
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Federal Insurance Supervision Act (ISA)																													
FINMA circ. 18/4 "Tarifierung - berufliche Vorsorge"																													
FINMA circ. 10/3 "Krankenversicherung nach VVG"																													
FINMA circ. 16/2 "Offenlegung - Versicherer (Public Disclosure)"									30.	1.																			

	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. Anti-money laundering/compliance

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

- Status:**
- Adopted by Parliament on 19 March
 - Referendum deadline: 8 July 2021
 - Expected entry into force: mid-2022

-
- 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.

Anti-Money Laundering Ordinance (AMLO)

- Status:**
- Hearing until 17 January 2022
 - Expected entry into force as of 1 July 2022

-
- Incorporation of relevant provisions of the anti-money laundering ordinances of public authorities (including AMLO-FINMA) to the Anti-Money Laundering Ordinance of the Federal Council:
 - Duties in the event of suspected money laundering;
 - Definition of the term 'reasonable suspicion' in the French-language version.

3.2. Organisation of financial market

Financial Services Act (FinSA)

- Status:**
- In force since 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).

According to art. 2 paragraph 2 lit. d FinSA companies are not subject to the act as far as their operation is subject to the Insurance Supervision Act dated 17 December 2004 (ISA). Accordingly, insurance companies do not have to apply the provisions in relation to the FinSA (and related provisions). Certain aspects of the FinSA will be implemented in the Insurance Supervision Act (ISA) to be revised (see chapter 4.1). As the provisions are material for the financial market industry, the provisions are listed for the sake of completeness.

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 Services Ordinance (FinSO) | Extension of transitional period for key information document

- Status:**
- In force since 1 January 2022
 - Extension of the transitional period for the preparation of the key information document until 31 December 2022

-
- The transitional provision previously defined in FinSO and CISO provided for the preparation of key information documents for structured products, collective investment schemes and other financial instruments as of 1 January 2022.
 - Modification of the transitional provisions of art. 111 FinSO and art. 144 CISO, so that a simplified prospectus can continue to be prepared until 31 December 2022, following the extension of the transitional period in the European Union.

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

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

-
- 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

-
- 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 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

-
- 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.

3.3. 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:**
- In force since 1 January 2021
 - Transitional periods up to 31 December 2030 at the latest
-
- 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
 - Expected entry into force: 1 January 2023, at the earliest
 - Adaptation of the articles of incorporation and organisational regulations to the new law within two years of its entry into force
-
- 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:**
- In force since 1 January 2022
 - Transitional period: First-time application for the financial year beginning one year after the entry into force, i.e. applicable to the 2023 financial year

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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.

Ordinance on transparency on non-financial matters

- Status:**
- Consultation expected: March 2022

-
- Preparation of an implementing ordinance for the binding implementation of the recommendations of the Task Force on Climate-related Financial Disclosures (TCFD) for large Swiss companies.
 - This relates to reporting obligations concerning climate-related activities as part of the counterproposal to the Responsible Business Initiative.
 -

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: second half of 2022

-
- 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) approved by Parliament on 25 September 2020.

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

- Status:**
- Hearing until 14 October 2021
 - Expected entry into force: second half of 2022

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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:
 - Minimum data security requirements,
 - Procedures related to the duty of disclosure and duty to inform,
 - Reporting data security breaches.

FINMA guidance 03/2018, 10/2020 und 03/2021 | 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 guidance 10/2020 published recommendations and expected milestones regarding the replacement of LIBOR in its guidance 10/2020.
 - FINMA guidance 03/2021 states that new LIBOR-based business transactions concluded as of the second half of 2021 may be considered a violation of the regulatory requirements with regard to adequate risk management, except for justified and documented exceptions.

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

- Status:**
- In force since 1 February 2021 for amendments to the Code of Obligations, the Federal Intermediated Securities Act and the Federal Act on International Private Law
 - In force since 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 organized 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: • In force since: 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.

Sustainability in the Swiss financial sector

Status: • Publication of the report of the Federal Council of 17 November 2021 on the climate-related impact of the financial sector

- Review of progress of implementation by the financial sector by the end of 2022

- Recommendation to financial market actors on the creation of transparency on financial products and client portfolios using comparable and meaningful indicators of climate-related impact.
- Promoting a common definition of sustainability impact to avoid 'greenwashing'.
- Reassessment of the progress of implementation by the financial sector by the end of 2022 and, if necessary, revision of the Financial Market Supervision Act to avoid 'greenwashing'.

4. Insurance

4.1. Changes in laws

Partial revision Insurance Contract Act (ICA)

- Status:**
- Federal Dispatch published on 28 June 2017
 - Approval of parliament on 19 June 2020
 - In force since: 1 January 2022

-
- Draft included measures to facilitate electronic transactions.
 - Other changes include:
 - Introduction of a right of withdrawal for the policyholder within 14 days
 - Provisional cover
 - Ordinary right to terminate the contract of both parties after 3 years; right to terminate the contract at any time for important reasons
 - Waiver of termination of health insurers regarding supplementary health insurance
 - Prolongation of the period of limitation for claims arising out of insurance contracts from two to five years
 - Introduction of a general direct claim of the injured for all liability insurances
 - Limited protection of policyholders in the event of large risks resp. professional clients

Insurance Supervision Act (ISA)

- Status:**
- Federal Dispatch: 21 October 2020
 - Considered by the National Council on 3 May 2021 and by the Council of States on 12 December 2021 for the first time
 - Difference resolution procedure expected: Spring session 2022
 - Expected entry into force: 1. quarter 2024

-
- 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
 - In consideration of international standards, the Federal Counsel may subject Swiss branches of insurance companies domiciled abroad underwriting reinsurance only to supervision
 - Insurance special purpose vehicle placed under supervision
 - Selective adjustments e.g., possibility to exempt small insurance companies from supervision or provisions for group supervision
 - Obligation to register with an ombudsman's office for all insurance companies and non-tied insurance intermediaries and general settlement of disputes between policyholder and insurance companies through mediation proceedings with an ombudsman is disputed in Parliament

4.2. In force amendments to existing circular letters of FINMA

FINMA Circular 2018/4 'Tarifizierung – berufliche Vorsorge'

- Status:**
- 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.

FINMA Circular 2010/3 «Krankenversicherung nach VVG»

- Status:**
- Entry into force: 1 June 2021
 - Transitional period for adjustment of General Terms and Conditions of Insurance regarding new contracts: 1 January 2023
 - Transitional period for adjustment of General Terms and Conditions of Insurance regarding existing contracts: 1. January 2023, if feasible according to civil law
 - Transitional period for adjustment of as of 1 June 2021 existing, technical unfounded deductions: as soon as feasible according to civil law
-
- Transfer of existing FINMA practice regarding protection of insured against abusive premium, restriction of permissible profit margin and combating non justified inequality of insured into circular
 - Particularly concretion of the term «inequality» according to art. 117 para. 2 AVO and associated limitations of technical unfounded deductions
 - Mentioning of the effects on premium resulting of a change of age group in General Terms and Conditions of Insurance
 - Specification of the requirements for rate increase above measured exogenous inflation in case of closed portfolio
 - Specification of certain recitals and clarification of selected definitions

FINMA Circular 2016/2 «Offenlegung – Versicherer (Public Disclosure)»

- Status:**
- Entry into force: 1 July 2021
 - Transitional period: First publication in the report on the financial situation for the financial year 2021
-
- Disclosure of management of climate-related financial risks:
 - Description of the major climate-related financial risks and their impact on the business strategy, business model and financial planning (strategy)
 - Disclosure of the process for identifying, assessing and managing climate-related financial risks (risk management) as well as quantitative information (including a description of the applied methodology) on climate-related financial risks
 - Description of the central attributes of the governance structure in relation to climate-related financial risks
 - Initially only large insurance companies (supervisory categories 1 and 2) fall under the scope of the disclosure obligations