

Synopsis of the most important regulatory developments

Swiss insurance industry – what counts

Status: 1. July 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, it has been considered by the Parliament. Following the procedure for settling differences, the partial revision of the ISA has been unanimously approved on 18. March 2022. 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. 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.

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. On 17. May 2022, the Federal Department of Finance (FDF) published the draft amendment to the ISO and opened the consultation period. The consultation will last until 7. September 2022. For an overview of the ISO revision, we refer to Chapter 4.1.

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

	2022						Jul	2023						2024	2025	2026	2027	2028	2029								
	Jan	Feb	Mar	Apr	May	Jun		Aug	Sep	Oct	Nov	Dec	Jan							Feb	Mar	Apr	May	Jun	Jul	Aug	Sep
Anti-money laundering/compliance																											
Federal Act to Increase the Effectiveness of Combating Money Laundering and Terrorist Financing																											
Anti-Money Laundering Ordinance (AMLO)		17.																									
FINMA Anti-Money Laundering Ordinance (AMLO-FINMA) (partial revision)			8.		10.																						
Organisation of financial market																											
FinSO (extension of transitional period for key information document)		1.																									
FINMA circular 'FinSA code of conduct' (publication of new circular)																											
FMA (assessment of the regulation)																											
FMIO (extended transitional period for small non-financial counterparties)																											
FMIO-FINMA (amendment of derivative categories)				9.		5.																					
FINMA guidance 04/2020 (extension of deadline for first margin payments of certain OTC derivatives)																											
Other topics																											
SCO (gender quota and transparency rules for the commodity trading sector))																											
SCO (overall revision of company law)																											
Ordinance against Excessive Remuneration in Listed Companies Limited by Shares (ERCO) (repeal)																											
SCO (indirect counter-proposal to the 'Responsible Business' initiative)		1.																									
Ordinance on climate reporting			30.			7.																					
Sustainability in the Swiss financial sector																											
Federal Act on Data Protection (FADP) (total revision)																											
Ord. to the Federal Act on Data Protection (OFADP) (total revision)																											

	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

	2022												2023												2024	2025	2026	2027	2028	2029
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec						
Partial Revision Insurance Contract Law (ICA)	1.																													
Federal Insurance Supervision Act (ISA)																			≈											
Ordinance on the Supervision of Private Insurance Institutions (AVO)					17.		7.												≈											
FINMA circ. 18/4 "Tarifizierung - berufliche Vorsorge"																						31.								
FINMA circ. 10/3 "Krankenversicherung nach VVG"																														

	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: 1 October 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 October 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.

FINMA Anti-Money Laundering Ordinance (AMLO-FINMA) | Partial revision

- Status:**
- Consultation ended on 10 May 2022
 - Expected entry into force: 1 December 2022

-
- Adoption of the changes to the Anti Money Laundering Act (AMLA) and the Anti-Money Laundering Ordinance (AMLO).
 - Regulates the criteria for the risk-based periodic validation that client data is up to date and on the relevant processes established in an internal directive.
 - Duties in the event of a suspicion of money laundering transferred from the AMLO-FINMA to the AMLO.
 - A few minor adjustments: Extension of the scope of application to DLT trading facilities, clarification regarding the threshold for transactions with virtual currencies, specification of the regulatory competency of SRO-SIA
 - A transitional period of six months from the date of entry into force for technical arrangements to clarify the threshold for transactions in virtual currencies

3.2. Organisation of financial market

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.
 - Adjustment 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.
-

FINMA circular 'FinSA code of conduct' | Publication of new circular

- Status:**
- Hearing expected: Q3 2022
 - Expected entry into force: Q1 2023
-

- Publication of basic questions regarding the implementation in practice and interpretation of the code of conduct according to the Financial Services Act (FinSA) and the Financial Services Ordinance (FinSO).
-

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 Financial Market Infrastructure Ordinance (FMIO-FINMA) | Adjustment of derivatives categories

- Status:**
- Hearing until 5 July 2022
 - Expected entry into force: Q1 2023
 - Transitional period expected: Compliance with the defined reporting requirements within 9 months of entry into force

-
- Adjustment of the derivatives categories subject to the obligation to clear trades via a counterparty in the EU.
 - Precise definition of the content to be reported in the event of reportable derivative transactions.

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

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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 disclosing the information in the compensation report for:
 - Board of Directors: at the latest for the financial year beginning 5 years after the entry into force;
 - Board of Executive Board: at the latest for the financial year beginning 10 years after the entry into force.
 - Increased transparency requirements applicable to the commodities sector through the disclosure of payments to state-owned entities.
 - First-time application for the financial year beginning one year after the entry into force.

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

- Status:**
- Entry into force: 1 January 2023
 - 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.

Ordinance against Excessive Remuneration in Listed Companies Limited by Shares (ERCO) | Repeal

- Status:**
- Date of repeal: 1 January 2023

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- Transfer of the provisions of the Ordinance against Excessive Remuneration in Listed Companies Limited by Shares (ERCO) to the Code of Obligations.
 - Repeal of the Ordinance as of 1 January 2023.

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 climate reporting

- Status:**
- Hearing until 7 July 2022
 - Expected entry into force: 1 January 2023

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- Precise definition of the contents of reporting on climate (in particular on CO₂ targets) required for large Swiss companies as part of the reporting on environmental issues in accordance with the Code of Obligations art. 964a–c. Other environmental issues are not covered by this Ordinance.
 - Regulation of the presumption that the climate reporting obligation for large Swiss companies is fulfilled if the reporting is based on the recommendations of the Task Force on Climate-related Financial Disclosures (TCFD). If a company applies guidelines or standards other than those of the TCFD, it must demonstrate that the reporting obligation is fulfilled in some other way.

The requirement to integrate climate reporting in the report on non-financial matters and to publish it on the company's website in a digital format (e.g. pdf or XBRL), which is both human and machine readable.

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, adjustment of the Financial Market Supervision Act to avoid 'greenwashing'.

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: 1 September 2023

-
- 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 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: 1 September 2023

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

4. Insurance

4.1. Changes in laws and ordinances

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:**
- Adopted by Parliament on 18 March 2022
 - Referendum deadline: 7. July 2022
 - Expected entry into force: 1 July 2023
-

- 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 Council 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

Insurance Supervision Ordinance (ISO)

- Status:**
- Hearing: 17 May 2022 until 7 September 2022
 - Expected entry into force: 1 July 2023
-

- New Regulation of the conditions under which FINMA grants supervisory relief (type, scope and frequency of reporting) for smaller insurance and reinsurance undertakings (categories 4 and 5)
- Definition of the term "business related to the insurance business" and specification of the requirements for the permission of FINMA of business not related to the insurance business.
- Introduction of the "Prudent Man Principle", according to which an insurance company can have an individually designed investment list approved by FINMA. Alternatively, the insurance company can apply a short investment list predefined by FINMA.
- SST: no content revision; where necessary, individual adjustments and additional specifications. The intervention thresholds are now no longer regulated at circular level, but in the ISO and there are only two intervention thresholds instead of three.
- Substantiation of the rules of conduct of the ISA for the distribution of qualified life insurance policies (amongst others relating to offer, basis information sheet, appropriateness test and documentation obligations).
- Tightening of the term "insurance intermediation" and adaptation to the possibilities of digital information technology as well as codification of the current supervisory practice of FINMA at ordinance level.
- Definition of conduct, which is incompatible with the independence of unaffiliated insurance intermediaries, and specification of the intermediary supervision tightened as part of the ISA revision (professional liability, Corporate Governance principles, reporting etc.)
- Provisions regarding insurance special purpose vehicles, which newly will be subject to supervision under the partial revision of the ISA.

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