



# Regulatory update: an overview of the latest develop- ments in the financial sector

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As cross-border interconnections in the financial markets have multiplied over the last few years, Switzerland's financial regulations have also become more influenced by international standards. It should therefore hardly come as a surprise that currently there is a long list of pending financial market regulations.

*The following is meant to give you an overview of regulations currently in the pipeline as well as some of the latest legislation that has recently entered into force. Having said that, please note that neither the Financial Services Act (FinSA) nor the Financial Institutions Act (FinIA) are being treated in this article. In view of the topicality and the importance of these draft laws, those topics have been covered in a separate article dedicated to just this, entitled "Parliament's addition of Article 8(1) FinSA and its implication for Swiss financial service providers" by Thierry Ammann in this edition of Compliance Matters.*

*There is also a separate article on the Automatic Exchange of Information showing all of the latest developments, entitled "The AEoI has been in force for a year – what remains to be done?" by Philipp Zünd, also in this edition of Compliance Matters.*

## 1. Securities trading / financial market infrastructures

The Financial Markets Infrastructure Act (FMIA),<sup>1</sup> the Financial Market Infrastructure Ordinance (FMIO)<sup>2</sup> as well as the Financial Market Infrastructure Ordinance (FMIO-FINMA)<sup>3</sup> of the Swiss Financial Market Supervisory Authority (FINMA) entered into force on 1 January 2016. Among other things, these three pieces of legislation address the duties of operators of organized trading venues and the notification duties related to securities trading. In order to define the related supervision practice FINMA published the revised circulars 2018/2 "Duty to report securities transactions"<sup>4</sup> and 2008/4 "Securities journal"<sup>5</sup> as

well as the newly created circular 2018/1 "Organized trading facilities".<sup>6</sup> These three circulars have now become effective as of 1 January 2018.<sup>7</sup>

Essentially, FINMA adjusted the circular "Duty to report securities transactions" to the new legal situation, i.e. that beneficial owners of securities transactions now also have to be reported.<sup>8</sup> As an alternative, FINMA also accepts a report in the format of the European Union. However, such alternative reportings under MiFIR9 are only permitted if the office where it has to be reported is equivalent in its supervision for the purpose of transactions monitoring according to FMIA.<sup>10,11</sup> Moreover, the list of exceptions applicable to the duty to report (concerning financial statements abroad in domestic and foreign securities and derivatives based on these) was revised.<sup>12</sup> In addition, the duty to report now also applies to certain non-standardized derivatives.<sup>13</sup>

The amendment of the circular "Securities journal" relates mostly to the revision of the notification duties. What is of interest in this respect is the fact that FINMA – contrary to its original intention – decided to not subject branch offices abroad to the duty to centrally maintain a securities journal.<sup>14</sup> Foreign branch offices, however, must nonetheless ensure that the journals are made available to their Swiss headquarters upon request.<sup>15</sup> FINMA provided further details in respect to deadlines and the supervisory practice foreseen in respect of notification duties under FMIA in

<sup>1</sup> Federal Act on Financial Market Infrastructures and Market Conduct in Securities and Derivatives Trading (Financial Market Infrastructure Act, FMIA) of 19 June 2015, SR 958.1.

<sup>2</sup> Ordinance on Financial Market Infrastructures and Market Conduct in Securities and Derivatives Trading (Financial Market Infrastructure Ordinance) of 25 November 2015, SR 958.11.

<sup>3</sup> Ordinance on Financial Market Infrastructures and Market Conduct in Securities and Derivatives Trading of the Swiss Financial Market Supervisory Authority (FINMA Financial Market Infrastructure Ordinance, FINMA-FMIO) of 3 December 2015, SR 958.111.

<sup>4</sup> FINMA circular 2018/2 accessible at <<https://www.finma.ch/de/~media/finma/dokumente/dokumentencenter/myfinma/rundschreiben/finma-rs-2018-02.pdf?la=de>> (last accessed on 16 January 2018).

<sup>5</sup> FINMA circular 2008/4 accessible at <<https://www.finma.ch/de/~media/finma/dokumente/dokumentencenter/myfinma/rundschreiben/finma-rs-2018-04.pdf?la=de>> (last accessed on 16 January 2008).

<sup>6</sup> FINMA circular 2018/1 accessible at <<https://www.finma.ch/de/~media/finma/dokumente/dokumentencenter/myfinma/rundschreiben/finma-rs-2018-01.pdf?la=de>> (last accessed on 16 January 2018).

<sup>7</sup> Also see: FINMA press release "FINMA publishes circular on securities trading" dated 9 February 2017, accessible at <<https://www.finma.ch/de/news/2017/02/20170209-mm-rs-finfrag/>> (last accessed on 16 January 2018).

<sup>8</sup> Also see FINMA circ. 2018/2, margin nos. 27-31.

<sup>9</sup> Regulation (EU) No. 600/2014 dated 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012, ABl. EU L 173 dated 12 June 2014, 84 ff.

<sup>10</sup> See Article 31 FMIA.

<sup>11</sup> Also see FINMA circ. 2018/2, margin no. 31.

<sup>12</sup> Also see FINMA circ. 2018/2, margin no. 21.

<sup>13</sup> Also see: FINMA press release "FINMA publishes circular on securities trading" dated 9 February 2017, accessible at <<https://www.finma.ch/de/news/2017/02/20170209-mm-rs-finfrag/>> (last accessed on 16 January 2018).

<sup>14</sup> Total revision of FINMA circ. 08/11 "Disclosure requirements for securities transactions" and partial revision of FINMA circ. 08/04 "Securities journal", report on the hearing from 28 September to 9 November 2016 on the drafts of circulars (dated 25 January 2017), p. 18.

<sup>15</sup> Also see FINMA circ. 2008/4, margin no. 20.

2017 with the publication of its “FINMA Guidances”.<sup>16</sup> Purpose of the new circular “Organized trading facilities” is the definition of FINMA’s practice in regard to organized trading facilities, which previously were not legally regulated. The circular explains the term “organized trading facilities” and the duties operators of such trading facilities have.<sup>17</sup> In particular, it is crucial to segregate proprietary trading from matched principal orders, i.e. that these are not allowed to take place in the same trading system in order to avoid conflicts of interest.<sup>18</sup>

## 2. Clarification of provisions by the Swiss Federal Council on Fintech

The revised Banking Ordinance<sup>19</sup> foresees that deposits from the public up to CHF 1 million may be accepted without any license (the so-called “sandbox”) provided these funds do not bear interest and are not invested.<sup>20</sup> This is even true if the deposits are collected from more than 20 depositors.<sup>21</sup> In order to protect the depositors, these must be informed of the missing FINMA supervision as well as of the absence of any depositor protection.<sup>22</sup> On the other hand, if deposits are meant to fund a commercial or industrial activity, these funds may bear interest and they may be invested.<sup>23</sup>

Moreover, the Swiss Federal Council has increased the number of days that funds may remain in so-called settlement accounts from seven to sixty.<sup>24</sup>

Here, the objective of the revision was getting rid of regulatory hurdles for business models deemed to be innovative in the area of digital financial services.<sup>25</sup>

In order to define its supervisory practice in regard to the Fintech regulations mentioned above (sandbox and regulation on settlement accounts), FINMA adjusted its circular 2008/3 “Public deposits with non-banks” to reflect the new provisions of the ordinance; in doing so, it circumscribed matters excluded from the duty to have a

license and adjusted the period regarding the settlement accounts.<sup>26</sup>

However, FINMA did not address the creation of a separate licensing category planned in the Banking Act<sup>27</sup> for so-called Fintech companies (companies that accept deposits from the public up to a maximum of CHF 100 million without going into the lending business) in the current partial revision of the circular.<sup>28</sup>

The partially revised circular became effective as of 1 January 2018.

## 3. Money-laundering and combating terrorism

### 3.1 Partial revision of the FINMA Anti-Money Laundering Ordinance

During its fourth country review, the Financial Action Task Force (FATF) gave Switzerland a good overall rating,<sup>29</sup> but detected some weaknesses in the Swiss setup for combating money laundering and the financing of terrorism.<sup>30</sup> FINMA’s Anti-Money Laundering Ordinance (AMLO-FINMA)<sup>31</sup> will be adjusted to remediate weaknesses. In doing so, FINMA’s supervisory and enforcement practice findings will be integrated.<sup>32</sup>

According to the draft, financial intermediaries would also have to verify the information on the beneficial owner(s) also for normal-risk clients and update client information regardless of events and at regular intervals. In order to show itself flexible to financial intermediaries, FINMA now suggests using a risk-based approach, specifically in regard to the scope of the verification activities, as well as in regard to the type and frequency of updates.<sup>33</sup> The revised

<sup>16</sup> See FINMA’s supervisory newsletter 01/2017 *Financial Markets Infrastructure Act: Deadlines regarding the duty to exchange collateral, 02/2017 Financial Market Infrastructure Act: notification duties / trade repository and 05/2017 Financial Markets Infrastructure Act: reporting to trade repositories / extending of transitional periods* all accessible at <<https://www.finma.ch/de/dokumentation/finma-aufsichtsmittelungen/#Order=4>> (last accessed on 16 January 2018).

<sup>17</sup> Also see FINMA circ. 2008/4, margin no. 1.

<sup>18</sup> Also see FINMA circ. 2008/4, margin no. 26.

<sup>19</sup> Ordinance on Banks and Savings Banks (Banking Ordinance, BO) dated 30 April 2014, SR 952.02.

<sup>20</sup> Article 6(2) BO.

<sup>21</sup> Also Article 6(2) BO.

<sup>22</sup> Article 6(3) in conjunction with Article 6(2)(c) BO.

<sup>23</sup> Article 6(3) BO.

<sup>24</sup> Article 5(3)(c) BO.

<sup>25</sup> FINMA press release “Swiss Federal Council opens consultation draft on new Fintech regulations” dated 1 February 2017, accessible at <<https://www.admin.ch/gov/de/start/dokumentation/medienmitteilungen.msg-id-65476.html>> (last accessed on 16 January 2018).

<sup>26</sup> Also see the FINMA press release “Sandbox and settlement account: FINMA adjusts circular” dated 1 September 2017, accessible at <<https://www.finma.ch/de/news/2017/09/20170901-mm-rs-publikumseinlagen-bei-nichtbanken/>> (last accessed on 16 January 2018).

<sup>27</sup> Also see the FINMA press release, “Sandbox and settlement account: FINMA adjusts circular” dated 1 September 2017, accessible at <<https://www.finma.ch/de/news/2017/09/20170901-mm-rs-publikumseinlagen-bei-nichtbanken/>> (last accessed on 16 January 2018).

<sup>28</sup> Swiss Federal Act on Banks and Savings Banks (Banking Act, BA) dated 8 November 1934, SR 952.0.

<sup>29</sup> Also see: Swiss Federal Council’s press release, “Switzerland receives good marks in the FATF country review in regard to the combating of money laundering and terrorist financing” dated 7 December 2016, accessible at <<https://www.admin.ch/gov/de/start/dokumentation/medienmitteilungen.msg-id-64837.html>> (last accessed on 16 January 2018).

<sup>30</sup> For details on the FATF country report for Switzerland 2016, please refer to <<http://www.fatf-gafi.org/publications/mutualevaluations/documents/mer-switzerland-2016.html>> (last accessed on 16 January 2018).

<sup>31</sup> Ordinance of the Swiss Financial Market Supervisory Authority on the Prevention of Money Laundering and the Financing of Terrorist Activities (AMLO-FINMA, SR 955.033).

<sup>32</sup> Also see: FINMA press release, “FINMA opens hearings on the partial revision of FINMA’s Anti-Money Laundering Ordinance” dated 4 September 2017, accessible at <<https://www.finma.ch/de/news/2017/09/20170904-mm-geldwaeschereiverordnung-finma/>> (last accessed on 16 January 2018).

<sup>33</sup> Also see: FN 32.

ordinance also foresees additional duties in respect of due diligence if a domiciliary company and complex structures or high-risk countries are involved.

Furthermore, the adjusted ordinance will also elucidate the requirements and duties made of financial intermediaries that have branch offices abroad or financial groups with foreign group companies in regard to their global supervision of legal and reputational risk.<sup>34</sup> Specifically, it foresees additional risk analyses at a consolidated basis, at least an annual report as well as possible ad-hoc reports, internal on-site controls and the duty to ensure access to information.<sup>35</sup>

Finally, the identification threshold of clients and beneficial owners for cash transactions and the subscription of non-listed collective investment schemes is to be lowered from CHF 25,000 to CHF 15,000 (FATF level).<sup>36</sup>

The consultation on the partial revision of the Anti-Money Laundering Ordinance lasted until 16 October 2017. Its partial revision will enter into force only in 2019.

### 3.2 Swiss Federal Act to Reinforce the Combating of Money Laundering and of Financing Terrorism

Consequently, to the FATF country review, the Swiss Federal Council ordered the Swiss Federal Department of Finance in June 2017 to draw up legal measures in order to make Swiss law conform better to FATF standards, thus strengthening the effectiveness of its law to combat money laundering and the financing of terrorism. The time allocated for the implementation of these legislative measures is three years. It is expected that FATF will perform a follow-up country review in 2021 to audit whether the effectiveness has indeed been improved.<sup>37</sup>

The consultation on this draft is expected to start in June 2018.<sup>38</sup>

### 3.3 Adjustments to the Anti-Money Laundering Act and the Mutual Assistance Act

In June 2017, the Swiss Federal Council published a draft of its decision to approve and implement the Council of Europe's agreement on the prevention of terrorism and the

protocol to it, as well as to enhance the criminal law tool kit against terrorism and organized crime.<sup>39</sup> The consultation draft was open to comments until 13 October 2017. In the course of this implementation, the Anti-Money Laundering Act<sup>40</sup> will also be amended. Among other things, the Swiss Money Laundering Reporting Office Switzerland (MROS) will now also have the possibility to demand information from participating Swiss financial intermediaries in connection with transactions and business relationships based on information received from foreign money-laundering reporting offices (cf. Article 11a(2bis) and (3) AMLA-draft).

Moreover, the Mutual Assistance Act<sup>41</sup> is to be adjusted in the course of amending the draft, introducing the so-called dynamic legal assistance (cf. Article 80(dbis) to (dter) IMAC-draft). This amendment will create the possibility to order all of the necessary legal measures for foreign proceedings and as well as transmit information and evidence gathered in connection with the prevention and prosecution of a criminal act where extradition might apply prior to the final order. In addition, it is expected that joint investigative groups will be created.

These provisions are meant to enhance international collaboration and allow for a more rapid intervention.

## 4. FINMA circular on outsourcing

On 5 December 2017, FINMA issued its latest version of the circular 2018/3 "Outsourcing – Banks and Insurance companies".<sup>42</sup> It regulates the handling of outsourced services holistically, for banks, securities dealers and insurance companies.

Among other things, the circular now covers the following aspects:<sup>43</sup>

- Principle-based and technology-neutral regulation and greater individual responsibility of the institutes: Institutions should implement the individual outsourcing requirements and duties in such a way that they can

<sup>34</sup> Article 6(1) FINMA-AMLO (draft).

<sup>35</sup> Also see: FINMA press release, "FINMA opens hearings on the partial revision of FINMA's Anti-Money Laundering Ordinance" dated 4 September 2017, accessible at <<https://www.finma.ch/de/news/2017/09/20170904-mm-geldwaeschereiverordnung-finma/>> (last accessed on 16 January 2018).

<sup>36</sup> Also see FN 35.

<sup>37</sup> Also see: The Swiss Federal Council's press release, "The Swiss Federal Council defines the general direction for follow-up work in regard to the FATF country report on Switzerland", accessible at <<https://www.admin.ch/gov/de/start/dokumentation/medienmitteilungen/bundesrat.msg-id-67338.html>> (last accessed on 16 January 2018).

<sup>38</sup> According to the overview "Planned legislative consultations", accessible at <<https://www.admin.ch/ch/d/gg/pc/preview.html#efd>> (last accessed on 16 January 2018).

<sup>39</sup> Cf. first draft on the whole matter and explanatory report by the Swiss Federal Office of Justice, dated June 2017, "Approval and implementation of Council of Europe's agreement on the prevention of terrorism and the protocol to it, as well as the enhancement of the criminal law tool kit against terrorism and organized crime", accessible at <<https://www.bj.admin.ch/dam/data/bj/sicherheit/gesetzgebung/terrorismus-europarat/vn-ber-d.pdf>> (last accessed on 16 January 2018).

<sup>40</sup> Swiss Federal Act on Anti-Money Laundering and Financing Terrorism (AMLA; SR 955.0) dated 10 October 1997.

<sup>41</sup> Federal Act on International Mutual Assistance in Criminal Matters (Mutual Assistance Act, IMAC, SR 351.1) dated 20 March 1981.

<sup>42</sup> FINMA circular 2018/3 accessible at <<https://www.finma.ch/de/~media/finma/dokumente/dokumentencenter/myfinma/rundschreiben/finma-rs-2018-03.pdf?la=de>> (last accessed on 16 January 2018).

<sup>43</sup> In particular, see FINMA circ. 2018/3 "Outsourcing – Banks and Insurance companies", report on the consultation from 6 December 2016 until 31 January 2017 on the circular's draft (21 September 2017).

sufficiently take into consideration their specific business models and risks. Institutions are also asked to be more responsible when assessing the materiality of outsourced services. The functions on which compliance with financial market supervision legislation depends are deemed to be material. The break-down is specific to the institution.

- The circular's scope of application extends also to insurance companies domiciled in Switzerland and branch offices of foreign insurance companies that require a license pursuant to Articles 3 and 6 ISA in conjunction with Article 5 ISA.<sup>44</sup>
- Equal treatment of group-internal and external outsourcing – albeit with certain alleviations. Risks associated with outsourcing must be taken into account from a consolidated perspective across the group. For various requirements, the affiliation within the Group can be taken into account, provided that the risks typically associated with outsourcing verifiably do not exist or that certain requirements are not relevant or otherwise regulated.
- Inventory of outsourced functions: The addressees of the circular have to maintain an inventory of outsourced functions, which contains a description of the function outsourced as well as the service provider, recipient and the person in the company who is responsible for monitoring and controlling the service provider.
- Higher requirements in regard to the documentation of the selection, instruction and control of the service provider. Specifically, the circular also demands a risk analysis, which must consider the concentration risk and risk of dependence, among other things.
- New minimum requirements for outsourcing agreements: The outsourcing agreement must cover the minimum content described in the circular. Now, also group-internal outsourcing requires a written agreement.
- Principle-based approach and proportionality principle for outsourcing the risk control and compliance functions: The risk control and compliance functions are independent control bodies and may be outsourced only by institutions in Categories 4 and 5. Only specific, purely operative tasks in risk management and local compliance may be outsourced by institutions of all categories.
- Additional requirements and duties in regard to security-

related outsourcing, i.e. in Information Technology: The institution and the service provider have to define the security requirements as well as a contingency plan in an agreement.

- Definition of full and unhindered inspection and review rights at all times for the company, the audit firm and FINMA: In case of outsourcing abroad, the company has to be able to explicitly guarantee that it itself, its external auditors and FINMA can exercise and enforce their right of inspection and review. These rights have to be defined contractually; however, they do not have to be evidenced to FINMA anymore.
- Loosening of the rules for the delegation of audit procedures: Audit activities related to outsourcing do not necessarily need to be outsourced to an audit firm organized according to Swiss law. The audit firm also no longer has to be the same one that was mandated with the financial audit. However, the regulatory audit firm now carries the final responsibility also if audit procedures are delegated, i.e. for the confirmation of the adherence to the circular.
- Guarantee that a service provider can be reorganized or wound down in Switzerland in the case of outsourcings abroad. Accordingly, the data must be available and readable from Switzerland at all times without restriction.
- Because it is a regulatory law, the circular no longer explicitly mentions data protection or the protection of secrecy. However, naturally these still apply.

The circular will enter into force on 1 April 2018. Banks and securities dealers have five years to adjust their current outsourcing relationships to the requirements and duties of the circular. However, if an existing outsourcing relationship changes after the circular has entered into force on 1 April 2018 or if a new relationship is entered into, the new rules become applicable immediately. For instance, the company has to have adjusted its internal processes by 1 April 2018 and have inventoried all of its outsourcing relationships so it can ensure that requirements and duties for new outsourcings can be maintained. No transitional period is foreseen for insurance companies, as these were previously not affected by the circular.<sup>45</sup>

As the above-mentioned adjustments of FINMA's practice can have far-reaching impacts on the addressees of the circular, we recommend that banks, securities dealers and insurance companies analyze their existing outsourcing relationships and those planned in the near future and, if necessary, adjust these accordingly and in a timely manner.

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<sup>44</sup> Swiss Federal Act on the Supervision of Insurance Companies (Insurance Supervision Act, SR 961.01) dated 17 December 2004.

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<sup>45</sup> Also see: FINMA circ. 2018/3, margin nos. 37 et seqq.

## 5. Expected regulatory amendments for banks

### 5.1 Depositor protection scheme and insolvency – revision of the Banking Act

In February 2017, the Swiss Federal Council decided to enhance the depositor protection scheme with a number of actions. The Swiss Federal Department of Finance (FDF) was ordered to work out a consultation draft on the amendment of the relevant laws – in particular the Banking Act.<sup>46</sup> Simultaneously, the Swiss Federal Council published three steps intended to enforce the depositor protection scheme in view of international developments in regard to the securing of bank deposits:

- Shortened period until secured deposits are paid out in case of a bank's bankruptcy;
- Better financing of the depositor protection scheme by depositing securities in the amount of 50 percent of outstanding contributions due by the banks; and
- Redefinition of the system's ceiling to now 1.6 percent of the total of the secured deposits.

### 5.2 Too big to fail – calculating the investment deduction

The regulatory side effects of the Too big to fail (TBTF) instruments (increase in financing costs and expansion of the balance sheet of group parent companies) on the investment deduction would cause a higher tax burden for group parent companies domiciled in Switzerland if these are not corrected accordingly. In order to remove these unwanted negative side effects, the Swiss Federal Council opened the consultation on the draft of the "Swiss Federal Act on the Calculation of the Investment Deduction for Too-Big-to-Fail Instruments". This legal provision is meant to amend the DFTA<sup>47</sup> and the DTHA<sup>48</sup> insofar that the calculation of the net income of group parent companies of banks should not include (i) *financing costs* and (ii) *receivables from funds provided for intercompany funding* (issue of TBTF instruments, such as CoCos, write-off bonds and bail-in bonds). The Swiss Federal Council wishes to foster equity build-up at group parent companies of banks in Switzerland, which have issued FINMA-approved TBTF instruments, so that this process is accelerated, thus enhancing Switzerland's stability as a financial center.<sup>49</sup>

<sup>46</sup> Cf. the press release of the FDF "Swiss Federal Council wants to enhance the depositor protection scheme" dated 15 February 2017, accessible at <[https://www.efd.admin.ch/efd/de/home/dokumentation/nsb-news\\_list.msg-id-65655.html](https://www.efd.admin.ch/efd/de/home/dokumentation/nsb-news_list.msg-id-65655.html)> (last accessed on 16 January 2018).

<sup>47</sup> Federal Act on Direct Federal Taxation of 14 December 1990 (SR 642.11).

<sup>48</sup> Swiss Federal Act on the Harmonization of Direct Taxation of Cantons and Municipalities of 14 December 1990 (SR 642.14).

<sup>49</sup> Also see: Press release of the Swiss Federal Council, "Swiss Federal Council wants to facilitate equity build-up" dated 9 June 2017, accessible at <<https://www.admin.ch/gov/de/start/dokumentation/medienmitteilungen.msg-id-67008.html>> (last accessed on 16 January 2018).

The consultation on this enactment was closed on 29 September 2017. These improvements are expected to enter into force at the earliest on 1 January 2019.<sup>50</sup>

### 5.3 Basel III – capital adequacy standards

The reform package of Basel III initiated by the G20 is being worked out by the Basel Committee for Banking Supervision since 2013, with legislation successively entering into force. As of the beginning of 2018, it is especially the standards on *interest risk in the banking book* and *disclosure* that are topical. Moreover, the international accounting standards IFRS have also been adjusted. These amendments (IFRS 9) concern the provisions to be considered by banks when calculating the eligible capital.

In November 2017, the Swiss Federal Council informed of relevant changes in the Capital Adequacy Ordinance (CAO),<sup>51</sup> including the introduction of a leverage ratio and new provisions on risk diversification. The leverage ratio has been introduced into the CAO effective 1 January 2018. If the Swiss Federal Council has its will, the amendments concerning risk diversification will enter into force as of 1 January 2019.<sup>52</sup>

In the course of the amendments mentioned above to implement internationally accepted laws into Swiss legislation, it is also planned that FINMA will revise the relevant FINMA circulars. FINMA's consultation lasted until 31 January 2018.

In particular, the following FINMA circulars will be affected:

- 2008/6 "Interest-rate risks – banks" (total revision, will be replaced by FINMA circular 2018/xx "Interest-rate risks – Banks")
- 2013/1 "Eligible capital - Banks" (partial revision)
- 2015/3 "Leverage ratio" (adjustments to reflect the amendments in the CAO)
- 2016/1 "Disclosure - Banks" (partial revision; step-by-step replacement of FINMA circular 2008/22 "Disclosure – Banks")
- 2011/2 "Capital buffer and capital planning – Banks" (selective adjustments)
- 2017/7 "Credit Risk - Banks" (selective adjustments)
- 2019/1 "Risk diversification – Banks" (adjusted to the amendments made in the CAO; replaces previous FINMA circular 2008/23 "Risk diversification – Banks")

<sup>50</sup> According to p. 5 of the overview issued by the Swiss Federal Tax Administration "Other Legislations and Ordinances in the Pipeline to enter into force in 2018-2020" of 6 October 2017, accessible at <<https://www.estv.admin.ch/estv/de/home/allgemein/steuerpolitik/fachinformationen/inkrafttreten-neuerungen/2018-20.html>> (last accessed on 16 January 2018).

<sup>51</sup> Ordinance concerning Capital Adequacy and Risk Diversification for Banks and Securities Dealers of 1 June 2012 (Capital Adequacy Ordinance, CAO, SR 952.03).

<sup>52</sup> Also see: Press release of the Swiss Federal Council "Swiss Federal Council approves revision of Capital Adequacy Ordinance" dated 22 November 2017, accessible at <<https://www.admin.ch/gov/de/start/dokumentation/medienmitteilungen/bundesrat.msg-id-68912.html>> (last accessed on 16 January 2018).

The planned amendments are expected to enter into force on 1 January 2019, i.e. one year later than foreseen in the international timetable.<sup>53</sup>

#### 5.4 Basel III - liquidity standards

In order to provide smaller banks with alleviations in regard to the liquidity coverage ratio, the provisions of the Liquidity Ordinance<sup>54</sup> have been amended. These entered into force on 1 January 2018. However, the Swiss Federal Council delayed introducing amendments concerning the net stable funding ratio. It is expected to decide at the end of 2018 on the further steps to be taken in this regard.<sup>55</sup>

At the same time, FINMA has adjusted its circular 2015/2 "Liquidity risks – Banks" to reflect the amended requirements in the Liquidity Ordinance and also made some smaller corrections.<sup>56</sup> The partially revised circular became effective as of 1 January 2018.<sup>57</sup>

#### 6. Efficiency gains in auditing

The revision of FINMA circular 2013/3 "Auditing"<sup>58</sup> is meant to enhance the risk-based audit procedures in the regulatory audit of banks, securities dealers and asset managers. This will enable audit firms that act as an extended arm of the supervisory authority to be used even more effectively in the future. The primary objective of the revision is thus to make auditing more efficient. The consultation lasted until 31 January 2018 and the revised circular is expected to enter into force on 1 January 2019.<sup>59</sup>

Specifically, the audits should consider the supervised institution's risk situation and identify the challenges facing the supervised institution going forward. This objective will be attained with specific audit procedures and by making the audit cycles less stringent for smaller institutions. In

addition, it also aims to achieve a significant cost reduction (of at least 30 percent) for the regulatory audit. The savings are to be used primarily for targeted, one-off interventions by FINMA or those commissioned by it.<sup>60</sup>

#### 7. Insurance: planned amendments in regard to insurance policies and the insurance supervisory laws

The Insurance Policies Act (IPA)<sup>61</sup> regulates the contractual relationship between insurance companies and their clients and was enacted more than 100 years ago. A series of significant client protection aspects was taken into consideration in a first partial revision in 2006. The total revision of this law, originally expected in 2011, was to include a comprehensive adjustment to new needs and situations; in particular, the position and rights of insured persons should have been strengthened further. However, both the National Council and the Council of States rejected a total revision. In view of these developments, the Swiss Federal Council worked out a partial revision and adopted its corresponding dispatch at the end of June 2017. According to the FDF, it could enter into force in 2019.<sup>62</sup>

The FDF was tasked with working out a consultation draft of the Insurance Policies Act. The draft is primarily meant to re-adjust the regulation and supervisory intensity to the needs of insured persons, to introduce a re-organization law for insurance companies as well as duties of due diligence for financial services provided by insurance companies, which originally had been foreseen in the FinSA.<sup>63,64</sup>

<sup>53</sup> Also see: FINMA press release "Implementation of Basel III in Switzerland: FINMA revises circulars" dated 31 October 2017, accessible at <<https://www.finma.ch/de/news/2017/10/20171031-mm--basel3--finma-revidiert-rs/>> (last accessed on 16 January 2018).

<sup>54</sup> Ordinance on the Liquidity of Banks (Liquidity Ordinance, LiqO, SR 952.06).

<sup>55</sup> Also see: Press release of the Swiss Federal Council "Swiss Federal Council approves revision of Liquidity Ordinance" dated 22 November 2017, accessible at <<https://www.admin.ch/gov/de/start/dokumentation/medienmitteilungen.msg-id-68904.html>> (last accessed on 16 January 2018).

<sup>56</sup> Specifically, elements which up to now had been explained in the FAQs as well as recommendations made by the Basel Committee for Bank Supervision upon its review of the Swiss liquidity legislation (Regulatory Consistency Assessment Programme) were incorporated into the circular.

<sup>57</sup> Also see: FINMA press release "FINMA publishes partially revised circular "Liquidity risks - banks"" dated 15 December 2017, accessible at <<https://www.finma.ch/de/news/2017/12/20171215-mm-rs-liquiditaetsrisiken/>> (last accessed on 16 January 2018).

<sup>58</sup> FINMA circular 2013/3 accessible at <<https://www.finma.ch/de/-/media/finma/dokumente/dokumentencenter/myfinma/rundschreiben/finma-rs-2013-03.pdf?la=de>> (last accessed on 16 January 2018).

<sup>59</sup> Also see: FINMA press release "FINMA revises auditing circular" dated 30 November 2017, accessible at <[>>](https://www.finma.ch/de/news/2017/11/20171130-mm-pruefwesen/) (last accessed on 16 January 2018).

<sup>60</sup> Also see: FN 58.

<sup>61</sup> Federal Act on Insurance Policies dated 2 April 1908 (IPA, SR 221.229.1).

<sup>62</sup> Also see: FDF information on the revision of the Insurance Policy Act (IPA) accessible at: <<https://www.efd.admin.ch/efd/de/home/themen/wirtschaft-waehrung-finanzplatz/finanzmarktpolitik/totalrevision-des-versicherungsvertragsgesetzes--vvg/-fb-vvg.html>> (last accessed on 16 January 2018).

<sup>63</sup> The Economic Committee of the Council of the States decided in the fall of 2016 that insurance companies should be exempted from the FinSA and that instead, these amendments should be incorporated into the already ongoing revision of the ISA. Also see: the committee's press release dated 17 October 2017 accessible at <<https://www.parlament.ch/press-releases/Pages/mm-wak-s-2016-10-17.aspx>> (last accessed on 16 January 2018).

<sup>64</sup> Also see: Interpellation by Pirmin Bischoff, "Improved depositor protection for insured persons by introducing a re-organization law for insurance companies" of 12 December 2017 (interjection no. 17.3962), accessible at <<https://www.parlament.ch/de/ratsbetrieb/suche-curia-vista/geschaefte?AffairId=20173962>> (last accessed on 16 January 2018) and the report of the Committee for Economics and Taxes of 26 April 2010 on the motion placed by Bischofberger (interjection no. 09.3965), accessible at <<https://www.parlament.ch/de/ratsbetrieb/suche-curia-vista/geschaefte?AffairId=20093965>> (last accessed on 16 January 2018).

## 8. Summary

The regulation pipeline is chockful also at the beginning of 2018. Even though the regulatory workup caused by the financial crisis from 2007/2008 seems to be slowly coming to an end, and new tendencies to deregulate the financial markets are already underway (especially in the USA), market participants in Switzerland are nonetheless asked to be mindful of new regulations so that they stay within the law when offering services. Specifically, the areas of anti-money laundering and the digitalization of financial services should be kept in mind. Furthermore, the first findings arising from the application of FMIA requirements are being collected and, where necessary, used to make adjustments.

## 9. How can KPMG help?

Also in 2018 the financial service industry will be affected by a number of regulatory initiatives on the global, European and national level. KPMG can provide advice for banks, insurance companies and asset managers on all aspects of the financial market legislation.

Services include the implementation of new regulations, advice in regard to the acquisition of new FINMA licenses, special investigations (e.g. on behalf of regulators or a financial institution), cross-border manuals, outsourced services such as the compliance function and wind-down services. We also offer consulting in regard to tax matters, specifically concerning tax transparency, such as the automatic exchange of information.

Our understanding of the industry goes far beyond purely legal aspects. We also have the necessary competences to implement new regulations into your existing business and operating models. In doing so, we accompany our clients on their transformative journeys, from the impact analysis to the conception, implementation and the test phase.

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