

Regulatory developments

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

09/24





Welcome

to the latest issue of «Regulatory Developments»

Dear readers,

I am very pleased to present you with a newly designed publication and to take this opportunity to introduce some innovative features.

From this issue onwards, I shall be happy to draw your attention to the most important new topics here in our editorial in order to give you a quick overview of the latest regulatory developments. These are now also labelled 'New' to make the document easier for you to read. In the new Chapter 5, we have compiled a list of contacts for the regulatory topics so that if you have any questions, you know whom you can contact directly. If you cannot find a suitable contact person, you may of course get in touch with me at any time. My colleagues and I look forward to hearing from you!

I have summarised the most important new topics in the current issue below:

Chapter 2: Interdisciplinary projects

- *Extension of the international automatic exchange of information in tax matters (AEOI) to crypto assets:*
The consultation on the extension of the AEOI to crypto assets ends on 6 September 2024, while the consultation on the designation of partner states will last until 15 November 2024. Entry into force is planned for 1 January 2026.
- *Greenwashing prevention in the Swiss financial sector (AMAS, SBA and SIA):*
The Federal Council sees the new self-regulation of the financial sector as progress in the implementation of its position on the prevention of greenwashing. The self-regulations of the SBA, AMAS and SIA have been published and brought into force, although transitional periods for implementation apply in some cases until 1 January 2027.
- *FINMA Supervisory Communications 03/2024: Findings from cyber risk supervisory activities, clarification of FINMA Supervisory Communication 05/2020 and scenario-based cyber exercises:*
FINMA publishes its findings from its supervisory activities in the area of cyber risks, points out repeatedly identified deficiencies, and clarifies the obligation to report cyberattacks and scenario-based cyber risk exercises.
- *Amendment to the Ordinance to the Federal Act on Data Protection (OFADP):*
The USA is added to the list of countries with adequate data protection. The amendment to the FADP will enter into force on 15 September 2024.

Chapter 3: Banks/securities firms

- *Too-big-to-fail instruments for withholding tax | Transitional solution for temporary extension of special regulations:*
The Federal Council is once again extending temporary exemption provisions for interest from too-big-to-fail (TBTF) instruments in the Federal Act on Withholding Tax until December 31, 2031.
- *FINMA guidance, 06/2024: Stablecoins: Risks and requirements for stablecoin users and guaranteeing banks:*
FINMA defines minimum requirements for banks' default guarantees and argues that stablecoin issuers or appropriately supervised financial intermediaries must adequately verify the identity of all stablecoin holders.

Chapter 4: Collective investment institutions

- *FINMA guidance, 04/2024: Management of operational risks of fund management companies and managers of collective assets:*
Operational risks at supervised institutions are increasing due to digitisation, and weaknesses in operational risk management are increasingly being observed. This supervisory communication serves to raise awareness among fund management companies and managers of collective assets in this regard.

I hope you enjoy reading this update and send you my best wishes!

Tobias Scheiwiller



09/24

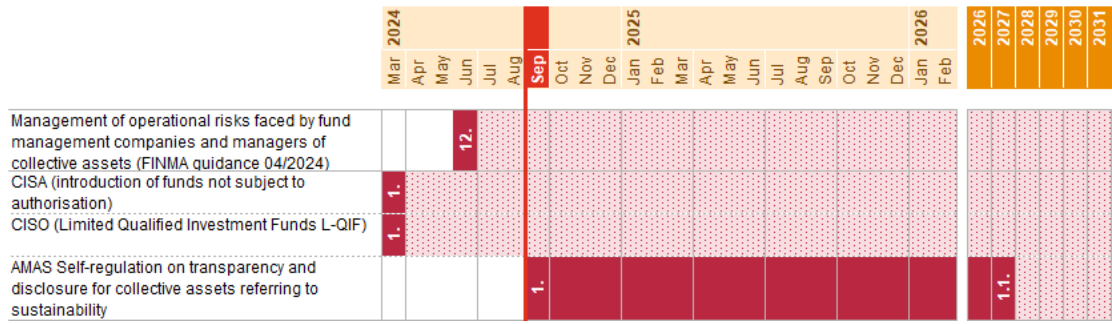


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1.3 Collective investment institutions



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



Brasserie
Le Valmy
LE VALMY

2.

Interdisciplinary projects

2.1 Auditing

FINMA circular 13/3 'Auditing' | Amendments due to total revision of FINMA circular on operational risks

Status: → In force since 1 January 2024

- Split of current 'Information Technology (IT)' audit field into two new audit fields: 'Management of information and communication technology (ICT) risks' and 'Management of cyber risks'.
- For the 'Management of information and communication technology (ICT) risks' audit field, gradual coverage over four years is now applied instead of six years as previously.
- Introduction of a new 'Operational Resilience' audit field.

FINMA auditing ordinance | Transfer of circular 13/3 'Auditing'

Status: → Consultation until 22 May 2024

→ Expected entry into force: 1 January 2025

- Examination of the transfer of the circular into a FINMA ordinance on the basis of the ex-post evaluation.
- Elevation to the level of FINMA ordinance is for formal reasons and is not with the intention of making significant changes to the current auditing activities. Limited portion of the content remains in a circular.

2.2 Anti-money laundering/compliance

Federal Act on the Transparency of Legal Entities

Status: → Consultation period until 29 November 2023

→ Expected entry into force: 1 January 2026, at the earliest

- Preparation of a draft act for increased transparency and easier identification of the beneficial owners of legal entities.
- Introduction of a central federal register for the identification of beneficial owners:
 - Obligations to identify, verify and report the beneficial owners of the legal entities;
 - Obligations to identify, verify and report members of the Board of Directors acting in a fiduciary capacity, managing directors, shareholders and partners;
 - Documentation and retention obligations;
 - The central register will be accessible to the authorities as well as financial intermediaries, advisors and lawyers to fulfil the due diligence obligations according to the AMLA, but not publicly available.
- Financial intermediaries subject to a reporting obligation of differences between register entries and own information in the event a client does not make the necessary adjustments.
- Introduction of due diligence obligations for advisors and lawyers, in particular for certain services relating to real estate transactions and the foundation, conversion or sale of companies.
- Due diligence obligations regarding precious metals and gemstones trading in the case of cash payments exceeding CHF 15,000.
- Due diligence obligations regarding cash payments in real estate trading.

Agreement on the Swiss banks' code of conduct with regard to the exercise of due diligence (CDB 20) | Total revision

Status: → In revision
→ Expected entry into force: 1 January 2025, at the earliest

- Total revision of the agreement to take account of the adjustments in AMLA, AMLO and AMLO-FINMA as well as FATF recommendations.
- Does not include further specification of the verification and updating obligations defined in the revised AMLA.

2.3 Organisation of financial market

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

Status: → Consultation until 15 July 2024
→ Expected entry into force: Q1 2025

- 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).
- The circular specifies the way in which clients must be notified so that they can make informed investment decisions. For example, clients should be advised of the type of financial service, risks associated with financial instruments or financial services, and compensation from third parties.

Financial Institutions Ordinance (FinIO) | Adjustments

Status: → Consultation period until 23 December 2022
→ Second half of 2023, at the earliest

- Adjustment of the provisions as part of the amendments to the Collective Investment Schemes Ordinance (CISO).
- Adjustment of the deadlines and clarifications regarding the submission of the annual report, the summary audit report and the comprehensive audit report to FINMA for fund administrators and for fund managers.
- Clarification regarding the exercise of supervision by FINMA and the appointment of the audit firm in the event that fund administrators or fund managers are acting as trustees.

Financial Market Infrastructure Act (FinMIA) | Partial revision

- Status:**
- In revision
 - Consultation until 11 October 2024
 - Entry into force: open (expected in 2027/2028)

Adjustment of the Financial Market Infrastructure Act (FinMIA) to reflect technological developments and relevant further evolution in international standards and foreign legal systems

- Simplifications and extensions in the area of financial market infrastructures:
 - Strengthen the stability of infrastructures by introducing new specific requirements;
 - Simplify the requirement regarding recognition of foreign trading venues;
 - Increase legal certainty as regards the definition of organised trading facilities and introduce a threshold for the authorisation of payment systems;
- Simplifications and extensions in the area of derivatives trading:
 - Harmonise the reporting standard and take into account international developments of the reporting duty for derivatives transactions;
 - Exempt small non-financial counterparties from the duty to report derivatives transactions;
 - Give consideration to developments in Europe.
- Simplifications and extensions in the areas of disclosure law, takeover law and market abuse provisions:
 - Harmonise, expand and transfer into federal law the issuer obligations that are important for market integrity in order to better prevent market abuse,
 - Modernise the trading supervision and reporting system in order to better identify market abuse by consolidating the existing offices in a central supervisory and reporting office.

Financial Market Infrastructure Ordinance (FinMIO) | Extended transitional period for small non-financial counterparties

- Status:**
- In force since 1 January 2019
 - Transitional period until 1 January 2028

-
- Preparation of a bill submitted for consultation on the amendment of the Financial Market Infrastructure Act (FMIA).
 - Extension of transitional period to 2028 in light of the possible exemption of small non-financial counterparties from the duty to report derivatives transactions.

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

- Status:**
- In force since 1 February 2023
 - Transitional period: Compliance with the defined reporting requirements within 15 months of entry into force

-
- Adjustment of the interest-rate 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 09/2023 | Extension of transitional period art. 131 para. 5^{bis} FMIO

- Status:** → Published on 20 December 2023
→ Extension of transitional period until 1 January 2026

- Basic obligation, as of 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. The original transitional period has already been extended several times.
- Further extension of the transitional period in accordance with art. 131 para. 5^{bis} FMIO until 1 January 2026.



New

Extension of the international automatic exchange of information in tax matters (AEOI) to crypto assets | Consultation opened

- Status:** → Consultation on the extension of the AEOI to crypto assets until 6 September 2024
→ Entry into force: expected 1 January 2026
→ Opening of consultation on the designation of partner states: by 15 November 2024

Publication of new reporting framework for AEOI on crypto assets (CARF) by OECD in October 2022. This regulates the handling of crypto assets and their providers.

Switzerland intends to implement the CARF.

- The aim is to close gaps in the tax transparency system and ensure equal treatment with traditional assets and financial institutions.
- The consultation draft is intended to criminalise the negligent violation of due diligence, reporting and disclosure obligations and to simplify the admission of new AEOI partner states by delegating powers from Parliament to the Federal Council.
- The consultation on the extension of the AEOI to crypto assets was opened on 15 May 2024 and will continue until 6 September 2024.
- In a further consultation draft, the Federal Council is proposing with which of the 111 states and territories with which Switzerland has activated the AEOI should automatically exchange information on crypto assets from 2026, and with which partner states the AEOI on crypto assets could be implemented at a later date.
- The consultation on the designation of partner states was opened on 18 August 2024 and will continue until 15 November 2024.

2.4 Sustainability

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

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.
- The report for the 2023 financial year must be approved and signed by the Board of Directors and approved by the General Meeting.

Ordinance on climate reporting

- Status:** → In force since 1 January 2024

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.
- Requirement to publish the report in an internationally accepted machine-readable digital format within one year of entry into force.

Ordinance on climate reporting | Revision

Status: → Hearing expected: January 2025

- Inclusion of minimum requirements for transition plans of financial institutions.
- Proportionate update of the reference to international standards with specific additional requirements
 - European Sustainability Reporting Standards (ESRS)
 - Standard des International Sustainability Standards Board (ISSB).
- For companies that must apply the ESRS because of their extraterritorial effect on business activities in the EU internal market: create legal certainty that Swiss requirements are also met.
- For other companies: apply the more pragmatic ISSB Standard as an alternative.
- Publish reports in machine-readable form and on an international platform.

Adjustment of the Code of Obligation's provisions regarding transparency on non-financial matters

Status: → Consultation until 17 October 2024

- Establish an internationally coordinated system for sustainable corporate governance for the protection of people and the environment and take into account the revised EU Directives on:
 - reporting on sustainability; and
 - corporate sustainability due diligence.
- Conduct an in-depth analysis of the effects of the future EU regulation on the due diligence obligations of third-country firms also active in the EU in the areas of human rights and the environment by the end of 2023.
- Draft a bill submitted for consultation to adjust sustainability reporting by June 2024;
 - Lowering the sustainability reporting requirement threshold from 500 to 250 employees;
 - Complying with specific and extensive due diligence and reporting obligations for companies with risks in the areas of child labour and conflict minerals;
 - Mandatory review by external auditors;
 - Choice of sustainability reporting according to EU standard or other equivalent standard (e.g. OECD standard).



New

Prevention of greenwashing in the Swiss financial sector (AMAS, SBA and SIA)

Status: → Entry into force of the self-regulations: 1 September 2024
→ Transitional period until 1 January 2027

- The Federal Council sees the financial sector's new self-regulation against greenwashing as progress in implementing the Federal Council's position on preventing greenwashing in the financial sector.
- The self-regulations of the Swiss Bankers Association (SBA), the Asset Management Association (AMAS) Switzerland and the Swiss Insurance Association (SIA) have been published and brought into force, with transitional periods for implementation applying in some cases until 1 January 2027.
- Self-regulation on transparency and disclosure of sustainability-related collective assets (AMAS): see Chapter 3.8;
- Guidelines for financial service providers on the integration of ESG preferences and ESG risks and the prevention of greenwashing in investment advice and asset management (SBA): see Chapter 4;
- Self-regulation to prevent greenwashing in unit-linked life insurance policies with a sustainability focus (SIA). The self-regulation implements various aspects of the Federal Council's position, in particular:
 - guidelines for the definition of sustainable investment objectives;
 - the description of the sustainability approaches used;
 - accountability for this;
 - the audit of the implementation by an independent third party.
- Open points remain with regard to the fulfilment of self-regulation through the application of EU law and with regard to the permissible frame of reference for sustainability targets and enforceability.
- The Federal Council instructs the FDF to re-evaluate the need for action with regard to the full implementation of the Federal Council's position as soon as the European Union has published any amendments to its SFDR, but no later than the end of 2027.

FINMA circular 'Nature-related financial risks' | Publication of new circular

Status: → Consultation until 31 March 2024
→ Expected entry into force: 1 January 2025, transitional provisions

- Specification of FINMA's supervisory expectations regarding the management of nature-related financial risks and the extent to which these must be taken into account in corporate governance and institution-wide risk management.
- In particular, it specifies criteria for assessing the materiality of risks and how scenario analyses are to be incorporated. It also sets out how the main nature-related financial risks are to be embedded as risk drivers in the existing management of credit, market, liquidity and operational risks as well as in insurance activities.
- The circular is based on the current recommendations of the international standard-setters.
- The addressees are banks, securities firms and insurance companies in all supervisory categories and applying the principle of proportionality.

2.5 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 disclosing the information in the compensation report for
 - Board of Directors: at the latest as of the financial year beginning 5 years after the entry into force;
 - Executive Board: at the latest as of 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: → In force since 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.

Promotion of open finance in Switzerland

Status: → The Federal Council considers industry progress to be sufficient, so no further regulatory measures are planned for the time being.

- Open finance is to be expanded by promoting the exchange of financial data via standardised, secure data interfaces at the request of clients.
- In principle, the Federal Council favours a market-based approach.
- There is a demand for more tangible progress and greater commitment when opening up data interfaces.
- Had the financial sector not displayed sufficient commitment to opening up these interfaces, measures would have been developed by June 2024.
- However, the Federal Council considers recent progress made by the industry to be sufficient at this point in time, and will therefore not be proposing any further regulatory measures.

Information Security Act (ISA) and Cybersecurity Ordinance (CSO) | Cyberattack reporting obligation

Status: → Cybersecurity Ordinance (CSO): Consultation: until 13 September 2024
→ Expected entry into force: 1 January 2025

- Introduction of an obligation to report cyberattacks on critical infrastructures within 24 hours of their detection to the National Cybersecurity Centre (NCSC) with the aim of:
 - detecting at an early stage attack patterns on critical infrastructures;
 - warning the potentially affected persons;
 - recommending appropriate prevention and defence measures.
- Companies that are subject to the Banking Act, the Insurance Oversight Act or the Financial Market Infrastructure Act are considered organisations subject to the reporting obligation.
- Reporting a cyberattack provides entitlement to assistance from the NCSC when dealing with an incident.

With the Cybersecurity Ordinance (CSO), the Federal Council is now presenting the provisions for implementing the Information Security Act (ISA).

- The CSV specifies how the reporting obligation is to be implemented in future and which entities are exempt. The following aspects are specifically regulated:
 - The scope of the reporting obligation for authorities and organisations;
 - Definition of reportable cyberattacks and what content must be reported;
 - The procedures for fulfilling the reporting obligation and the deadline and completion of the report.
 - Exemptions from the reporting obligation



New

FINMA-guidance 03/2024 | Findings from cyberrisk supervisory activities, clarification of FINMA guidance 05/2020 and scenario-based cyber exercises

Status: → Published: 7 June 2024

- FINMA publishes its findings from its supervisory activities in the area of cyber risks, points out repeatedly identified deficiencies and specifies the obligation to report cyberattacks and scenario-based cyber risk exercises.
- Cyberattacks in recent years have mainly affected outsourced services. Governance in dealing with cyber risks also often has weaknesses.
- FINMA clarifies the FINMA Guidance 05/2020 "Duty to report cyberattacks in accordance with Art. 29 para. 2 FINMASA" with regard to the reporting deadline and scope.
- FINMA is expanding its supervisory instruments and defining risk-based, scenario-related cyber exercises that institutions to which FINMA Circular 23/1 applies must conduct in accordance with the principle of proportionality:
 - Systemically relevant institutions: Red-teaming exercises (security experts assume the role of an attacker and attempt to attack and circumvent a company's cybersecurity measures by copying the attack method of a 'malicious' hacker);
 - Non-systemically important institutions: At least one annual table-top cyber exercise (simulation and play-through of a scenario on paper [dry run]);
 - Institutions in supervisory categories 4 and 5: Under certain conditions, they can carry out the exercises of the Swiss Financial Sector Cyber Security Centre (Swiss FS-CSC).



New

Ordinance to the Federal Act on Data Protection (OFADP) | Amendment to the FADP

Status: → Entry into force of the amended Data Protection Ordinance: 15 September 2024

- Amendment to the Data Protection Ordinance approved by the Federal Council; the US added to the list of countries with adequate data protection.
 - The respective amendments will apply as of 15 September 2024.
 - With the Swiss-US Data Privacy Framework, personal data can in future be transferred from Switzerland to certified companies in the United States without additional guarantees.
 - The certification for US companies ensures compliance with data protection measures and data protection guarantees; in other words, companies shall process data only for the purposes for which it was collected.
 - The Swiss-US Data Privacy Framework creates a level playing field for private individuals and companies in Switzerland.
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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
→ Transitional periods for the creation of value adjustments for expected losses and for inherent default risks until 31 December 2025 at the latest

- Application of the provisions for the creation of value adjustments for default risks for the FY2021 financial statements at the latest.
- The intention is for value adjustments to be created on a straight-line basis for expected or inherent default risks during a transitional period lasting until 31 December 2025.
- The amount of any shortfall may also be booked in full at an earlier date up to the end of 2025.

3.2 Disclosure

FINMA Ordinance on the Disclosure of Risks and Capital Requirements and the Principles of Corporate Governance (DisO-FINMA) | Replaces FINMA circular 16/1

- Status:** → Consultation until 25 October 2022
→ Entry into force: 1 January 2025

- Replacement of current FINMA circular 16/1 'Disclosure – banks' by a FINMA ordinance.
- 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.
- Adjustment of the existing individual disclosure templates and tables.

3.3 Capital adequacy/risk diversification

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

- 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.

Capital Adequacy Ordinance (CAO) | Basel III framework revision – Post-crisis reforms

- Status:** → Entry into force: as of 1 January 2025
→ Phased increase of output floors for internal model-based approaches until 2028
→ Publication of the ordinances to implement the final Basel III standards (March 2024)

- Despite delays in some countries and the partial postponement (mainly EU and USA) of selected new requirements in the area of market risks (FRTB), the Federal Council is not deviating from its previous timetable; full Basel III final regulation will therefore enter into force in Switzerland on 1 January 2025
- Adjustment of 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.
- Adjustment of 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.
- Adjustment 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 72.5% of risk-weighted assets calculated using the standardised approaches.
- Simplified implementation of the rules for category 3 to 5 banks.
- Replacement of the previous FINMA circulars by FINMA ordinances:
 - Ordinance on the Trading Book and Banking Book and Eligible Capital (TBEO-FINMA): Replaces FINMA circular 13/1 'Eligible capital – banks';
 - Ordinance on the Leverage Ratio and Operational Risks (LROO-FINMA): Replaces FINMA circular 15/3 'Leverage ratio – banks' and the quantitative part of the FINMA circular 08/21 'Operational risks – banks';
 - Ordinance on Credit Risks (CreO-FINMA): Replaces FINMA circular 17/7 'Credit risks – banks';
 - Ordinance on Market Risks (MarO-FINMA): Replaces FINMA circular 08/20 'Market risks – banks'.

Capital Adequacy Ordinance (CAO) | Extension of the transitional period for the use of the market value method

Status: → In force since 1 January 2024

- Banks in supervisory categories 4 and 5 may use the market value method in accordance with the no longer valid version of the CAO from 2016 for the conversion of derivatives into their credit equivalents until 31 December 2023.
- Adjustment of the transitional period until 31 December 2024, until the entry into force of the revised Basel III framework – post-crisis reform.

FINMA circulars 'Risk diversification' and 'Limitation of intra-group positions' | Transfer of circular

Status: → Consultation expected: in the course of 2024

- The implementing regulations for the risk diversification regulations are to be transferred to a FINMA ordinance in the course of 2024.
- Selective, specific adjustments are planned.



New

Too-big-to-fail instruments for withholding tax | Transitional solution for temporary extension of special regulations

Status: → Extension of the special regulations: until 31 December 2031

- Since 1 January 2013, the Federal Withholding Tax Act has included time-limited exemption provisions for interest from too-big-to-fail (TBTF) instruments (such as bail-in or write-off bonds). These have already been extended twice, most recently until 31 December 2026, and the Federal Council has extended them again until 31 December 2031.
- Banks should continue to be able to raise capital from Switzerland at competitive conditions. Without an additional extension, interest on TBTF instruments issued after this date would be subject to withholding tax.

Avoidance of legal loopholes: As the amendments to the Withholding Tax Act (WHTL) cannot come into force by 1 January 2027, a temporary extension of the exemption provisions of the TBTF instruments is planned until the amendment to the Withholding Tax Act (WHTL) comes into force, but no later than 31 December 2031.

3.4 Liquidity

Banking Act (BankA) | Public liquidity backstop

Status: → Federal Dispatch published 6 September 2023

→ Consideration by Parliament pending

- Public liquidity backstop to allow the Confederation and the Swiss National Bank to bolster the liquidity of a systemically important bank if this is required for it to continue as a going concern.
- Measures for systemically important banks regarding remuneration during the period of recourse to state aid.

Clarification of the provisions relating to the reserve capital, reporting obligations and maintenance of a register by cooperative banks.

- Charging systemically important banks an annual lump sum for the risk of a potential provision of a default guarantee.
- Provisions on liquidity assistance loans, guarantees, further measures and merger-related transactions, which were based on the Emergency ordinance of 16 March 2023.

3.5 Credit business

SBA Guidelines on minimum requirements for mortgage loans | Adjustment

Status: → Recognition by FINMA as a minimum regulatory standard on 27 March 2024
→ Entry into force: 1 January 2025 (simultaneous with final Basel III standards)

- Reduction of the minimum requirements for investment property mortgage loans.
- Repeal of the tighter requirements imposed in 2019 and standardisation of the specifications for all property types:
 - Minimum down payment: 10%;
 - Maximum amortisation period to two thirds of the collateral value: 15 years.

SBA Guidelines on assessing, valuing and processing loans secured against property | Adjustment

Status: → Recognition by FINMA as a minimum regulatory standard on 27 March 2024
→ Entry into force: 1 January 2025 (simultaneous with final Basel III standards)

- Inclusion of regulations on not-for-profit social housing.
- Obligation to record the purchase price, the collateral's value and the basis for calculation of each real estate collateral.
- Requirements regarding the independence of internal bank functions in the valuation of real estate collateral and in the use of valuation models.
- Provisions for plausibility checks of creditworthiness and sustainability in cases of periodic resubmission.

3.6 Organisation/risk management

SBA Recommendations for Business Continuity Management (BCM) | Repeal

Status: → Repealed as of 31 December 2023

Parts of the SBA Recommendations previously recognised as self-regulation are now addressed by the total revision of FINMA circular 23/1 'Operational risks and resilience – banks'.

- Recognition of the corresponding parts of the SBA Recommendations as a minimum standard is to be repealed with the entry into force of the circular.

FINMA circular 23/1 'Operational risks and resilience – banks' | Total revision of FINMA circular 08/21

Status: → In force since 1 January 2024
→ Transitional periods for operational resilience aspects until 31 December 2025

- Reclassification of the quantitative capital requirements for operational risks into the final Basel III regulations.
- Clarification of the role and responsibilities of the Board of Directors in relation to operational risks.
- Obligation to regularly and independently assess the effectiveness of key controls and the separation of duties, responsibilities and competences to ensure independence and to prevent conflicts of interest.
- Obligation to perform risk and control assessments of significant changes in the products, activities, processes and systems.
- Requirements for minimum periodicity and content of internal reporting to the supreme governing body and to the management.
- Requirements for change management in the field of information and communication technology (ICT) and ensuring the separation of ICT environments for development, testing and production.
- Expansion of the specifications for operating the ICT infrastructure and incident management.
- Clarification of measures for managing cyber risks.
- Clarification of the handling of critical data and increasing the desired level of protection compared to previous specifications.
- Adoption of an updated version of the previous SBA Recommendations for Business Continuity Management (BCM).
- Implementation of operational resilience specifications.
- Relaxation of the rules for banks and investment firms in supervisory categories 4 and 5, as well as banks in the regime for small banks and non-account-holding securities firms.

3.7 FinTech

Improving the client protection of FinTech companies in accordance with art. 1b BankA

Status: → Consultation expected: First half of 2024

- Adaptation of financial market regulation to improve the client protection of companies in accordance with art. 1b BankA.
- Improvement of depositor protection by separating client funds from other assets in the event of the bankruptcy of a FinTech company.
- Review of the repeal of the CHF 100 million limit on public deposits.

3.8 Sustainability

SBA guidelines for financial service providers on the integration of ESG preferences and ESG risks into investment advice and portfolio management | Revised self-regulation

- Status:** → Publication of the directive on the revised self-regulation: 19 June 2024
→ Entry into force of the guidelines on the revised self-regulation: 1 September 2024, with transitional periods until 1 January 2026 and 1 January 2027 respectively

- Binding self-regulation for SBA members; non-members can adopt the guidelines on a voluntary basis. These guidelines are **currently neither recognised nor approved as self-regulation by FINMA** and therefore do not constitute regulatory requirements.
- Based on the guidelines that entered into force on 1 January 2023, establish a uniform minimum standard for consideration of ESG preferences and ESG risks in investment advice and portfolio management to prevent greenwashing.
- Over the past few months, the industry associations have further developed and elaborated their self-regulation in close cooperation with the authorities in order to reflect comprehensively the Federal Council's position on greenwashing prevention in the financial sector of 16 December 2022. The existing versions of the AMAS and SBA 'Guidelines for financial service providers on the inclusion of ESG preferences and ESG risks and the prevention of greenwashing in investment advice and asset management' have been supplemented and made more specific. They entered into force on 1 September 2024, with corresponding transition periods.

SBA Guidelines for financial service providers on the integration of ESG preferences and ESG risks into investment advice and portfolio management | Removal of transaction-based investment advice from scope of application

- Status:** → In force since 3 October 2023

- Binding self-regulation for SBA members; non-members can adopt the guidelines on a voluntary basis. These guidelines are **currently neither recognised nor approved as self-regulation by FINMA** and therefore do not constitute regulatory requirements.
- Clarification that ESG preferences do not need to be collected for non-portfolio-based investment advice services (i.e. transaction-based investment advice).
- The transitional periods of the guidelines that came into force on 1 January 2023 will not be adjusted.

SBA Guidelines for mortgage providers on the promotion of energy efficiency

- Status:** → In force since 1 January 2023
→ Transitional period for adapting banks' internal processes until 1 January 2024

- Binding self-regulation for SBA members; non-members can adopt the guidelines on a voluntary basis. These guidelines are currently neither recognised nor approved as self-regulation by FINMA and therefore do not constitute regulatory requirements.
- Encourage mortgage providers to consider long-term value retention and energy efficiency when offering clients advice on financing a property.
- Allow different conditions in the areas of loan-to-value, affordability, amortisation and interest rates that distinguish between the financing of sustainable properties and non-sustainable properties.
- Take measures to identify and collect relevant information available to the public on the climate efficiency of buildings (especially labels and certificates).
- Provide regular training for client advisers and mortgage specialists regarding the procedure for long-term value retention and energy efficiency.

3.9 Other topics

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

Status: → In force since 1 January 2023

- 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;
 - Relaxation of 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 adapting the Mortgage Bond Act (MBoA).
- Adjustment of banks' self-regulation to protect privileged deposits within five years at the latest.

Banking Ordinance (BankO) | Insolvency, deposit insurance

Status: → In force since 1 January 2023

→ Transition period to deposit half of the mandatory contribution in the form of securities or cash loans until 30 November 2023

-
- Adoption of the amendments to the Banking Act on the topics of insolvency and deposit insurance.
 - Resolvability:
 - Requirements regarding the assessment of the ability to restructure and liquidate international systemically important banks in Switzerland and abroad;
 - Clarification of the financial and organisational requirements for companies not subject to supervision that belong to a systematically important banking group and that are material to its business.
 - Deposit insurance:
 - Definition and description of privileged deposits, amounts and depositors;
 - Adoption of detailed provisions in the areas of IT infrastructure, personnel and processes for preparatory measures that ensure, in the course of normal business activities, a payment schedule is drawn up, depositors are contacted and the privileged amounts are guaranteed;
 - Further provisions for systemically important banks and relaxation of the rules for banks with fewer than 2,500 depositors;
 - Review of preparatory measures by regulatory audit firm as part of the basic regulatory audit.
 - Measures in the event of insolvency risk:
 - To enable the issue of financial instruments in the event of the restructuring of cantonal banks.
 - Determination of the supervisory categories of banks:
 - Adjustment and increase of the thresholds for total assets, insured deposits and assets under management to take account of developments in the financial market;
 - Introduction of a requirement to review the thresholds at least every five years.
 - Adaptation of the Mortgage Bond Ordinance (MBoO):
 - Clarification of the rules governing the management of coverage, in particular its classification and safekeeping;
 - Clarification of the tasks of the investigating officer appointed by FINMA in cooperation with the central mortgage bond institutions.
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esuisse self-regulation for the deposit insurance scheme | Implementation of preparatory measures

Status: → In force since 1 January 2023

→ Transitional period until 31 December 2027

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- Establish the organisational requirements for drawing up the list of depositors and for the payout process by means of
 - measures to maintain critical IT systems, services and service agreements;
 - Availability of a sufficient number of persons;
 - Implementation of the preparatory measures in the event of a bank's closure, in particular
 - Processes for drawing up the depositor list at any time within 72 hours;
 - Formulation of client letters and reply forms, incl. tools for partial automation;
 - Processes for sending client letters within seven working days;
 - Technical facilitation of the processing of payment instructions by preparing the existing e-banking system so it can be used;
 - Processes for processing client payment instructions within seven working days of receipt.
-

FINMA Banking Insolvency Ordinance (BIO-FINMA) | Adjustments to BankA and BankO

Status: → Hearing expected: Q3 2024
→ Expected entry into force: Q3 2025

- Adoption of the amendments to the Banking Act and the Banking Ordinance.
- Review of a potential consolidation of the various insolvency regulations of FINMA (BIO-FINMA, IBO-FINMA and Ordinance on the Bankruptcy of Collective Investment Schemes, CISBO-FINMA) into a new FINMA Insolvency Ordinance.

SBA Allocation Directives for the New Issues Market (2023)

Status: → In force since 1 September 2023
→ Transitional period for adapting documentation until 29 February 2024

- Replaces SBA Allocation Directives for the New Issues Market from 2004.
- Content revised and updated based on the Financial Services Act (FinSA):
 - Extends the scope of application from equity securities to equity securities and debt instruments;
 - Updates the list of objective reasons for differential treatment;
 - Differentiates between allocations to nostro accounts made by syndicate banks and allocations to nostro accounts made by third-party banks
 - Updates the final provisions, refers to FinSA transitional periods.
- These Allocation Directives **no longer apply as self-regulation recognised or approved by FINMA as of 1 September 2023**, but will continue in the form of voluntary self-regulation

SBA Directives on the Independence of Financial Research (2018) | Adjustment

Status: → In revision

- Adjustment of the guidelines of the Swiss Bankers Association recognised by FINMA as a minimum standard.

FINMA circular 'Consolidated supervision' | Publication of new circular

Status: → Hearing expected: Q3 2024
→ Expected entry into force: Q2 2025

- Documentation of the current practice of consolidated supervision of financial groups under the Banking Act and FinIA, with clarifications and specifications in selected key areas from a supervisory perspective.

FINMA guidance 08/2023 | Staking

Status: → Published on 20 December 2023

- Regulation of various legal interpretation issues related to staking services in the custody of crypto-based assets.
- Overview of risks and risk mitigation measures for various variants of staking crypto-based assets.



New

FINMA guidance 06/2024 | Risks and requirements for stablecoin issuers and guaranteeing banks

Status: → Published on 26 July 2024

-
- With the supplement to the guidelines for subordination requests regarding initial coin offerings (ICOs) dated 11 September 2019 ('Supplement to the ICO guidelines'), FINMA noted that questions frequently arise regarding authorisation requirements under the Banking Act or the Collective Investment Schemes Act with regard to projects for the issuance of stablecoins.
 - The FINMA guidance addresses two main aspects:
 - Minimum requirements for default guarantees from banks are defined. Such guarantees are used by some issuers of stablecoins in order to be exempt from the requirements for a banking licence.
 - FINMA argues that stablecoin issuers or appropriately supervised financial intermediaries must adequately verify the identity of all stablecoin holders due to anti-money laundering requirements, since anonymous transfers are prohibited.
 - FINMA is thus providing additional guidance for projects wishing to issue stablecoins and for banks providing default guarantees to stablecoin issuers. Stablecoin issuers should assess the latest FINMA guidelines' impact on their contractual structures, operations and business models. Banks providing default guarantees need to be aware of the associated risks and include such guarantees in their risk assessment.
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4.

Collective investment institutions

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

Status: → In force since 1 March 2024

- 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.

Collective Investment Schemes Ordinance (CISO) | Limited Qualified Investment Funds (L-QIF) and other adjustments

Status: → In force since 1 March 2024

- Implementation provision for changes in the Collective Investment Schemes Act (CISA) to the Limited Qualified Investment Funds (L-QIF) with special regulations in the following areas:
 - Investment regulations;
 - Transparency, reporting and statistics;
 - Accounting, valuation, financial reporting and publication obligations;
 - Audit.
- Further adjustments to the Collective Investment Schemes Ordinance in the following areas:
 - Legal definition of a collective investment scheme: specification of the requirement of two independent investors;
 - Distinction between collective investment schemes and structured products: reinstatement of the legal distinction between collective investment schemes and structured products by means of labelling;
 - Remuneration of ancillary costs: extension of the exhaustive list of permissible ancillary costs;
 - Liquidity: explicit provisions on liquidity and adequate liquidity risk management;
 - Exchange Traded Funds (ETF): new provisions, in particular on disclosure;
 - Side pockets: creation of side pockets, subject to FINMA's approval;
 - Securities lending and repo transactions: improving transparency requirements;
 - Investment violations: principles-based codification of the duty to provide information in the event of investment violations.

AMAS Self-regulation on transparency and disclosure for collective assets referring to sustainability

Status: → Entry into force of the revised self-regulations: 1 September 2024, with transitional periods until 1 January 2026 and 1 January 2027 respectively

- Binding self-regulation for AMAS members and other market participants. These guidelines are **currently neither recognised nor approved as self-regulation by FINMA**.
- Ensuring transparency, quality and positioning of asset management and collective assets referring to sustainability.
- Requirements of asset managers and producers of collective investment schemes in the following areas:
 - Organisation, processes and risk control;
 - Knowledge in the area of sustainability;
 - Documentation of the sustainability policy;
 - Diligence in the selection, instruction and monitoring of sustainability research, sustainability data and analysis tools;
 - Sustainability report.
- Over the past few months, the industry associations have further developed and elaborated their self-regulations in close cooperation with the authorities in order comprehensively to reflect the Federal Council's position on greenwashing prevention in the financial sector, issued on 16 December 2022. The existing versions of the AMAS 'Self-regulation on transparency and disclosure of collective assets with a sustainability focus' and the SBA have been supplemented and made more specific. They entered into force on 1 September 2024, with corresponding transitional periods.



New

FINMA guidance 04/2024 | Management of operational risks faced by fund management companies and managers of collective assets

Status: → Published: 12 June 2024

- In the course of its supervisory activities, FINMA has determined that operational risks at supervised institutions are increasing due to digitisation. At the same time, FINMA has increasingly observed weaknesses in the operational risk management of fund management companies and managers of collective assets.
- Against this backdrop, FINMA has issued guidance in order to raise fund management companies' and managers of collective assets' awareness of the importance of appropriate operational risk management.
- FINMA refers to the general principles of appropriate risk management, which also apply to operational risk management, and describes measures to ensure the appropriate management of risks in the following areas:
 - Information and communication technology;
 - Risks with regard to critical data;
 - Cyber risks;
 - Business continuity management;
 - Legal and compliance, in particular cross-border business;
 - Outsourcing.



5.

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Risk & Regulatory



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Sustainability



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