

Press release

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FINMA opens consultation on the partial revision of the FINMA Banking Insolvency Ordinance

The Swiss Financial Market Supervisory Authority FINMA is opening the consultation period for the partially revised FINMA Banking Insolvency Ordinance. Adjustments include implementing provisions on the requirement for banks and securities dealers to only agree new contracts or changes to existing contracts if the counterparty recognises a postponement of the termination of contracts in accordance with Article 30a of the Banking Act (BA).

Article 12 para. 2^{bis} of the Banking Ordinance (BO), which entered into force on 1 January 2016, requires that Swiss Banks now only enter into new contracts that are subject to foreign law or a foreign place of jurisdiction if the counterparty, in advance, contractually acknowledges a possible postponement ordered by FINMA. A postponement of this kind ensures the continuation of key contractual relationships without interruption in crisis situations. This obligation is now specified in the partially revised FINMA Banking Insolvency Ordinance in line with international standards. The consultation period will last until 8 November 2016. The revised provisions are scheduled to enter into force on 1 March 2017.

As set out in the draft ordinance, the adjustment requirement will only affect contracts whose continued existence is essential for a bank requiring restructuring. It therefore includes an exhaustive list of those contract types that are subject to this adjustment requirement. The listed contracts are customary in the financial market and include, in particular, contracts governing the purchase, sale, lending and repurchase of certain underlying securities. The list of contracts is internationally harmonised and coordinated with the definition of financial contracts in accordance with the EU Directive on the recovery and resolution of banks.

The implementing provisions also define exemptions from the contract adjustment requirement. This applies, in particular, to contracts with financial market infrastructures and central banks. Group companies of Swiss banks which are not active in the financial sector are likewise exempted from this requirement.

The ordinance also governs the implementation deadlines: contracts with banks and securities dealers as counterparties which are concluded or amended three months or later after entry into force of this partial revision will be required to meet the requirements in Article 12 para. 2^{bis} BO. Contracts with all other counterparties will only be required to meet the requirements if they are concluded or changed six months or later after entry into force of the partial revision.