

Press release

Date:
16 March 2017

Embargo:

Contact:
Vinzenz Mathys
Media Spokesperson
Phone +41 (0)31 327 19 77
vinzenz.mathys@finma.ch

FINMA publishes FINMA Banking Insolvency Ordinance

With the consultation completed, the Swiss Financial Market Supervisory Authority FINMA has published the partially revised FINMA Banking Insolvency Ordinance. The amendments specify the requirements for the contractual recognition of stays on early termination rights with regard to financial contracts. The new provisions will come into force on 1 April 2017.

The amended Banking Ordinance (Art. 12 para. 2^{bis}) that came into force on 1 January 2016 requires that Swiss banks and securities dealers only enter into new contracts under foreign law or with a foreign place of jurisdiction with counterparties that contractually recognize FINMA's power to order a stay on early termination rights. Any such stay is intended to ensure the continuation of critical contractual relationships in a financial crisis. The partially revised FINMA Banking Insolvency Ordinance sets out the details of the requirement pursuant to Art. 12 para. 2^{bis} Banking Ordinance in line with international standards. The new provisions will come into force on 1 April 2017.

The respondents welcomed this partial revision in principle but requested further clarification regarding the rule's scope of application as well as additional exceptions to the rule. FINMA considered these requests and their impact in depth and amended the wording of the consultation draft accordingly. Under the new wording, contracts entered into by foreign group entities are only subject to the rule if the respective financial contract was guaranteed or otherwise secured by a bank or securities dealer domiciled in Switzerland. As a result of the consultation, FINMA included additional exceptions for contracts with individuals as well as for contracts regarding the placement of financial instruments on the market. In addition, FINMA extended the implementation periods to 12 months for contracts with banks and securities dealers and 18 months for contracts with other counterparties.