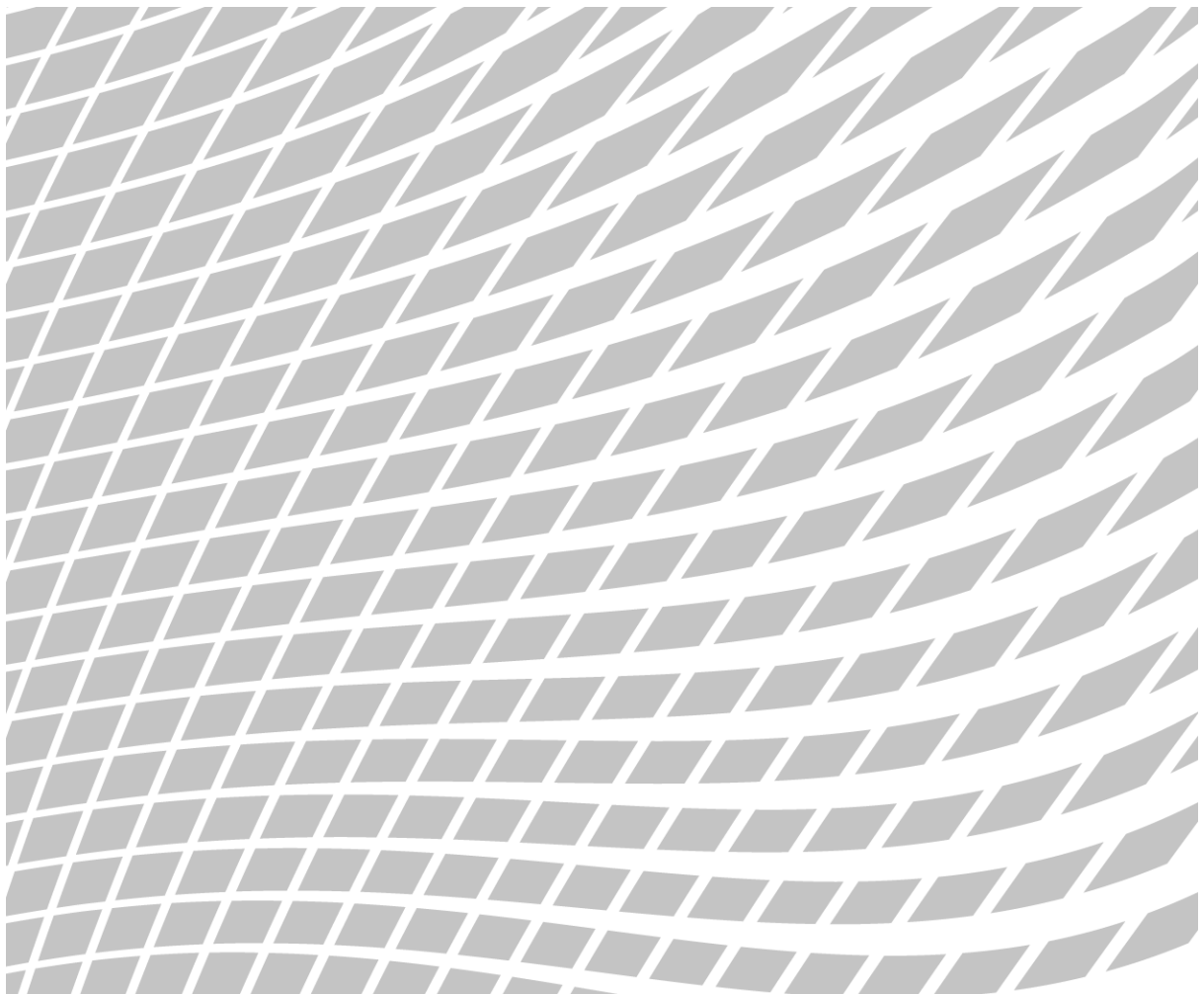


8 May 2012

Draft Insurance Bankruptcy Ordinance FINMA

Key points



Background

Since 1 September 2011, FINMA is responsible for initiating and conducting bankruptcy proceedings over insurance companies supervised under the Insurance Supervision Act of 17 December 2004 (ISA, SR 961.01).

Bankruptcy proceedings under the ISA are only rudimentarily regulated. This Ordinance should therefore complement the law accordingly.

Objectives

Swift bankruptcy proceedings: Proceedings are to be accelerated by not making certain procedural steps and legal remedies mandatory and by even eliminating them.

Efficient bankruptcy proceedings: Bankruptcy proceedings are to become more efficient by making certain tailored instruments for insurance companies available to FINMA and the bankruptcy liquidator.

Protecting policy holders: Protection of policy holders is to be ensured by collocating their claims preferential to first-class claims and granting them the possibility of being paid in advance.

Legal certainty: The Ordinance and the implementing provisions prescribed in the ISA serve to enhance transparency by determining the course of the bankruptcy proceedings. In the event of an insurance company going bankrupt, this Ordinance will render the steps taken by FINMA predictable for all parties involved.

Important aspects of the Ordinance

Part of the current BIO-FINMA already regulates bankruptcy proceedings over certain financial intermediaries supervised by FINMA. Since the subject matter of both ordinances bears a certain similarity, the part of the BIO-FINMA deemed relevant serves as a basis for the IBO-FINMA.

The Ordinance provides for flexible proceedings tailored to the needs of the individual case of the institution in liquidation.

The insurance holders and creditors are treated equally irrespective of their being domiciled in or outside Switzerland and of their citizenship.

Claims to be secured by tied assets are collocating before first-class claims as prescribed in Article 219 of the Federal Act on Debt Enforcement and Bankruptcy of 11 April 1889 (DBA, SR 281.1).

Paying dividends to policy holders to cover claims secured by tied assets may be done in total or in part before the schedule of claims comes into effect.

The Ordinance does not involve any organisational adjustments or changes for insurance companies since the new provisions are directed only at institutions in liquidation under bankruptcy legislation. No additional costs will therefore be incurred by institutions supervised by FINMA when the Ordinance comes into force.