

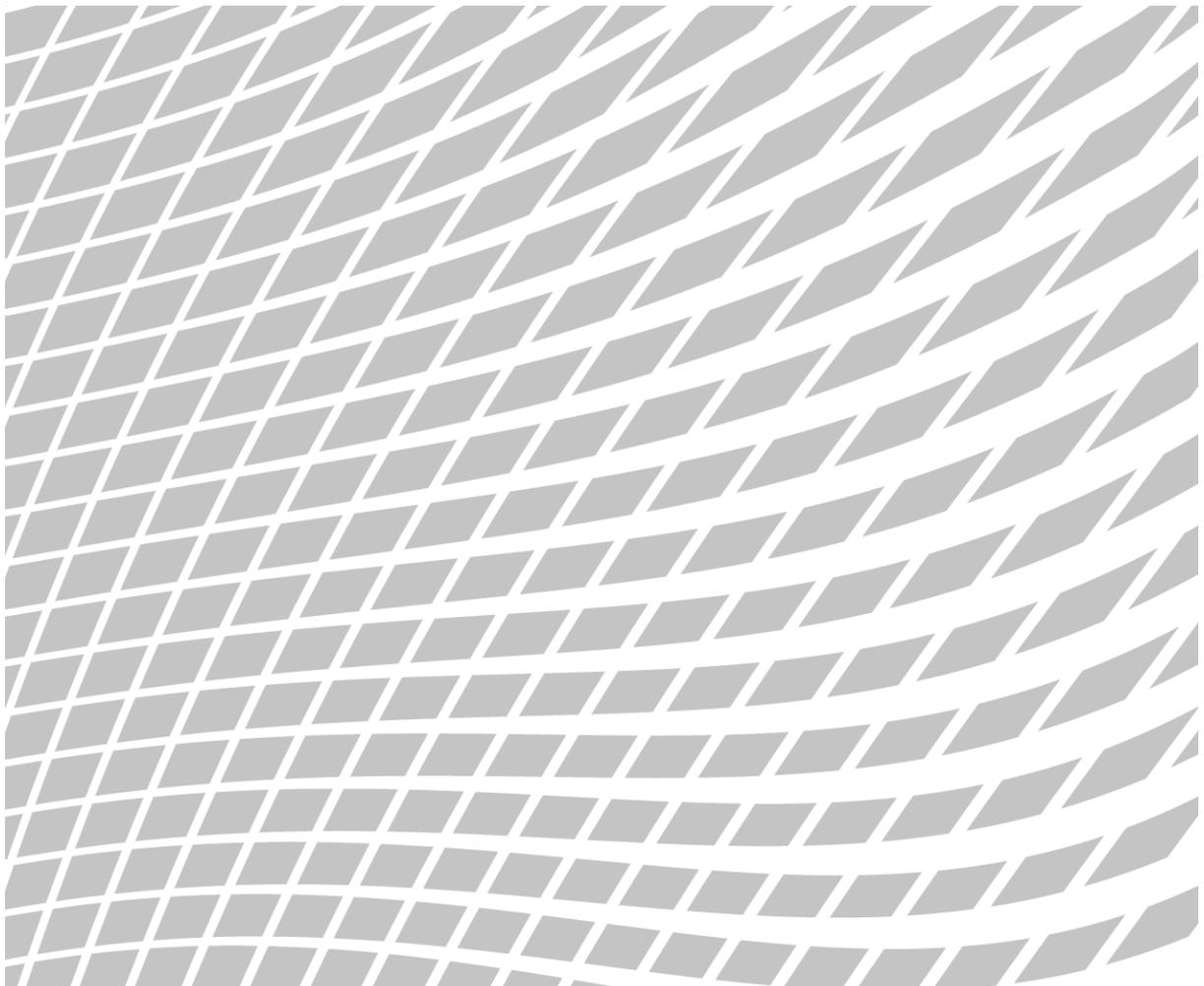
22 October 2012

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# FINMA Banking Insolvency Ordinance

## Key points

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## Content and scope of application

The FINMA Banking Insolvency Ordinance (BIO-FINMA) regulates bankruptcy proceedings and restructuring proceedings for banks, securities dealers and mortgage bond institutions.

BIO-FINMA fleshes out the highly abstract Articles 28 to 37g of the Banking Act (BA).

## Outcome of the consultation

The draft of BIO-FINMA, which was published for consultation on 16 January 2012, was essentially welcomed. This applies in particular to the fact that the procedures for bank restructuring and bankruptcy are combined in one ordinance. The improved predictability and increased legal certainty provided by BIO-FINMA also met with a positive response.

The major criticism of the consultation respondents was that the legal basis for some provisions in the restructuring section of BIO-FINMA was not adequate and in some cases non-existent. Disapproval was also expressed because in some areas insufficient progress had been made on achieving international consensus. The report addresses criticisms of the individual provisions.

## Changes made to the consultation draft

BIO-FINMA has been restructured in a purely formal sense and now contains only chapters and sections. The use of both masculine and feminine forms, which was the subject of much adverse comment, must be retained even if it impairs readability and access to the document.

The key changes in the area of bankruptcy provisions are the reversal of the suspension of the bankruptcy privilege for numbered accounts and the inclusion of provisions for a separate schedule of claims for claims secured by a registered pledge and/or for early realisation.

As far as restructuring is concerned, the provisions contained in the consultation draft were comprehensively overhauled. This made it possible to include international developments and numerous improvements through clarification and the use of more precise wording. The structure and organisation of the document were then modified in the interests of clarity.