

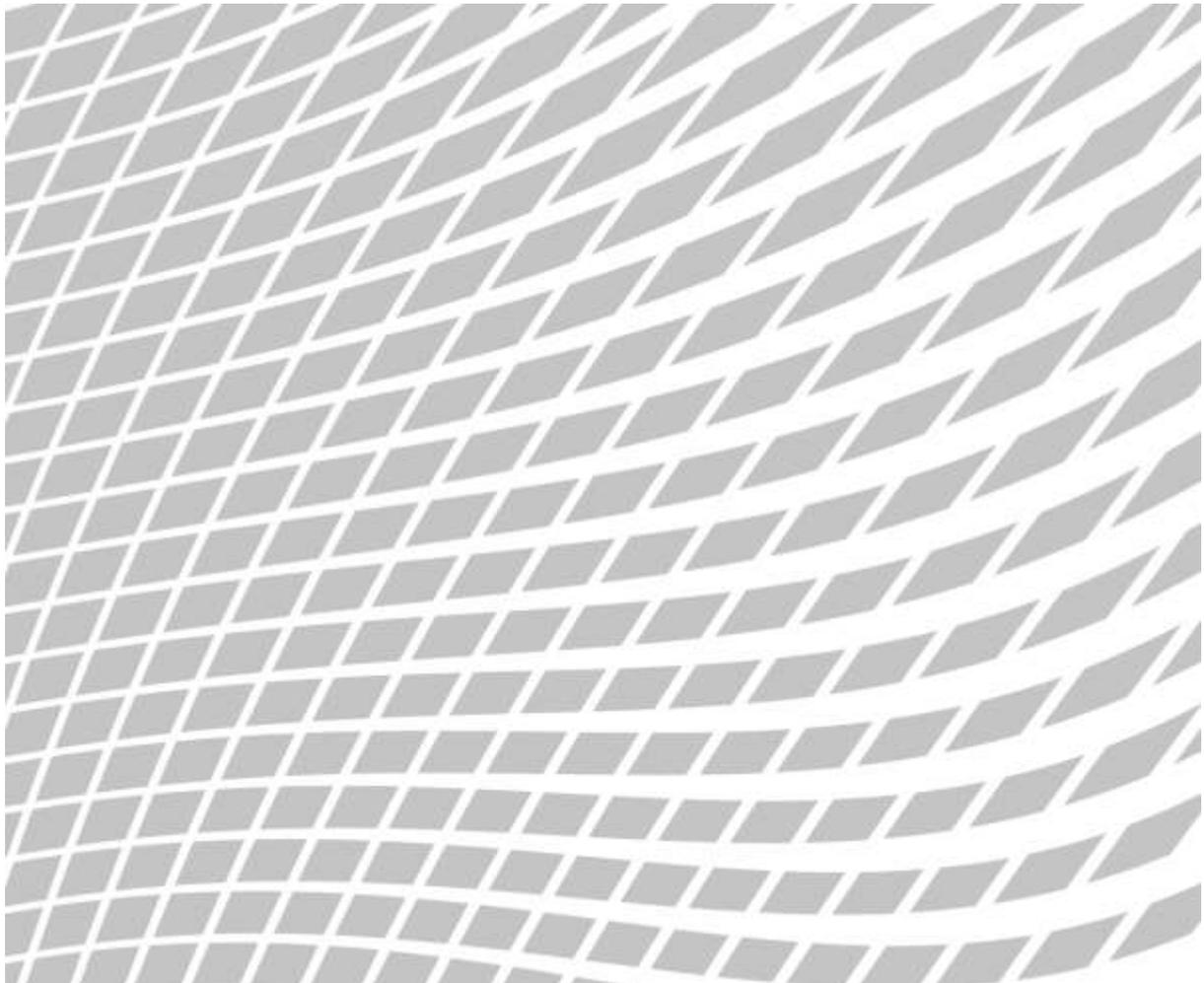
27 September 2016

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## **FINMA Banking Insolvency Ordinance – partial revision**

### Key points

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Article 12 para. 2<sup>bis</sup> of the Banking Ordinance (BO), which came into force on 1 January 2016, requires that Swiss banks only enter into new contracts which are subject to foreign law or a foreign place of jurisdiction if the counterparty, in advance, contractually acknowledges a possible postponement of the termination of contracts in accordance with Article 30a Banking Act ordered by FINMA. As this rule leaves a number of questions unanswered, implementation provisions regulating the points below in particular will be incorporated into the FINMA Banking Insolvency Ordinance (BIO-FINMA):

1. clarifying which types of contract fall in scope of Article 12 para. 2<sup>bis</sup> BO;
2. clarifying to which group companies of Swiss banks and securities dealers the adjustment requirement set out in Article 12 para. 2<sup>bis</sup> BO applies;
3. clarifying that the adjustment requirement set out in Article 12 para. 2<sup>bis</sup> BO only applies to the amendment of existing contracts and the conclusion of new contracts;
4. creating appropriate exemptions from the adjustment requirement for certain contracts (e.g. contracts with financial market infrastructures); and
5. defining the implementation deadlines.