



# finma

Eidgenössische Finanzmarktaufsicht FINMA  
Autorité fédérale de surveillance des marchés financiers FINMA  
Autorità federale di vigilanza sui mercati finanziari FINMA  
Swiss Financial Market Supervisory Authority FINMA

## Annual Report 2016



## FINMA's mandate

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The Swiss Financial Market Supervisory Authority FINMA is an independent, public law institution charged with protecting creditors, investors and policyholders and ensuring the proper functioning of the financial markets.

FINMA is mandated to protect individual financial market clients against unfair business practices and inequitable executions in securities markets; it also ensures that the financial institutions it supervises remain solvent. By securing the way in which the financial markets function, FINMA safeguards and enhances the stability of the Swiss financial system which in turn contributes to the competitiveness and reputation of Switzerland's financial centre.

FINMA supervises banks, securities dealers, insurance companies, financial market infrastructures and financial intermediaries, in addition to products and institutions under the Collective Investment Schemes Act (CISA). It licenses companies operating in the sectors it supervises and monitors their permanent compliance with statutory regulations and licensing requirements. FINMA cooperates with foreign regulators; it is responsible for combating money laundering, taking enforcement measures and, where necessary, conducting restructuring and bankruptcy proceedings.

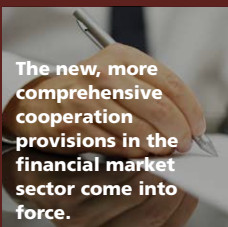
FINMA is also tasked with supervising the disclosure of shareholdings at listed companies, conducting enforcement proceedings, issuing rulings to restore compliance with the law and, where wrongdoing is suspected, filing criminal charges with the competent criminal authorities. In addition, FINMA supervises public takeover bids under the Financial Market Infrastructure Act (FMIA) and is the body to which appeals against decisions of the Swiss Takeover Board (TOB) may be brought.

Finally, FINMA participates in the legislative process and, where it is authorised to do so, issues its own ordinances. It also publishes circulars detailing the interpretation and application of financial market law and is responsible for the recognition of self-regulatory standards.

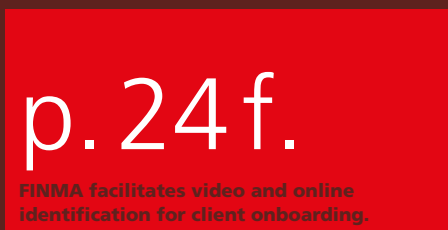
# On-site supervisory reviews in figures

On-site supervisory reviews are one of FINMA's key supervisory tools. These reviews provide FINMA with extensive information about the institutions it audits and also encourage an objective and open dialogue with licence holders. This ultimately helps FINMA to identify potential risks. By comparing the results of individual reviews and assessing quantitative and qualitative aspects, FINMA also gains a broader overview of the market as a whole.

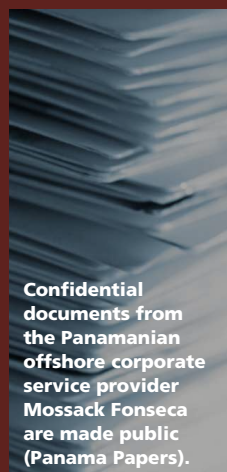
JAN.



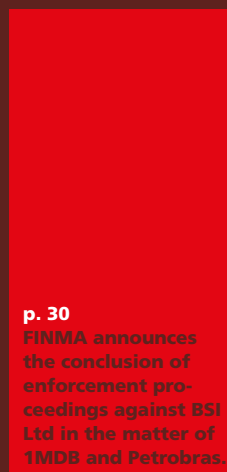
MAR.



APR.



MAY



## On-site supervisory reviews: banks and insurance companies



In 2016, the Banks division concentrated its on-site supervisory reviews on lending (including mortgages), anti-money laundering, operational risks and wealth management. While no on-site supervisory reviews were carried out at Supervisory Category 5 institutions, they were subjected to brief, but intensive, on-site checks (deep dives), which provided a better overview of specific topics.

In the insurance sector, the depth of on-site supervisory reviews, particularly with respect to technical provisions, was intensified in 2016. Corporate governance and internal control systems were also audited.

JUNE



On 23 June 2016, the United Kingdom votes to leave the EU.

p. 32  
FINMA creates the new Recovery and Resolution division.

The Federal Council amends the "too big to fail" provisions and introduces guidelines on the total loss-absorbing capacity (TLAC) of global systemically important banks.

SEPT.



p. 100  
FINMA signs a FinTech cooperation agreement with the Monetary Authority of Singapore (MAS).

OCT.



The Financial Action Task Force (FATF) concludes a comprehensive review of Switzerland's efforts to prevent money laundering.

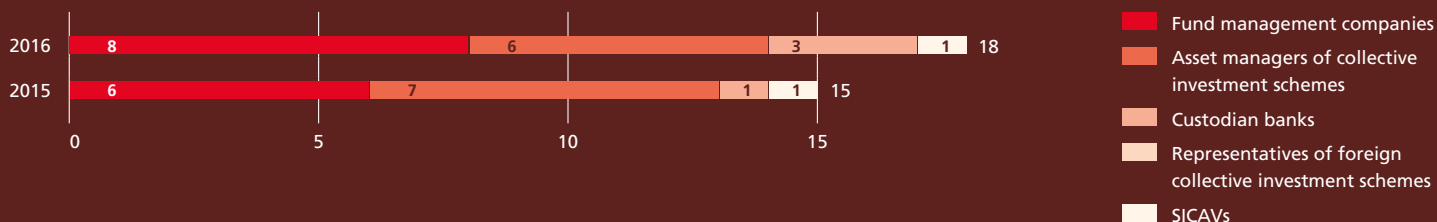
## On-site supervisory reviews: self-regulatory organisations and directly subordinated financial intermediaries



On-site supervisory reviews are held at directly subordinated financial intermediaries (DSFIs) to restore compliance with regulatory law. During the period under review, these audits involved money transfer service providers, fiduciaries, asset managers and a currency trader. The topics addressed were organisational measures, compliance with anti-money laundering due diligence requirements and the involvement of third parties in implementing those requirements.

FINMA also performs risk-based Anti-Money Laundering Act (AMLA) audits at self-regulatory organisations (SROs). SRO-specific topics such as weaknesses in the system's organisational and operational structure and more generic SRO issues are included in these audits. Measures to restore compliance with regulatory law are defined for any vulnerable areas identified and their subsequent implementation is monitored. In 2016, FINMA conducted a thorough review of the implementation of the new authorisation and supervisory competencies applicable to audit firms and lead auditors, in addition to the implementation, application and monitoring of the new AMLA requirements for SRO members. Another area reviewed was the identification of changes in the business activities of SRO members and the influence of those changes on the risk-oriented supervision of SROs.

## On-site supervisory reviews: institutions under the Collective Investment Schemes Act



In 2016, the Asset Management division focused mainly on auditing risk management (including risk controls) and the safekeeping of assets. Reviews were also carried out on the suitability of products and services for clients, reflecting increased emphasis on compliance with the rules of conduct.

NOV.

**p. 32**  
FINMA issues Credit Suisse (Switzerland) Ltd. with a banking, securities dealers and custodian bank licence.

**p. 15**  
FINMA sanctions Falcon Private Bank Ltd. for seriously breaching regulatory law in the matter of 1MDB.

**p. 28**

The Federal Council proposes the introduction of a new FinTech licence and an innovation area for financial providers exempt from licensing requirements.



DEC.

**p. 48**  
FINMA's Board of Directors decides to put the second package of circulars linked to the revised ISO revision (1 July 2015) into force on 1 January 2017.



## Building on past successes

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FINMA has defined its strategic goals for the years 2017 to 2020. It remains fully committed to protecting financial market participants and maintaining the strength and integrity of the Swiss financial centre. At the same time, regulation should not stand in the way of innovation.

This Annual Report 2016 marks the end of our 2013 to 2016 strategy period. Our strategic goals for 2017 to 2020 aim to build on past successes while setting some new accents. Change is the only constant, and participants in the Swiss financial market, including FINMA itself, will doubtless face further challenges over the coming four years.

### **Ensuring strong capitalisation for banks and insurers**

Stable and resilient financial institutions are an absolute prerequisite for protecting financial market clients and maintaining an international reputation as a sound financial system. Stringent prudential requirements for banks and insurers are therefore fully warranted.

Stability is a hallmark of Switzerland in general and of its financial system in particular. On behalf of creditors, investors and policyholders, FINMA will continue to do everything in its power to ensure that this remains the case. In 2016, important steps were taken in Switzerland to ensure that global systemically important banks are more strongly capitalised, the Basel Committee on Banking Supervision continued its work on the Basel III reform agenda and, thanks to the tried-and-tested SST solvency system, insurers are relatively well positioned. FINMA's main prudential focus in the year ahead will be on implementing the reinforced "too big to fail" regulations and on enhancing the resolvability of our systemically important financial institutions.



### **Pushing for a change of culture**

FINMA will continue its efforts to bring about positive change in the business conduct of financial institutions. Again, serious shortcomings came to light in 2016, particularly in the area of money laundering. Over the past four years, FINMA has taken enforcement action against supervised institutions in about 40 cases for breaches of anti-money laundering regulations, but the scale of the recent misconduct is unprecedented. Several Swiss financial institutions have been caught up in major international corruption cases, not least those involving the Malaysian sovereign wealth fund 1MDB and Brazilian oil company Petrobras. In these two cases, FINMA launched enforcement proceedings against nine institutions and four individuals; three of these cases were concluded by the end of 2016. FINMA has also made its approach to anti-money laundering supervision more proactive and intensified its oversight of institutions with significant risks. At the end of 2016, 21 banks were categorised as “high risk”. FINMA will continue to use all the enforcement tools at its disposal to tackle misconduct on the part of both companies and individuals. As the world’s leading private wealth management hub, Switzerland must protect its financial system from misuse.

### **Supporting innovation**

Switzerland’s financial industry needs to place ever-greater emphasis on innovation. In 2015, FINMA launched proposals to remove regulatory obstacles to financial innovation and established a framework for online client identification. Our dedicated FinTech desk responded to more than 270 enquiries in 2016. FINMA will continue to advocate the dismantling of unnecessary regulatory hurdles for innovative service providers and welcomes the action taken by the Federal Council and Parliament to create a new licensing category.



Dr Thomas Bauer  
Chair

December 2016

### **Dealing with emerging risks**

The increasing digitalisation of the financial industry brings both opportunities and risks. In 2016, FINMA devoted substantial resources to analysing the risks posed by cyber attacks. Special audits were carried out at systemically important institutions to establish the status of their cyber defences, and self-assessments were conducted at other banks. Minimum requirements for cyber defence were also defined. Reducing vulnerability to such attacks will remain a key priority for FINMA in the year ahead. The same applies to IT outsourcing. For cost reasons, there has been a growing trend among financial institutions to delegate tasks to external providers, both in Switzerland and abroad. Outsourcing by banks and insurers has become an increasingly complex issue and supervised institutions must ensure proper control over their outsourced processes. FINMA must also be able to verify that outsourced processes meet our requirements and that access to critical services is guaranteed, also if an institution is in crisis. It will therefore carry out on-site checks at selected service providers over the course of 2017.

### **Providing an effective and efficient supervisory system**

FINMA has established itself as an effective and credible supervisory authority. Despite many new challenges, FINMA has kept costs and staff numbers stable over the past four years. This would only change if and when FINMA is assigned new responsibilities. Efficiency gains will therefore remain a top priority. We will also extend our use of digital channels in our interactions with supervised institutions and in the authorisation process with the aim of freeing up resources to counter the emerging risks highlighted above. We will also look to improve the cost/benefit of regulatory audit. FINMA is committed to delivering a Swiss supervisory system that is lean, efficient and effective.



Mark Branson  
CEO

## **FINMA: AN OVERVIEW**

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## **SUPERVISION, ENFORCEMENT AND REGULATION**

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# FINMA: an overview

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## FINMA's core tasks: third parties commissioned by FINMA

FINMA relies on significant support from third parties in all aspects of its supervisory work. It is committed to using these third-party resources effectively and efficiently and ensuring a fair and transparent mandate assignment process.

FINMA has approximately 480 full-time positions, which makes it a lean organisation by international standards, considering the size of the Swiss financial centre. This is partly due to the fact that FINMA commissions support from third parties in every aspect of its supervisory remit. In the banking sector, for instance, FINMA may conduct an in-depth supervisory review based on a more basic audit, which would usually be performed by an audit firm. FINMA can also commission mandataries for specific cases relating to aspects of ongoing supervision, enforcement or restructuring and liquidation proceedings.

### Auditors assume a key role

Switzerland has a long tradition of using audit firms to support the supervisory authorities. Since 1934, banks have been obliged under the Banking Act to use an auditor to review compliance with financial market laws. Nowadays, audit firms create an annual risk analysis for each financial institution. This analysis forms the basis of an audit programme defined by FINMA and performed by the auditor, which subsequently reports to FINMA. The regulatory audit is distinct from the financial audit under the Code of Obligations (CO). The audit firm must be thorough in performing its duties and guarantee an objective assessment. To this end, the auditor needs to comply with legal requirements in terms of organisation, employee training and independence. The Federal Audit Oversight Authority (FAOA) issues authorisations for regulatory auditors<sup>1</sup> and financial auditors under the CO.

The costs incurred by the audit firms in conducting regulatory audits are covered by the supervised institutions. The audit firms report their fees to FINMA every year. The average hourly rate for a regulatory audit is CHF 219 and CHF 147 for the financial audit. In 2016, audit costs accounted for 43% of FINMA's and the regulatory auditor's combined costs. The

extent to which audit companies are used in the Swiss financial market varies considerably. Audit fees account for over 60% of banking supervision costs, compared to just 11% in the insurance sector, where FINMA performs most of the supervision for historical reasons. Each year, audit firms report the fees they charge for the previous year to FINMA. This explains why the audit fees for regulatory audits conducted by audit firms in the financial year 2015 are shown under 2016 in the chart below. The total fees for that period came to CHF 115.7 million and have thus remained relatively stable in recent years.

### Fees charged by audit firms for regulatory audits

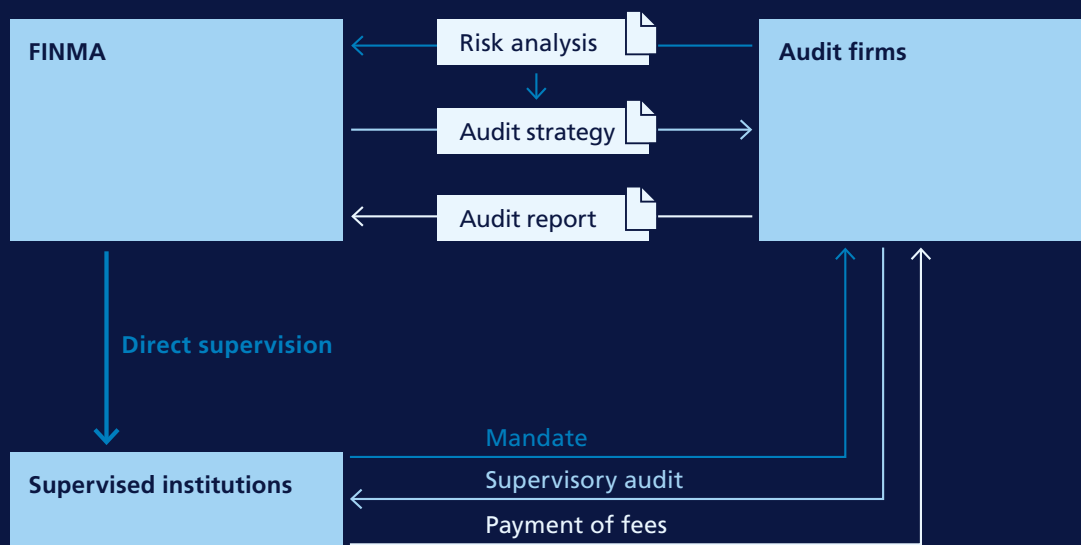
Annual fees per supervisory area (in CHF millions) <sup>2</sup>	2016	2015	2014
Asset management	15.7	11.8	12.0
Banks and securities dealers	93.7	89.8	95.8
Markets	1.7	1.9	2.0
Insurance companies	7.6	5.5	6.0
<b>Total</b>	<b>115.7</b>	<b>109.0</b>	<b>115.8</b>

<sup>1</sup> There are currently seven companies with authorisation to conduct regulatory audits of banks, stock exchanges and securities dealers; seven for insurance companies; nine under the Collective Investment Schemes Act and 19 for directly subordinated financial subsidiaries (DSFIs) to FINMA.

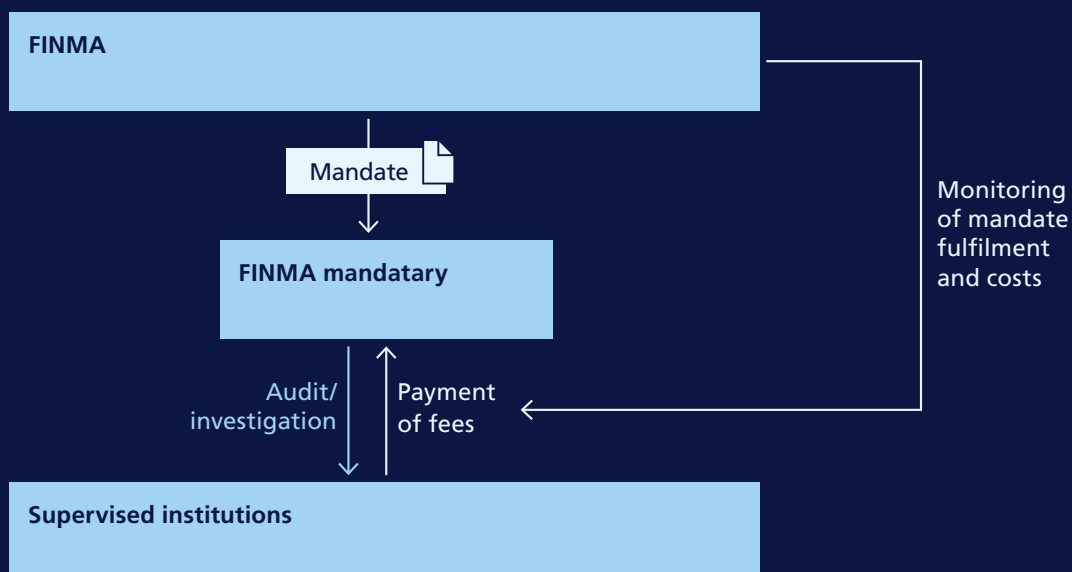
<sup>2</sup> The figures for each year apply to audits conducted in the previous financial year.

# Third parties commissioned by FINMA

## Auditing as a key element of ongoing supervision



## FINMA mandataries in specific cases



### **Making auditing fit for the future**

Auditing in Switzerland is scrutinised at a national and international level due to its role in maintaining effective supervision of the Swiss financial market and subsequently ensuring the smooth functioning of the financial markets. The interdependency between audit firms and supervised institutions is a particularly sensitive area as it has raised doubts about the auditors' objectivity.

FINMA is part of the Swiss supervisory system, which comprises FINMA's supervisory work and the audits conducted by audit firms. This system enables comprehensive regulatory auditing, particularly through the on-site presence of auditors at large international banks outside Switzerland. That is how FINMA can preserve its lean structures. However, FINMA also considers itself responsible for the system's efficiency and effectiveness. It therefore regularly reviews the system's quality in view of the proportion of regulatory audit costs paid to audit firms. The supervisory authority has concluded that the cost-benefit ratio could be improved. FINMA will specify measures in 2017 to ensure Swiss financial market supervision becomes more effective.

### **FINMA mandataries: an important instrument for specific supervisory and enforcement issues**

Mandataries are an important supervisory instrument for FINMA and they can be deployed across the full range of FINMA's operations. As opposed to auditing, mandataries are not usually commissioned for a recurring audit; instead they are used for specific issues related to supervision and enforcement. FINMA's mandates are as varied as the areas they cover and thus require different types of specialisation. Mandataries include, but are not restricted to, audit firms. Their costs are borne by the supervised institutions. There are five types of mandatary (see p. 11).

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## Five types of mandatary

### **Audit mandataries: authorised financial intermediaries**

Audit mandataries review a supervised institution on FINMA's behalf as part of the supervisory authority's ongoing supervision. They are used, for example, for special or institutional events. Expert knowledge is often required.

### **Investigating agents: authorised financial intermediaries**

Investigating agents clarify an issue related to enforcement proceedings or monitor the implementation of FINMA's supervisory measures. That can also include extensive forensic examination. In specific instances relating to licence holders, investigating agents can also receive authorisation to act instead of an institution's governing bodies.

### **Investigating agents: unauthorised activities**

If there is reason to believe that companies or persons are exercising an activity without the authorisation required under financial market law, investigating agents can be commissioned to clarify the matter. In this instance, the investigating agent normally also receives authorisation to act instead of the governing bodies.

### **Restructuring agents and crisis managers: authorised financial intermediaries**

FINMA entrusts restructuring mandataries with drawing up a restructuring plan. The crisis manager assumes management of the financial intermediary affected, elaborates proposed solutions to a crisis and implements them.

### **Bankruptcy and liquidation mandataries**

Liquidators liquidate an institution after authorisation has been withdrawn or if the institution does not have the requisite authorisation. The bankruptcy liquidator is commissioned to settle bankruptcy proceedings.

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FINMA maintains a list of suitable mandataries<sup>3</sup> whom it can deploy quickly in specific instances. The mandataries listed must have knowledge and experience of similar mandates and have access to a functioning infrastructure. Where there is no suitable mandatary to carry out a mandate, FINMA may commission an expert who is not listed. The mandataries must always be independent of the supervised institution. In 2016, about 83% of them, i.e. 53 out of 64 mandataries on the list, were commissioned to carry out at least one FINMA mandate. Individual mandataries received a maximum of six

mandates during this time. FINMA monitors the completion of mandates at all times and controls the proportionality of the costs borne by the supervised institutions in question. Each assignment given to a FINMA mandatary results in a ruling (which can be appealed) on the supervised institution or unauthorised financial intermediary. Costs for FINMA mandataries commissioned in 2016 came to CHF 49.2 million.

<sup>3</sup> For the list of mandataries, see <https://www.finma.ch/en/finma/finma-mandataries>.



#### Costs for FINMA mandataries and number of mandates granted<sup>4</sup>

Annual fee volume per mandate type (in CHF millions)	2016 <sup>5</sup>	Number of mandates granted	2015	Number of mandates granted	2014	Number of mandates granted
Auditing of authorised financial intermediaries	4.3	8	7.7	19	4.3	18
Investigations of authorised financial intermediaries	13.2	13	2.5	4	1.4	5
Investigations of activities conducted without requisite authorisation	1.1	8	1.3	15	1.0	12
Liquidation proceedings	0.9	4	0.7	4	0.9	15
Bankruptcy/liquidation proceedings	29.7	15	46.8	8	21.7	17
<b>Total</b>	<b>49.2</b>	<b>48</b>	<b>59.0<sup>6</sup></b>	<b>50</b>	<b>29.3</b>	<b>67</b>

<sup>4</sup> The costs of insolvency proceedings can vary year on year depending on the complexity or status of the proceedings.

<sup>5</sup> Invoices received as of 24 February 2017.

<sup>6</sup> This exceptionally high fee is due to several extensive and complex bankruptcy proceedings.

From cooperation provisions to delivery platforms, 2016 was a varied and challenging year for FINMA. The key milestones are summarised below by quarter.

### First quarter

#### New cooperation provisions come into effect

Some extensive changes to the cooperation provisions in the Financial Market Supervision Act came into effect on 1 January 2016, at the same time as the new Financial Market Infrastructure Act. For example, FINMA is no longer obliged to inform the client in advance when transferring client information in accordance with financial market law. Moreover, licence holders are now authorised to transfer non-public information directly to foreign authorities subject to certain conditions.

#### Corporate governance assessment for insurance companies

For the first time, all insurance companies included in the corporate governance assessment submitted the online questionnaire. FINMA uses this annual survey to systematically assess corporate governance at insurance companies. The results provide indicators of specific weaknesses at individual insurance companies and an overview of general market practice.

#### Standard model for reinsurance captives

Since the revised Insurance Supervision Ordinance (ISO)<sup>7</sup> came into force, reinsurance captives have also been obliged to measure their solvency using the Swiss Solvency Test (SST). In 2015, FINMA presented the standard model for reinsurance captives, which almost every captive used for the first time in 2016 to measure their SST. The SST ratio for this sector is reported separately from the other reinsurers.

#### FINMA video and online identification circular comes into effect

FINMA established the legal regulatory conditions for onboarding clients via digital channels. Anti-money laundering due diligence requirements applicable to digital financial services were set out in a new circular in line with the principle of technology neutrality. FINMA Circular 2016/7 "Video and online identification"<sup>8</sup> came into force in March 2016.

### Second quarter

#### Conclusion of proceedings against BSI Ltd in the matter of 1MDB

In May 2016, FINMA concluded extensive enforcement proceedings against BSI Ltd.<sup>9</sup> The proceedings revealed that the bank was in serious breach of anti-money laundering regulations and of "fit and proper" requirements in its business relationships and transactions linked to the Malaysian sovereign wealth fund 1MDB. FINMA ordered the disgorgement of profits worth CHF 95 million, in addition to other measures. The supervisory authority also launched enforcement proceedings against two of the bank's former top managers.

#### New Recovery and Resolution division

The new Recovery and Resolution division has been operational since June 2016. It pools FINMA's competencies in the strategically important area of resolution and insolvency. The new structure will make FINMA more efficient and effective as a resolution authority. It will also underscore FINMA's commitment in this area.

#### "Too big to fail" provisions adjusted

The Federal Council approved the reinforced "too big to fail" provisions in May 2016 following which the revised Capital Adequacy Ordinance (CAO)<sup>10</sup> came into force on 1 July 2016. The total loss-absorbing capacity standard was also implemented in Swiss law, having been approved by the Financial Stability Board.

<sup>7</sup> See press release of 17 November 2015 "FINMA brings partially revised FINMA Insurance Supervision Ordinance into force" (<https://www.finma.ch/en/news/2015/11/20151117-mm-avo-finma/>).

<sup>8</sup> See press release of 17 March 2016 "FINMA reduces obstacles to FinTech" (<https://www.finma.ch/en/news/2016/03/20160317-mm-fintech/>).

<sup>9</sup> See press release of 24 May 2016 "BSI in serious breach of anti-money laundering regulations" (<https://www.finma.ch/en/news/2016/05/20160524-mm-bsi/>).

<sup>10</sup> See Ordinance on Capital Adequacy and Risk Diversification for Banks and Securities Dealers (Capital Adequacy Ordinance; SR 952.03) (<https://www.admin.ch/opc/de/classified-compilation/20121146/index.html>; in German).

### Third quarter

#### **Mandate to amend the Insurance Supervision Act**

On 7 September 2016, the Federal Council commissioned the Federal Department of Finance (FDF) to establish a draft consultation paper to amend the Insurance Supervision Act (ISA) in view of the introduction of client protection-based supervision and a restructuring law for insurers. The Swiss Insurance Association (SIA) and FINMA are both represented in the FDF working group.

#### **Delivery platform for supervised institutions and audit firms**

In September 2016, FINMA's digital delivery platform became operational. The platform allows supervised institutions and audit firms to submit documents electronically in a user-friendly and secure way. The platform is provided by FINMA as a free service.

#### **Proceedings against Falcon Private Bank Ltd. in the matter of 1MDB**

In October 2016, FINMA concluded extensive enforcement proceedings against Falcon Private Bank Ltd.<sup>11</sup> The proceedings concluded that the bank had seriously breached anti-money laundering regulations by failing to carry out adequate background checks into transactions and business relationships associated with Malaysian sovereign wealth fund 1MDB, which were booked in Switzerland, Singapore and Hong Kong. FINMA banned the bank from entering into business relationships with foreign politically exposed persons for a period of three years, in addition to other measures. Enforcement proceedings were also launched against two of the bank's former office holders.

### Fourth quarter

#### **FINMA publishes new circular on corporate governance for banks**

FINMA also streamlined its supervisory requirements regarding corporate governance, internal control systems and risk management for banks in a new circular (FINMA Circ. 17/1 "Corporate governance – banks").<sup>12</sup> This Circular comes into force on 1 July 2017. It takes account of the most recent findings from the financial crisis and emphasises the importance of modern corporate governance in addition to appropriate and effective risk management for banks.

#### **Signing of an MoU on funds with Hong Kong**

In the interests of improving cooperation between Switzerland and Hong Kong and providing reciprocal market access for fund providers, FINMA signed a Memorandum of Understanding (MoU) in December 2016 with the Securities and Futures Commission of Hong Kong (SFC). Switzerland's motivation in signing the MoU is to open up the Hong Kong market for the distribution of Swiss securities funds to public investors, and enable supervised institutions in Switzerland to manage funds distributed to public investors in Hong Kong.

#### **Credit Suisse (Switzerland) Ltd. receives banking licence**

FINMA issued Credit Suisse (Switzerland) Ltd. with a licence in October 2016 to operate as a bank, securities dealer and custodian bank. Credit Suisse was thus able to transfer its Swiss retail and corporate client business from its Swiss Universal Bank division to a separate Swiss bank and thus improve its resolvability in the event of a crisis.

#### **Publication of the FATF country assessment report**

The Financial Action Task Force (FATF) published its report on its country assessment of Switzerland on 7 December 2016. The purpose of the two-part FATF assessment is to gauge the technical compliance and effectiveness of the national systems in place to counter money laundering and terrorism financing. Switzerland's effectiveness achieved a positive result on many fronts. Nevertheless, the country must undergo an enhanced follow-up process, as must nine of the eleven evaluated countries, regarding the implementation of the FATF recommendations.

<sup>11</sup> See press release of 11 October 2016 "Falcon sanctioned for 1MDB breaches" (<https://www.finma.ch/en/news/2016/10/20161011-mm-falcon/>).

<sup>12</sup> See press release of 1 November 2016 "FINMA redefines corporate governance guidelines for banks" (<https://www.finma.ch/en/news/2016/11/20161101-mm-rs-corporate-governance-bei-banken/>).

## FINMA in the political context

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In 2016, FINMA again provided expert advice on financial market legislation during the parliamentary debates. It exchanged views with politicians on a range of issues, including the development of “too big to fail” legislation and supervision of independent asset managers. FINMA was also asked to provide an expert opinion on the Pensions 2020 reform package.

At the beginning of 2016, FINMA was invited to a hearing held by the parliamentary Committee for Social Security and Health of the National Council. The committee’s goal was to gather expert advice on the Pensions 2020 reform package.

### **Information event on insurance supervision**

The current low interest rate environment is presenting the Swiss insurance sector with major challenges. Protecting the interest of policyholders is of particular importance in such an environment. Against this backdrop, FINMA invited members of the Federal Assembly to an information event in the first quarter of 2016 to provide insight into what is involved in insurance supervision. In addition to some general questions on insurance supervision, the event examined the topics of life insurance in a low interest rate environment and FINMA’s supervision of supplementary healthcare insurance – with a particular focus on business conduct and tariff controls.

### **Annual accountability requirements**

Once the Federal Council and parliamentary oversight committee had approved FINMA’s Annual Report, the report was then published as is the case every year. FINMA elaborated on how it perceives current developments in the financial centre and provided information on its supervisory role at its media conference on 7 April 2016 and at the hearing held by the FDF/EAER sub-committee of the Control Committee of the Council of States (CC-CS) on 21 April 2016.

### **Provision of information to parliamentary committees**

FINMA attended a number of hearings in 2016 and shared its views on the development of the “too big to fail” legislation. The main issues were the amendments to the withholding tax law and the Capital Adequacy Ordinance (CAO). FINMA also contributed its position on the proposal to further develop the structure of Postfinance.

Another significant regulatory topic was establishing supervision for independent asset managers as part of the legislative work on the Financial Institutions Act (FinIA) and the Financial Services Act (FinSA). FINMA’s contributions reflected its commitment to creating an effective supervisory system.

FINMA is in regular contact with many national institutions and associations. In compliance with the legal framework, FINMA maintains an open and transparent information policy towards supervised institutions, other stakeholder groups and the public.

FINMA interacts with almost 100 institutions and associations, including the umbrella associations of supervised institutions, supervisory and criminal authorities as well as other authorities and federal offices. Its contacts with business, professional and staff associations, consumer protection organisations and ombudspersons in various supervisory areas are equally important. FINMA actively cultivates dialogue with its stakeholder groups to improve their understanding of supervisory and regulatory issues.

### **Expert panels**

The subject-specific expert panels initiated in 2015 – comprising high-level representatives of the supervisory and private sectors – were expanded in 2016. These panels facilitate direct exchanges between those responsible for making decisions at a supervisory level and key financial market players. The four expert panels in banking (asset management, retail banking, capital markets and private banking) met twice in 2016. The positive outcome of these meetings also led to the creation of expert panels in the insurance sector. In 2016, the first meetings took place for non-life, health and life insurance as well as reinsurance. Specific supervisory and regulatory issues were discussed as were current market developments.

### **Sustainability and the financial market**

In 2016, FINMA contributed to the work of a national expert group under the leadership of the Federal Office for the Environment (FOEN), which defined proposed measures for a financial system compatible with sustainability principles. The group included representatives from the financial sector, academia, non-governmental organisations and federal authorities. The experts presented their findings on 14 June 2016.<sup>13</sup>

### **Cooperation with administrative authorities**

Within its legal mandate, FINMA also cooperates with the Federal Department of Finance (FDF), the Swiss National Bank (SNB) and other federal authorities on many matters of shared regulatory and supervisory concern.

### **FINMA in dialogue with academia**

FINMA regularly invites academics and financial experts to seminars so they can present the results of their latest research. By holding these events, FINMA aims to promote open discussion. They also provide a valuable opportunity for FINMA employees to keep abreast of the latest research.

<sup>13</sup> FOEN 2016: Proposals for a Roadmap towards a Sustainable Financial System in Switzerland, [www.bafu.admin.ch/ud-1097-e](http://www.bafu.admin.ch/ud-1097-e).

# Key topics discussed with important stakeholder groups

FINMA conducts annual or semi-annual discussions with the most important associations and stakeholder groups of supervised institutions. The main topics covered in 2016 are indicated below.

## BANKS

### Swiss Bankers Association (SBA)

- Financial Services Act and Financial Institutions Act
- Amendment to the Swiss banks' code of conduct with regard to the exercise of due diligence/FINMA Circular on video and online identification
- New FINMA Circular "Corporate governance – banks"<sup>14</sup>
- Dealing with cyber risks

## INSURANCE COMPANIES

### Swiss Insurance Association (SIA)

- New and revised FINMA circulars<sup>15</sup>
- Development of the Swiss Solvency Test (SST)
- New restructuring regulation for insurers
- Supervisory approach based on client protection and other amendments to the Insurance Supervision Act
- Group discounts in supplementary health insurance
- Creation of a new SST standard model for group life insurance

## COLLECTIVE INVESTMENT SCHEMES

### Swiss Funds & Asset Management Association (SFAMA)

- Alignment of current sample documents to match the revised FINMA Collective Investment Schemes Ordinance (CISO)
- Review of SFAMA guidelines on money market and real estate funds
- Exchange on current regulatory and economic developments in asset management (FMIA, FinIA/FinSA, innovative products, etc.)

## AUDIT FIRMS

### EXPERTsuisse

- New and/or revised minimum audit requirements for banks and collective investment schemes regarding the code of conduct (suitability, market integrity, compliance)
- Review of anti-money laundering audit programmes
- Partial review of the FINMA Circular on auditing<sup>16</sup>
- Classification system for complaints and recommendations
- Review of the guidelines on risk analysis and audit strategy
- Improving the effectiveness of regulatory audits

<sup>14</sup> See press release of 1 November 2016, "FINMA redefines corporate governance guidelines for banks" (<https://www.finma.ch/en/news/2016/11/20161101-mm-rs-corporate-governance-bei-banken>).

<sup>15</sup> See press release of 15 December 2016, "FINMA publishes insurance circulars" (<https://www.finma.ch/en/news/2016/12/20161215---mm---rs-versicherungsbereich/>).

<sup>16</sup> See press release of 16 December 2014, "FINMA publishes revised circular on auditing" (<https://www.finma.ch/en/news/2014/12/mm-rs-pruefwesen-20141215/>).

In 2016, international standard-setting bodies continued to make progress in setting important operating conditions for the Swiss financial centre. FINMA also played an active role on many committees.

As part of its international remit, FINMA represents the interests of Switzerland on a number of international committees, including the Basel Committee on Banking Supervision (BCBS), the International Association of Insurance Supervisors (IAIS), the International Organization of Securities Commissions (IOSCO) and Financial Stability Board (FSB) groups. FINMA promotes appropriate and proportionate solutions, which do not distort international competition and permit implementation appropriate to the Swiss financial sector.

### **Financial Stability Board**

The Financial Stability Board promotes international financial stability. To this end, it assumes a coordinating function between the sector-specific standard-setting bodies BCBS, IAIS and IOSCO and the national financial authorities. Switzerland's involvement in the FSB enables it to participate in structuring and implementing the G-20 reform agenda established in the wake of the financial crisis. FINMA works closely with the Swiss National Bank (SNB) and the State Secretariat for International Financial Matters (SIF), as they represent Switzerland in the FSB Plenary and other bodies. FINMA represents Switzerland on the FSB Standing Committee on Supervisory and Regulatory Cooperation and in the Resolution Steering Group.

The implementation of the reform agenda progressed further in 2016. The focus for a number of FSB subjects moved to the national implementation of the adopted rules and monitoring those rules to ensure international uniformity. Enhancing resolvability for systemically important banks was specified further at the international level, while a number of FSB member states proceeded with the implementation of corresponding measures. Furthermore, the setting of crisis management guidelines for important financial market infrastructures

became more of a priority, particularly for central counterparties. The FSB also worked on assessing the impact of regulation, focusing on the various proposed G-20 financial market reforms.

### **Basel Committee on Banking Supervision**

Switzerland is represented by FINMA and the SNB on the Basel Committee on Banking Supervision. In 2016, the Basel Committee worked intensively on finalising the Basel III reform agenda; however it did not manage to meet its original time plan. The committee's main focus was on improving risk-weighted (and differentiated) capital requirements. It then intends to revise standard approaches to capital adequacy requirements for credit and operational risks. The model approach to securitising credit risks is to be adjusted and will introduce a rule whereby a model-based capital adequacy requirement may not fall below a given percentage of the capital under the standard approach (output floor).

In 2016, the country reviews continued concerning the progress of implementation of the Basel III minimum standards under the Regulatory Consistency Assessment Programme (RCAP). FINMA is actively involved in this and, as in the case of other international standards, it monitors how other financial centres implement them in terms of timing and content. The evaluation of the Swiss regulatory framework for systemically important banks concluded with a positive finding. FINMA also assumed the leading role in the RCAP evaluation of the Basel III regulations on own funds and liquidity in South Korea.

### **International Association of Insurance Supervisors**

FINMA remained on the International Association of Insurance Supervisors (IAIS) Executive Committee in 2016 and represented Switzerland on other committees and in working groups.

The FSB published an updated list of global systemically important insurers (G-SII) in November 2016, which comprises the same nine insurance groups as in 2015 and still does not include any Swiss insurance groups. The FSB list follows on proposals submitted by the IAIS which are based on an annual analysis of the datasets of about 50 global insurance groups. In 2016, the IAIS applied a reworked methodology. The amendments are designed to provide a more balanced view of the indicators of systemic importance, include the quantitative and qualitative aspects in an improved process structure and extend the methodology to speciality insurers, including reinsurers.

FINMA contributed to the redrafting of the insurance core principles (ICPs) for effective insurance supervision and the establishment of the Common Framework (ComFrame) for supervising internationally active insurance groups (IAIG).<sup>17</sup> ComFrame aims to develop the regulatory minimum framework for IAIG including a new risk-based international capital standard (ICS) for insurance groups. Following extensive field tests involving some 40 insurance groups worldwide including Switzerland, the first version of the ICS is scheduled for publication in mid-2017 for testing within a closed reporting process. From 2020, the subsequent version of the ICS and the qualitative elements of ComFrame will be binding.

### **International Organization of Securities Commissions**

In 2016, FINMA represented Switzerland on the Board of the International Organization of Securities Commissions (IOSCO) and undertook a range of tasks for other committees.

IOSCO continued to work closely with the FSB on asset management. The FSB published a consultation paper in June 2016 containing recommendations for identifying structural weaknesses resulting from asset management activities.<sup>18</sup> IOSCO will assume most of the follow-up work in establishing specific recommendations. Further progress was also made in cooperation with the FSB towards creating a toolkit for market conduct, including defining potential supervisory instruments. IOSCO also approved the Enhanced Multilateral Memorandum of Understanding (MMoU), which provides an improved basis for international cooperation. Another major project was concluded in the form of a published recommendation on cyber resilience for financial market infrastructures, i.e. suitable measures for cyber resilience.<sup>19</sup>

<sup>17</sup> See <http://www.iaisweb.org/page/supervisory-material/common-framework>.

<sup>18</sup> See <http://www.fsb.org/2016/06/fsb-publishes-proposed-policy-recommendations-to-address-structural-vulnerabilities-from-asset-management-activities/>.

<sup>19</sup> Cyber Guidance: <https://www.iosco.org/news/pdf/IOSCONEWS433.pdf>.



### FINMA's international cooperation in figures

FINMA was represented in a total of 75 working groups of the four international standard-setting bodies in 2016.

Standard-setting bodies	Number of working groups
FSB	14
BCBS	27
IAIS	17
IOSCO	17
<b>Total</b>	<b>75</b>

Following the financial crisis, the role of international committees grew over a number of years due to the comprehensive reform agenda. This momentum started to diminish in 2015, a trend which continued in 2016. FINMA is constantly reviewing the necessity and priorities of its engagement in these international committees and will continue its involvement in keeping with Switzerland's interests.



# Main activities

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## Financial technology and digitalisation

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Since 2013, FINMA has been paying close attention to the challenges arising from new technological developments in finance (FinTech) regarding licensing requirements, supervision and regulation. FINMA revised one circular and issued another to enable video and online identification and the digital conclusion of asset management agreements. It has also developed proposals to introduce a specific licensing category for FinTech service providers.

Innovation is an important part of maintaining competitiveness in the Swiss financial centre and ensuring it is equipped for the future. In fact, innovation is a must if the financial market is to maintain its dynamism and capacity to develop. FINMA is in contact with a broad range of stakeholder groups related to FinTech and constantly reviews the new challenges presented by technological advances. For instance, FINMA has a direct information and contact channel to deal with FinTech-related issues.

### **Switzerland shows continued interest in FinTech**

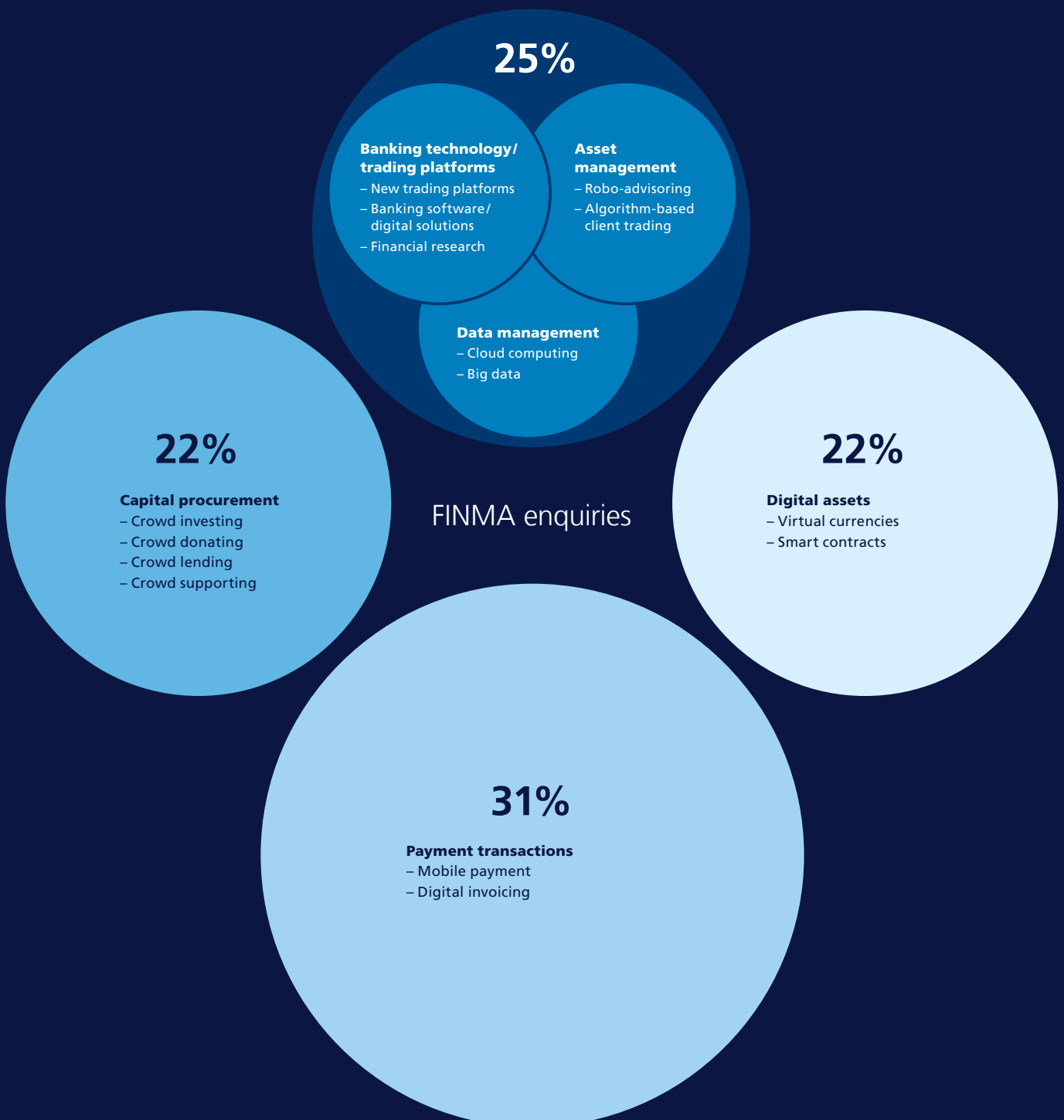
FINMA reported on the growing FinTech trend in its 2015 Annual Report. The Swiss financial sector's interest in digitalisation has continued to grow in the interim. FINMA has seen a rise in new service offerings in the business-to-business segment (B2B) and the business-to-customer segment (B2C). The volume of FinTech-related research initiatives, support programmes and start-up companies has also increased. FINMA has kept abreast of the latest developments through regular dialogue with experts, companies and associations.

### **FinTech desk**

FINMA has taken organisational steps to adjust to the new market situation. It responded to a request from the FinTech sector at the end of 2015 for a centralised channel to access relevant information by setting up the FINMA FinTech desk, which became operational at the beginning of 2016. It manages all FinTech-related enquiries and it has the expertise to provide rapid and targeted answers. Interested members of the public or individuals working for start-ups or established financial services providers can obtain information about legal issues relating to the financial market via a dedicated FinTech desk. (Chart on the opposite page.)

# FinTech enquiries handled by FINMA

FINMA has seen a steep rise in the number and variety of FinTech business models, which in Switzerland now cover payment transactions, virtual currencies, capital procurement, asset management, banking technology/trading platforms, insurance and data management. FINMA received approximately 270 FinTech-related enquiries in 2016, mainly about capital procurement (22%), payment transactions (31%) and virtual currencies (22%).



**Technology-neutral regulation case study:  
identification of new clients (digital onboarding)**

FINMA maintains a technology-neutral approach to its regulation. Supervisory law must adopt a neutral position regarding technological developments and business models, i.e. neither facilitate nor hinder them. However, that does not mean the requirements applied to the provision of digital services have to be identical to those for analogue service providers. More importantly, the purpose of a regulation – one limiting the risk of money laundering, for example – must be upheld irrespective of whether market participants offer analogue or digital services.

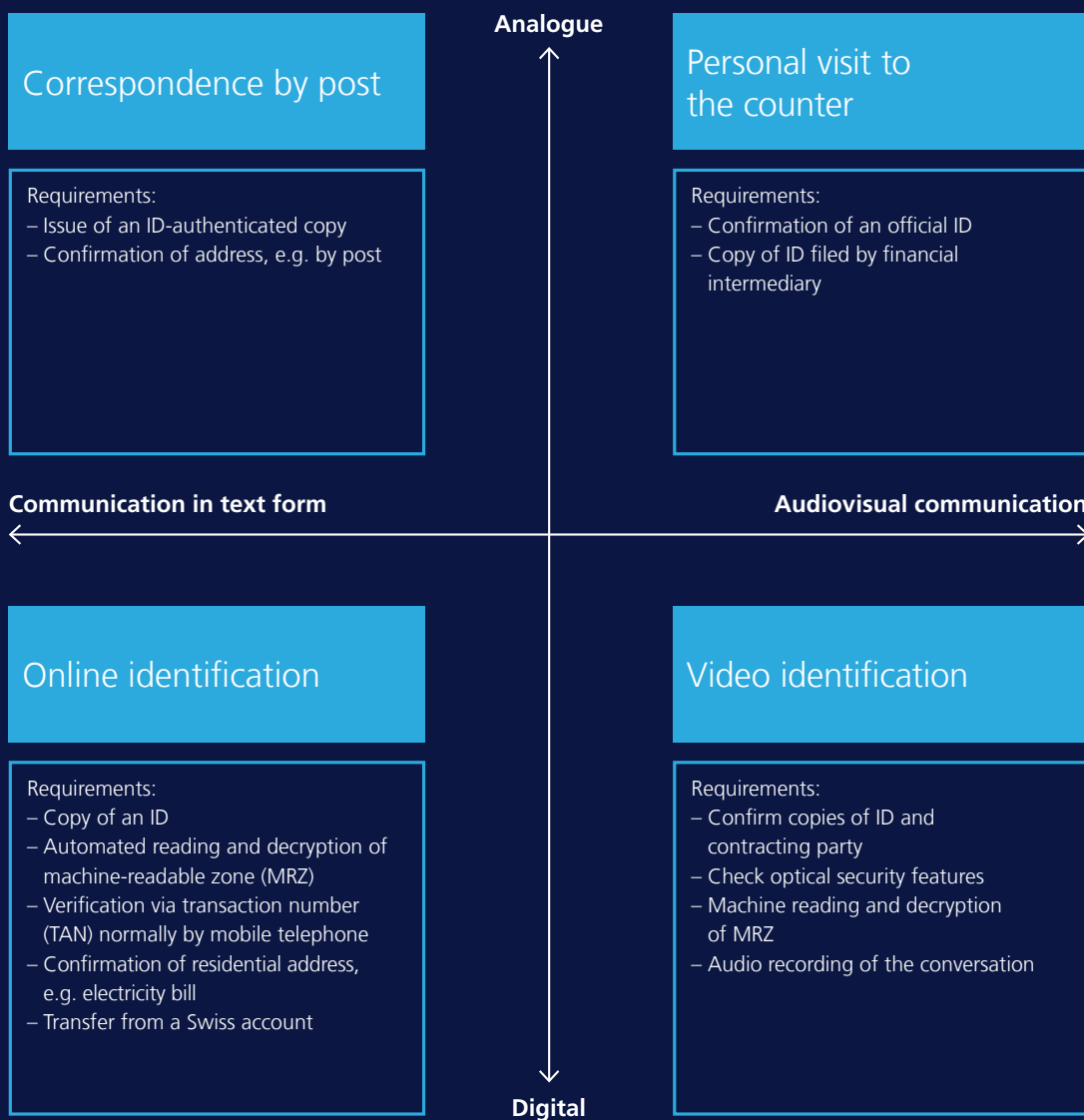
By defining the rules governing the digital verification of identification documents in Circular 2016/7 “Video and online identification”,<sup>20</sup> FINMA established the conditions for identifying clients through the internet when initiating a business relationship.

As tangible documents cannot be sent via the internet, FINMA set out the necessary technical requirements to establish a business relationship, for example the optical recognition of security features by video chat. Video identification is equivalent to providing identification documents at a counter, while online identification equates to identification through correspondence.

<sup>20</sup> See press release of 17 March 2016, “FINMA reduces obstacles to FinTech” (<https://www.finma.ch/en/news/2016/03/20160317-mm-fintech/>).

# FinTech: video and online identification

## Various options for video and online identification



**FINMA regulations are technology-neutral**

FINMA's approach to FinTech is based on three principles: consistent technology neutrality, legal certainty and principle-based regulation. FINMA systematically reviews its regulation for market-entry hurdles to technology-based business models. Circular 2016/7 "Video and online identification" is an example of principle-based regulation; its lean framework allows providers to be flexible in how they structure their services and implement them at a technical level. The Circular thus extended the operating framework to include innovative business models.

FINMA has also authorised the digital conclusion of asset management agreements. FINMA Circular 2009/1 "Guidelines on asset management" had stipulated the need for a written asset management contract. This Circular has been amended and alternative forms of concluding contracts via digital channels are now also legitimate. Procedural requirements under the Collective Investment Schemes Act remain reserved. The changes came into force on 1 August 2016.

**FINMA's commitment to progressive operating conditions for FinTech companies**

Switzerland also needs to adapt its overarching legal framework to consistently improve the operating environment for FinTech. FINMA has conducted in-depth discussions with the FinTech sector and representatives of established financial service providers to identify obstacles within the supervisory framework conditions. The main barriers to FinTech stem from banking legislation. FINMA also performed a benchmarking exercise against other financial centres and their FinTech initiatives. Against this background, FINMA proposed the creation of an effective and forward-looking legal regime. The aim here is to amend the Banking Act based on two pillars: the extension of the licence-free area (sandbox) to work with innovative business models free of any bureaucratic constraints, and a new licensing category tailored to established FinTech companies not involved in any conventional banking business and which, as a result, do not need to be regulated in the same way as banks. In view of the reduced risk, the authorisation requirements can be less exacting than with a traditional banking licence. The proposed licensing procedure would significantly lower the entry barriers to providers of payment systems, digital



asset management applications and crowd platforms, particularly with respect to capital, corporate governance and risk management requirements. The rationale behind the approach is to simplify current regulations as opposed to adding more regulation.

The Federal Council has received and advanced FINMA's proposals. The consultation process to review banking legislation will begin in early 2017.

#### **International engagement**

The topic of FinTech is also the subject of extensive discussion at the international level. FINMA is committed to making Switzerland an internationally competitive FinTech location. In 2016, FINMA joined the international FinTech debate and strengthened cooperation with other foreign supervisory authorities in digitalisation and financial technology. On 12 September 2016, FINMA signed an agreement to deepen FinTech cooperation with the Monetary Authority of Singapore (MAS). FINMA plans to conclude further cooperation agreements in 2017.

## Prevention of money laundering is a priority

Money laundering risks in Switzerland are increasing. FINMA prioritises this topic in its risk-oriented supervision, acting when it identifies any misconduct.

Many financial intermediaries are increasingly dealing with funds from geographically remote and relatively unfamiliar markets. While assets from emerging economies present an opportunity for the Swiss financial centre, they also bring new risks. It is often hard to determine the origin of the funds. That is why financial intermediaries need to identify, limit and monitor their money laundering exposure. It is fundamental to the Swiss financial centre's reputation that Swiss financial intermediaries avoid accepting and managing the proceeds of criminal activity.

### FINMA's risk-oriented supervision

FINMA has strengthened its supervisory activity regarding money laundering risks to account for the change in the operational framework. It collects specific data from the institutions and classifies them according to the risk level (low, medium or high) they present. The rating of the institutions depends on such risks as the nature of the client base (number of clients, domicile, asset segment, etc.), services offered and the implementation of risk minimisation measures. FINMA then focuses on those institutions in the high-risk category through a range of measures including on-site supervisory reviews and case-related audits. At the end of 2016, 21 banks were in the high-risk category.

FINMA also reacts to specific events: in the wake of the Panama papers incident, for instance, FINMA initiated contact with 35 banks and conducted detailed investigations into 20 of them. FINMA intensified its supervision of specific areas for about six of those banks and imposed additional measures, thereby also enhancing its deterrent effect. The investigations revealed that the banks were basically familiar with the risks and had integrated them into their risk management criteria in dealing with domiciliary companies. Enforcement proceedings were launched in one case.

FINMA's supervisory investigations concluded that, overall, most Swiss financial intermediaries had taken sufficient action to address their money laundering risks. However, there are still too many exceptions and room for improvement.

### Investigations and proceedings prompted by money-laundering scandals

Where Swiss financial intermediaries fail to comply with their due diligence requirements, FINMA takes appropriate measures. Examples here are the involvement of Swiss banks in the Malaysian sovereign wealth fund 1MDB scandal and the state-owned Brazilian oil company Petrobras affair. FINMA investigated about two dozen banks and commissioned audit mandataries to review many institutions, resulting in enforcement proceedings against nine companies. In May and October 2016, FINMA disclosed the outcome of its proceedings against BSI Ltd and Falcon Private Bank Ltd respectively. In both instances, FINMA imposed the necessary measures to restore compliance with the law.

On average, FINMA has issued ten sanctions annually in response to breaches of anti-money laundering regulations in recent years, ranging from the disgorgement of profits to ordering the dissolution of a licence holder. Furthermore, FINMA implemented changes to the governance structures of supervised institutions and imposed restrictions on new types of business activity, including a multi-year ban on new client relationships with politically exposed persons.

In the past, FINMA has imposed industry bans on several bank managers due to serious breaches of their due diligence requirements. In 2016, the supervisory authority also launched further enforcement proceedings against senior bank managers, four of which were linked to the 1MDB case.

### Prevention of money laundering in the digital age

FINMA is committed to technology-neutral regulation. Nonetheless, digital financial services and business models are also susceptible to money laundering risks. Technology-neutral does not mean that due diligence requirements in the analogue world do not also apply to the digital world. All financial market players are responsible for ensuring the adequate implementation of anti-money laundering provisions. FinTech innovations present an opportunity to prevent money laundering. In March 2016, FINMA set out anti-money laundering due diligence requirements for client onboarding via digital channels in Circular 2016/7 "Video and online identification", which supports a fully digital onboarding process.

### FATF acknowledges anti-money laundering efforts

The Financial Action Task Force (FATF) conducted an extensive assessment of Switzerland and its efforts to combat money laundering and terrorist financing. The FATF report was published on 7 December 2016. Most of the countries evaluated to date, including Switzerland, must undergo an enhanced follow-up process. In Switzerland's case, the FATF sees room for improvement in certain areas, for example in the legal framework.

The country report contains a list of improvement measures for Switzerland. For example, it recommends obliging financial intermediaries to regularly update client information pertaining to current business relationships. Financial intermediaries are also to increase the reporting of any suspicions to the Money Laundering Reporting Office Switzerland (MROS).<sup>21</sup> A recommendation was made to some self-regulatory organisations (SROs) to be more vigilant in recognising and monitoring money laundering risks. Especially those SROs whose

members are involved in fiduciary activity are expected to make improvements.

Switzerland's score has placed it in the top half of those countries reviewed to date. Other countries audited include the US, Canada, Singapore, Australia, Norway, Belgium and Austria. Switzerland will assess the recommendations put forward by the FATF and implement them where necessary.

### Strategically significant reporting system

FINMA has noticed that some financial intermediaries are not complying with the new reporting requirements. Some institutions are very reticent to report any "reasonable" suspicions. According to the latest ruling of the Federal Criminal Court and the Federal Administrative Court, any suspicion that assets may stem from criminal activity and which cannot be resolved by the financial intermediary's investigations, is considered "reasonable".

Adherence to reporting requirements is strategically important for the Swiss financial centre: if internationally active criminal organisations and purveyors of corruption realise that the proceeds of criminal activity are consistently going to be reported to the authorities, it will deter them from laundering their money in Switzerland and thus preserve the integrity of the Swiss financial centre.

### FINMA further strengthens its supervision

FINMA will address the relevant recommendations of the FATF country assessment. There are many on-site supervisory reviews scheduled in 2017 to determine whether institutions are meeting their anti-money laundering reporting requirements. Furthermore, FINMA will critically assess its supervision of self-regulatory organisations (SROs) with regard to their members' fiduciary activities and offshore companies. Generally speaking, FINMA will heighten its anti-money laundering efforts.

<sup>21</sup> See <https://www.fedpol.admin.ch/fedpol/en/home/kriminalitaet/geldwaescherei/meldeformular.html>.

In its new Recovery and Resolution division, FINMA has consolidated its crisis restructuring activities, recovery and resolution planning, and restructuring and insolvency proceedings into one centre of competence. This will allow FINMA to pool its resources in this area and increase its expertise.

Both international and domestic systemically important banks are legally obliged to present viable crisis planning. The plans must include measures for organic restructuring (recovery) and demonstrate how to ensure resolution. These measures are designed to ensure that the Swiss government will not be forced to intervene in a financial crisis (“too big to fail” issue).<sup>22</sup>

FINMA has to develop a viable resolution strategy for each systemically important bank. It also has to evaluate the contingency measures put in place by the banks to improve their resolvability, and approve the emergency plans which the institutions are legally required to maintain. Additionally, international systemically important banks have to cooperate with foreign supervisory and resolution authorities as well as the Swiss National Bank in the course of their resolution planning. An internationally coordinated approach by the responsible authorities can only work if systemically important institutions can convincingly demonstrate their resolvability in a crisis situation.

FINMA also supports banks and other prudentially supervised licence holders (for instance insurers or asset managers exposed to the risk of destabilisation) where restructuring proceedings are necessary.

Given the growing strategic significance of recovery and resolution, it was a logical step to consolidate those competencies into one independent division, which occurred as of 1 August 2016. Moreover, the new division improves FINMA’s profile as a competent resolution authority at the international level.

### Progress in the resolution strategy of large banks

In close cooperation with FINMA, both large banks are working intensively on implementing the specific

applicable legal requirements. FINMA issued a ruling on 14 October 2016 authorising Credit Suisse AG to outsource its operations in Switzerland to a separate legal unit: Credit Suisse (Switzerland) Ltd. UBS implemented the same measure in 2015 when it founded UBS Switzerland AG. The two large banks have significantly improved their resolvability through this organisational separation of their systemically important functions for the Swiss market. In parallel, both institutions are improving their capital base so they can better absorb losses as required under the new “too big to fail” provisions. Both large banks have issued substantial volumes of bail-in bonds.<sup>23</sup> These bonds facilitate recovery and orderly resolution (gone concern capital). The banks will, however, have to issue additional gone concern capital over the next few years to comply with the new requirements of the Capital Adequacy Ordinance<sup>24</sup> by the deadline set for the end of 2020.

### Emergency planning for systemically important banks

The five systemically important banks (Credit Suisse, Postfinance, Raiffeisen, UBS and Cantonal Bank of Zurich) are obliged to demonstrate in their emergency planning that the continuity of systemically important functions will not be affected by the threat of insolvency. Furthermore, in accordance with Article 60 para. 3 of the Banking Ordinance, international systemically important banks must conclude, by the end of 2019, the preliminary implementation of those measures outlined in the emergency plan that are crucial to the uninterrupted continuity of systemically important functions. Domestic systemically important banks must now ensure the emergency plan is viable within three years of establishing their systemic importance. This legislation is ambitiously designed to ensure the viability of emergency plans and it will require considerable financial and organisational effort from the systemically

<sup>22</sup> See the corresponding milestone on p. 14 and the 2015 FINMA Annual Report, “Main activities: Further strengthening of Swiss “too big to fail” legislation” (<https://www.finma.ch/en/~media/finma/dokumente/dokumentencenter/myfinma/finma-publikationen/geschaeftsbericht/20160407-finma-jb15.pdf?la=en>).

<sup>23</sup> Special bonds approved by FINMA at time of issue which can be written down to offset the threat of insolvency through a recovery procedure or converted into equity capital.

<sup>24</sup> Article 148d Capital Adequacy Ordinance (CAO) (<https://www.admin.ch/opc/de/classified-compilation/20121146/index.html#a148d>; in German).

important banks, particularly those with a global reach, over a number of years. Details on the gone concern capital requirements for domestic systemically important banks are still pending. They will be discussed as part of the next “too big to fail” evaluation report for the Federal Council in 2017.

UBS and Credit Suisse submitted their initial emergency plans at the end of 2015 and the beginning of 2016, respectively. In both cases, FINMA came to the conclusion that the plans need to be updated to include evidence (as required by law) that the systemically important functions are sufficiently robust to continue uninterrupted in the event of a crisis. The strong operational and financial dependence of the Swiss subsidiaries on their parent companies significantly affects the viability of the emergency plans.

### Significant insolvencies

FINMA was involved in 161 insolvency proceedings at the end of December 2016 that included domestic proceedings and processes initiated by foreign bankruptcies and restructurings. A number of major milestones were achieved during the period under review: the remaining operations of Banque Privée Espírito Santo (BPES) were liquidated and a creditors’ committee was set up in May 2016. The committee’s remit includes defining the key criteria for handling the submitted claims, thus paving the way for the next milestone: establishing the schedule of claims. Comparisons have been drawn for prioritising some of the pending claims. The systematic liquidation and debt collection relating to BPES in and outside Switzerland has proceeded in accordance with the strategy approved by the creditors’ committee. Swiss proceedings relating to the bankruptcy of the American investment bank Lehman were completed with a surplus to the full satisfaction of the creditors. The insolvency proceedings against the Zurich branch of London-based Lehman

Brothers International (Europe) were close to being concluded at the end of 2016. Only the bankruptcy liquidator’s final report was still outstanding.

### Open insolvency proceedings at 31 December 2016

Type of proceedings <sup>25</sup>	No. of cases
Internal bankruptcies	27
External bankruptcies	78
Internal liquidations	2
External liquidations	35
Internal recognition procedures	16
External recognition procedures	1
Voluntary liquidations	2
<b>Total</b>	<b>161</b>

<sup>25</sup> Bankruptcy liquidators both internal to FINMA and externally commissioned conducted the insolvency proceedings.



# Supervision, enforcement and regulation

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## Persistently negative interest rates, digitalisation and money laundering prevention – the challenges facing Swiss banks

The year 2016 was dominated by the ongoing low interest rate policy of leading central banks. FINMA, however, also focused on many other economic risks. These included, in particular, money laundering prevention, cyber risks and increased outsourcing of key services.

The continuing low interest rate policy of the US and European central banks – and by extension the SNB – put pressure on many Swiss banks' profitability, although this was partly compensated by higher margins on mortgage business. It also created incentives to take on greater risks and invest further in potentially overpriced asset classes, including several segments of the Swiss investment property market.

As well as closely monitoring the economic risks for banks, FINMA is also increasingly turning its attention to risks in other areas, particularly money laundering prevention, cyber threats and outsourcing. Supervisory measures were introduced to contain these risks and steps were taken at regulatory level, with FINMA completely revising its Corporate Governance Circular and the Federal Council continuing to develop its "too big to fail" legislation.

### Negative interest rates weighing on liability margin

A large majority of Swiss banks have so far refrained from passing on negative interest rates introduced in early 2015 to small investors. This has put pressure on the liability margin between interbank rates and interest paid on deposits, especially for banks that had high levels of SNB sight deposits above the relevant thresholds before negative rates were imposed. Expectations that rates would remain low for some time also led to a relatively flat yield curve and, consequently, a reduction in the income banks normally earn through maturity transformation, i.e. converting short-term deposits into long-term loans. As the previous financial investments made at higher interest rates reach maturity, the asset margin between the interest received and interbank rates declines. All these factors are weighing on banks' profitability. Until now, those banks operating in the mortgage sector have been able to largely make up for this by increasing the asset margin on their mortgage busi-

ness. Some banks have also taken the opportunity to raise fees and commissions. However, the continuing pressure on profitability may result in banks taking on increased risks in lending or in interest rate risk management, for instance by ceasing to hedge interest rate risks.

### Mortgage market slightly calmer

Momentum in the Swiss mortgage market eased slightly in 2016, especially where owner-occupied residential properties were concerned. Prices rose more slowly in some regions, while some in the upper price segment actually fell. These changes indicate a correction to the partial overheating of recent years, and are probably also a consequence of regulatory measures having the desired effect.

### Risks for investment properties

Vacancy rates rose, particularly with regard to office space, due to reduced demand from the financial sector and elsewhere, leading to an increased risk of the mortgages on these properties not being covered by rental income. With monetary policy keeping yields low on other asset classes such as government bonds, this nonetheless prompted further significant investments in real estate, and in investment properties in particular. This trend towards buying properties to rent has grown markedly in recent years, with both institutional and private investors acting as purchasers. Investment properties are viewed as riskier than owner-occupied properties, as repayments of interest and capital are dependent on renting out the property and on receiving the corresponding payment of rent.

### Money laundering prevention

FINMA's supervisory activities also focused on money laundering prevention in 2016. It became clear that in light of the global trend towards greater tax conformity, banks are checking more rigorously whether their clients have their tax affairs in order.



However, due to greater competition, wealth management banks have become willing to accept more deposits from clients in emerging markets, where the money laundering risk tends to be higher.

It is crucial to the reputation and integrity of Switzerland's financial centre that Swiss financial intermediaries avoid accepting and managing money of criminal origin. They must therefore consistently capture, monitor and limit their money laundering risks. Most banks do so very effectively. In the course of its supervisory activities, however, FINMA has identified considerable shortcomings at several banks, especially with regard to establishing and documenting the origin of assets and identifying and investigating higher-risk transactions.

The requirement for banks to report suspicious cases makes a key contribution to combating money laundering in Switzerland, although all banks do not yet adopt an equally rigorous approach to implementing this obligation. FINMA will therefore be conducting a series of on-site supervisory reviews of institutions' money laundering reporting in 2017.

### Cyber risks

The danger of cyber attacks on financial institutions has risen across the board. As a result, the detection, recording and limitation of cyber risks are becoming increasingly important. FINMA therefore revised Circular 08/21 "Operational risks – banks" in 2016 and introduced a variety of supervisory measures.<sup>26</sup>

### Supervision of outsourcing

Growing pressure on margins, cost-cutting and digitalisation are prompting more and more outsourcing of IT services and the emergence of new forms such as cloud outsourcing. Against this backdrop, FINMA initiated a revision of Circular 08/7 "Outsourcing – banks"<sup>27</sup> in 2016. The Circular retains the principle-

based requirements and now also applies to insurance companies. One key change in the revised Circular is that all its rules now also apply to intra-group outsourcing. There are also specific provisions on the critical services of systemically important institutions. Furthermore, banks and insurance companies must maintain an inventory of outsourced services. If services are outsourced abroad, all information necessary for recovery and resolution must be accessible from Switzerland at all times.

To reflect the increased significance of outsourcing, FINMA is also planning on-site supervisory reviews of the leading service providers in Switzerland.<sup>28</sup> In addition, a revised questionnaire to be completed by audit firms will give FINMA standardised information about banks' significant outsourcings.

### Further strengthening of the "too big to fail" regime

In May 2016, the Federal Council adopted the revised "too big to fail" regime, particularly with regard to risk-weighted and non-risk-weighted capital ratios. It includes capital adequacy requirements for systemically important institutions, designed to reduce the probability of insolvency (going concern requirements). Additional funding component requirements have also been established to ensure the most orderly resolution possible in the event of insolvency (gone concern requirements). The basic non-risk-weighted leverage ratio requirement for global systemically important banks is 4.5% in the going concern scenario and 12.9% for risk-weighted assets. When the surcharge for the progression is added, the going concern requirements are 5.0% (leverage ratio) and 14.3% (risk-weighted assets) for the two largest banks. Global systemically important banks (G-SIBs) must also hold the same level of loss-absorbing funding to secure recapitalisation in the event of recovery or resolution (bail-in) without

<sup>26</sup> For more detailed information, see pages 44–45.

<sup>27</sup> See press release of 6 December 2016, "FINMA revises outsourcing regulations" (<https://www.finma.ch/en/news/2016/12/20161206---mm---rs---outsourcing/>).

<sup>28</sup> See Article 23<sup>bis</sup> Banking Act.

state support. These gone concern requirements are again 5.0% for the leverage ratio and 14.3% for risk-weighted assets. Emergency plans for domestic systemically important banks are still to be developed, and these have a material influence on the level of their gone concern capital requirements. The specific need for gone concern requirements will therefore form part of the next evaluation report on the “too big to fail” legislation, which is expected to be adopted by the Federal Council in February 2017.

#### **Corporate governance: new FINMA Circular 17/1**

Many of the problems and undesirable developments at banks in recent years are due to a lack of proper corporate governance and insufficient risk management. FINMA therefore considers it important to provide appropriate guidelines for banks on how to organise their corporate governance and risk management. In 2016, it therefore published Circular 17/1 “Corporate governance – banks”.<sup>29</sup> This reflects the latest industry standards of corporate governance and sets out requirements for banks’ risk management that comply with international standards. Various provisions in the Circular have been combined and it has generally been streamlined. The revised document also takes account of recommendations made by the International Monetary Fund (IMF) during its assessment of the Swiss financial sector as part of the Financial Stability Assessment Program (FSAP).

The Circular stipulates that banks must comply with and implement a series of important principles and structures for directing the company (checks and balances). All banks must also have a risk management framework developed by the executive board and approved by the board of directors. Banks in Supervisory Categories 1 to 2 must appoint an audit committee, a risk committee and a chief risk officer, who must also be a member of the executive board.

The new Circular comes into force on 1 July 2017. From 2017, minimum corporate governance disclosure requirements are contained in a separate circular (FINMA Circular 16/1 “Disclosure – banks”). In addition, banks in Supervisory Categories 1 to 3 must implement extended disclosure requirements equivalent to SIX’s Directive Corporate Governance. For reasons of proportionality, less stringent requirements apply to banks in Categories 4 and 5.

#### **Consolidation in the banking sector continues**

The difficult economic environment in 2016 was also reflected in further consolidation. Although the number of institutions exiting supervision was down on recent years, eight banks ceased banking operations in 2016. The consolidation process continued with asset management banks negotiating the possible transfer of partial accounts or entire portfolios to other institutions. The number of new licence applications also remained low. The few

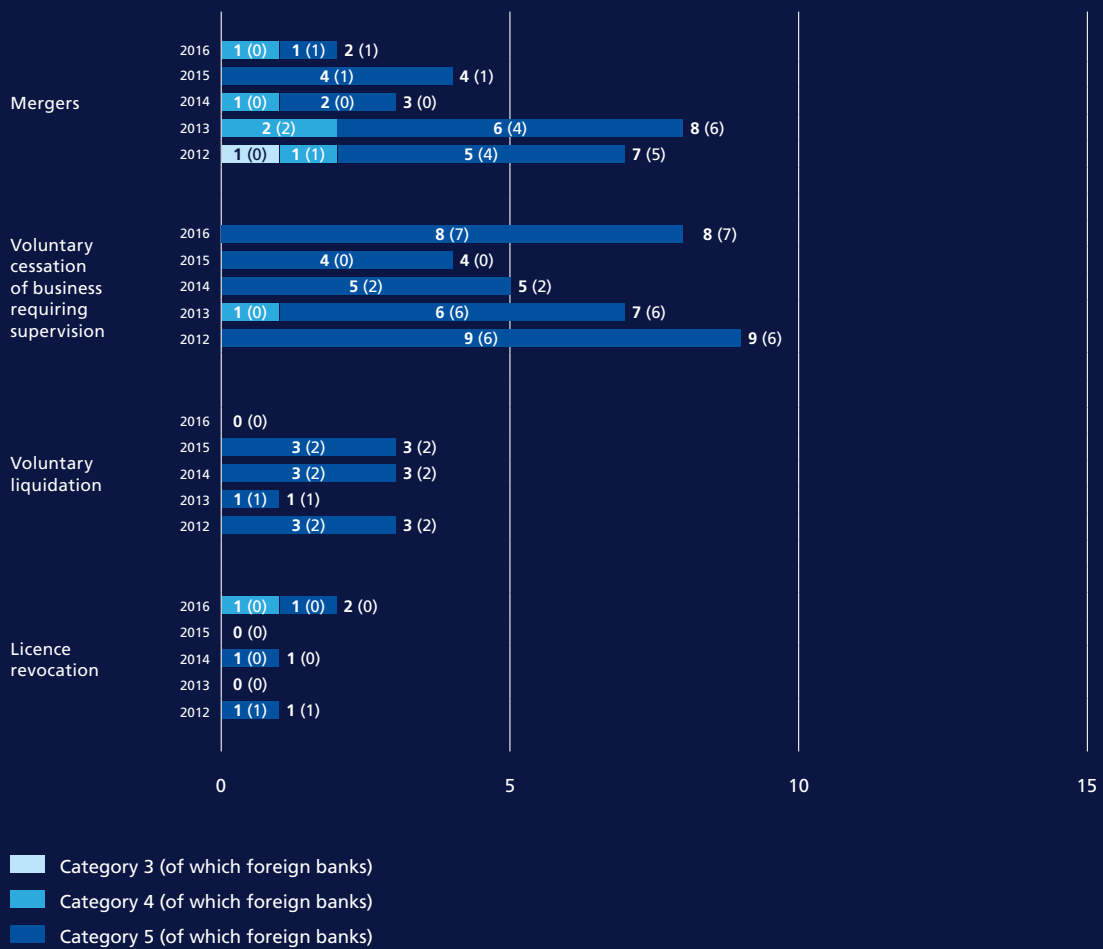
<sup>29</sup> See press release of 1 November 2016 “FINMA redefines corporate governance guidelines for banks” (<https://www.finma.ch/en/news/2016/11/20161101-mmrs-corporate-governance-bei-banken/>).

that were granted in 2016 related to existing market participants who changed their licence holder due to a reorganisation of the group structure.

FINMA is maintaining a neutral stance on the changes to the banking sector's market structure. However, its protection mandate requires it to closely monitor each market exit. Once a decision to cease banking operations has been taken, FINMA facilitates a targeted release from supervision. This can happen once the bank no longer holds any positions in need of particular protection and any potential claims by creditors have been satisfied or secured effectively.

# Market exits: banks

## Market exits since 2012



## Market exits since 2012

	2016	2015	2014	2013	2012
Total (of which foreign banks)	12 (8)	11 (3)	12 (4)	16 (13)	20 (14)

## Basel III reform agenda

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In 2016, the Basel Committee on Banking Supervision continued its work on the Basel III reform agenda. The decisions that are still outstanding will have major repercussions for the banking sector as a whole and the large banks in particular.

The Basel Committee aims to conclude the Basel III package of reforms, launched as a regulatory framework at the end of 2010, by adopting the last (as yet undefined) standards. These reforms are designed to remove the deficiencies identified in Basel II (the preceding international framework for calculating required own funds) during the financial crisis. As a result, the financial system will become more secure and resilient in times of crisis. The Basel Committee is working mainly on the calibration and calculation methods for risk-weighted assets (RWAs) for credit and operational risks (standard and model approaches), the output floor for model approaches relative to standard models and the leverage ratio (including higher ratios) for global systemically important banks. The current rules will be streamlined and inter-

bank RWAs made more comparable to increase confidence in the significance of RWA-based capital ratios. The Basel Committee does not intend to significantly increase RWAs and the application date for the new regulations has not yet been set. The reform agenda triggered by the financial crisis will be completed once these last decisions have been taken.

The Basel Committee continued to make progress during 2016; however, it did not manage to meet the original time plan. The Basel Committee needs more time, particularly to set the definitive RWA calibration and define the standard-model output floor, before the governing body of the Basel Committee, the Group of Governors and Heads of Supervision approve the full reform package.

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## Focal points of banking supervision in 2017

**Major dangers to the Swiss banking centre are high levels of debt in the peripheral eurozone countries, China and the US; the potential negative impact of Brexit and the US elections; central banks' expansionary monetary policy; and the growing importance of cyber risks and money laundering. FINMA's response includes more intensive monitoring, consistent stress testing, focused on-site supervisory reviews, and closer monitoring of the implementation of its revised circulars, particularly those on corporate governance.**

FINMA systematically monitors the development of banks and securities dealers, collecting standard information on the status of individual institutions at regular intervals. A summary of key figures related to supervision was published for the first time at the end of 2016, and various leading indicators are now being incorporated into this monitoring system.

Furthermore, FINMA seeks to gather information on specific topical issues. It is currently investigating how banks could be affected by a worsening of the situation in Europe. In the present environment, it is also important to measure the interest rate risk on an ongoing basis. In addition, stress test exercises are used to examine the vulnerability of selected banks to a range of scenarios. Adverse developments in Europe and in the Swiss real estate market are the main potential risks taken into account in the latest tests.

FINMA's supervisory activities also include carrying out targeted on-site analyses of supervised institutions. Its supervisory reviews focus on internal bank processes for the recognition, recording and limitation of interest rate risks, risks on the real estate market – particularly those affecting investment properties – and risks linked to cyber attacks. The implications of outsourcing for individual institutions are also being explored. On-site supervisory reviews in 2017 will aim to ensure compliance with conduct rules for money laundering risks and the sale of financial products.

Finally, FINMA is maintaining intensive supervisory dialogue with those responsible for the management and control of financial institutions. One main emphasis will be the future implementation of the fully revised Corporate Governance circular.

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## Changes in banking regulation

Adjustments to international standards for banking regulation resulted in a number of FINMA banking circulars having to be amended in 2016.

FINMA circulars	Regulatory projects			Changes	In force from
	Type	Content/subject matter	Aims/reasons		
FINMA Circular 2017/1 "Corporate governance – banks"	Full revision	Requirements for corporate governance, the internal control system and risk management.	Update of the 2006 Circular to reflect the current international standards of the Basel Committee on Banking Supervision, taking account of the IMF's 2014 FSAP recommendations.	Introduction of principles and structural requirements for managing the bank (checks and balances); separate audit and risk committees and strengthening of the chief risk officer's function at banks in Categories 1–3.	1 July 2017
FINMA Circular 2008/21 "Operational risks – banks"	Partial revision	Requirements for the management of operational risks and capital requirements.	Update on risk management in light of technological advances and the associated new risks.	Removal of certain aspects that are now contained in Circular 2017/1 "Corporate Governance"; additions covering the management of IT and cyber risks, the risks of cross-border services and the continuity of critical services at systemically important banks.	1 July 2017
FINMA Circular 2017/7 "Credit risks – banks"	Full revision	Calculation of the minimum capital requirement for credit risks.	Incorporation of updated international standards from the Basel Committee.	New standardised approach for derivatives; new capital requirements for fund investments; new rules on securitisations.	1 Jan. 2017 (1 Jan. 2018 for securitisations)
FINMA Circular 2016/1 "Disclosure – banks"	Partial revision	Disclosure requirements for regulatory capital and liquidity.	Adjustments to reflect amended capital requirements in the Capital Adequacy Ordinance, chiefly for systemically important institutions.	Revision of content concerning disclosure requirements for systemically important institutions using sample tables.	1 Jan. 2017
FINMA Circular 2010/01 "Remuneration schemes"	Partial revision	Minimum standards for remuneration schemes at financial institutions.	Adjustments to inappropriate regulations for banks in Supervisory Category 2.	Application restricted to banks with more than CHF 10 billion minimum capital requirements.	1 July 2017

### Outlook

Changes to the international Basel III standards will necessitate further amendments to FINMA circulars in the coming years, in particular with regard to liquidity, leverage, risk diversification, market risks and interest rate risks in the banking book.

## At a glance: the threat of cyber attacks

Swiss banks must guard their infrastructure against various types of attack. In addition to phishing, malware and disruption to the availability of computers, the debilitating scenarios Swiss financial institutions face are growing ever more sophisticated and complex.

As part of the revision of FINMA Circular 08/21 “Operational risks – banks”, FINMA decided to expand its provisions on technological infrastructure by including critical aspects of dealing with cyber risks. The Circular requires banks and securities dealers to adopt an integrated and systematic approach to countering threats from the virtual world. The approach must include specific measures for governance, identification, protection, detection, response and recovery of threatened systems and services in connection with cyber risks and attacks.

FINMA also undertook an assessment of specific banks’ measures to counter cyber attacks. This included ordering banks in Supervisory Categories 1 and 2 to carry out additional cyber risk audits. FINMA also asked banks in Supervisory Category 3 to take part in a self-assessment of their implementation of cyber attack countermeasures. Both the audits and the self-assessment focused on the critical aspects of cyber risks as set out in the revised implementing provisions.

### **Additional audit**

The additional audits highlighted continuing deficits, in particular relating to the identification of potential cyber threats and protective measures. Based on these findings, the banks concerned took further steps to increase their resilience.

### **Self-assessment**

The self-assessment was designed to ascertain the progress in implementing measures to combat cyber risks, and to raise awareness of the critical aspects among banks in Supervisory Category 3.

Evaluation of the self-assessment by banks revealed wide differences: some banks rated nearly all measures as fully implemented, others almost none of them.

With regard to the critical aspects, detecting cyber attacks was one area in particular found to be needing improvement. In some cases there was a lack of measures to deal with more complex threat scenarios; in others the use of technical monitoring needed to be extended. However, there is also a need for action on the other critical aspects.

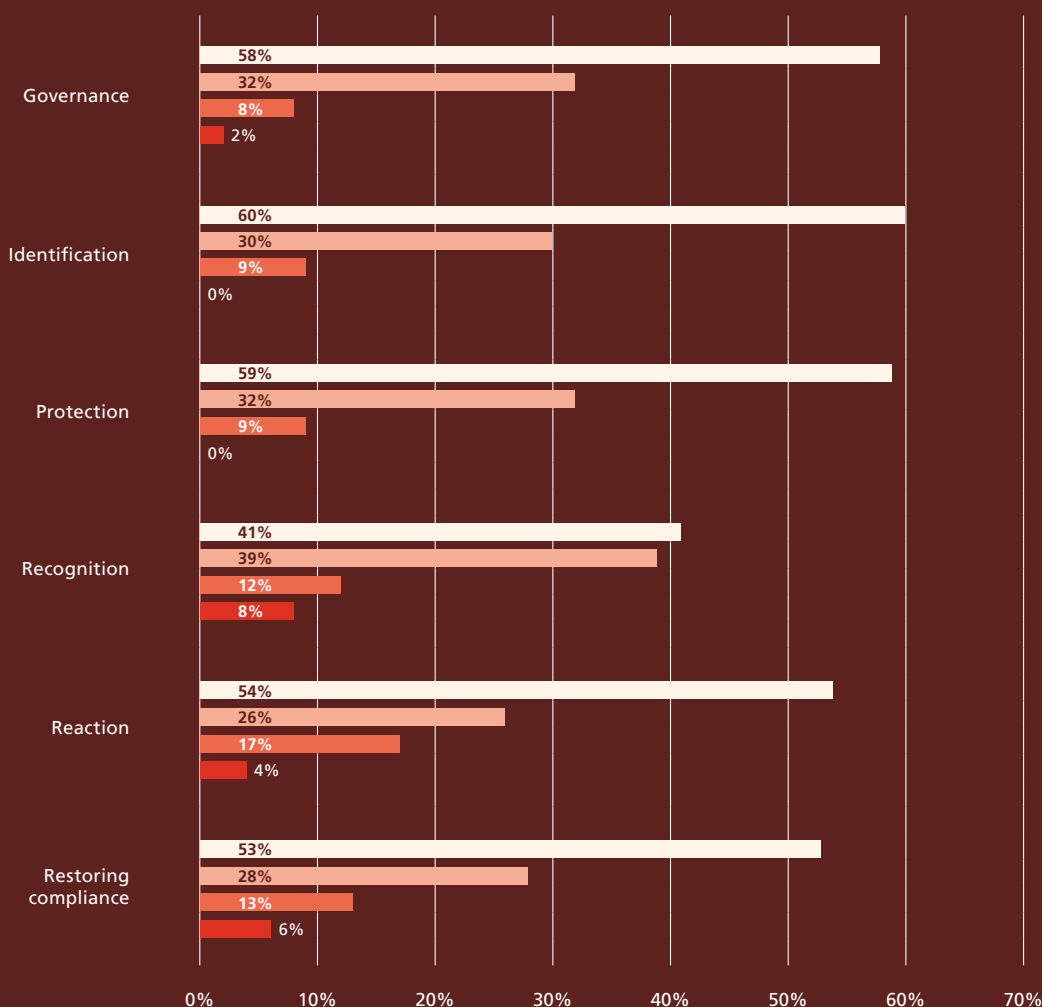
### **Conclusion**

In summary, the additional audits and evaluation of the self-assessments revealed that as of early 2016, there was still much to be done in ensuring adequate resilience to threats from the virtual world. With the revised implementing provisions set to come into force on 1 July 2017, banks in Supervisory Categories 1 to 3 therefore initiated projects specifically to enhance their ability to withstand a cyber attack.



The self-assessment carried out in early 2016 at banks in Supervisory Category 3 revealed a need for improvements in all key aspects of dealing with cyber risks. Especially with regard to timely detection of cyber attacks, the majority of those taking part had not implemented key measures completely, if at all.

### Self-assessment of measures to combat cyber risks



- Rating 1 (fully implemented): The financial institution has implemented this aspect in full and throughout the company, and this has been documented. This self-assessment, or feedback from stakeholder groups, such as operational risk management or internal audit, has not identified any unresolved issues.
- Rating 2 (largely implemented): The financial institution has largely implemented this aspect, but not across the whole company. Some questions on implementation also remain unanswered.
- Rating 3 (partially implemented): The financial institution has partially implemented this aspect. However, key elements of implementation have not yet been clarified or there are material uncertainties in this regard.
- Rating 4 (not implemented): The financial institution has not yet implemented this aspect in practice.

The trends of previous years continued in 2016. The Swiss insurance market maintained healthy solvency levels and, in many sectors, strong profitability. On the other hand, the low interest rate environment became more pronounced, confronting life insurers in particular with major challenges.

As in previous years, negative interest rates also marked 2016 in the form of declining investment returns and lower guarantees being granted, forcing life insurers, in particular, to tackle a number of longer-term challenges. In contrast, non-life insurers and supplementary health insurers managed to maintain their high profitability in a saturated market. In the international reinsurance and industrial insurance business, isolated major loss events did not result in a general market correction and Switzerland still remains an internationally attractive financial centre in this sector. In the year under review, FINMA issued four licences for insurance activities (effective as of 2016), mainly for the industrial insurance and reinsurance sectors. Two further licences were issued effective from 1 January 2017.

### Reduction in supplementary health insurance tariffs

In 2016, the private supplementary health insurance business generated approximately CHF 10 billion in premiums: one third from the hospitalisation, outpatient and daily benefits sectors, respectively. Under its statutory mandate, FINMA must audit tariffs to protect policyholders against the risks of insolvency and misuse, intervening when a tariff leads to excessive long-term, risk-based profit margins. In some cases in 2016, FINMA ordered tariff reductions or rejected applications for increases. While these interventions were based on its internal analyses, which indicated excessively high profits, FINMA also rejected requests for tariff increases when health insurers failed to plausibly document the incurred claims inflation.

FINMA set itself additional objectives in 2016 aiming to protect policyholders. These focused largely on master agreements with group discounts where FINMA noticed impermissible unequal treatment of policyholders; it subsequently took measures to rem-

edy the situation. Furthermore, it is preparing measures to ensure that the right to transfer be effectively granted for closed insurance portfolios. Currently, regulation allows policyholders to switch from discontinued products to other, still actively underwritten insurance solutions with a better mix of risks, enabling them to benefit from lower premiums.

### Challenges facing life insurers: tariffs, technical interest rate and statutory provisions

FINMA paid special attention to the technical interest rates of insurers in the occupational pensions sector. This led to a lowered supplementary pension conversion rate and lowered rates used for calculating risk premiums. FINMA also analysed the practices and trends in the pricing area as part of initial on-site supervisory reviews in this sector and will continue to do so in 2017.

The technical interest rate plays a key role in individual life insurance. In close cooperation with the insurance sector, FINMA managed to bring the technical interest rate close to zero effective 1 January 2017. A working group with life insurance representatives is currently developing new ways of setting the guaranteed rates. FINMA's goal is to authorise only products with interest rate guarantees that can be replicated with financial market instruments.

In recent years, FINMA reviewed the statutory provisions of life insurance companies very carefully; it conducted on-site supervisory reviews with stringent follow-up measures and used a specific audit programme. Life insurance companies have increased their provisions substantially in view of the declining interest rates. The cumulated increase in provisions in the occupational pension sector alone came to CHF 7.3 billion. By the end of 2016, statutory provisions for variable annuity products had become a

priority because they constitute a special form of fund-linked annuity insurance whose valuation comprises a high level of uncertainty. In view of this, a specific valuation approach, including parameterisation, is to be implemented for those products by the end of 2017.

#### **Non-life insurers remain stable**

Despite saturated markets and stiff competition, non-life insurers in Switzerland managed to post consistent and high profits in 2016, with the domestic market proving to be particularly strong. The suspension of the minimum CHF/EUR exchange rate in 2016 had no significant negative effect – despite forecasts to the contrary – and solvency levels among non-life insurers remained stable. The average SST ratio in 2016 came to 183% and thus remained at a virtually unchanged high level (184% in the previous year). FINMA identified no serious breaches of solvency rules nor any abusive practices among non-life insurers in 2016.

The agreement with Liechtenstein on natural hazards insurance managed by private insurance companies came into effect on 17 August 2016. It supplements the direct insurance agreement and provides more legal certainty and transparency for cross-border insurance companies in relation to natural hazards. In the agreement, damage from natural hazards is defined as damage to buildings and movables caused by certain natural events. The established solidarity principle for natural hazards insurance ensures that comparable hazards can be insured at the same premium rates. Under the agreement, Liechtenstein is now a member of the pool.

In 2016, two insurance companies were released from supervision, one of which had moved its registered office to Liechtenstein. Another insurer was

taken over and two were newly licensed. At the end of 2016, FINMA supervised 97 non-life insurers.

#### **Difficult market environment continues to affect Swiss reinsurance companies**

For reinsurers and large reinsurance captives,<sup>30</sup> Switzerland is increasingly attractive as a business location. During the second half of 2016, several companies applied for reinsurance licences to commence operations by 1 January 2017. The concentration of reinsurers and large industrial insurers worldwide has caused some reinsurance companies in Switzerland to adapt their business activities accordingly. Reinsurance companies in Switzerland continue to have high solvency ratios.

As part of the technical provisions audit programme, FINMA had external auditors review the qualitative and quantitative aspects of 13 reinsurers' statutory and market-consistent technical provisions for the 2015 financial year. The auditors found that the supervisory principles, the formation of technical provisions, and the organisational and procedural aspects were by and large compliant. The observed trends in how surplus provisions are managed indicate that their significance as a source of profits is likely to decline further. Losses occurred in 2016 from the unwinding of prior years' claims reserve, a possible indicator of the market cycle taking its course.

The environment for the reinsurance business continues to be difficult, and the decline in premium income persisted, especially in the property business. The outlook therefore remains challenging due to the large available capacities in the industry.

<sup>30</sup> An insurance company owned by a trade, an industrial goods or financing company, or by several such companies, which reinsures only the risks of these companies. (See earlier version of Art. 2 para. 1 ISO.).

### **Second package of circulars comes into force on 1 January 2017**

The revised Insurance Supervision Ordinance, which came into effect on 1 July 2015, made it necessary to adjust several FINMA circulars. FINMA responded by issuing two packages, the first of which focused on the changes that were most relevant for the recognition of supervisory equivalence by the EU. The second package of FINMA circulars was implemented as planned on 1 January 2017.<sup>31</sup> The revision mainly sought to streamline the regulations and ensure that they are more principle-based. At the same time, some already established practices were included.

The second package involved the new FINMA Circular 2017/5 “Business plans – insurers”, while FINMA Circular 2017/2 “Corporate governance – insurers”, FINMA Circular 2017/3 “Swiss Solvency Test (SST)” and FINMA Circular 2017/4 “Actuary responsible” were completely revised. FINMA Circular 08/35 “Internal audit – insurers” was revoked and its contents integrated into FINMA Circular 2017/2 “Corporate governance – insurers”.

<sup>31</sup> See press release of 15 December 2016 “FINMA publishes insurance circulars” (<https://www.finma.ch/en/news/2016/12/20161215---mm---rs-versicherungsbereich/>).

## National and international trends in insurance and solvency supervision

FINMA actively exchanges ideas with foreign supervisory authorities in the insurance sector through supervisory colleges. The international effort aims to enhance the supervision of international insurance groups. Because a broadly accepted, international standard for solvency supervision is not likely to be implemented in the near future, national approaches will continue to play an important role.

When supervising large international insurance groups, the authorities of the various countries work together by forming what are referred to as supervisory colleges. This enables FINMA to have an exchange with other insurance supervisors. At the technical level, FINMA is also in contact with other European regulators, especially when it comes to devising models for measuring solvency with the SST and Solvency II systems.

The quantitative parts of the SST and Solvency II are based on the same principles that have been consistently implemented in Switzerland. Europe has intervened more strongly in Solvency II regulations than Switzerland and added several adjustments. Because of the differences in the legal systems of the European countries, the limitations of comparing Solvency II implementation at the national level are clear. Insurance modelling is a complex undertaking, and there are options and methods for limiting comparability. On the other hand, overly simplified models harbour the danger of not adequately capturing the risks. Striking the right balance between the necessary complexity and the permissible simplicity in a model remains a major challenge.

### Swiss Solvency Test

FINMA adjusted the approval process for internal models based on the Insurance Supervision Ordinance revised in 2015 and implemented it at the beginning of 2016. This process now consists of a summary review conducted shortly after the insurance company submits its application. A further element involves a substantive review, which FINMA can conduct at any time while the model is in use. Proof of need for an internal model must be provided prior to these two reviews, whereby the insurance company must explain why the standard model is unable to appropriately capture its risk situation. When applying for approval of an internal model,

the insurance company must submit, along with the other documentation, a validation report and an impact analysis quantifying the differences between the internal model and the standard model.

In the first half of 2016, FINMA used the old model-approval process to finalise the review of the models it had been examining and had almost completed by the beginning of 2016. It conducted all further applications and reviews consistently in accordance with the new approval process. Some insurance companies submitted their proof of need in 2016. FINMA allocated a standard model to those insurance companies that failed to submit proof of need for an internal model.

FINMA revised some of the standard models starting in the last quarter of 2015, which in some cases meant producing a fully revised version, taking information from the insurance industry into account. The updated standard models capture the risk profiles in the Swiss market more accurately, and the number of requests by insurance companies for internal models has subsequently declined. SST figures will be publicly available for the first time in 2018, and FINMA therefore expects an increase in proofs of need for internal models in the coming year.

The first to be developed was the standard model for reinsurance captives, which was widely used for the SST 2016. In 2016, FINMA also field-tested the new standard model for reinsurance companies and implemented the findings from these tests so that the model can be finalised by the beginning of 2017. Work on developing a standard model for group life insurance companies commenced in close collaboration with the respective life insurers, and the model should be ready for use in the SST in 2018.

At the same time, FINMA further developed the current standard models, in particular by revising the model for market risks – including its coordination with the standard model for credit risks – and the model for non-life insurance risks. It is therefore now possible to sufficiently reflect the risk landscape of most insurance companies in Switzerland. Those revised standard models not already applicable for the SST 2017 will be made available for use in the SST 2018.

The measures mentioned will help to significantly reduce the number of insurance companies using internal models for the SST.

### **SST figures by insurance sector**

In 2016, the required target capital and the risk-bearing capital of all insurance sectors remained relatively stable compared with the previous year. Changes could be observed especially among life insurance companies and reinsurance companies.

Reinsurance captives' SST figures have been consolidated with those for reinsurance companies. With the SST 2016, all reinsurance captives have become subject to the SST solvency regime.

## SST figures for each insurance sector

Insurer	SST 2016 (17 November 2016)				SST 2015 (27 September 2015)			
	Risk-bearing capital (in CHF millions)	Target capital (in CHF millions)	SST ratio	Under-funded	Risk-bearing capital (in CHF millions)	Target capital (in CHF millions)	SST ratio	Under-funded
Life insurers	59,645	41,019	145%	1 (17)	50,165	34,226	147%	2 (17)
Non-life insurers	74,756	41,003	182%	1 (54)	77,014	41,883	184%	0 (56)
General health insurers	9,493	3,704	256%	0 (22)	9,297	3,484	267%	1 (22)
Reinsurers and reinsurance captives	56,787	28,352	200%	1 (51)	60,349	27,800	217%	0 (30)
<b>Total</b>	<b>200,681</b>	<b>114,078</b>	<b>176%</b>	<b>3 (144)</b>	<b>196,825</b>	<b>107,393</b>	<b>183%</b>	<b>3 (125)</b>

In the underfunded column above, the unbracketed numbers correspond to the number of underfunded insurers whereas the bracketed numbers indicate the total number of insurers, e.g. 1 (51) means that one insurer out of 51 is underfunded.

### **New coordination agreements as basis for supervisory colleges**

Supervisory colleges are an important forum for cooperation between FINMA and supervisory authorities abroad, and they play an essential role in international group supervision. The regular exchange of information and experience aims to facilitate cooperation among the supervisory authorities and improve the supervision of internationally active groups and conglomerates. Cooperation among supervisory authorities internationally is becoming increasingly formalised in coordination agreements. Effective group supervision therefore presupposes that such cooperation exists and that the necessary information can be exchanged reliably among the participating authorities supervising a particular group or an individual company.

As a group supervisor, FINMA manages five supervisory colleges. In 2016, this form of cooperation again proved to be an effective means of exchanging information among the supervisory authorities. The coordination agreements that are now in effect for all five supervisory colleges with between 6 and 25 foreign members can be seen as a milestone because they provide a formal framework for cooperation and information exchange. They also lay out the goals and principles for a supervisory college, the prerequisites for college membership, and the responsibilities of the group supervisor and college

members. The regulations on confidentiality are of great importance, and FINMA uses the International Association of Insurance Supervisors' Multilateral Memorandum of Understanding (IAIS MMoU<sup>32</sup>) as the standard. The MMoU also includes principles on exchanging information regularly and ensuring that working groups within the college carry out their functions effectively by topic or region.

The main topics of the colleges in 2016 included assessing the risks of insurance groups and the initial report on the self-assessment of the risk situation and capital requirements referred to as ORSA (own risk and solvency assessment) at group level.

If an insurance company or a supervised branch office in Switzerland belongs to a foreign group, FINMA also participates in the foreign supervisory colleges commensurate with the risk involved. In 2016, FINMA was a member of 14 foreign supervisory colleges.

<sup>32</sup> The IAIS MMoU is a multilateral agreement that governs cross-border cooperation and confidential information exchanges among the participating supervisory authorities.



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## Focal points of insurance supervision in 2017

**The adjusted regulations on the Swiss Solvency Test and on corporate governance will be implemented in 2017. Based on a risk assessment, supervision will focus on the life insurance and supplementary health insurance sectors.**

In the two previous years, numerous FINMA circulars were adjusted and new circulars were issued based on the Insurance Supervision Ordinance, which was revised in 2015. In the coming year, the supervisory focus will again be on continuing to implement these regulations and on introducing new rules. For example, this means supporting insurance companies in developing the newly introduced own risk and solvency assessment.

In 2017, FINMA will continue to focus on further developing the Swiss Solvency Test (SST). With the revised ISO having established the precedence of the standard models, several adjustments became necessary, such as redesigning the approval process so that internal models can be used only in exceptional cases and amending the process to avoid delays in processing the applications. At the same time, new standard models are being developed and existing standards revised; new models for reinsurance and occupational pensions should be ready by the end of 2017.

Developments in life insurance will remain a priority for FINMA's supervisory activities next year. The continuing low interest rate environment is a major challenge for insurance companies. FINMA will continue to ensure that reserves are sufficient to cover current liabilities, and it will work with the Insurance Association on developing robust and future-oriented solutions for guarantees in the individual life insurance sector.

In the supplementary health insurance sector, two topics will dominate in 2017: on the one hand, completing the revision of the master agreements and group discounts, both of which were already a priority in 2016; on the other hand, supervision of closed portfolios, which will involve implementing a landmark Federal Supreme Court ruling of 2016 across the market. As a first step, an analysis of the current situation will be made to determine whether and to what extent further measures are needed as part of a second step.

In 2017, targeted on-site supervisory reviews focusing on adequate reserves and governance will also be conducted in the insurance sector in response to current indicators and risk-based considerations.

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## Changes in insurance regulation

The partially revised Insurance Supervision Ordinance that came into effect on 1 July 2015 made it necessary to revise a number of FINMA circulars and and prepare new ones. This was done by issuing two packages of circulars, the second in 2016. It included one new and three revised circulars. Another FINMA circular was revoked.

FINMA circulars	Regulatory projects			Changes	In force from
	Type	Content/subject	Goals/reasons		
FINMA Circular 2017/5 "Business plans – insurers"	New regulation	This Circular lays out the requirements for insurance companies requesting an operating licence (Arts. 3 and 6 ISA) or approval for changing some elements of their business plan (Arts. 4 and 5 ISA).	Determining and coordinating current and partly new practices.		1 Jan. 2017
FINMA Circular 2017/2 "Corporate governance – insurers"	Full revision	This Circular specifies the ISA provisions on corporate governance, risk management and internal control systems. It also defines some of the principles and has been streamlined considerably compared with the previous version.	Adjustment to international standards; specifying current and some new practices; streamlining and principle-based formulation.	Full revision and streamlining	1 Jan. 2017
FINMA Circular 2017/3 "SST"	Full revision	This Circular lays out the provisions under supervisory law regarding the framework, execution and reporting procedure for the SST. These regulations are principle-based and have been streamlined considerably compared to the previous version.	Determining current and partly new practices; streamlining and principle-based formulation.	Full revision and streamlining	1 Jan. 2017

FINMA circulars	Regulatory projects			Changes	In force from
	Type	Content/subject	Goals/reasons		
FINMA Circular 2017/4 "Actuary responsible"	Full revision	The Circular specifies the regulatory requirements that apply to the actuary responsible. The revision underscores the importance of the actuary's role and it emphasises the Circular's key points.	Streamlining of the regulations and focus on key points.	Thorough revision; partial reduction	1 Jan. 2017
FINMA Circular 2008/35 "Internal audit – insurers"	Revocation	This Circular has been revoked and its contents integrated into FINMA Circular 2017/2 "Corporate governance – insurers".	Revocation	Revocation	–

### Outlook

Revision of the Insurance Supervision Act (ISA) will focus on categorisation; restructuring law; the rules currently included in the FinSA regarding insurance companies and insurance intermediaries; an estimate of the consequences of the regulations; and a comparison of laws. Categorisation includes re-examining the intensity of regulation and supervision based on the need for protection of policyholders; it should strengthen Switzerland as an insurance hub and support its competitiveness. The ISA is also to be adjusted in places and streamlined based on the findings obtained from the industry. With the introduction of the special bankruptcy law for insurance companies, the general composition proceedings of the Debt Enforcement and Bankruptcy Act (DEBA) which were in effect until 2012 were repealed because of conflicting competencies, making it necessary to introduce a restructuring law for insurance companies.

# At a glance:

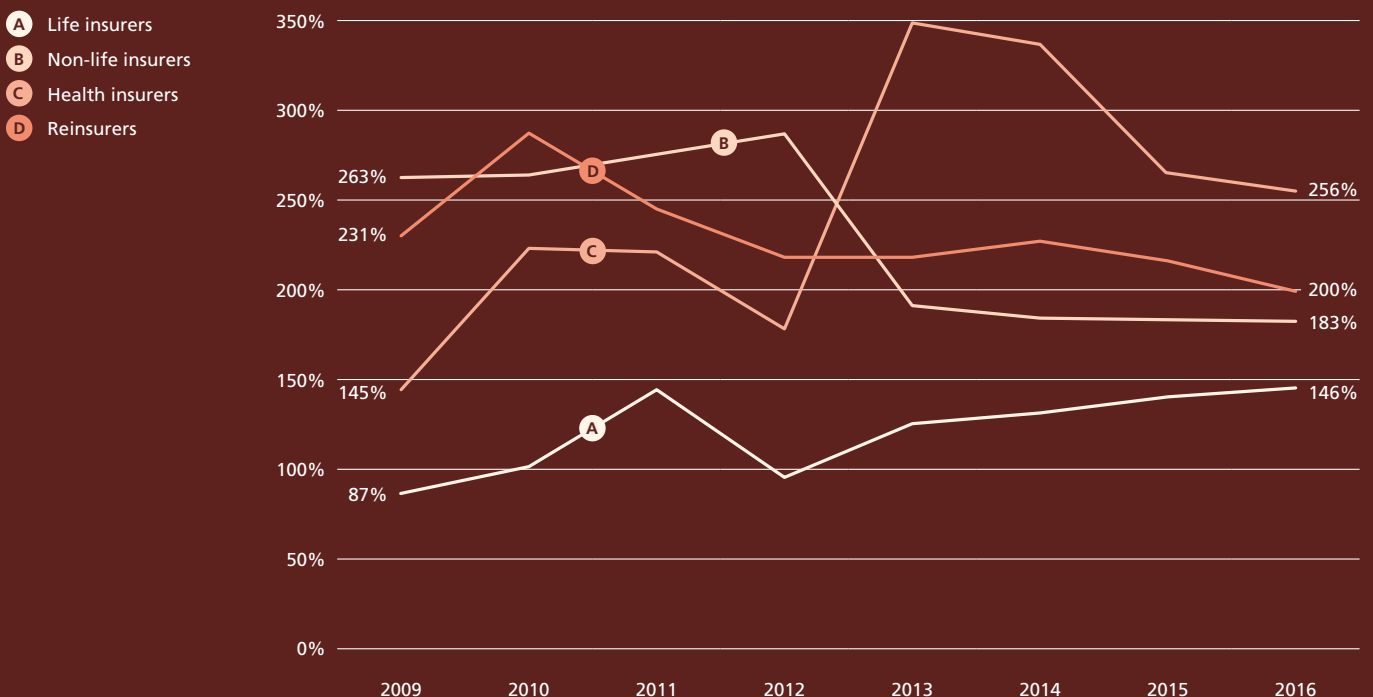
## SST ratio trends since 2009

Insurance companies are well capitalised, and life insurers, which are particularly exposed to the low interest rate environment, are mastering their challenges well. Suspension of the minimum CHF/EUR exchange rate by the Swiss National Bank in 2016 had little effect on solvency.

Several aspects characterised the trends in the Swiss Solvency Test (SST) ratios in the various insurance sectors in 2016.

- The SST has indicated that insurance companies are well capitalised. Market-consistent assessments and risk measurements are generally well accepted, having been part of standard practice for a number of years.
- Measuring solvency with the SST has improved asset and liability management considerably over the years and raised awareness of risks and ways of managing them. The need for capital has become an important element in setting the strategy for products and investments.
- Changes in hospitalisation financing on 1 January 2012 provided some relief for supplementary health insurers, resulting in reduced liabilities and commensurately higher SST ratios.
- Life insurers have met the challenges of the low interest rate environment very well. The improved assets-to-liabilities ratio and several new product initiatives are generally having a positive effect on solvency. From 2013 to 2015, several insurance companies made use of the relaxed SST requirements in view of the extraordinarily low interest rates.
- Suspension of the minimum CHF/EUR exchange rate and the lower interest rates introduced by the Swiss National Bank in 2016 had little effect on solvency trends.

### SST ratio trends by branch



FINMA Circular 13/2 “SST adjustments” introduced adjustments to the SST that were valid for only three years. In particular, the interest rate curve<sup>33</sup> was adjusted by setting a long-term interest rate for the Swiss franc and other major foreign currencies towards which the interest rate curves should converge. The yield on Confederation bonds, which was used exclusively as a basis for setting the interest rate curve until the end of 2012, was replaced with swap rates,<sup>34</sup> adjusted downwards by 10 basis points, as the reference interest rates. This risk-bearing interest yield curve was used only for current business and thus did not apply to new business. For the sake of transparency, insurance companies had to provide FINMA with a shadow statement, in addition to the relaxed SST, that excluded the effects of the adjustments.

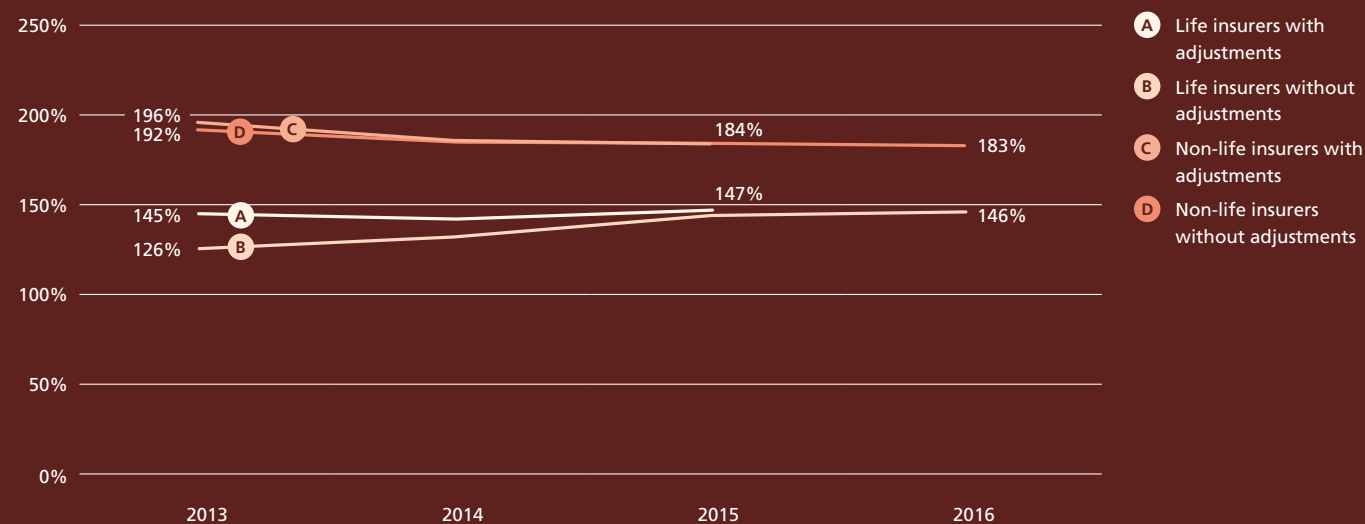
<sup>33</sup> The ratio between different interest rates is referred to as the interest rate structure. It is illustrated in the chart by the interest rate curve and shows in particular to what extent future obligations are discounted.

<sup>34</sup> An interest rate swap is a financial derivative where two parties agree to exchange interest rate payments on a fixed nominal amount at a fixed later date. The interest rate payments are such that one party pays a fixed interest rate and the other party pays a variable interest rate, which is determined by a (not risk-free) reference interest rate in the interbank market. The swap rate is fixed so that the present value of this swap is zero at the time the swap was agreed where the swap rate is used for the fixed interest rate.

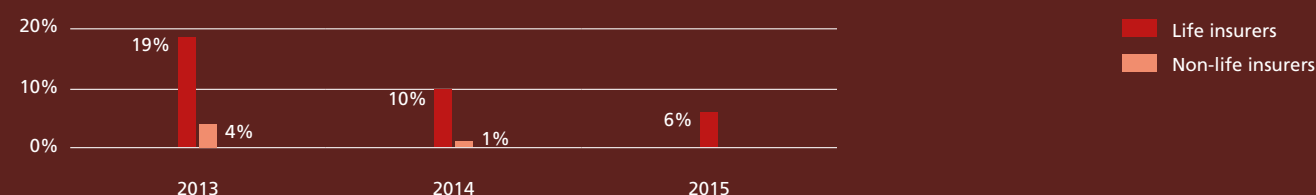
The chart shows the SST adjustments from 2013 to 2015. Health insurers and reinsurers hardly used this option, which is why only the effects on life insurers and non-life insurers are shown, measured by the SST ratio and its relative change.

- The effect of the adjustments was strongest among life insurers in 2013 but quickly subsided. The difference between SST ratios with adjustments and those without dropped from 19 percentage points in 2013 to 6 percentage points in 2015. FINMA believes that the largely comfortable SST capitalisation in 2016 is due to the industry having learned how to cope with the challenges of the low interest rate environment. The fact that new business did not benefit from the adjustments had only a minor impact.
- Non-life insurers continue to be well capitalised. Requests for SST adjustments were based primarily on regulations under which all SST units of insurance groups subject to the SST requirements had to decide for or against such adjustments. The difference between SST ratios with adjustments and those without dropped from 4 percentage points at the time of the introduction in 2013 to 1 percentage point in 2014. In 2015, the adjustments were no longer used.

### Adjustment effects



### Relative difference between the SST ratios with and without adjustments



In carrying out its supervisory activities in 2016, FINMA's Markets division focused on the FATF country assessment and the implementation of the Financial Market Infrastructure Act. Together with other supervisory divisions, it developed minimum audit requirements for conduct rules.

The Markets division has a direct and indirect supervisory role within FINMA. It oversees financial market infrastructures,<sup>35</sup> directly subordinated financial intermediaries (DSFIs) and self-regulatory organisations (SROs) through direct contact with the supervised institutions. On the other hand, the division also supports other FINMA divisions in the areas of money laundering prevention, compliance with conduct rules vis-à-vis clients in the investment area ("suitability"), auditing and financial reporting.

#### **New audit programme for conduct rules vis-à-vis clients in the investment area**

Institutions active in the financial sector must observe certain conduct rules vis-à-vis their clients in the investment area. These include the duty to recommend that clients buy only suitable investment products. Compliance with these requirements is referred to as suitability. FINMA has stepped up its supervision in this area and developed a new audit programme, which will be used by auditors beginning in 2017. The audit programme specifies the minimum requirements for the audits carried out by audit firms. It aims to ensure that the fulfilment of conduct rules vis-à-vis clients in the investment area is adequately and appropriately checked. This applies to the following four audit areas: asset management, investment advisory services, execution-only and the distribution of collective investment schemes. The new audit programme will also cover issues such as best-execution, securities lending using client holdings, training for front-office staff and the correct treatment of retrocessions.<sup>36</sup>

#### **Results and recommendations of the FATF country assessment**

The Financial Action Task Force (FATF) conducted an in-depth evaluation of the situation in Switzerland and assessed the efforts being made to combat

money laundering and the financing of terrorism. The report was published in December 2016. As regards the effectiveness of the measures taken in these areas, Switzerland achieved a positive result in many respects. The FATF made special mention of the Swiss authorities' risk-based approach and consistent application of anti-money laundering rules. The FATF did, however, identify a need for adjustments to the Swiss regulatory framework and for further action in a number of other areas. As in most of the other countries reviewed so far, Switzerland will therefore be subject to an enhanced follow-up process.

The country report contains a series of recommendations for improvement to be made by Switzerland. For example, financial intermediaries should be obliged to regularly update their client information for existing business relationships. They should also increasingly report suspicions of money laundering to the Money Laundering Reporting Office Switzerland (MROS). It has also been recommended that some SROs implement more appropriate measures to identify and monitor money laundering risks. In particular, SROs whose members perform fiduciary activities are expected to make improvements. FINMA will closely examine the relevant recommendations.

#### **Supervision of the parabanking sector**

The revised Anti-Money Laundering Act (AMLA) entered into force on 1 January 2016. Since then, FINMA has been evaluating whether the SROs have implemented the new AMLA provisions. It was determined that the SROs have taken both the necessary substantive and organisational measures to comply with the requirements of the revised AMLA. The measures cover areas such as changes to SRO regulations, publications and training. FINMA carried out on-site reviews at the SRO of the Swiss Bar Associa-

<sup>35</sup> Financial market infrastructures include post-trading services in securities and derivatives trading relating to the clearing and settlement of securities transactions which are provided by securities settlement systems in the form of central counterparties (CCPs) and central securities depositories (CSDs). Payment processing systems are also included. The broader definition encompasses regulated trading platforms. FINMA is responsible for supervising financial market infrastructures (stock exchanges and similar institutions, CCPs and CSDs). Systemically important post-trading infrastructures and payment processing systems are also supervised by the Swiss National Bank (SNB).

<sup>36</sup> Commissions paid to financial intermediaries by financial product providers.

tion and the Swiss Notaries Association for the first time in 2016, thereby fulfilling a new legal requirement.

Financial intermediary activities are subject to various industry-specific risks, for instance those arising from money laundering and the financing of terrorism. For this reason, FINMA uses a risk-based approach in its supervision of SROs. In 2016, FINMA focused on assessing how the SROs were recording and checking any changes to their members' business activities and whether the resulting risks were adequately addressed in line with their risk-based supervisory approach. Here FINMA ascertained that while all SROs are applying a risk-based supervisory approach, some are at a more advanced stage than others. Some SROs, for example, have yet to adequately map the risk criteria for their members' business activities.

Another supervisory topic relating to SROs was the implementation of the new supervisory obligations resulting from the bundling of responsibility for supervising audit firms. FINMA's review also revealed that the SROs have taken appropriate measures to implement their new obligations in this area or are currently taking steps to implement such measures with respect to the transitional provisions by the start of 2017.

### **Introduction of new accounting standards for banks**

The new accounting standards for banks have been in force since 1 January 2015 and were applied by banks for the first time when preparing their 2015 annual financial statements. Each year FINMA reviews a random sample of annual financial statements. These checks have shown that for the most part the changes have been satisfactorily implemented. They also confirmed FINMA's impression that the annual financial statements prepared by banks are now more transparent thanks to the new balance-sheet and

profit-loss account positions, and the additional information provided in the notes. However, FINMA also identified a number of issues which it discussed individually with the banks affected. Some banks, for example, are forming reserves for general banking risks, which are intended to be used to cover latent default risks. Other banks have even been reversing value adjustments for latent default risks and transferring the proceeds to reserves for general banking risks with the aim of covering their latent default risks. However, reserves for general banking risks are a component of equity and should not be used to replace operationally essential value adjustments. FINMA has therefore launched a project to examine the possible introduction of an expected-loss approach.<sup>37</sup>

<sup>37</sup> Approach to determine value adjustments based on expected losses, which must be estimated for the following year or the full remaining period, and comprising the present values of the expected payment defaults. Current economic conditions and forecasts of future events and economic conditions must be considered along with historical data when estimating expected losses.

## Supervision of financial market infrastructures and initial experiences in the implementation of the Financial Market Infrastructure Act

A significant topic in 2016 was the implementation of the Financial Market Infrastructure Act. FINMA had to evaluate a large number of first-time and new applications for authorisation of financial market infrastructures, both from existing and new financial market intermediaries. The new legislation also made it necessary to revise subordinate regulations and implement derivatives-trading requirements.

Financial market infrastructure (FMI) supervision in 2016 centred on the work carried out in relation to the implementation of the new legal requirements. This included revising various FINMA circulars and stepping up cooperation between domestic and foreign authorities. In this context, FINMA's coordination with the SNB on the supervision and monitoring of systemically important FMIs played a key role.

### Implementation of the Financial Market Infrastructure Act

Following the entry into force of the Financial Market Infrastructure Act (FMIA) on 1 January 2016, FMIs have had to implement the new requirements that have been specifically defined for them. These also form the basis of the processes required under the Act which existing and new FMIs must follow to (re-)apply for authorisation. All existing Swiss FMIs have launched implementation projects, having consulted FINMA and, in certain cases, the SNB.

The FMIA defines separate legal requirements for the financial market infrastructures. While the new legislation contained only minimal adjustment requirements for post-trading activities, the trading platforms as defined under the FMIA are subject to completely new requirements. To improve market surveillance, the FMIA also requires trading surveillance units focused on domestic trading platforms to work together more closely. By pooling the information they have on irregularities in the trading sector, they can increase their chances of uncovering any instances of improper conduct on the part of market participants. A cooperation agreement to this effect has already been concluded with the involvement of FINMA.

by companies now qualifying as FMIs under the new legislation, for example for a Swiss trade repository for derivatives transactions.

In light of the derivatives trading requirements introduced in the FMIA, it is now also necessary to recognise foreign infrastructures (central counterparties [CCPs] and trade repositories) to a greater extent. Given the predominantly cross-border nature of derivatives trading and the rules that have already been implemented abroad, Swiss companies subject to the new derivatives trading requirements also use foreign FMIs. In 2016, FINMA received applications for recognition from nine foreign CCPs and one foreign trade repository. The recognition process has already been completed for one foreign CCP.

Fifty-seven reapplications for recognition were received from foreign trading platforms that had already been recognised before 2016; of these, 27 have already been approved. FINMA publishes a full list of foreign FMIs which it recognises.<sup>38</sup> As part of the recognition process, FINMA also concludes cooperation and exchange-of-information agreements with the relevant foreign authorities. These include rules covering coordination of measures in the event of a crisis. The focus here is on ensuring interoperability. FINMA continues to be involved in international committees which lay down framework conditions and effective cross-border measures in cases where an FMI finds itself in difficulty. In doing so, it is helping to improve cooperation in the event of a crisis.

In addition to the reapplications for authorisation that had to be submitted by existing FMIs by the end of 2016, first-time applications were also submitted

<sup>38</sup> See <https://www.finma.ch/en/finma-public/authorised-institutions-individuals-and-products/>.



### **Supervision of financial market infrastructures in cooperation with the SNB**

FINMA has defined a minimum standard audit strategy applicable to basic audits of FMIs. It coordinates with the SNB in cases where a systemically important financial market infrastructure is also subject to supervision by the SNB. To prevent any overlaps in supervision, these two authorities have consulted each other and divided responsibilities between them. Steps were also taken to ensure that both parties have access to the same information (risk analysis, audit strategy and reporting).

### **Derivatives trading and implementation of FMIA**

Implementation of the derivatives-trading requirements forms part of the regulatory follow-up work linked to the FMIA. The authorisation (of Swiss) and recognition (of foreign) CCPs and trade repositories is related to the gradual introduction of the requirement to clear qualifying derivatives transactions through authorised or recognised central counterparties (Art. 85 FMIO) and the requirement to report derivatives transactions to a trade repository (Art. 130 FMIO). Meeting the derivatives-trading requirements under foreign law is contingent upon FINMA's recognition of the foreign law as equivalent and recognition of the foreign financial market infrastructures (Art. 95 FMIA; Art. 81 FMIO). In this regard, FINMA has recognised specific European Union rules as provisionally equivalent and extended the deadlines for the exchange of collateral accordingly in line with international standards.

In addition, FINMA will carry out a regular equivalence assessment process regarding the relevant EU regulations.

### **Structural changes to post-trading**

For a number of years, post-trading has faced growing pressures as a result of competition and consolidation. Discussions about whether to continue using the current technical infrastructure or replace it have become more urgent. The question here is whether further investments should be made in conventional technologies and systems or whether medium-term planning should focus on new technologies (e.g. blockchain or distributed ledger technology [DLT]). International FMIs have already launched various projects, which could result in fundamental changes in trading and post-trading. However, it is likely to take several years for this technology to reach market maturity. Given the interconnectedness of the capital markets, it is unclear which new technologies will ultimately establish themselves. FINMA is closely monitoring these technological developments and their impact on trading and post-trading.

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## Focal points of market supervision in 2017

The Markets division supervises the parabanking sector as regards compliance with anti-money laundering regulations and is responsible for supervising financial market infrastructures (FMIs). In addition to its own evaluations, FINMA uses the national risk assessment carried out by the Federal Government in 2015 when monitoring the parabanking sector. A high level of money laundering risk was identified for fiduciaries and lawyers, asset managers with clients from emerging markets, and money-transfer service providers. FINMA will continue to refine its risk analysis process for the parabanking sector and support SROs in improving their risk-based approaches in an effort to ensure harmonisation. In addition, FINMA will step up its supervision of any SROs with large numbers of members involved in the fiduciary business. It will also carry out targeted checks as to whether the AMLA due diligence obligations introduced in 2016 are being effectively implemented.

FINMA has learned from the financial crisis and in recent years it expanded its supervision of financial market infrastructures (FMIs) engaging in trading and post-trading. One particular focus has been on post-trading activities in light of the derivative clearing obligations defined by the G-20 and the opening of trading markets in the EU. Switzerland's financial market infrastructures are facing strategic challenges in the form of increased competition and technological developments. FINMA will need to pay particular attention to the stability of these infrastructures.

FINMA will also concentrate on the re-authorisation of financial market infrastructures under the FMIA which will soon be necessary. This means that some of the new trading platform requirements and new reporting obligations for market participants must be implemented by the end of 2017 given the need to synchronise schedules with the EU. In light of business activities carried out by Swiss FMIs in the EU and by EU-based FMIs in Switzerland, a great deal of time will continue to be spent working together with supervisory authorities and central banks across the EU.

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## Changes in market regulation

Technology-neutral anti-money laundering due diligence requirements for digital financial service providers have been set out in a new circular. The follow-up regulatory work on the FMIA led FINMA to put out the revised FINMA Circular 2008/11 “Duty to report securities transactions” and Circular 2008/4 “Securities journals” for a period of consultation.

FINMA circulars	Regulatory projects			Changes	In force from
	Type	Content/subject matter	Aims/reasons		
FINMA Circular 2016/7 “Video and online identification”	New circular	FINMA has set out the regulatory anti-money laundering due diligence requirements in a new circular so that they can be applied in a digital context and do not contain any unnecessary obstacles in line with the principle of technological neutrality.	An ever increasing number of financial intermediaries contact their clients via the internet and mobile devices. The requirements designed to combat money laundering and the financing of terrorism should take into account the increasing digitalisation of financial services.	–	18 Mar. 2016
FINMA Circular 2011/1 “Acting as a financial intermediary under AMLA”	Partial revision	FINMA Circular 2011/1 clarifies the provisions in the Anti-Money Laundering Ordinance (AMLO) and sets out when the professional practice of financial intermediary activities is subject to the Anti-Money Laundering Act.	As of 1 January 2016, the Federal Council repealed the former Ordinance on the Professional Practice of Financial Intermediation (OPPF) and replaced it with the new Anti-Money Laundering Ordinance. This led to a subsequent revision of the FINMA Circular.	The changes were mainly editorial (updating references). The scope of the AMLO has also been aligned with current FINMA practice.	5 Dec. 2016

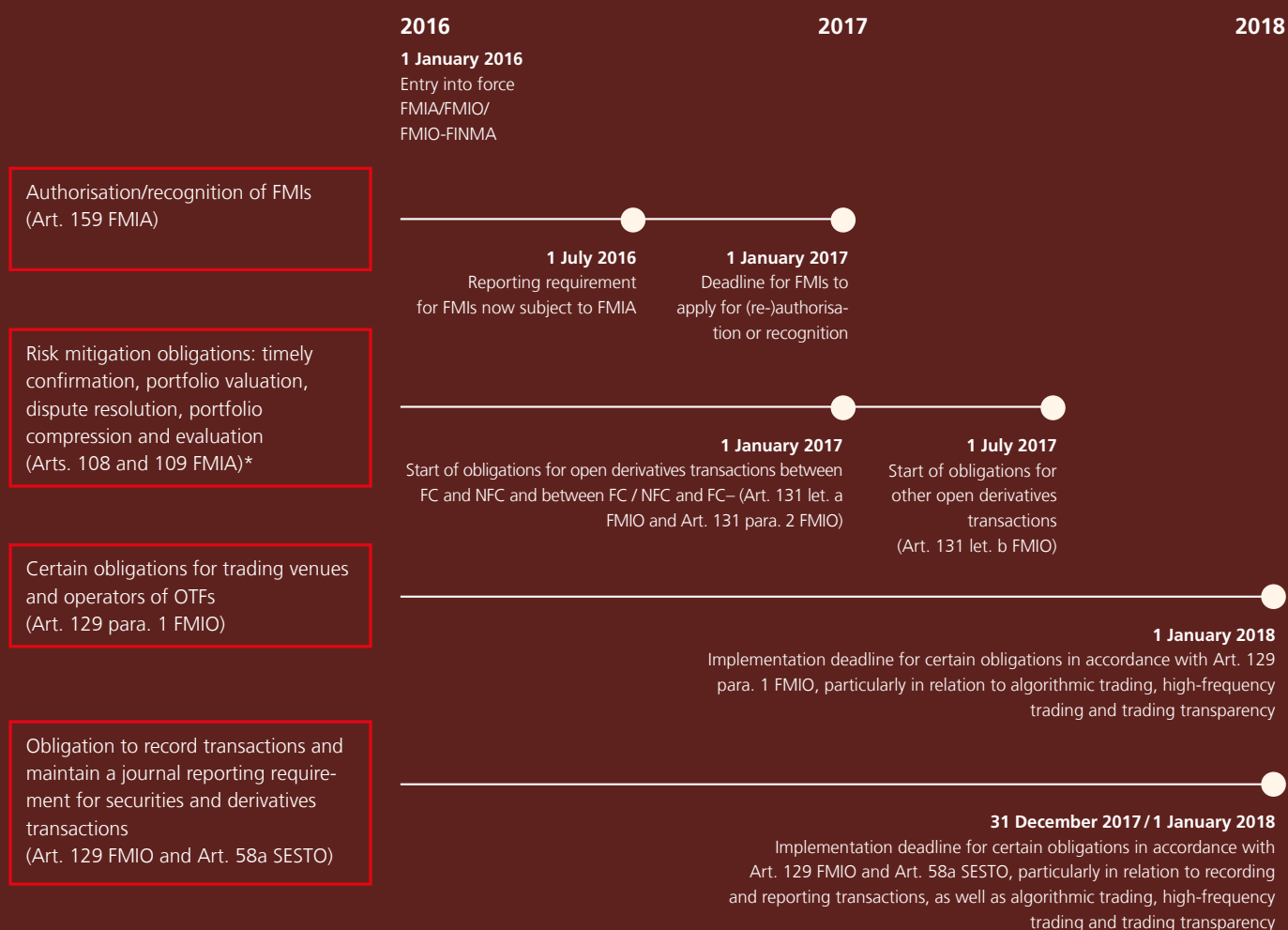
### Outlook

Following the entry into force of the Financial Market Infrastructure Act (FMIA) on 1 January 2016, FINMA engaged in a range of regulatory follow-up work. This included adopting the new Circular “Organised trading facilities”, the full revision of Circular 2008/11 “Duty to report securities transactions” and the partial revision of Circular 2008/4 “Securities journals”.

# At a glance: FMIA/FMIO implementation deadlines

Following the entry into force of the Financial Market Infrastructure Act (FMIA) and the Financial Market Infrastructure Ordinance (FMIO) on 1 January 2016, the legislator assigned FINMA the mandate to draft the relevant implementing provisions and carry out certain authorisation and recognition processes. The entry into force of the FINMA Financial Market Infrastructure Ordinance (FMIO-FINMA) on 1 January 2016 marked FINMA's completion of this mandate.

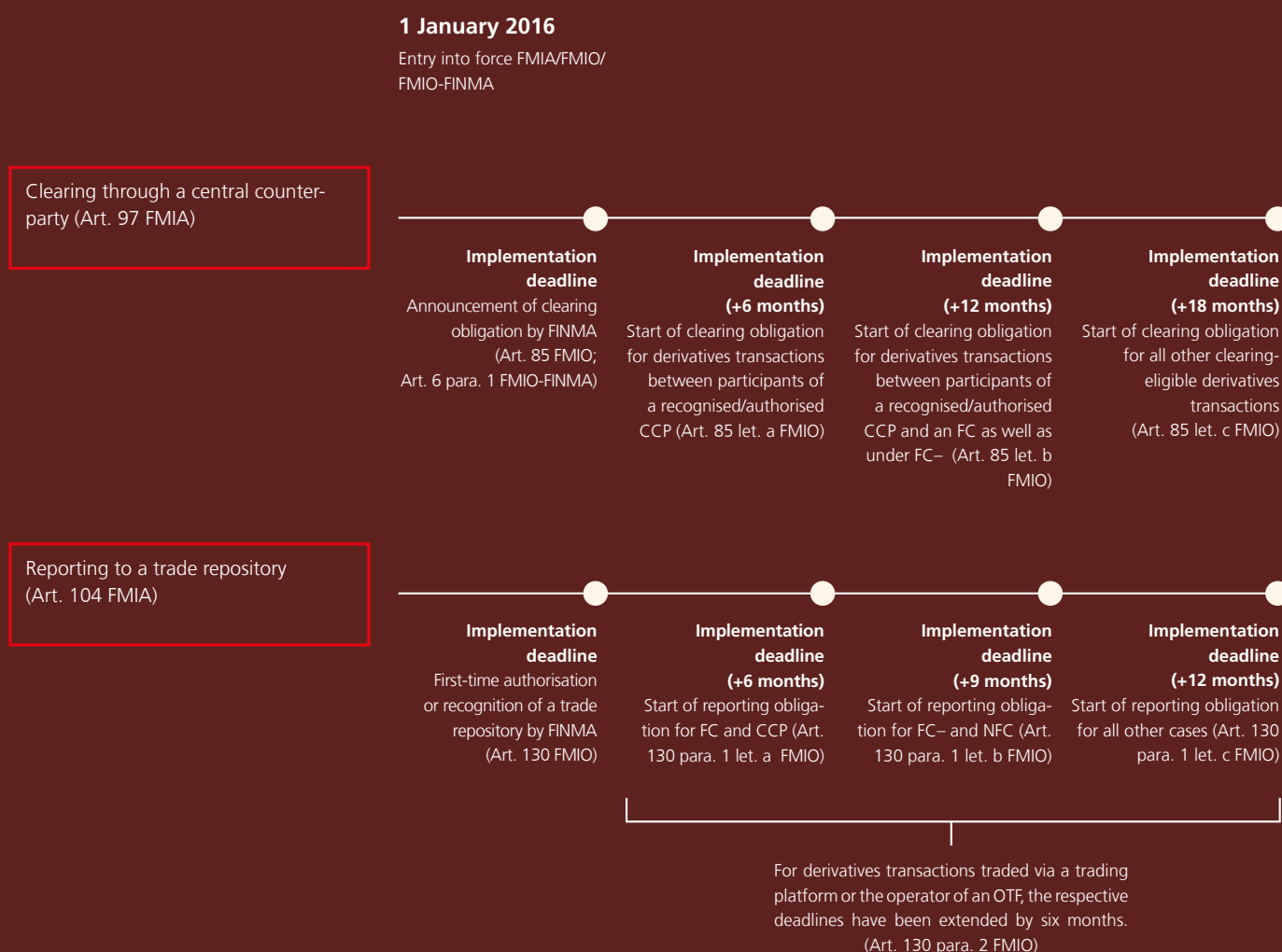
## Scheduled implementation deadlines



\* Please refer to Section 3 of FINMA Guidance 01/2016 dated 6 July 2016 with regard to the obligations to exchange collateral as part of the risk mitigation requirements.

The first chart shows the fixed implementation deadlines for FMIA, FMIO and FMIO-FINMA (delays are possible), while the second chart illustrates the relatively definite implementation deadlines (which may depend on the start dates of the implementation periods).

## Relative implementation deadlines



- CCP Central counterparty
- FC Financial counterparty
- FC- Small financial counterparty
- NFC Non-financial counterparty
- NFC- Small non-financial counterparty
- OTF Organised trading facility

## Overview of asset management

The difficult market environment continued to exercise pressure on the asset management sector in 2016. FINMA specified its supervisory requirements for licence holders and took steps to improve market access for Swiss providers.

Low and even widespread negative interest rates combined with modest economic growth shaped the market situation for fund providers in 2016. This increased pressure on margins prompted market participants to intensify their search for yield. The sector also saw new types of investment and strategies in product development and considerable activity in property investments. FINMA also noticed a growing trend in outsourcing to specialised third parties and an increased emphasis on accessing markets outside Switzerland, as they offer additional growth opportunities to the Swiss asset management industry.

### Amendment of supervisory practice relating to CIS managers

In its supervisory and regulatory role, FINMA follows the principle that supervised entities with similar risk exposure receive the same level of supervision. To ensure the application of this principle, FINMA reviewed its licensing and supervisory role with regard to CIS managers and securities dealers. The results of this review led to an alignment of supervisory practice insofar as it was proper and legally permissible.

For example, the risk categorisation for companies under the Collective Investment Schemes Act (CISA) was aligned with that for banks. As a result, supervised institutions in the asset management sector are now all in Supervisory Categories 4 and 5. The auditing approach for institutions operating under CISA was also adjusted.

### Delegation of key duties outside Switzerland

As FINMA has noted from its licensing activities, licence holders are delegating more duties to third-party companies. This delegation often includes core tasks, such as portfolio management, risk management or other key functions, mainly for reasons of increased efficiency and lower costs.

If the licence holder delegates key duties to third-party companies in other countries, it must prove that FINMA, the regulatory audit firm and the licence holder itself can exercise their right to conduct audits and that they have legal authority to do so. That applies to those areas covered by supervisory law and private law. An expert legal opinion from a law firm or confirmation from the foreign supervisory authority qualify as proof in this instance. The audit company has to obtain this proof prior to outsourcing and confirm to FINMA that the requirements of Article 66 para. 5 CISO-FINMA will be adhered to. Moreover, the regulatory requirements governing the delegation of duties must be complied with in every instance, including the careful selection, instruction and monitoring of the mandatary.

### Market access to Hong Kong

FINMA entered into negotiations with the Securities and Futures Commission of Hong Kong (SFC) in 2015 to improve cooperation and access to its fund market. The joint Memorandum of Understanding (MoU) was signed in December 2016. The MoU regulates the exchange of information for supervision purposes and facilitates access for Swiss securities funds and CIS managers to public investors in Hong Kong. It also provides access to the Swiss market for selected funds and asset managers from Hong Kong.

The SFC now views FINMA's supervision as an "acceptable inspection regime" and a "recognised jurisdiction". That means supervised institutions authorised to manage collective investment schemes in Switzerland can now also manage funds distributed to public investors in Hong Kong. That applies to Hong Kong funds and funds from third-party states, e.g. UCITS.<sup>39</sup>

By the same token, Swiss securities funds will be accessible to public investors in Hong Kong, provided

<sup>39</sup> Undertakings for Collective Investment in Transferable Securities.

they meet the regulatory requirements under CISA, comply with disclosure obligations and nominate a representative in Hong Kong. The requirements are set out in an SFC circular.<sup>40</sup> Authorisation is provided through a standard process.

### **Second positive ESMA recommendation for an AIFMD passport for Switzerland**

The EU Alternative Investment Fund Managers Directive (AIFMD) provides for (harmonised) access to the European market for the management and distribution of alternative investment funds from non-EU states, known as the AIFMD passport. In July 2015, the European Securities and Markets Authority (ESMA) made its first recommendation to the European Commission to extend the AIFMD passport to Switzerland and two other jurisdictions. This recommendation was preceded by a number of meetings with FINMA where the supervisory authority outlined to ESMA the fundamental principles of the Swiss supervisory regime and its suitability. The European Commission postponed approval of the AIFMD passport at the end of 2015 to allow ESMA to assess other countries. The Commission also requested further details on those countries that had already undergone examination. FINMA provided ESMA with the required information and ESMA made a second recommendation to the Commission in July 2016 to extend the AIFMD passport to Switzerland. The European Commission must now decide on the implementation of the AIFMD passport for third-party states. It is not clear when a decision can be expected.

### **Outlook**

The trend in favour of outsourcing operational processes is likely to continue as it allows companies to focus on the core business of asset management. Moreover, companies see outsourcing as a means to improve efficiency and cut costs.

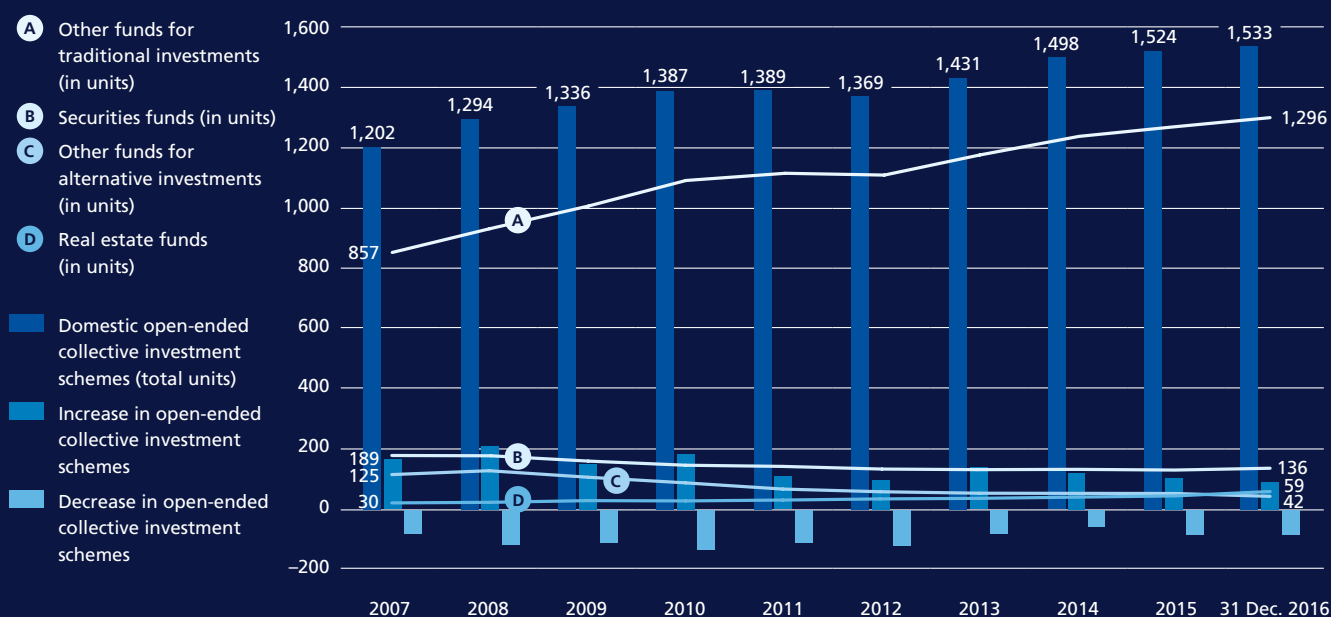
As regards products, the ratio between Swiss and foreign collective investment schemes approved for distribution is expected to remain stable, while investors will most likely continue to target higher-risk investments. The current monetary policy of the central banks is impacting institutional investors in particular, causing them to look beyond traditional investments to generate yield. This is conducive to the addition of more innovative-technical, alternative and real estate-based products to the market.

<sup>40</sup> Circular on Mutual Recognition of Funds (MRF) between Switzerland and Hong Kong, see <http://www.sfc.hk/edistributionWeb/gateway/EN/circular/doc?refNo=16EC63>.

# Product development

The Swiss fund market continues to grow, with real estate funds posting the highest proportional rate of growth in 2016. The number of foreign funds approved for distribution in Switzerland also continues to rise.

**Growth in the number of domestic open-ended collective investment schemes between 2007 and 2016 according to fund type**



**Growth in the number of foreign collective investment schemes between 2007 and 2016**





## Developments in investment funds

Investors had to contend with a difficult market environment, low interest rates and volatile markets in 2016. FINMA received more authorisation applications for funds with innovative investment approaches or funds aiming to achieve higher returns by incurring additional risks. A greater focus was put on product liquidity as a result.

In 2016, market developments forced market participants to look for new earnings opportunities, as reflected in the increased number of applications for collective investment schemes. Market participants developed innovative solutions for investors to generate positive returns. Real estate funds became more prominent as did investment funds offering liquid returns.

### Focus on the liquidity of prospective investments

Investors can often achieve higher returns through relatively illiquid investments. This marked tendency towards less liquid investments was apparent in the applications for collective investment schemes submitted to FINMA in 2016.

Despite this trend, there are also signs that issuers continue to target short subscription and repurchase intervals and short notice periods. The disparity between the repurchasing conditions for collective investment schemes and the liquidity of fund investments poses a heightened risk during stress situations, for example market turbulence, when more people may wish to redeem their investments. FINMA therefore focuses on the liquidity of prospective investments when assessing collective investment scheme applications to pre-empt the risk of a fund proving unable to meet its commitments.

### Sustained interest in real estate funds

FINMA also received more real estate fund applications in 2016. The biggest growth spike was for the licensing or authorisation of real estate funds for qualified investors, which are subject to less stringent conditions. The exemptions requested were mainly related to risk distribution and investment restrictions and were meant to enable a prompt launch date for the fund. FINMA can grant full or partial exemptions from certain legal requirements for collective investment schemes, pro-

vided they are only accessible to qualified investors and as long as the protective purpose of the law is not compromised as a result.<sup>41</sup> When submitting an application for a licence or authorisation for a real estate fund, applicants must demonstrate that they have fulfilled all the necessary requirements. Applicants must expressly prove that the requested exemptions will not compromise legal protections, even in the event of numerous redemptions or market turbulence. A number of applicants were unable to provide such evidence.

The notice period is a key element of Swiss real estate funds, besides the investment restrictions and risk distribution. The annual notice period is set by law for the end of the financial year, which contributes to the robustness of Swiss real estate funds. They proved less susceptible in 2016 than those in other European countries to the risks stemming from increased redemptions and market turbulence. In other European jurisdictions a higher number of redemptions, for example through market turbulence, caused the closure of some real estate funds. The one-year notice period mitigates this risk for Swiss real estate funds.

Institutions involved in property funds are increasingly establishing fund management companies for their real estate funds. When assessing the resulting licensing applications, FINMA has ensured that the institutions meet all the licensing requirements, especially as regards fund administration, and that there are no conflicts of interest.

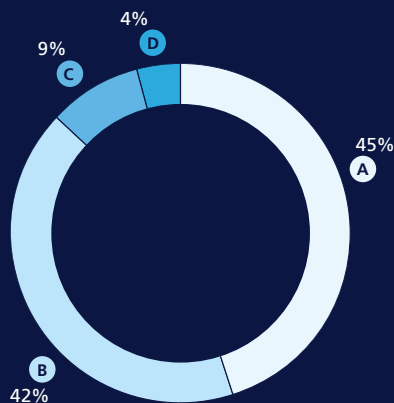
There was a higher number of applications for authorisation to conduct transactions with related parties. As a rule, such transactions are not allowed; however, FINMA may grant exceptions in specific cases where there is adequate justification for doing so. There is always the danger that construction-project risks could be transferred from related parties to investors. That is why exceptions to the prohibition of transactions with

<sup>41</sup> Article 10 para. 5 CISA.

# Swiss real estate fund investments: distribution by property type

Swiss real estate fund investments are divided more or less equally between residential and commercial properties. Project investments account for 4% of the total.

## Breakdown according to property type



- A Residential buildings
- B Commercial premises in use
- C Mixed-use buildings
- D Land for building and construction projects started (incl. cancelled projects)

related parties are not allowed if the fund management, investment company with variable capital (SICAV) or related parties were involved in construction projects within the real estate portfolio. FINMA ruled in one instance that an exception to the ban on property-related transactions with related parties could be considered if the properties in question had been completed prior to their inclusion in the real estate portfolio. The rationale for this exemption is that the construction-project risk could not be transferred to the investors.

### Approval of innovative fund products

In 2016, FINMA received applications for a range of innovative fund solutions. It approved the first Swiss equity fund to apply the concept of collective intelligence. The fund follows the hypothesis that the value and validity of estimates are improved when many people combine their knowledge. The securities fund only invests in securities included in a Swiss equities index. The novelty of this particular fund comes from its use of a crowd-voting online platform. There are many participants (crowd) on the electronic platform who forecast the price development of the securities listed on the index. The crowd's estimates are gathered every month on a set date. The fund management then uses the aggregate forecasts as a benchmark for weighting the securities within the fund.

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## Focal points of asset management supervision in 2017

The supervision of business conduct is growing in importance, including in the area of asset management.

Supervision in this area will focus on market integrity by monitoring compliance with market conduct rules, for example the ban on using insider information or market manipulation when managing collective investment schemes. The suitability area focuses mainly on the degree to which suitability and adequacy checks are carried out. The integrity of the acquisition, client advice and profiling, and suitability of the information provided to the client are thus ensured for the direct distribution of collective investment schemes.

In addition, the risks stemming from cross-border client relationships will be analysed more closely and examined carefully, especially where the risk factors are higher, while compliance with anti-money laundering requirements will be monitored closely and a more involved licensing process will be set up.

FINMA is also planning a greater number of shorter on-site deep dives. As with the supervisory reviews, the deep dives are consistently risk-oriented, case-related and subject to prior notification.

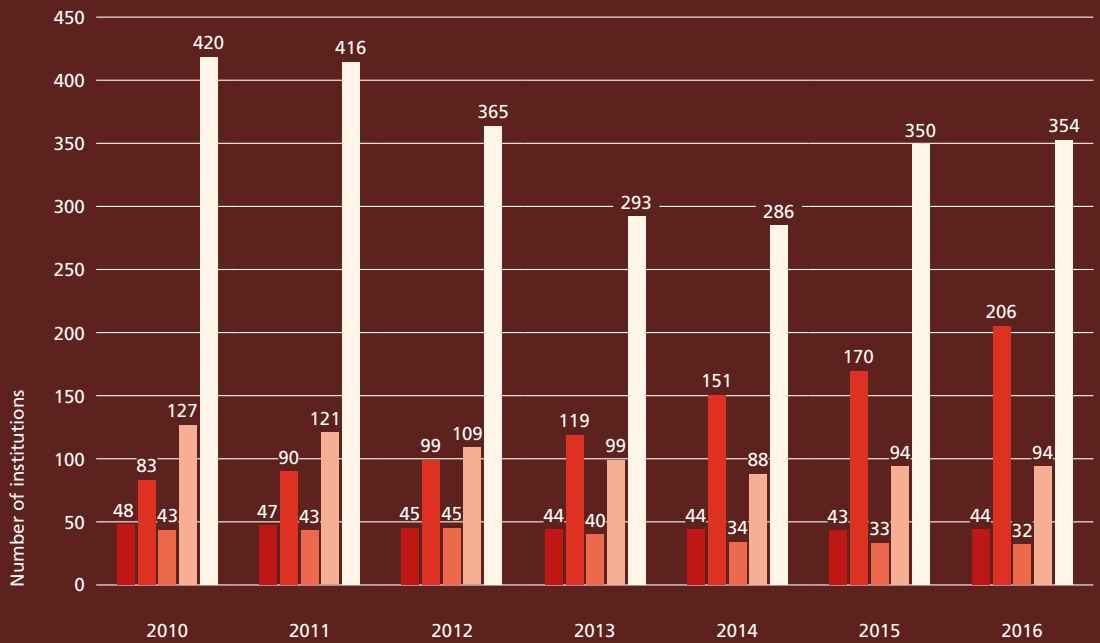
Activities relating to prudential supervision, for example the evaluation of real estate funds, delegation of duties outside Switzerland and mandatory controls for the safekeeping of asset values, will be the other key asset management supervisory areas in 2017.

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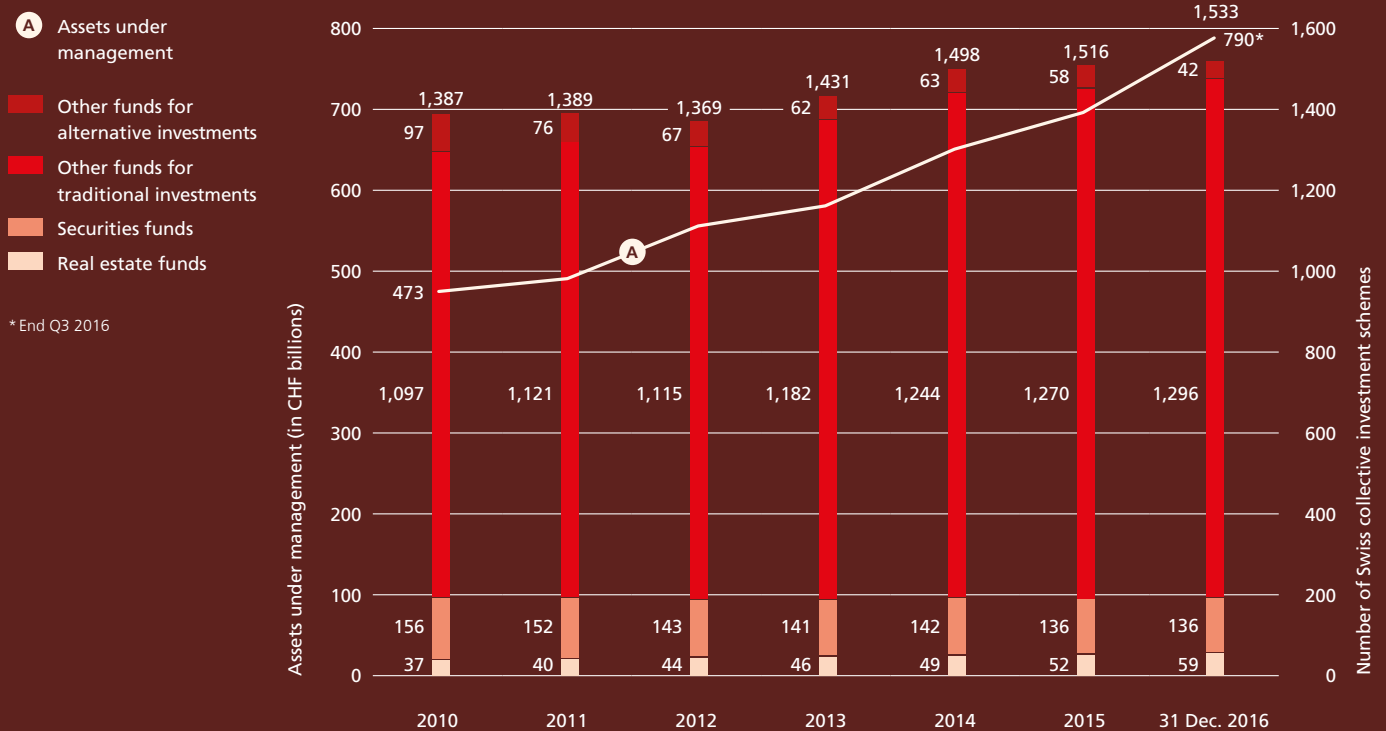
# At a glance: the Swiss fund market

The fund market in Switzerland grew again in 2016. There is more demand for real estate funds, and assets under management also increased.

Number and growth of institutions based in Switzerland under CISA

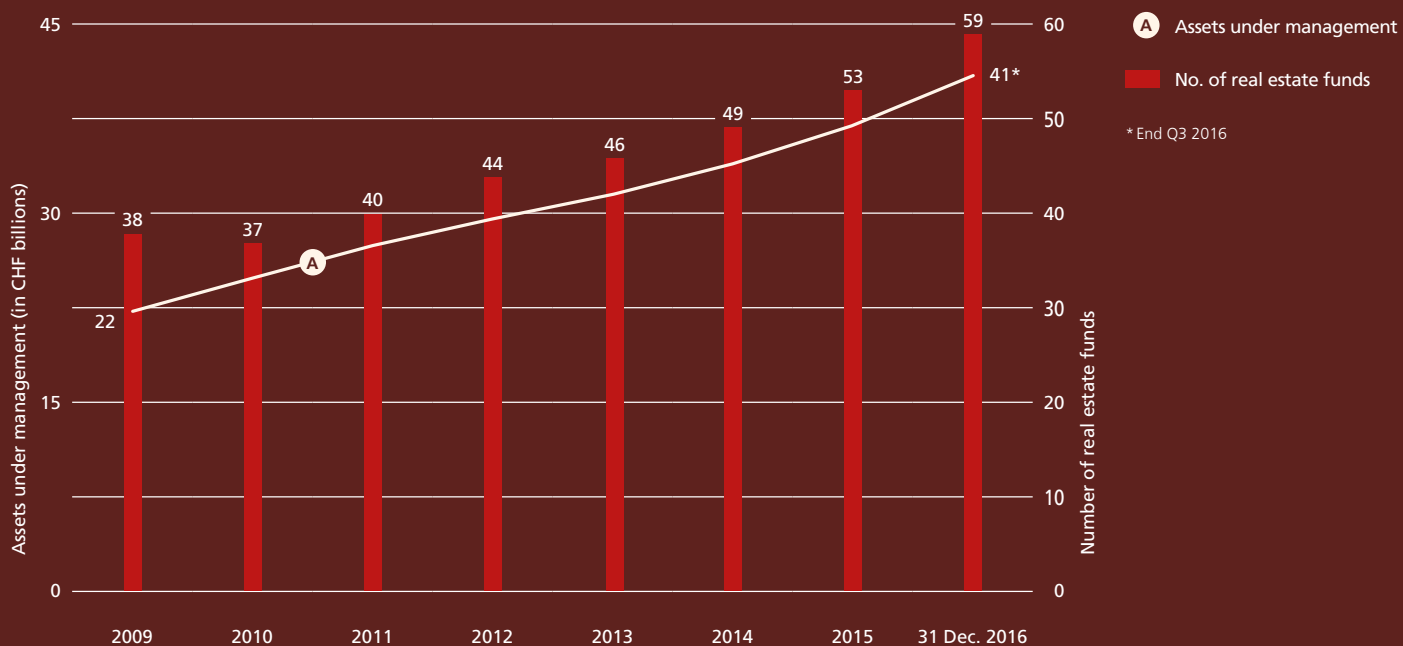


Number of open-ended Swiss collective investment schemes and assets under management

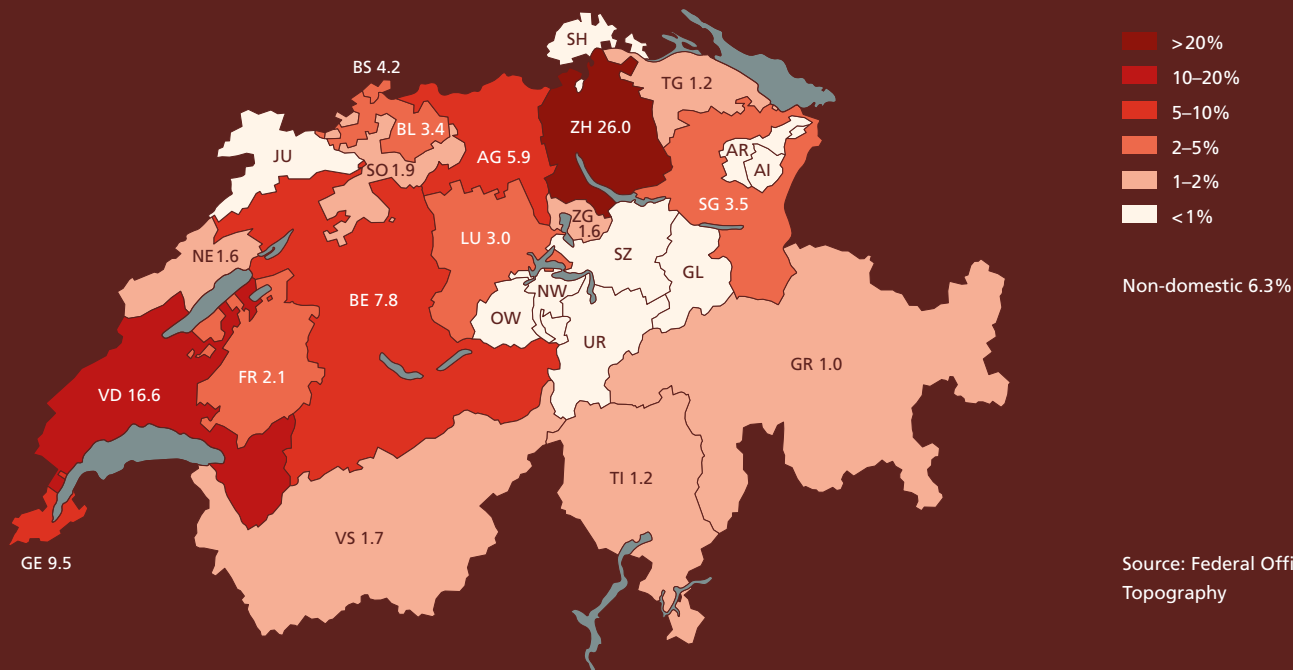


The number of licensed CIS managers has increased steadily in recent years, while the number of custodian banks has decreased due to more stringent requirements. The volume of Swiss collective investment schemes also increased in 2016, particularly other funds for traditional investments and real estate funds. The popularity of real estate funds is also evident in the assets under management (AUM), which grew by about 11% annually between 2010 and 2016, while the number of newly issued real estate funds posted moderate growth. Swiss real estate funds invest mainly in the cantons of Zurich, Vaud, Geneva and Bern. Property investments outside the major conurbations held less appeal.

### Development of real estate funds



### Breakdown of properties by canton in %



Source: Federal Office of Topography

In 2016, the Enforcement division conducted numerous parallel investigations and proceedings against companies and individuals, many of which were complex and international in scope.

FINMA applies enforcement as a visible means of acting against breaches of supervisory law and to restore compliance with the law. Enforcement proceedings may be conducted against licence holders and their employees, unauthorised financial services providers and participants in the Swiss securities market. The Enforcement division also covers any matters governed by takeover and disclosure law, and the provision of administrative and/or legal assistance to foreign supervisory authorities and domestic prosecution authorities. Financial market insolvency proceedings handled by FINMA are now managed by the Recovery and Resolution division, due to the growing complexity of the issues involved.

Since 2015, FINMA has published a separate annual report on its enforcement activities during the previous year. It contains anonymised case summaries and the annual statistics of FINMA's enforcement investigations and proceedings.

### Focus on business conduct of licence holders

Compliance by licence holders with their due diligence obligations under the Anti-Money Laundering Act (AMLA) was again a focus area in 2016. FINMA conducted extensive preliminary investigations related to the suspected corruption scandals concerning the Malaysian sovereign wealth fund 1MDB, the Brazilian company Petrobras and the allegations of corruption levelled at FIFA officials. These investigations led to enforcement proceedings against ten institutions, three of which have since been concluded. FINMA found that the institutions involved in the three concluded proceedings had all failed to investigate the matter in question in sufficient detail as per their obligation to establish plausibility: in many instances the institutions accepted inconclusive documentation or information from clients which was lacking in detail. They did not undertake a critical analysis, which would have been commensurate to the risks inherent to the business relationship. However, they had a responsi-

bility to adopt a more thorough approach in keeping with their legal obligation to establish plausibility. FINMA coordinated its investigations with the Office of the Attorney General and foreign supervisory authorities, especially the Monetary Authority of Singapore (MAS).

FINMA also identified repeated instances of licence holders' employees being suspected of criminally fraudulent practices. In cases which do not centre on a breach of specific supervisory provisions, FINMA focuses on the institution's organisational arrangements, i.e. whether the company's corporate governance could be improved. As far as employees are concerned, FINMA has to decide on the basis of the instruments at its disposal<sup>42</sup> whether to take action against them; it also informs the relevant criminal authorities in every instance as per its duty of notification.

### Strengthening FINMA's supervision of market integrity

All individuals and legal entities are forbidden to engage in insider trading and market manipulation in securities approved for trading at a Swiss exchange. Such conduct is also prohibited for any securities derivatives. Moreover, institutions supervised by FINMA must have organisational measures in place to ensure market abuse by employees or clients can be identified and prevented wherever possible, even in those markets not set down in the law.<sup>43</sup> This applies to foreign securities and derivatives, as well as foreign currency, interest rate and commodities markets. FINMA has perceptibly strengthened its supervision of market integrity through its new market conduct audit programme. This programme outlines the minimum audit requirements incumbent on mandataries when conducting audits of supervised institutions from 2017. Based on the risk analysis related to the business model, audit firms must now closely scruti-

<sup>42</sup> In particular, industry bans (Art. 33 FINMASA) and activity bans (Art. 35a SESTA).

<sup>43</sup> Articles 142 and 143 FMIA.

nise the suitability of the organisational measures and controls to prevent market abuse. That will ensure compliance with market conduct requirements as set out in FINMA directives.

### Proceedings against persons: pioneering ruling by the Federal Supreme Court

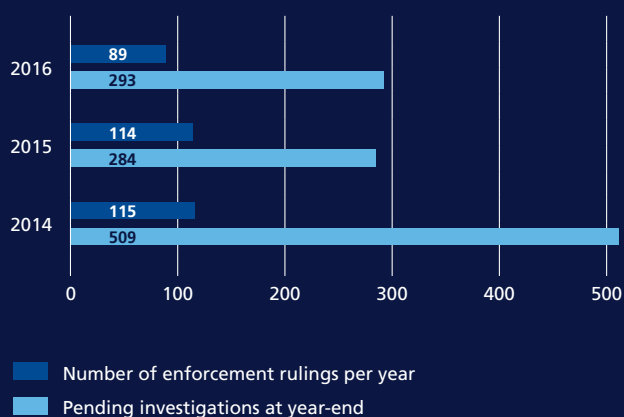
In April 2016, the Federal Supreme Court issued a ruling on the nature of an industry ban<sup>44</sup> brought by FINMA against a former senior bank manager and on the applicable rules of procedure.<sup>45</sup> The federal judges noted that this sanction – notwithstanding its repressive elements – qualified as an administrative as opposed to a criminal matter under national law. The sanction is not general in nature as it is restricted to a specific profession, which is contingent on proper professional practice in accordance with supervisory law under threat of sanction. Moreover, the sanction may have a major impact on the freedom that the person in question has to pursue a career; however in terms of its nature and gravity it is primarily a restriction of economic freedom for a limited duration and based on police law, as opposed to recompense for wrongdoing. In that sense, the industry ban issued by FINMA is identical to a ban of limited duration from doing a job, which the supervisory commission may impose on a lawyer as a disciplinary measure.<sup>46</sup> The proceedings leading to an industry ban by FINMA thus do not constitute a criminal charge under international law.<sup>47</sup> The procedural guarantees derived from these provisions are therefore not applicable.

### Engaging in unauthorised activity

In 2016, FINMA focused its investigations of unauthorised activity on possible breaches of the Banking Act and Anti-Money Laundering Act (AMLA). The supervisory authority also followed up on suspected breaches of supervisory law on collective investment schemes, stock exchanges and securities trading, and insurance. The increase in the number of websites suggesting that they were from companies domiciled in Switzerland (Swiss address and/or telephone number) proved especially problematic. The contents of the websites indicated in many instances that the companies were conducting operations which require authorisation. In the course of its investigations, FINMA established that the companies in question were not physically present in Switzerland as it was unable to contact them. The simulated Swiss contact details are an attempt to exploit the Swiss financial centre's good reputation and persuade clients to make questionable investments in financial products. Moreover, clients

## Key enforcement figures

### Investigations and enforcement rulings



<sup>44</sup> Article 33 FINMASA.

<sup>45</sup> Federal Supreme Court ruling 2C\_739/2015 of 25 April 2016 consid. 3.4.

<sup>46</sup> Article 17 para. 1 let. d FAFML (Federal Act on the Freedom of Movement for Lawyers).

<sup>47</sup> Article 6 1 ECHR and Article 14 (3) let. g UN Covenant II.

are often required to make prepayments and thus fall victim to fraud. As the companies are not actually located in Switzerland, FINMA is often unable to conduct extensive negotiations or resort to any supervisory measures in these cases. FINMA usually records the names of these questionable companies on its warning list to protect investors.<sup>48</sup>

#### **Enforcement of disclosure and takeover law**

Other notable events during the year under review included the new provisions of the Financial Market Infrastructure Act (FMIA), which came into force on 1 January 2016, and the Financial Market Infrastructure Ordinance-FINMA (FMIO-FINMA). Article 120 para. 3 FMIA (third-party reporting requirements) as elaborated further in Article 10 para. 2 FMIO-FINMA raised the most questions in the market. There was considerable discussion regarding the notification duty under Article 120 para. 3 FMIA for direct and indirect control. Following the subsequent industry consultation, the new regulation, which came into force on 1 March 2017 (Art. 10, para. 2 FMIO-FINMA), confers a voting right: in accordance with Article 120 para. 3 FMIA, anyone with the discretionary power to exercise voting rights is subject to the notification duty. If the voting right is under direct or indirect ownership, the duty of notification has been met if the controlling entity reports on a consolidated basis.

#### **New cooperation provisions**

In 2016, international cooperation centred on the implementation of the revised cooperation provisions of Article 42 ff. FINMASA, which came into force on 1 January 2016.

When providing client information to foreign authorities, FINMA may refrain from informing the clients concerned before transmitting the information in exceptional cases, i.e. if the purpose of the administrative assistance and the effective fulfilment of the requesting authority's tasks would be compromised by prior notification. This risk applies, for example, in the following situations: the risk of evidence being destroyed, possibility of suspects conferring with each other, displacement of assets, further collusion in unresolved confidential investigations conducted by the requesting authority, or urgency due to the imminent expiry of a statute of limitations. In such an event, the client will be informed after the information has been transmitted and once the danger of interference has passed. Such retrospective notifications have already taken place.

FINMA is also responsible for approving on-site supervisory reviews of Swiss licence holders by foreign financial market supervisory authorities. Any information gathered through a review may exclusively be used to implement financial market law. The law now enables the foreign authority responsible for the consolidated supervision of a Swiss licence holder to view a limited number of unre-

<sup>48</sup> <https://www.finma.ch/en/finma-public/warnliste>.

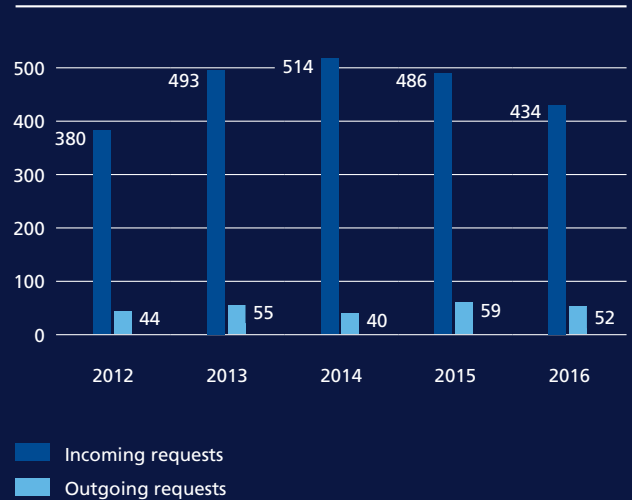


# International administrative assistance

dacted client files from private banking. The selection of these files must be random and based on preset criteria. Some initial cases have facilitated the establishment of an objective approach to defining these samples and implementing them in a practical way compatible with the spirit of the mandate. The legal wording also permits on-site supervisory reviews in Switzerland by foreign financial market supervisory authorities, if the authority in question is only responsible in its own country for supervising the relevant operations of the Swiss licence holder. FINMA has summarised the key principles on its website governing cooperation for such on-site supervisory reviews conducted by foreign supervisory authorities in Switzerland.

Finally, the new law allows licence holders, subject to certain conditions, to transfer information on their own initiative that is not in the public domain directly to foreign financial market supervisory authorities. FINMA has set out its interpretation of the new regime in a circular to assist supervised institutions in adopting a standard application of the rule and to minimise the associated risks. A public consultation was held allowing the financial sector to state its position and the conclusions have been broadly taken into account. The circular entered into force on 1 January 2017.

Number of requests per year



As in previous years, the Enforcement division concluded many investigations and proceedings in 2016 involving both authorised and unauthorised activities. There were also numerous cases of insolvency<sup>49</sup> and a high number of requests for international administrative assistance. The number of appeals remains high.

#### Overview of key enforcement figures<sup>50</sup>

	Outstanding on 1 January 2016	Proceedings initiated	Proceedings concluded	Outstanding on 31 December 2016
<b>Investigations</b>	<b>283</b>	<b>636</b>	<b>626</b>	<b>293</b>
– licence holders	45	131	111	65
– unauthorised activities	128	284	298	114
– inadmissible market conduct	89	126	117	98
– disclosure	21	95	100	16
<b>Enforcement proceedings</b>	<b>35</b>	<b>51</b>	<b>38</b>	<b>48</b>
– licence holders	10	23	15	18
– proceedings against individuals	14	15	10	19
– unauthorised activities	11	13	13	11
<b>Liquidations</b>	<b>36</b>	<b>7</b>	<b>6</b>	<b>37</b>
– licence holders	5	2	2	5
– unauthorised activities	31	5	4	32
<b>Bankruptcies</b>	<b>93</b>	<b>21</b>	<b>8</b>	<b>106</b>
– licence holders	13	0	0	13
– unauthorised activities	80	21	8	93

<sup>49</sup> Rulings issued by the new Recovery and Resolution division are included in the statistics.

<sup>50</sup> The updating of statistics may lead to some minor discrepancies between the statistics for 2016 and those published in last year's report.

	Outstanding on 1 January 2016	Proceedings initiated	Proceedings concluded	Outstanding on 31 December 2016
<b>Recognition process</b>	<b>16</b>	<b>1</b>	<b>0</b>	<b>17</b>
– licence holders	15	1	0	16
– unauthorised activities	1	0	0	1
<b>International administrative assistance</b>	<b>172</b>	<b>486</b>	<b>497</b>	<b>161</b>
– incoming requests (submitted to FINMA)	151	434	436	149
– outgoing requests (made by FINMA to foreign authorities)	21	52	61	12
<b>Appeal proceedings</b>	<b>46</b>	<b>48</b>	<b>40</b>	<b>54</b>
– Federal Administrative Court (FAC)	40	41	28	53
– Federal Supreme Court (FSC)	6	7	12	1

# At a glance: enforcement measures

The Financial Market Supervision Act has granted FINMA greater enforcement powers than its predecessor authorities. The charts below show how FINMA uses these powers.

## Type and number of measures: licence holders

### Licence holders

#### Measures against licence holders

- A** Appointment of investigating agents (I)
- B** Declaratory rulings/reprimands
- C** Special conditions and restrictions (II)
- D** Implementation overseen by third parties (III)
- E** Suspension and removal of top management officials (IV)
- F** Disgorgement of profits
- G** Licence withdrawals
- H** Liquidation/bankruptcy proceedings
- I** Ruling publications

#### Measures against top management, owners and employees

- A** Declaratory rulings/reprimands
- B** Suspension and removal (V)
- C** Industry and activity bans (VI)
- D** Disgorgement of profits

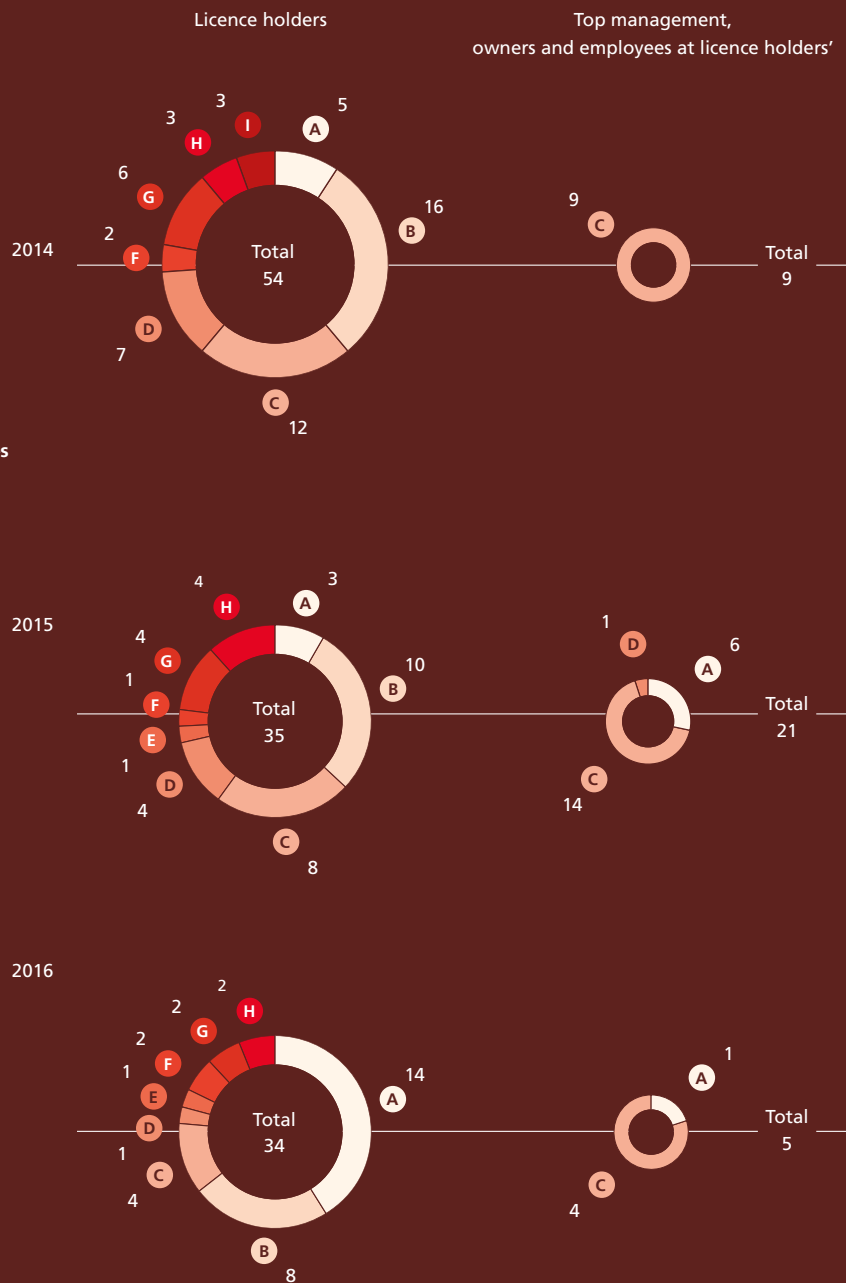
### Unauthorised activities

#### Measures against companies

- A** Appointment of investigating agents (I)
- B** Declaration of unauthorised activities
- C** Liquidation
- D** Bankruptcy proceedings (VII)

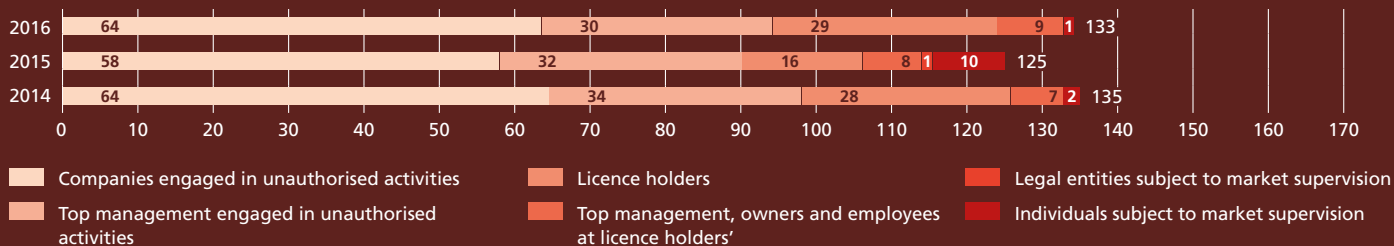
#### Measures against individuals

- A** Declaration of involvement in unauthorised activities
- B** Cease-and-desist orders
- C** Ruling publications (VIII)

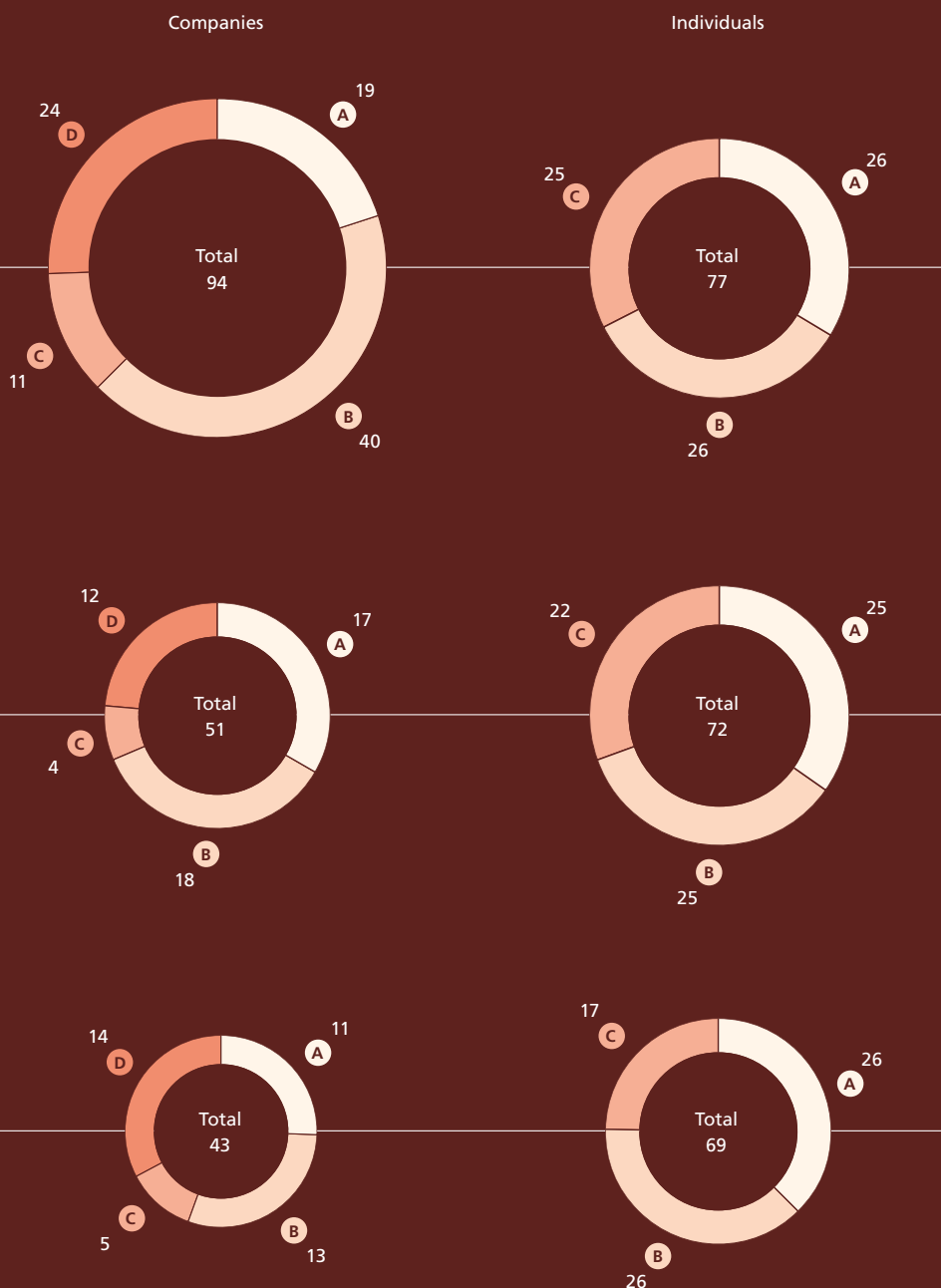


## Number of addressees of enforcement rulings according to sector and parties affected

FINMA issues enforcement rulings against authorised and unauthorised companies and individuals that are subject to financial market supervision. This chart shows the category and number of addressees of enforcement rulings (excluding international cooperation) between 2014 and 2016.



## Type and number of measures: unauthorised activities



### Method of counting

The diagrams show the number of parties affected (and not the number of rulings). Where a number of different measures were imposed on an individual/entity at the same time (e.g. an organisational measure to restore compliance with the law under Art. 31 FINMASA and an order to disgorge profits), these have been counted separately. However, when a number of similar measures were imposed on an individual/entity (e.g. a number of measures to restore compliance with the law), these have been counted only once.

### Individual categories

- I Ordered as a precautionary measure during an investigation
- II Rulings based on Art. 31 FINMASA
- III In a final ruling on adopting controls to implement special conditions
- IV Number of licence holders affected
- V Number of top management officials affected
- VI Under Art. 33 FINMASA and Art. 35a SESTA
- VII Bankruptcy proceedings initiated following a liquidation already ordered by FINMA were not counted again in this chart.
- VIII Mainly cease-and-desist orders



# Organisation and staff

**84** Board of Directors and Executive Board

**88** Staff

**91** Operations



## Board of Directors and Executive Board

FINMA is a public law institution and is appropriately structured with a board of directors and an executive board as its most important governing bodies. On 1 January 2016, FINMA's Board of Directors was reconstituted, and on 1 August 2016, the head of the new Recovery and Resolution division became a member of the Executive Board. New heads were also appointed to the Enforcement and Operations divisions.

### FINMA's Board of Directors

The Board of Directors is FINMA's strategic management body. It directs, supervises and controls FINMA's executive management. It also decides on matters of substantial importance, issues ordinances and circulars and is responsible for FINMA's budget. The Board of Directors bears this responsibility as a collective body. Its decisions are taken by a majority of the votes of the members present.

### Members of the Board of Directors (31 December 2016)

Dr Thomas Bauer	Chair
Philippe Egger	Vice-chair
Prof. Marlene Amstad	Member
Bruno Frick	Member
Bernard Keller	Member
Prof. Yvan Lengwiler	Member
Günter Pleines	Member
Dr Renate Schwob	Member
Franz Wipfli	Member

### New appointments to the Board of Directors (1 January 2016)

A new chair and three new members took up their posts on FINMA's Board of Directors on 1 January 2016. Dr Thomas Bauer (chair), Prof. Marlene Amstad, Bernard Keller and Dr Renate Schwob were appointed by the Federal Council on 1 July 2015 for the 2016–2019 term. At the same time, the Federal

Council reappointed the current Board members for a further term of office. At its meeting on 11 November 2015, the Federal Council also appointed Philippe Egger, a serving member of the Board, to the position of vice-chair with effect from 1 January 2016. FINMA's Board of Directors therefore enters its new term of office with nine members, the maximum permitted under the Financial Market Supervision Act (Art. 9 para. 2 FINMASA) which sets out that between seven to nine members are required.

### Committees of the Board of Directors

The Board of Directors forms an Audit and Risk Committee, a Nomination Committee, a Regulation Committee and a Takeover Committee from among its members. The Takeover Committee is the body to which appeals against decisions of the Swiss Takeover Board may be brought. The Regulation Committee is the body which ultimately decides on the consultation drafts of FINMA regulations. The other two committees act in an advisory capacity and submit proposals to the Board of Directors. Each committee has a chair who liaises with the Board of Directors and the Executive Board. In addition to its standing committees, the Board of Directors may form ad hoc committees to prepare business or commission individual members to undertake special tasks.



### The standing committees of the Board of Directors and their members (31 December 2016)

	Audit and Risk Committee	Nomination Committee	Regulation Committee	Takeover Committee
Dr Thomas Bauer		chair	chair	
Philippe Egger	X			
Prof. Marlene Amstad				
Bruno Frick		X		chair
Bernard Keller	X			
Prof. Yvan Lengwiler		X		X
Günter Pleines		X	X	
Dr Renate Schwob			X	X
Franz Wipfli	chair			

#### The Executive Board

The Executive Board is FINMA's operational management body. It is responsible for supervising banks, insurance companies, exchanges, securities dealers and other financial intermediaries in accordance with the law and the strategy defined. It prepares the necessary files and materials for decisions on matters dealt with by the Board of Directors and is responsible for implementing the resolutions of the Board and its committees.

#### New Recovery and Resolution division

Resolution and insolvency are strategically important issues for FINMA. In the current market and regulatory environment, insolvency issues, for instance contingency planning, the potential restructuring of ailing institutions and the orderly resolution of insolvent institutions, require greater attention. It has therefore been decided to bring these activities together in a dedicated division. Dr David Wyss, formerly Head of FINMA's Enforcement division, was appointed to lead the new Recovery and Resolution division. Patric Eymann, who was previously Head of Investigations section in the Enforcement division, now leads the Enforcement division. Both division heads took up their new posts on 1 August 2016.



Board of Directors, from left to right: Bernard Keller, Prof. Yvan Lengwiler, Dr Renate Schwob, Philippe Egger, Dr Thomas Bauer, Prof. Marlene Amstad, Bruno Frick, Franz Wipfli, Günter Pleines



Executive Board, from left to right: Michael Schoch, Patric Eymann, Dr David Wyss, Dr Peter Giger, Mark Branson, Alexandra Karg, Léonard Bôle, Dr Michael Loretan, Rupert Schaefer

### Members of FINMA's Executive Board (31 December 2016)

Mark Branson	CEO
Dr Peter Giger	Deputy CEO and Head of Insurance division
Léonard Bôle	Head of Markets division
Patric Eymann	Head of Enforcement division (since 1 August 2016)
Dr Michael Loretan	Head of Asset Management division
Alexandra Karg	Head of Operations division (since 1 October 2016)
Rupert Schaefer	Head of Strategic Services division
Michael Schoch	Head of Banks division
Dr David Wyss	Head of Recovery and Resolution division (since 1 August 2016)

Andreas Zdrenyk, formerly Head of Operations division, left FINMA at the end of January 2016 and was succeeded on an interim basis by Albert Gemperle, Head of Facility Management and Purchasing section. Alexandra Karg was appointed Head of Operations division on 1 October 2016, having previously served for a number of years as a member of the Executive Board of SIX Financial Information in Zurich.

### Enforcement Committee

The Enforcement Committee (ENA) is a standing committee of the Executive Board responsible for taking decisions on enforcement. It issues enforcement rulings and decides whether to initiate and/or discontinue proceedings, particularly against supervised institutions and individuals. If matters of substantial importance are involved, these decisions are reserved for the Board of Directors.

### Permanent members of the Enforcement Committee (31 December 2016)

Mark Branson	Chair
Rupert Schaefer	
Patric Eymann	

Where a supervised institution is the subject of enforcement proceedings, the Executive Board member responsible for its supervision joins the Enforcement Committee to discuss that specific case.

FINMA is committed to a sustainable and fair personnel policy and puts an emphasis on efficiency, transparency and a long-term approach. In 2016, FINMA's personnel management focused on diversity and equal pay.

The principles of sustainability are reflected in all personnel processes at FINMA, including personnel planning, which takes account of quantitative, financial and qualitative aspects. On the recruitment front, FINMA is committed to filling posts from within the organisation whenever possible. Communication with staff remains key. Events and regular employee surveys provide an opportunity for feedback and suggestions for improvement.

Two aspects of sustainable personnel management were given special attention in 2016. On the one hand, FINMA underlined its commitment to diversity in a variety of ways, including its popular secondment programmes, the extension of flexible part-time work schedules and the creation of a business administration apprenticeship. On the other hand, it focused on the issue of equal pay and equal opportunity and organised an independent review of how these principles are applied in practice.

### **Enabling diversity**

FINMA benefits from the fact that its employees come from diverse backgrounds and have a broad range of experience. It uses and develops these strengths through international exchanges, family-friendly employment conditions and, most recently, by training apprentices.

Thanks to modern mobile technology and a flexible model governing annual working time, FINMA employees in virtually all functions can help define the framework within which they work, allowing them enough freedom to plan and organise their own daily activities. FINMA revised its models for part-time work in 2016 with the aim of ensuring that employment conditions meet employee needs and help employees fulfil their family responsibilities. In addition to the existing flexible part-time model, employees can now also choose a model which

accommodates fixed-time commitments and better supports job-sharing.

The secondment programmes were widely used again in 2016. In a total of 15 inbound secondments (2015:14), employees of Swiss and foreign partner organisations worked at FINMA for approximately six months. In outbound secondments, seven FINMA employees (2015:10) had the opportunity to work abroad for up to six months.

In 2016, FINMA also laid the foundation for future participation in vocational training. Starting in the summer of 2017, it will offer a three-year apprenticeship in basic business administration finishing with a professional baccalaureate (M profile). A further trainee position will then be offered for each year of the apprenticeship.

### **Equal pay and equal opportunity**

Last year's revision of the Personnel Ordinance prompted FINMA to undertake an in-depth review of its salary system. Variable salary components were transferred to employees' fixed salaries without any adverse impact on budgets or costs. The fixed annual salaries are defined on the basis of analytically evaluated individual functions, enabling FINMA to implement a straightforward, fair and competitive salary policy.

Independent experts reviewed the new FINMA salary system and confirmed its parity and effectiveness. The Swiss Association for Quality and Management Systems (SQS) awarded FINMA its "Good Practice in Fair Compensation" certificate.

The review consisted of a quantitative evaluation in the form of an anonymised statistical analysis of the existing salary structure using "Logib", the Federal Government's equal-pay tool, and a qualita-

tive analysis of existing personnel processes and regulations.

The equal-pay analysis shows that FINMA has a 2.6% salary differential between men and women. This is well below the maximum permitted value of 5.0% and around the average for the other companies which have been certified. FINMA is committed to improving this result by consistently applying the principles of equal opportunity in its salary policy. The next maintenance audit will take place in the autumn of 2017.

### **Key personnel figures**

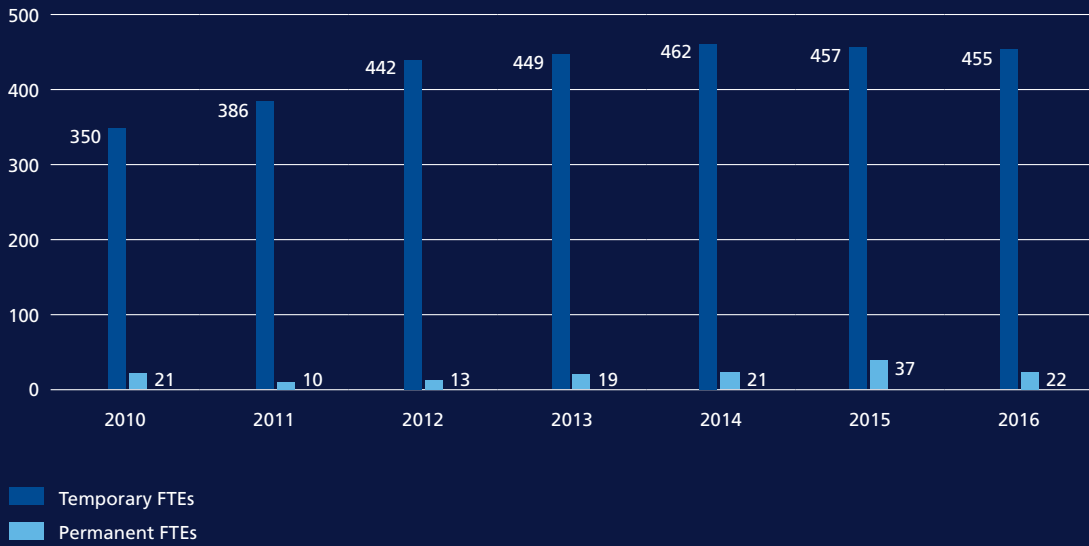
In 2016, the maximum headcount approved by the Board of Directors for permanent employment was 481 full-time equivalent positions, of which an average of 455 were filled (2015: 457). In 2016, FINMA had an average of 513 employees (2015: 527) across 477 full-time equivalent positions (2015: 494) in permanent and temporary employment. In 2016, some 28% of employees worked part-time (2015: 24%). The headcount approved by the Board of Directors for 2017 is unchanged.

The average age of employees in 2016 was 42 (2015: 41). Approximately 69% of staff (2015: 71%) were aged between 30 and 49; 22% were aged 50 and over (20%:2015), while 9% were young talents unchanged from the previous year. Executive and management positions were held by 271 employees or 55% (2015: 261/50%). This category at FINMA includes all line management and specialist functions in Salary Bands 1 to 3. Ninety employees (33%) had a line management function similar to the previous year, with women making up 26% of line managers (2015: 20%). Women accounted for 40% of the total workforce (2015: 39%). At the end of 2016, the number of non-Swiss nationals working for FINMA was 71 (2015: 72).

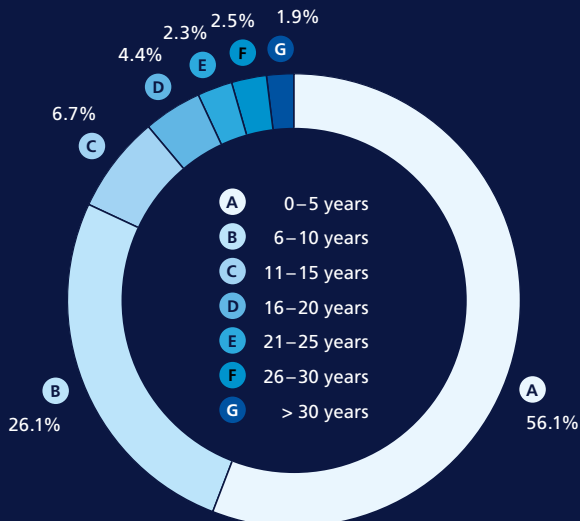
At the end of December 2016, staff turnover (excluding retirement) remained unchanged at 11%. Of FINMA's overall workforce, 19% have worked for the authority or its predecessor organisations for more than ten years.

# Key staff figures

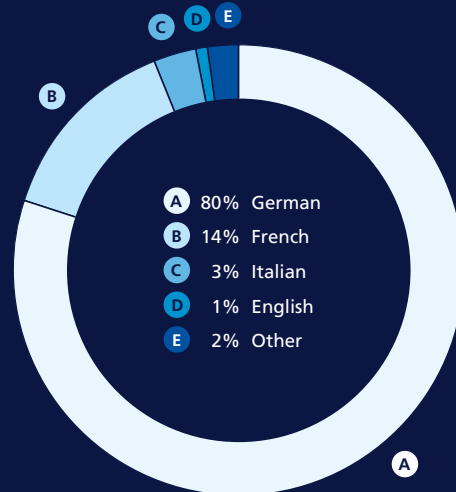
## Average full-time equivalents (FTEs)



## Years of service



## Breakdown by language



In 2016, FINMA introduced new technology to enhance electronic cooperation with external parties. Supervised institutions, audit firms and third parties can now use a secure delivery/collaboration platform to send electronic documents to FINMA.

In response to a widely expressed need, FINMA has streamlined the exchange of documents with audit firms, supervised institutions and third-party companies by implementing an electronic delivery platform and enhancing its collaboration platform.

### **Extranet: new delivery platform for supervised institutions and audit firms**

In September 2016, FINMA enhanced its electronic communications by implementing Extranet. Thanks to this new delivery platform, supervised institutions and audit firms can now submit their documents rapidly and securely. Electronic documents requiring a signature must bear a qualified electronic signature.

The delivery platform is recognised by the Federal Government and meets the statutory requirements set out in the Ordinance on Electronic Transmission for Administrative Proceedings.<sup>51</sup>

### **Electronic collaboration platform**

There is also a need for secure electronic collaboration with audit firms, supervised institutions and other companies. FINMA has sought to meet this important requirement by implementing FINMA Trust Room. The solution, which was evaluated in a WTO tender process, enables a secure information exchange with third parties. In encrypted data rooms, FINMA employees can exchange documents securely with external parties. One specialist unit is already using FINMA Trust Room to communicate with foreign authorities. The solution will be rolled out across FINMA in 2017.

<sup>51</sup> See <https://www.admin.ch/opc/de/classified-compilation/20100598/index.html>, in German.





# Appendix

- 94 Supervisory categories
- 96 Statistics
- 100 FINMA agreements at the international level
- 102 Abbreviations



## Supervisory categories

FINMA-supervised institutions are assigned to one of six categories depending on their potential risk impact on creditors, investors, policyholders and the Swiss financial centre as a whole. FINMA also gives each institution a rating which reflects its assessment of the institution's current status.

On the basis of the assigned category and rating, FINMA's supervisory approach determines the intensity of supervision, the supervisory tools applied and the interaction between direct supervision by FINMA and the use of audit firms for individual institutions.

These measures enable closer scrutiny of relevant institutions and a systematic risk orientation for supervisory activities. Institutions with a lower risk assessment are supervised less intensely.

### Supervisory categories – banks<sup>52</sup>

FINMA Circular 2011/2<sup>53</sup> sets out the various categories for banks.

Category	Criteria (in CHF billions)	Number of institutions	
		2016	2015
1	Total assets	≥ 250	
	Assets under management	≥ 1,000	
	Privileged deposits	≥ 30	2
	Capital requirements	≥ 20	2
2	Total assets	≥ 100	
	Assets under management	≥ 500	
	Privileged deposits	≥ 20	3
	Capital requirements	≥ 2	3
3	Total assets	≥ 15	
	Assets under management	≥ 20	
	Privileged deposits	≥ 0.5	29
	Capital requirements	≥ 0.25	31
4	Total assets	≥ 1	
	Assets under management	≥ 2	
	Privileged deposits	≥ 0.1	63
	Capital requirements	≥ 0.05	64
5	Total assets	< 1	
	Assets under management	< 2	
	Privileged deposits	< 0.1	202
	Capital requirements	< 0.05	211

<sup>52</sup> Market participants not subject to prudential supervision are in Category 6.

<sup>53</sup> See FINMA Circular 2011/2 "Capital buffer and capital planning – banks" (<https://www.finma.ch/en/~media/finma/dokumente/dokumentencenter/myfinma/rundschreiben/finmars-2011-02.pdf?la=en>).

### Supervisory categories – insurance companies<sup>54</sup>

Category	Criteria (in CHF billions)	Number of institutions	
		2016	2015
1	–	–	–
2	Total assets > CHF 50bn or complexity	5	5
3	Total assets > CHF 1bn or complexity	37	37
4	Total assets > CHF 0.1bn or complexity	60	62
5	Total assets > CHF 0.1bn or complexity	105	110

### Supervisory categories – asset management

Category	Criteria (in CHF billions)	Number of institutions	
		2016	2015
1	–	–	–
2	–	–	–
3	–	–	–
4	Assets under management <sup>55</sup> > =CHF 30bn	11	–
5	Assets under management <sup>56</sup> < CHF 30bn	394	–

### Supervisory categories – markets

	Exchanges	Central counterparties	Central securities depositories
<b>Quantitative criteria</b>			
Number of transactions	X	X	X
Market share	X	X	
Capital	X	X	X
Number of participants	X	X	
Deposit volume			X
Importance of foreign business	X	X	X
<b>Qualitative criteria</b>			
Traded/cleared products	X	X	
Technological complexity	X	X	
Links to other FMIs		X	
Structure of depository network			X

Financial market infrastructures (FMIs) are categorised according to quantitative and qualitative criteria based on FMI type.

Based on this criteria, three financial market infrastructures were assigned to Category 1, two to Category 2 and one to Category 5.

Directly supervised financial intermediaries (DSFIs) are assigned to Category 6 and are not subject to prudential supervision.

<sup>54</sup> Market participants not subject to prudential supervision are in Category 6.

<sup>55</sup> The assets under management are the total net fund assets of all managed or administered funds and all individual portfolio management assets.

<sup>56</sup> The assets under management are the total net fund assets of all managed or administered funds and all individual portfolio management assets.

### Supervised financial market participants<sup>57</sup>

(31 December 2016)

#### Supervised banks

	2016	2015
Banks, of which	282	290
– under foreign control	91	98
– branches of foreign banks	29	31
– exiting the market	16	19
Raiffeisen banks	271	292
Representative offices of foreign banks	57	56

#### Supervised securities dealers

	2016	2015
Securities dealers, of which	52	56
– under foreign control	14	16
– branches of foreign securities dealers	11	13
– exiting the market	6	7
Representative offices of securities dealers	40	38
Recognised foreign remote participants	126	121

#### Supervised financial market infrastructures

	2016	2015
Swiss stock exchanges <sup>58</sup>	3	3
Swiss institutions similar to stock exchanges <sup>58</sup>	3	3
Recognised foreign stock exchanges/trading venues <sup>58</sup>	55	60
Recognised foreign institutions similar to stock exchanges/trading venues <sup>58</sup>	3	3
Recognised foreign central counterparties <sup>59</sup>	1	–

#### Supervised collective investment schemes

	2016	2015
<b>Swiss collective investment schemes</b>		
Total Swiss collective investment schemes, of which	1,551	1,542
– domestic open-ended collective investment schemes (Art. 8 CISA)		
– contractual investment funds and SICAVs	1,533	1,524
– of which intended for qualified investors only	645	615 <sup>60</sup>
– closed-ended Swiss collective investment schemes (Art. 9 CISA)		
– limited partnerships for collective investment schemes and SICAFs	18	18
<b>Foreign collective investment schemes</b>		
Total foreign collective investment schemes, of which	7,401	7,198
– EU compatible (UCITS)	7,314	7,104
– non-EU compatible (non-UCITS) <sup>61</sup>	87	94

<sup>57</sup> “Supervised” does not necessarily mean that an institution is subject to prudential supervision.

<sup>58</sup> Authorisation category names changed when FMIA came into force on 1 January 2016. As the transitional periods expired only at the end of 2016, both the old and new names are used in this report.

<sup>59</sup> No statistics for the previous year as this is a new supervisory category.

<sup>60</sup> Statistical error correction.

<sup>61</sup> Non-UCITS schemes are collective investment schemes not subject to the EU UCITS Directive.

### Supervised fund management companies, asset managers, custodian banks, representatives and distributors under CISA

	2016	2015
Fund management companies	44	43
Asset managers	206	178
Representatives of foreign collective investment schemes	94	94
Distributors under CISA	354	350
Custodian banks	32	33

### Supervised insurers and general health insurers

	2016	2015
Life insurers, of which	19	20
– insurers domiciled in Switzerland	16	17
– branches of foreign insurers	3	3
Non-life insurers, of which	120	122
– insurers domiciled in Switzerland (incl. 21 supplementary health insurers [2015: 22])	74	76
– branches of foreign insurers (incl. 2 supplementary health insurers [2015: 1])	46	46
Total reinsurers	55	59
– reinsurers	30	30
– reinsurance captives	25	29
General health insurers offering supplementary health insurance	13	13
Total supervised insurers and health insurers	207	214
Insurance groups (groups and conglomerates)	6	6

### Supervised financial intermediaries

	2016	2015
Total supervised self-regulatory organisations	12	12
Total directly supervised financial intermediaries	199	227
Total group companies subject to FINMA money laundering supervision	136	140
Total registered insurance brokers	15,611	15,322

### Recognised credit rating agencies

	2016	2015
Total recognised credit rating agencies	5	5

## Authorisations issued

(1 January to 31 December 2016)

### Banks

	2016	2015
Licences (Art. 3 BA)	2	2
Branches (Art. 4 FBO-FINMA)	3	4
Representative offices (Art. 14 FBO-FINMA)	1	5
Additional licences (Art. 3 <sup>ter</sup> BA)	7	4
Released from supervision	8	3

### Securities dealers

	2016	2015
Securities dealers' licences (Art. 10 SESTA)	1	1
Branches (Art. 41 SESTO)	0	1
Representative offices (Art. 49 SESTO)	4	3
Additional licences (Art. 10 para. 6 SESTA and Art. 56 para. 3 SESTO)	0	0
Released from supervision	4	4
Recognition of foreign market participants	6	6

### Financial market infrastructures

	2016	2015
Recognition of foreign exchanges/trading venues (incl. organisations similar to stock exchanges) <sup>62</sup>	3	4
Recognition of foreign central counterparties <sup>63</sup>	1	–

### Collective investment schemes

	2016	2015
Swiss collective investment schemes	90	106
Foreign collective investment schemes	829	1,102

### Fund management companies, asset managers, custodian banks, representatives and distributors under CISA

	2016	2015
Fund management companies	2	0
Asset managers	33	33
Representatives of foreign collective investment schemes	2	13
Distributors under CISA	42	84
Custodian banks	1	2

<sup>62</sup> Authorisation category names changed when FMIA came into force on 1 January 2016. As the transitional periods expired only at the end of 2016, both the old and new names are used in this report.

<sup>63</sup> No statistics for the previous year as this is a new supervisory category.

## Insurers and general health insurers

	2016	2015
Life insurers, of which	0	0
– insurers domiciled in Switzerland	0	0
– branches of foreign insurers	0	0
Non-life insurers, of which	2	1
– insurers domiciled in Switzerland	1	1
– branches of foreign insurers	1	0
Reinsurers	0	1
Reinsurance captives	1	1
General health insurers offering supplementary health insurance	0	0
<b>Total</b>	<b>3</b>	<b>3</b>
Insurance groups (groups and conglomerates)	0	0

## Financial intermediaries

	2016	2015
Directly supervised financial intermediaries	9	9
Group companies subject to FINMA money laundering supervision	9	13
Registered insurance brokers	988	842

## Credit rating agencies

	2016	2015
Recognised credit rating agencies	0	0

## Enforcement key figures

	2016	2015
Enforcement rulings	89	114
Appeals filed against enforcement rulings	41	50
Settled appeals	33	40
Charges filed with criminal authorities	167	157

## Other rulings issued by the Enforcement Committee

	2016	2015
ENA rulings (e.g. data protection law, concession law, accountability, recusals)	3	6

FINMA cooperates with numerous international authorities. In 2016, FINMA signed a number of agreements to formalise this cooperation.

International agreements are non-binding administrative conventions relating to supervisory cooperation. The term “memorandum of understanding” (MoU) is commonly used to refer to such agreements, as are “cooperation agreement” (COAG) and “coordination arrangement”. In these agreements, the participating supervisory authorities agree to cooperate within the scope of their national law and define the relevant arrangements. International agreements cannot be used by FINMA or the foreign partner authorities and/or third parties to establish any rights or obligations.

### **Memorandum of Understanding between the Hong Kong Securities and Futures Commission and FINMA**

The Hong Kong Securities and Futures Commission (SFC) and FINMA signed a Memorandum of Understanding on asset management. This agreement permits the offering and distribution of recognised investment funds to unqualified investors in both Switzerland and Hong Kong.

### **Cooperation agreement between the Monetary Authority of Singapore and FINMA**

In the context of their financial dialogue, the Monetary Authority of Singapore (MAS) and FINMA have signed an agreement to enhance cooperation on FinTech.<sup>64</sup> This agreement enables FinTech companies from Singapore and Switzerland to expand in each other’s markets. In addition, innovative FinTech companies in both countries can quickly establish contact with the authorities in each other’s country to identify the type of authorisation they require. This will eliminate regulatory uncertainties and ultimately reduce the time to the commencement of business.

<sup>64</sup> See “Financial technology and digitalisation”, section on “International engagement”, p.29.



In 2016, FINMA signed agreements with the following supervisory authorities:

Country	Supervisory authority	Type	Area of application
Bermuda	Bermuda Monetary Authority (BMA)	multilateral/ institution-specific	Supervisory cooperation agreement – XL Group
Bermuda	Bermuda Monetary Authority (BMA)	multilateral/ institution-specific	Supervisory cooperation agreement – Allied World Group
Bermuda	Bermuda Monetary Authority (BMA)	multilateral/ institution-specific	Supervisory cooperation agreement – Validus Group
European Union	European Securities and Markets Authority (ESMA), European Central Bank (ECB) and all authorities partici- pating in the T2S cooperative arrangement	multilateral/ general	Supervisory cooperation agreement – central securities depositories (CSDs)
France	Autorité de contrôle prudentiel et de résolution (ACPR)	multilateral/ institution-specific	Cooperation agreement on crisis management – AXA Gruppe
Germany	German Federal Financial Supervisory Authority (BaFin)	multilateral/ institution-specific	Supervisory cooperation agreement – Munich Re Group
Germany	German Federal Financial Supervisory Authority (BaFin)	multilateral/ institution-specific	Supervisory cooperation agreement – Allianz Group
Hong Kong	Securities and Futures Commission (SFC)	bilateral/general	Cooperation agreement on asset management
Italy	Istituto per la Vigilanza sulle Assicurazioni (IVASS)	multilateral/ institution-specific	Supervisory cooperation agreement – Generali Group
Singapore	Monetary Authority of Singapore (MAS)	bilateral/general	FinTech cooperation agreement
Singapore	Monetary Authority of Singapore (MAS)	bilateral/general	General cooperation agreement
Switzerland	FINMA (home regulator); all college members (host regulators)	multilateral/ institution-specific	Supervisory cooperation agreement – Bâloise Group
Switzerland	FINMA (home regulator); all college members (host regulators)	multilateral/ institution-specific	Supervisory cooperation agreement – Helvetia Group
Switzerland	FINMA (home regulator); all college members (host regulators)	multilateral/ institution-specific	Supervisory cooperation agreement – Swiss Re Group
Switzerland	FINMA (home regulator); all college members (host regulators)	multilateral/ institution-specific	Supervisory cooperation agreement – Swiss Life Group
Switzerland	FINMA (home regulator); all college members (host regulators)	multilateral/ institution-specific	Supervisory cooperation agreement – Zurich Insurance Group
United Kingdom	Prudential Regulation Authority (PRA)	bilateral/general	Agreement on the sharing of respon- sibilities relating to prudential supervision
United Kingdom	Bank of England (BoE)	multilateral/ institution-specific	Supervisory cooperation agreement – LCH Group

## Abbreviations

<b>ACPR</b> Autorité de contrôle prudentiel et de résolution	<b>FIFA</b> Fédération Internationale de Football Association
<b>AIFMD</b> Alternative Investment Fund Managers Directive (EU)	<b>FinIA</b> Swiss Financial Institutions Act (draft law)
<b>AMLA</b> Swiss Federal Act of 10 October 1997 on Combating Money Laundering and Terrorist Financing in the Financial Sector (Anti-Money Laundering Act; SR 955.0)	<b>FINMA</b> Swiss Financial Market Supervisory Authority
<b>AMLO</b> Swiss Federal Ordinance of 11 November 2015 (Anti-Money Laundering Ordinance; SR 955.01)	<b>FINMASA</b> Swiss Federal Act of 22 June 2007 on the Swiss Financial Market Supervisory Authority (1 January 2016) (Financial Market Supervision Act; SR 956.1)
<b>AUM</b> Assets under management	<b>FinTech</b> Financial technology
<b>BA</b> Swiss Federal Act of 8 November 1934 on Banks and Savings Banks (Banking Act; SR 952.0)	<b>FinSA</b> Swiss Financial Services Act (draft law)
<b>BaFin</b> Federal Financial Supervisory Authority (Germany)	<b>FMI</b> Financial market infrastructure
<b>BCBS</b> Basel Committee on Banking Supervision	<b>FMIA</b> Swiss Federal Act of 19 June 2015 on Financial Market Infrastructures and Market Conduct in Securities and Derivatives Trading (1 January 2016) (Financial Market Infrastructure Act; SR 958.1)
<b>BoE</b> Bank of England (United Kingdom)	<b>FMIO</b> Swiss Federal Ordinance of 25 November 2015 on Financial Market Infrastructures and Market Conduct in Securities and Derivatives Trading (Financial Market Infrastructure Ordinance; SR 958.11)
<b>BMA</b> Bermuda Monetary Authority	<b>FMIO-FINMA</b> FINMA Ordinance of 3 December 2015 on Financial Market Infrastructures and Market Conduct in Securities and Derivatives Trading (Financial Market Infrastructure Ordinance; SR 958.111)
<b>BPES</b> Banque Privée Espírito Santo	<b>FOEN</b> Swiss Federal Office for the Environment
<b>B2B</b> Business-to-business	<b>FSAP</b> Financial Sector Assessment Program
<b>B2C</b> Business-to-customer	<b>FSB</b> Financial Stability Board
<b>CAO</b> Swiss Federal Ordinance of 1 June 2012 on Capital Adequacy and Risk Diversification for Banks and Securities Dealers (Capital Adequacy Ordinance; SR 952.03)	<b>FSC</b> Swiss Federal Supreme Court
<b>CC-CS</b> Control Committee of the Council of States	<b>G-20</b> Group of the 20 leading industrialised and developing economies
<b>CCP</b> Central counterparty	<b>G-SIB</b> Global systemically important bank
<b>CHF</b> Swiss franc	<b>G-SII</b> Global systemically important insurer
<b>CISA</b> Swiss Federal Act of 23 June 2006 on Collective Investment Schemes (Collective Investment Schemes Act; SR 951.31)	<b>IAIG</b> Internationally active insurance group
<b>CISO</b> Swiss Federal Ordinance of 22 November 2006 on Collective Investment Schemes (Collective Investment Schemes Ordinance; SR 951.311)	<b>IAIS</b> International Association of Insurance Supervisors
<b>CO</b> Swiss Federal Act on the Amendment of the Swiss Civil Code (Part Five: The Code of Obligations, status as of 1 January 2017; SR 220)	<b>ICP</b> Insurance Core Principles
<b>COAG</b> Cooperation agreement	<b>ICS</b> International Capital Standards (Risk-based global capital standards for insurance groups)
<b>ComFrame</b> Common Framework	<b>IMF</b> International Monetary Fund
<b>CSD</b> Central Securities Depository	<b>IOSCO</b> International Organization of Securities Commissions
<b>DEBA</b> Swiss Federal Act of 11 April 1889 on Debt Enforcement and Bankruptcy (SR 281.1)	<b>ISA</b> Swiss Federal Act of 17 December 2004 on the Supervision of Insurance Companies (Insurance Supervision Act; SR 961.01)
<b>DLT</b> Distributed ledger technology	<b>ISO</b> Swiss Federal Ordinance of 9 November 2005 on the Supervision of Private Insurance Companies (Insurance Supervision Ordinance; SR 961.011)
<b>DSFI</b> Directly subordinated financial intermediary	<b>IVASS</b> Istituto per la Vigilanza sulle Assicurazioni
<b>EAER</b> Swiss Federal Department of Economic Affairs, Education and Research	<b>MAS</b> Monetary Authority of Singapore
<b>ECB</b> European Central Bank (EU)	<b>MMoU</b> Multilateral Memorandum of Understanding
<b>ENA</b> FINMA Enforcement Committee	<b>MoU</b> Memorandum of Understanding
<b>ESMA</b> European Securities and Markets Authority	<b>MRF</b> Mutual Recognition of Funds
<b>EU</b> European Union	<b>MROS</b> Money Laundering Reporting Office Switzerland
<b>FAC</b> Swiss Federal Administrative Court	<b>MRZ</b> Machine-readable zone
<b>FAOA</b> Swiss Federal Audit Oversight Authority	<b>OPFI</b> Ordinance of 18 November 2009 on the Professional Practice of Financial Intermediation (1 January 2010) (Professional Practice of Financial Intermediation; SR 955.071)
<b>FATF</b> Financial Action Task Force	
<b>FBO-FINMA</b> Ordinance of 21 October 1996 of the Swiss Financial Market Supervisory Authority on Foreign Banks in Switzerland (FINMA Foreign Banks Ordinance; SR 952.111)	
<b>FDf</b> Swiss Federal Department of Finance	

**ORSA** Own Risk and Solvency Assessment  
**OTF** Organised trading facility  
**PRA** Prudential Regulation Authority (United Kingdom)  
**RCAP** Regulatory Consistency Assessment Programme  
**RWA** Risk-weighted asset  
**SBA** Swiss Bankers Association  
**SESTA** Swiss Federal Act of 24 March 1995 on Stock Exchanges and Securities Trading (Stock Exchange Act; SR 954.1)  
**SESTO** Swiss Federal Ordinance of 2 December 1996 on Stock Exchanges and Securities Trading (1 January 2016) (Stock Exchange Ordinance; SR 954.11)  
**SFAMA** Swiss Funds & Asset Management Association  
**SFC** Securities and Futures Commission (Hong Kong)  
**SIA** Swiss Insurance Association  
**SICAF** Investment company with fixed capital  
**SICAV** Investment company with variable capital  
**SIF** Swiss State Secretariat for International Financial Matters  
**SIX** SIX Swiss exchange  
**SNB** Swiss National Bank  
**SQS** Swiss Association for Quality and Management Systems  
**SR** Classified compilation of Swiss federal law  
**SRO** Self-regulatory organisation  
**SST** Swiss Solvency Test  
**TAN** Transaction authentication number  
**TLAC** Total loss-absorbing capacity  
**TOB** Swiss Takeover Board  
**T2S** TARGET2-Securities  
**UCITS** Undertakings for Collective Investment in Transferable Securities  
**WTO** World Trade Organisation

# Organisation chart

(31 December 2016)

- Divisions
- Sections and groups reporting directly to the division heads
- Internal Audit
- \* Member of the Executive Board



**Board of Directors**

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Chair

Internal Audit  
**Nicole Achermann**

**CEO**  
Mark Branson

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**Sandra Lathion**

Institutions and Products Zurich  
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Waldburger

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Human Resources  
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Communication  
Technologies  
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Facility  
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Enterprise Risk  
Management and  
Internal Control  
System  
Patrick Tanner

Procurement  
and Contract  
Management  
Martin  
Portenier

## FINMA's core values

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### Consistent supervision

FINMA is Switzerland's independent financial markets regulator. It is charged with protecting creditors, investors and policyholders and is responsible for ensuring that Switzerland's financial markets function effectively. Licensing, monitoring, enforcement and regulation are among its key tasks. FINMA adopts a risk-based approach to supervision that ensures continuity and predictability, fostering dialogue with supervised institutions, authorities, professional associations and other key institutions in and outside Switzerland.

### Independent decision-making

Institutionally, functionally and financially independent, FINMA exercises effective supervision and acts in the public interest. It operates in an environment characterised by the diverging interests of various stakeholders. In line with its remit, FINMA preserves its autonomy and reaches its decisions independently.

### Responsible staff

FINMA's staff combine experience with responsibility, integrity and the ability to deliver results. Working independently and flexibly, its staff are professional and can handle challenging situations. They take account of changes in their operating environment and respond with concrete measures that are both timely and appropriate.

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