

# Regulatory and Compliance Update

Newly enacted regulations and current draft regulations in  
Banking and Asset Management

September 2022





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#### Important note:

The following report gives an overview of important recently entered into force regulations of national and (to the extent that they have a substantial impact on Switzerland) international financial market laws as well as upcoming draft regulations. The presented Regulations are mainly addressed to banks, securities firms, asset management institutions (fund management companies, managers of collective assets, SICAVs, SICAFs, KmGK (limited partnerships for collective investment), other collective investment schemes, custodian banks of collective investment schemes, representatives), portfolio managers and trustees, although not all the addressees are affected by the Regulations directly or to the same degree.

Insurers are not taken into account. This account involves a selection of enactments/drafts that we consider especially important. This account does not claim to be complete and we do not guarantee the accuracy of the data reproduced herein.

Simplifications may have been made. In any case, the original legal bases are applicable.

## ► Part 1

### Recently entered into force



## Recently entered into force

Topic	Main news	Need for action	Timeline
<b>Automatic Exchange of Information (AEOI)</b>  Multilateral Competent Authority Agreement (MCAA), including Common Reporting Standard (CRS) as international legal basis (OECD)  AEOI Act, AEOI Ordinance and SFTA Guidelines for national implementation	<ul style="list-style-type: none"> <li>The automatic reporting obligations concern four categories of financial institutions ('reporting institutions'): depository institutions, custodial institutions, investment entities, and specified insurance companies.</li> <li>Obligation to register as a reporting institution with the Swiss Federal Tax Administration (SFTA) (was supposed to be performed in 2017).</li> <li>Since 1 January 2017, there has been an obligation to identify reportable persons (new clients and existing clients) and their current accounts/custody accounts according to detailed due diligence regulations, with the proviso that not all categories of customers are subject to the same implementation deadlines.</li> <li>Regular reporting of the persons concerned and their current accounts/custody accounts to the SFTA (including prior notification of relevant clients).</li> <li>The SFTA gives the relevant information to the tax authorities of the foreign Partner States concerned. The network of Switzerland's Partner States has been built up year by year.</li> <li>The transitional provision of Art. 1 of the AEOI Ordinance was repealed on 1 January 2019. This increases the AEOI documentation and reporting obligations with respect to clients from countries that generally participate in the AEOI but are not Partner States of Switzerland.</li> <li>Eight new AEOI Partner States were added to Switzerland's network as of 1 January 2020.</li> <li>In the summer of 2020, parliament passed an amendment to the AEOI Act and the AEOI Ordinance, which repeals certain exceptions (e.g., for co-owners' associations)</li> <li>In May 2022, the Federal Council approved the introduction of the automatic exchange of information with twelve additional states and territories. The first exchange of data is to take place in 2024.</li> </ul>	<ul style="list-style-type: none"> <li>By 30 June 2023: AEOI reportings for all Partner States (including first time reports for the ones added in 2022)</li> <li>By 31 January 2023: Inform clients affected by AEOI reporting for the first time</li> </ul>	<b>Entry into force: 1 January 2017</b> <ul style="list-style-type: none"> <li>Various implementation deadlines for certain AEOI obligations (see Need for action)</li> <li>Repeal of Art. 1 of AEOI Ordinance: 1 January 2019</li> <li>Amendment to the AEOI Act/AEOI Ordinance: 1 January 2021</li> <li>New AIA Partner States: 1 January 2023</li> </ul>
Banks and securities firms	Asset management institutions	Portfolio managers and trustees	
Directly concerned	Indirectly or partially concerned	Not concerned	

Topic	Main news	Need for action	Timeline
<b>Financial services</b>  Financial Services Act (FinSA)  Financial Services Ordinance (FinSO)	<ul style="list-style-type: none"> <li>Creation of a comprehensive Financial Services Act (FinSA) which is generally applicable regardless of the type of financial institution, in order to approximate the European regulations (MiFID II/MiFIR, etc.)</li> <li>Customer segmentation: Subdividing all clients into private, professional or institutional clients (with various possibilities to opt in or out of different customer categories)</li> <li>New rules of conduct: Checking the appropriateness and suitability of financial products and financial services for each customer segment and type of service</li> <li>Informing customers about financial service providers and the characteristics, risks and costs of a financial instrument</li> <li>General obligation to provide a prospectus for public offerings of securities</li> <li>Before offering a financial instrument to private customers, it is necessary to issue a Key Information Document ('KID') containing essential information for investment decisions and comparison of different financial instruments.</li> <li>For relationship managers: Obligations of education and further training</li> <li>The Financial Services Ordinance (FinSO) clarifies the provisions of the FinSA and contains, in particular, provisions on the rules of conduct, organisation, the relationship manager register, the obligation to provide a prospectus and the Key Information Document.</li> </ul>	<ul style="list-style-type: none"> <li>Implementing customer segmentation</li> <li>Introducing opting-out and opting-in forms</li> <li>Performing appropriateness and suitability checks on forms and systems</li> <li>Fulfilling duties to inform through fact sheets and/or website</li> <li>Fulfilling documentation and accountability obligations</li> <li>Fulfilling organisational duties</li> <li>Performing obligations regarding prospectus and KID</li> <li>Obligation to provide liaison with an ombudsman's office (except for clients that are purely institutional or professional per se)</li> </ul>	<b>Entry into force: 1 January 2020</b> <ul style="list-style-type: none"> <li>Obligation to provide liaison with an ombudsman's office by 24 December 2020</li> <li>Obligation to comply with the new prospectus requirements from 1 December 2020</li> <li>Transitional period for performance and application of customer segmentation, organisational duties, rules of conduct (information requirements, appropriateness and suitability checks, documentation and accountability obligations) by 31 December 2021</li> <li>Transition period for preparing key information documents expires on 31 December 2022</li> </ul>
Banks and securities firms	Asset management institutions	Portfolio managers and trustees	
Directly concerned	Directly concerned	Directly concerned	

## Recently entered into force

Topic	Main news	Need for action	Timeline
<b>Financial institutions</b> Financial institutions Financial Institutions Act (FinIA) Financial Institutions Ordinance (FinIO) Ordinance on Supervisory Organisations in Financial Market Supervision (SOO) Draft FINMA Financial institutions Ordinance (FinIO-FINMA) Late applications, FinIA	<ul style="list-style-type: none"> <li>Uniform rules on supervision of all financial service providers allowed to offer asset management services in the broad sense of the term, including securities dealers (new: 'securities firms'), however, without banks (Banking Act is still the basis)</li> <li>New prudential supervision of asset managers of individual customer assets, trustees and asset managers of Swiss pension funds (licensing obligation), with increased requirements in the areas of internal organisation, separation of powers, fit and proper tests etc.</li> <li>Cascading licensing system: higher-value licences automatically also include lower-level forms of licences (both rights and obligations)</li> <li>Distinction between qualified asset managers (under FINMA's direct supervision) and asset managers of the assets of individual clients. FINMA-accredited supervisory organisations will supervise asset managers of individual assets with different risk-based rules.</li> <li>The FinIO will clarify the licence requirements and obligations for financial institutions as well as their supervision.</li> <li>The SOO governs the licensing requirements and the activities for the newly introduced supervisory organisations.</li> <li>In particular, the FinIO-FINMA sets out the distinction between ordinary portfolio managers and managers of collective assets and the requirements for professional liability insurance as well as for risk management and risk control. In addition, in this framework, various FINMA circulars were amended and/or repealed and the threshold value requiring customer identity checks in foreign exchange transactions in cryptocurrencies was lowered from CHF 5,000 to CHF 1,000.</li> <li>The requirements for securities firms regarding capital and liquidity are now different depending on whether the firm operates for its own account or not.</li> <li>In its guidance dated 4 May 2022, FINMA summarises the roadmap for the authorisation process for portfolio managers and trustees.</li> <li>FINMA published new guidance on 11 August 2022 to provide portfolio managers and trustees with an update on the licensing process and an overview of the measures taken to date.</li> </ul>	<ul style="list-style-type: none"> <li>Institutions authorised by FINMA: Compliance with FinIA requirements within one year</li> <li>Institutions requiring new authorisation:               <ul style="list-style-type: none"> <li>Report to FINMA by 30 June 2020</li> <li>Application for authorisation to FINMA by 31 December 2022</li> </ul> </li> </ul>	<b>Entry into force: 1 January 2020</b> <ul style="list-style-type: none"> <li>Transition period for various obligations (see need for action)</li> <li>Approval of the first FinIA supervisory organisations: 6 July 2020</li> <li>Entry into force FinIO-FINMA: 1 January 2021</li> </ul>
Banks and securities firms	Asset management institutions	Portfolio managers and trustees	
Indirectly or partially concerned	Directly concerned	Directly concerned	

## Recently entered into force

Topic	Main news	Need for action	Timeline
<b>Environmental, Social and Governance (ESG)</b>	<ul style="list-style-type: none"> <li>The ESG concerns, among other things, a large-scale European regulatory package that defines the framework for dealing with sustainable investment.</li> <li>Regulation on the establishment of a framework to facilitate sustainable investment (so-called 'taxonomy'): This should allow for a uniform classification of activities in order to decide which are and which are not environmentally sustainable.</li> <li>Ordinance on disclosures relating to sustainable investments and sustainability risks: This Regulation requires financial institutions in the EU to comply with various disclosure obligations.</li> <li>Regulation on low carbon benchmarks and positive carbon impact benchmarks: The purpose of this Regulation is to establish standards for low carbon and positive carbon impact benchmarks</li> <li>Adapting MiFID II and IDD (Insurance Distribution Directive) by including ESG factors: In future, clients will be queried about their ESG preferences in the suitability and appropriateness test.</li> <li>There were various publications on ESG in Switzerland in 2021, including:               <ul style="list-style-type: none"> <li>The Green Fintech Network's action plan for a green and innovative Swiss financial centre</li> <li>FINMA Guidance 05/2021 on preventing and combating greenwashing</li> <li>Report of the Federal Council on a climate-friendly financial market</li> <li>Recommendations on transparency and minimum requirements for sustainable investment approaches and products, issued by AMAS and SSF</li> <li>SwissBanking's overview of relevant positions and recommendations in the area of sustainable finance</li> </ul> </li> <li>Key elements of the Swiss publications are the statements that according to the current Financial Services Act (FinSA), the ESG expectations of the customers must be taken into account and that financial institutions must already adequately record and manage climate-related financial risks.</li> <li>In May 2022, AMAS shared its stance on greenwashing in its position paper 'Sustainable Asset Management without Greenwashing: How Switzerland can live up to its claim to leadership'.</li> <li>In June 2022, the SBA published two new guidelines for its member institutions:               <ul style="list-style-type: none"> <li>'Guidelines for financial service providers on the inclusion of ESG preferences and ESG risks in investment advice and asset management'</li> <li>'Guidelines for mortgage providers to promote energy efficiency'</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>Analysis of the attractiveness of the business policy of expanding the range of sustainable investment products</li> <li>Providing relationship managers with proper training on ESG criteria and how to provide advice on that subject</li> <li>Integration of sustainability risks into internal risk management</li> <li>Integration of ESG criteria into the investment process as part of implementing the FinSA</li> </ul>	<b>Entry into force:</b> <ul style="list-style-type: none"> <li>EU legislation: between 2020 and 2022</li> <li>ESG disclosure obligations for systemically important institutions: 1 July 2021</li> <li>Guidelines enter into force for SBA members: 1 January 2023</li> </ul>
Banks and securities firms		Asset management institutions	Portfolio managers and trustees
Directly concerned		Directly concerned	Directly concerned



## Recently entered into force

Topic	Main news	Need for action	Timeline
<b>FINMA risk monitor</b>	<ul style="list-style-type: none"><li>• In the new edition of its risk monitor, FINMA currently points the following seven main risks:<ul style="list-style-type: none"><li>- the persistently low interest rate environment</li><li>- a correction in the real estate and mortgage markets, in particular in the case of investment properties</li><li>- Cyber attacks</li><li>- money laundering</li><li>- more difficult crossborder market access, in particular in the EU</li><li>- impending defaults or corrections in corporate loans and bonds abroad</li></ul></li><li>• FINMA determines its supervisory focus according to the risks described.</li><li>• Climate risks and greenwashing are described as risks that could have a lasting impact on the Swiss financial centre in the longer term.</li></ul>	<ul style="list-style-type: none"><li>• No need for action, but indirect influence through FINMA's supervisory activities</li></ul>	<b>Publication: 11 November 2021</b>
Banks and securities firms		Asset management institutions	Portfolio managers and trustees
Indirectly or partially concerned		Indirectly or partially concerned	Indirectly or partially concerned

Topic	Main news	Need for action	Timeline
<b>Second Shareholder Rights Directive (SRD II)</b>	<ul style="list-style-type: none"><li>• Swiss financial intermediaries holding securities from companies listed in the EU have the following duties:<ul style="list-style-type: none"><li>- Listed EU companies are entitled to request information from intermediaries regarding the identity of their shareholders. The relevant information must be provided by the final intermediary disposing of it. Since the Directive does not require the final intermediary to conduct investigations or make inquiries, it is only required to report such data as are currently known to it.</li><li>- Obligation to pass on information provided by the Company. The final intermediary must grant the shareholder access to the information through 'generally available tools and facilities', so supplying such information on a website or via e-banking, for example, should be permitted. In addition, it is obligatory to contact shareholders individually and draw their attention to information relevant to their shares. The extent to which shareholders can restrict or waive their rights to information is still unclear.</li><li>- To facilitate the exercise of shareholder rights, the intermediary must 1) take the necessary precautions to enable the shareholders to exercise their rights themselves or 2) exercise the rights as instructed by the shareholder.</li></ul></li></ul>	<ul style="list-style-type: none"><li>• Defining a procedure to process requests from EU/EEA companies for information about the identity of shareholders.</li><li>• Ensuring that any such disclosure of information does not violate statutory or contractual confidentiality rules</li><li>• Defining a procedure to communicate information about corporate events (e.g., general meeting, exercise of voting rights) to shareholders with holdings in EU/EEA companies or entering into waiver agreements in that respect</li></ul>	<b>Entry into force: 3 September 2020</b>
Banks and securities firms		Asset management institutions	Portfolio managers and trustees
Directly concerned		Not concerned	Not concerned



## Recently entered into force

Topic	Main news	Need for action	Timeline
<b>Blockchain/Initial Coin Offerings (ICOs)</b>  Federal Act on the Adaption of Federal Law to technological developments in distributed ledger technology	<ul style="list-style-type: none"><li>• The 'Federal Act on the Adaptation of Federal Law to developments in Distributed Ledger Technology' aims to individually amend nine federal acts on civil and financial market law so as to improve the framework conditions for Distributed Ledger Technology (DLT) and improve legal certainty.</li><li>• The proposal shall include, inter alia, the following:<ul style="list-style-type: none"><li>- Amendment to the Code of Obligations in order to create a legally secure basis for the trading of rights by means of a tamper-proof digital ledger (creation of 'registered book-entry rights')</li><li>- Amendment of the DEBA in order to regulate the legal separation of crypto-assets out of the bankruptcy estate</li><li>- Creation of a new and flexible authorisation mechanism – 'DLT trading systems' – for trading, settlement, processing and custody services with DLT-based assets</li></ul></li><li>• Furthermore, it should be possible in the future to obtain a licence as a securities firm for the operation of an organised trading system.</li></ul>	<ul style="list-style-type: none"><li>• For Blockchain offers: adjusting GTCs, Safe Custody Regulations, or similar documents to the future provisions of the Code of Obligations regarding registered uncertificated securities</li></ul>	<b>Entry into force: 1 August 2021</b>  (Provisions on registered book-entry rights as early as 1 February 2021)
Banks and securities firms	Asset management institutions	Portfolio managers and trustees	
Directly concerned	Indirectly or partially concerned	Indirectly or partially concerned	

Topic	Main news	Need for action	Timeline
<b>Changes in Management</b>  FINMA Guidance	<ul style="list-style-type: none"><li>• FINMA's guidelines on changes in the persons entrusted with the administration and management of banks provides an overview of the general principles observed by FINMA, the audit criteria applied in verifying the guarantee of irreproachable business conduct and the schedule, and lists the documents and information that generally have to be submitted to FINMA for processing a change of within a governance body.</li><li>• The guidelines serve as an aid for the banks. It does not tighten previous practice.</li></ul>	<ul style="list-style-type: none"><li>• Consideration of the guidelines in case of any changes within the governance bodies</li></ul>	<b>Publication:</b> <b>22 September 2021</b>
Banks and securities firms		Asset management institutions	Portfolio managers and trustees
Directly concerned		Not concerned	Not concerned

## Recently entered into force

Topic	Main news	Need for action	Timeline
<b>FATF risk countries</b> Updated country list	<ul style="list-style-type: none"> <li>The FATF updated its list of risk countries in June 2022. The following country is now under increased monitoring:               <ul style="list-style-type: none"> <li>- Gibraltar</li> </ul> </li> <li>Malta is no longer under 'increased monitoring'.</li> </ul>	<ul style="list-style-type: none"> <li>Consideration if (AMLA) directives refer to the FATF list</li> </ul>	<b>Publication: June 2022</b>
<b>Banks and securities firms</b>	<b>Asset management institutions</b>	<b>Portfolio managers and trustees</b>	
<b>Directly concerned</b>	<b>Directly concerned</b>	<b>Directly concerned</b>	

Topic	Main news	Need for action	Timeline
<b>LIBOR replacement</b> FFNMA Guidance 03/2018 FINMA Guidance 08/2020 FINMA Guidance 10/2020 FINMA Guidance 02/2021 FINMA Guidance 03/2021	<ul style="list-style-type: none"> <li>According to its guidance, FINMA considers the three main risks related to replacement of the LIBOR to be as follows:               <ul style="list-style-type: none"> <li>- Legal risks: e.g., if contracts using the LIBOR as a reference expire after 2021</li> <li>- Valuation risks: e.g., in case of claims and liabilities on derivatives and loans using the LIBOR as a reference</li> <li>- Risks related to ensuring operability: e.g., shortage of products based on alternative benchmark interest rates</li> </ul> </li> <li>On 4 December 2020, FINMA published a detailed roadmap tuned to international developments, with specific milestones in the course of 2021, for the LIBOR replacement. Its purpose is to clarify the FINMA recommendations for the supervised entities and market participants concerned, so that they can make good use of the time remaining until the end of 2021 to prepare for the disappearance of the LIBOR in CHF, EUR, GBP and JPY (in all maturities), and the disappearance in USD (in the 1W and 2M maturities) across all types of products.</li> <li>On 16 September 2021, FINMA published its Guidance 03/2021, in which it refers to a backlog in the adjustment of loan agreements for syndicated loans (joint lending by at least two credit institutions). The Guidance also contains a compilation of what FINMA considers to be best practices for dealing with LIBOR transition. FINMA then states that conclusion of new LIBOR transactions – except in strictly limited and documented exceptional cases – can be regarded as a violation of the supervisory requirements with regard to adequate risk management.</li> <li>On 7 December 2021, SwissBanking published circular no. 8066 concerning the impact of the discontinuation of LIBOR on the determination of the interest rate component of structured products.</li> </ul>	<ul style="list-style-type: none"> <li>By 25 January 2021: Sign the ISDA fallbacks protocol</li> <li>By 31 January 2021: No new business based on CHF or EUR LIBOR</li> <li>By 31 January 2021: Readiness to lend in alternative reference rates (ARR)</li> <li>Until 31 March 2021: Plans to reduce the legacy ('Tough Legacy')</li> <li>Until 30 June 2021: Implementation of system and process changes</li> <li>Until 30 June 2021: Risk mitigation for remaining 'Tough Legacy'</li> <li>By 30 June 2021: New contracts under ARR</li> <li>By 31 December 2021: Full operational readiness</li> <li>By 31 December 2021: All new contracts under ARR</li> </ul>	<b>LIBOR replacement: 31 December 2021</b> (various milestones in the course of 2021)
<b>Banks and securities firms</b>	<b>Asset management institutions</b>	<b>Portfolio managers and trustees</b>	
<b>Directly concerned</b>	<b>Directly concerned</b>	<b>Directly concerned</b>	

## Recently entered into force

Topic	Main news	Need for action	Timeline
<b>SBA Portfolio Management Guidelines</b>	<ul style="list-style-type: none"> <li>A comprehensive revision of the guidelines was made necessary by the enactment of the Financial Services Act (FinSA) and the corresponding ordinance (FinSO). The main aim is to ensure substantive compatibility with the FinSA, and to better allow for modern investment strategies.</li> <li>Many of the former provisions of the guidelines are now covered by the FinSA and FinSO. To avoid redundancy with the FinSA, the guidelines have thus been significantly abbreviated. The focus is now on the core elements of asset management.</li> <li>The amended guidelines will enter into force on 1 January 2022. Institutions that complete the changeover to FinSA before the end of the transition period and inform their audit firm of that fact in accordance with FinSO Art. 106 (2) can apply the amended guidelines from that point in time.</li> </ul>	<ul style="list-style-type: none"> <li>Formal introduction/consideration of the revised guidelines (no substantive changes)</li> </ul>	<b>Entry into force: 1 January 2022</b> (early adoption permitted)
Banks and securities firms	Asset management institutions	Portfolio managers and trustees	
Directly concerned	Not concerned	Not concerned	

Topic	Main news	Need for action	Timeline
<b>Revised AMAS Guidelines</b>	<ul style="list-style-type: none"> <li>As part of ongoing efforts to finalise the implementation of FinSA/FinIA, the following guidelines of the Asset Management Association Switzerland (AMAS; formerly SFAMA) have been revised: <ul style="list-style-type: none"> <li>Code of Conduct</li> <li>Guidelines for Real Estate Funds</li> <li>Technical Guidelines (Guidelines for money market funds, Guidelines on the valuation of the assets and the handling of valuation errors, Guidelines on the calculation and publication of performance data, Guidelines on the calculation and disclosure of the Total Expense Ratio (TER))</li> </ul> </li> <li>The provisions of the Transparency Guidelines were also adapted and newly incorporated into the revised Code of Conduct. The Distribution Guidelines of 22 May 2014 and the KIID Guidelines of 20 January 2012 will cease to apply as of 31 December 2021.</li> <li>The revised AMAS model documents – based on the revised guidelines – were published on 28 September 2021.</li> <li>The revised guidelines enter into force on 1 January 2022. FINMA recognised them as a minimum standard on 28 September 2021.</li> </ul>	<ul style="list-style-type: none"> <li>Consideration of the revised guidelines in templates, directives, etc.</li> </ul>	<b>Entry into force: 1 January 2022</b>
Banks and securities firms	Asset management institutions	Portfolio managers and trustees	
Directly concerned	Directly concerned	Not concerned	

## Recently entered into force

Topic	Main news	Need for action	Timeline
<b>SAAM Recommendations Asset Management</b>	<ul style="list-style-type: none"><li>• When the FinSA transitional period expired on January 2022, the previously applicable rules of professional conduct lost their (immediate) validity and were essentially replaced by the rules of conduct set out in FinSA and the detailed provisions of FinSO.</li><li>• However, the rules of conduct now contained in FinSA/FinSO do not fully cover all aspects that were previously laid down in codes of conduct. Against this background, the SAAM industry association has issued the professional recommendation on discretionary asset management orders and discretionary asset management in the sense of 'best practice' as of 1 January 2022.</li><li>• The expert recommendation deals with the following topics:<ul style="list-style-type: none"><li>- Contractual content</li><li>- Monitoring obligations</li><li>- Discretion in the use of financial instruments</li><li>- Loans, forward and derivative transactions</li></ul></li><li>• It should be noted that most of the requirements of the expert recommendation are not 'hard law', but rather an interpretation aid for the industry on the rules of conduct in accordance with FinSA/FinIO.</li></ul>	<ul style="list-style-type: none"><li>• Consideration of the expert recommendations regarding:<ul style="list-style-type: none"><li>- Content of the contract</li><li>- Supervisory duties</li><li>- Selection and use of financial instruments</li><li>- Loans, forward and derivative transactions</li></ul></li></ul>	<b>Entry into force: 1 January 2022</b>
Banks and securities firms	Asset management institutions	Portfolio managers and trustees	
Indirectly or partially concerned	Directly concerned	Directly concerned	

Topic	Main news	Need for action	Timeline
Updated IRS forms	<ul style="list-style-type: none"><li>• The IRS recently updated Forms W-8BEN, W-8BEN-E, W-8IMY, and W-8ECI, releasing new versions dated October 2021.</li><li>• The IRS has not announced a revision of Form W-8EXP to date. Swiss financial institutions that are considered Qualified Intermediaries or Foreign Financial Institutions for FATCA purposes must use the new forms from 1 May 2022 at the latest. The IRS has also published updated versions of the instructions for the corresponding forms.</li><li>• SwissBanking provides member banks with updated translations of forms W-8BEN for natural persons and W-8BEN-E for companies in German, French and Italian (see SwissBanking circular 8068).</li></ul>	<ul style="list-style-type: none"><li>• Use of updated IRS forms from May 2022 at the latest</li></ul>	<b>Entry into force:</b> <b>1 February 2022</b> <b>Publication:</b> <b>October 2021</b>
Banks and securities firms		Asset management institutions	Portfolio managers and trustees
Directly concerned		Directly concerned	Directly concerned



## Recently entered into force

Topic	Main news	Need for action	Timeline
<b>Covid-19 credits</b> Interest/amortisation	<ul style="list-style-type: none"><li>• The Federal Council has decided not to adjust the interest rates for Covid-19 credits as of the end of March 2022 for the following twelve months due to unchanged market developments. The interest rate for Covid-19 credits of up to CHF 500,000 will therefore remain at 0 percent and the interest rate for the portion of credits guaranteed by the guarantee organisations above CHF 500,000 (Covid-19 credits plus) will remain at 0.5 percent.</li><li>• Covid-19 credits must be amortised within eight years from the grant date. It is possible to extend this period by up to two additional years. Amortisation is agreed between the companies and the lending banks.</li><li>• The Federal Council supports the option that banks postpone the start of amortisation by a recommended 6 to 12 months for companies particularly affected by the pandemic.</li><li>• If a company defaults on repayment of the Covid-19 credit, the bank can make a claim on the guarantee. This transfers the outstanding loan claim from the lending bank to the respective guarantee organisation for receivables management.</li></ul>	<ul style="list-style-type: none"><li>• Attention with regard to Covid-19 credits granted</li></ul>	<b>Publication:</b> <b>2 February 2022</b>
Banks and securities firms		Asset management institutions	Portfolio managers and trustees
Directly concerned		Not concerned	Not concerned

Topic	Main news	Need for action	Timeline
Measures relating to the situation in Ukraine	<ul style="list-style-type: none"><li>On 28 February 2022, the Federal Council decided to adopt the EU sanctions against Russia. The Swiss ordinance was therefore subject to a total revision on 4 March 2022.</li><li>In particular, Art. 20 and 21 should be highlighted:<ul style="list-style-type: none"><li>Prohibition on accepting deposits in excess of CHF 100,000 from Russian citizens or natural/legal persons in Russia (Art. 20; per client; with exemptions provided for Swiss citizens, citizens of an EU member state and natural persons holding a temporary or permanent residence permit of Switzerland or an EU member state);</li><li>Duty to notify SECO by 3 June 2022 of existing deposits in excess of CHF 100,000 of Russian citizens or natural/legal persons in Russia (Art. 21). On 16 March 2022, SECO published an interpretation of these ordinance articles.</li></ul></li></ul>	<ul style="list-style-type: none"><li>Ensuring that no deposits exceeding CHF 100,000 are accepted from Russian citizens and persons/companies domiciled in Russia (per customer; taking into account exemption provisions)</li><li>Review the customer base to identify Russian citizens and persons/companies domiciled in Russia</li><li>Notify SECO by 3 June 2022 of deposits of Russian citizens and persons/companies domiciled in Russia.</li></ul>	Entry into force: 4 March 2022
Banks and securities firms		Asset management institutions	Portfolio managers and trustees
Directly concerned		Indirectly or partially concerned	Indirectly or partially concerned

## Recently entered into force

Topic	Main news	Need for action	Timeline
Systemically important banks – change in LiqO	<ul style="list-style-type: none"><li>The revision is intended to ensure that systemically important banks hold sufficient liquidity to absorb liquidity shocks and cover the need for restructuring or liquidation. A high level of liquidity is also a key prerequisite for the new public liquidity backstop planned by the Federal Council.</li></ul>	<ul style="list-style-type: none"><li>Liquidity requirements to be implemented by 2023</li></ul>	<b>Entry into force: 1 July 2022</b> (Transition period: 18 months)
Banks and securities firms		Asset management institutions	
Portfolio managers and trustees			
Directly concerned		Not concerned	

Topic	Main news	Need for action	Timeline
<b>Revised Guidelines on Dormant Assets</b>	<ul style="list-style-type: none"><li>• The guidelines on the treatment of assets without contact and dormant assets held at Swiss banks (Guidelines on Dormant Assets) were last revised in 2014 and needed updating in various respects:<ul style="list-style-type: none"><li>- The revision takes account of the fact that SIX SIS AG has been replaced by Econis AG as the service provider for the system used to record and publish assets without contact and dormant assets.</li><li>- The rules also now reflect practical experience in this area.</li></ul></li><li>• The revised guidelines do not contain any fundamentally new rules or any changes that must be implemented as of 1 July 2022. A detailed explanation of the changes to the guidelines on the treatment of assets without contact and dormant assets is provided in a separate appendix.</li></ul>	<ul style="list-style-type: none"><li>• Analyse explanations to identify any need for action</li></ul>	<b>Entry into force: 1 July 2022</b>
Banks and securities firms		Asset management institutions	Portfolio managers and trustees
Directly concerned		Indirectly or partially concerned	Indirectly or partially concerned

## Recently entered into force

Topic	Main news	Need for action	Timeline
<b>SBA circular – confirmation of business relations</b>	<ul style="list-style-type: none"><li>• The information bulletin with form pursuant to SBA Circular No. 8074 is further intended to provide recommendations on the prerequisites, form and scope of the confirmation required by the auditors of domestic and foreign corporate clients of banks in order to fulfil their audit mandate on the complete business relationships between their clients and the banks evident in the business records.</li></ul>	<ul style="list-style-type: none"><li>• Confirmation of business relations in accordance with the new form / information bulletin</li></ul>	<b>Entry into force: 14 April 2022</b>
Banks and securities firms		Asset management institutions	Portfolio managers and trustees
Directly concerned		Indirectly or partially concerned	Indirectly or partially concerned

Topic	Main news	Need for action	Timeline
<b>Report on digital finance</b>	<ul style="list-style-type: none"><li>• In its report, the Federal Council sets out twelve areas of action with specific measures. It also instructs the Federal Department of Finance (FDF) to implement them in 2022 and beyond in close coordination with political circles, authorities, the private sector and academia. The authorities should:<ul style="list-style-type: none"><li>- provide the best possible regulatory framework</li><li>- be active dialogue partners for the various stakeholders and coordinate where necessary</li><li>- work on cross-cutting issues with regard to the competitiveness and risks of the Swiss financial centre</li></ul></li></ul>	<ul style="list-style-type: none"><li>• No need for action but serves as basis for potential future developments</li></ul>	<b>Publication: 2 February 2022</b>
Banks and securities firms		Asset management institutions	Portfolio managers and trustees
Indirectly or partially concerned		Indirectly or partially concerned	Indirectly or partially concerned

## Recently entered into force

Topic	Main news	Need for action	Timeline
<b>Adaption of fund documents</b>	<ul style="list-style-type: none"><li>• According to Article 144 (3) of the Collective Investment Schemes Ordinance (CISO), fund management companies, SICAVs and limited partnerships for collective investment are required to submit to FINMA the adapted fund agreements, investment regulations and partnership agreements within two years after the entry into force of FinSA/FinIA. The deadline for submission of the adjusted fund documents would therefore expire on 31 December 2021.</li><li>• To ensure enough time to implement the revised self-regulation, Asset Management Association Switzerland has asked FINMA for an extension of the deadline for submission of the fund documents adapted to FinSA/FinIA. The adapted fund documents must now be submitted to FINMA by 30 June 2022.</li></ul>	<ul style="list-style-type: none"><li>• No need for action (carried out by fund management companies)</li></ul>	<b>Entry into force: 30 June 2022</b>
Banks and securities firms		Portfolio managers and trustees	
Asset management institutions			
Directly concerned	Directly concerned	Not concerned	

## Notes

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## Notes

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## ► Part 2

### Current draft regulations



## Current draft regulations

Topic	Main news	Timeline
<b>Anti-Money Laundering</b> Revision of AMLA	<ul style="list-style-type: none"> <li>By implementing the recommendations from the 4th FATF Country Report of 7 December 2016, the Federal Council intends to extend the AMLA due diligence obligations as well as include certain activities of non-financial intermediaries.</li> <li>To this end, the following amendments to the AMLA are planned: <ul style="list-style-type: none"> <li>- Duty of the financial intermediaries to explicitly verify the statements made about the beneficial owner</li> <li>- Duty of the financial intermediaries to update customer information periodically</li> <li>- Retaining the right to report, explanation of the terms 'right to report' and 'duty to report'</li> <li>- The 20-day processing period of the MROS will be replaced by the financial intermediary's right to break off business relationships involving a pending MROS report unless the report is forwarded to a criminal prosecution authority within 40 days.</li> <li>- Introduction of due diligence obligations related to the founding, management and administration of certain services related to companies and trusts (advisor provisions)</li> </ul> </li> <li>On 1 October 2021, the Federal Council published the consultation on the associated amendment to the Anti-Money Laundering Ordinance (AMLO) and other ordinances (until 17 January 2022). The amendments to the ordinances are to enter into force together with the amendments to the law (AMLA).</li> <li>FINMA opened the consultation on the partial revision of AMLO-FINMA on 8 March 2022. In its ordinance, FINMA specifies the duty of financial intermediaries to issue an internal directives on the updating of client data.</li> </ul>	<b>Entry into force:</b> <b>1 January 2023</b>
Banks and securities firms	Asset management institutions	Portfolio managers and trustees
Directly concerned	Directly concerned	Directly concerned

Topic	Main news	Timeline
<b>Data Protection</b> Totally revised Swiss Federal Act on Data Protection (FADP)	<ul style="list-style-type: none"> <li>The EU still considers the FADP to be equivalent, although it must be revised so that it can keep up with the changed technological and social circumstances and to ensure that Switzerland continues to be regarded by the EU as a third country with appropriate data protection.</li> <li>Companies must inform data subjects whenever they intend to procure their personal data, as well as specifying which information will be processed (consent is not absolutely necessary).</li> <li>Fines up to CHF 250,000 may be imposed on data controllers and up to CHF 50,000 on companies.</li> <li>Whenever data processing is to be performed that exposes an individual to increased risk, it has now become obligatory to perform a data protection impact assessment.</li> <li>In future, stricter rules will become applicable to the controversial practice of 'profiling' (i.e., the assessment of certain characteristics of a person based on automated processing of personal data) if the linking of data enables assessing essential aspects of the data subject and/or data of different origins are constantly linked to each other and/or enable drawing conclusions about different areas of the data subject's life.</li> <li>On 23 June 2021, the Federal Council published the draft of the associated ordinance (consultation until 14 October 2021). Among other things, the minimum requirements for data security and the regulations on the disclosure of data abroad (including the publication of a list of countries with adequate data protection) are specified. It then explains under which conditions companies with fewer than 250 employees do not need a register of processing activities.</li> <li>On 5 March 2021, the Federal Data Protection and Information Commissioner (FDPIC) published a guide to the fully revised Data Protection Act, in which he comments on what he considers to be the most important new provisions.</li> </ul>	<b>Expected entry into force:</b> <b>1 September 2023</b>
Banks and securities firms	Asset management institutions	Portfolio managers and trustees
Directly concerned	Directly concerned	Directly concerned

## Current draft regulations

Topic	Main news	Timeline
<b>Depositor protection</b> Strengthening of the depositor protection system by changing the existing regulations	<ul style="list-style-type: none"> <li>The existing depositor protection system is to be strengthened through a series of measures.</li> <li>The duration of disbursement of the secured deposits in case a bank declares bankruptcy is to be reduced to 7 days, which will be in line with the international standard. For implementation, the parties concerned will be granted a time allowance of at least 5 years.</li> <li>The depositor protection will be based on posting securities of a value equal to 50% of the deposit or an equivalent guarantee in the form of a cash loan to the benefit of the depositor protection scheme. The requirement for banks to hold liquid reserves to cover any outflows to the depositor protection scheme will cease to apply.</li> <li>The remaining 50% of the banks' contribution liabilities will be maintained in the current form of ex-post financing.</li> <li>The upper limit of the system is to be set at 1.6% of the total secured deposits, but at least CHF 6 billion.</li> <li>On 8 April 2022, the Federal Department of Finance published the consultation on the amendment of the Banking Ordinance. The implementing provisions mainly comprise definitions and specifications for deposit protection. For example, the banks are given instructions on how they must prepare to ensure the rapid payment of secured deposits in the event of insolvency.</li> </ul>	<b>Expected entry into force:</b> <b>1 January 2023</b>
Banks and securities firms	Asset management institutions	Portfolio managers and trustees
Indirectly or partially concerned	Not concerned	Not concerned

Topic	Main news	Timeline
<b>Limited Qualified Investment Funds</b> Adjustment of the Federal Act on Collective Investment Schemes (CISA)	<ul style="list-style-type: none"> <li>Switzerland is supposed to be made more attractive as a centre of investment funds and more competitive vis-à-vis the rival financial centres abroad.</li> <li>The market launch of innovative products is supposed to be facilitated.</li> <li>It is planned to add a category of investment funds to the CAO that does not require approval by FINMA. This new category of investment fund (Limited Qualified Investment Fund or 'L-QIF') would be reserved for qualified investors, such as pension funds and insurers.</li> <li>L-QIFs would not be subject to FINMA's authorisation or supervision, but an L-QIF must be managed by a supervised institution.</li> <li>The advantage of L-QIFs is that they can be brought onto the market faster and at lower cost than other investment funds.</li> <li>Parliament approved the bill in December 2021. The National Council, which had wanted to allow portfolio managers to manage L-QIF within the thresholds of the Financial Services Act, lost out to the Council of States. As a result, L-QIF may only be managed by managers of collective assets.</li> </ul>	<b>Expected entry into force:</b> <b>1 January 2023</b>
Banks and securities firms	Asset management institutions	Portfolio managers and trustees
Directly concerned	Directly concerned	Directly concerned



## Current draft regulations

Topic	Main news	Timeline
<b>Bank restructuring</b> Revision of the Banking Act and the Mortgage Bond Act	<ul style="list-style-type: none"> <li>The amendment aims to incorporate into formal legal instruments currently regulated by the FINMA Banking insolvency Ordinance on restructuring proceedings for banks.</li> <li>In particular, in order to strengthen legal certainty, the instruments that interfere with the rights of the Bank's owners and creditors, such as capital-investment actions (e.g. bail-in), should be anchored at the legal level.</li> <li>An amendment to the Mortgage Bond Act also strengthens the functioning of the Swiss pledge Bond system in the event of the insolvency or bankruptcy of a member bank.</li> <li>The draft was adopted by the National Council in the spring session of 2021 and by the Council of States in the autumn session of 2021. On 8 April 2022, the Federal Department of Finance published the corresponding consultation on the amendment of the Banking Ordinance.</li> </ul>	<b>Expected entry into force: 1 January 2023</b>
Banks and securities firms	Asset management institutions	Portfolio managers and trustees
Directly concerned	Not concerned	Not concerned

Topic	Main news	Timeline
<b>Basel III Final Rule</b> Adjustments to the CAO	<ul style="list-style-type: none"> <li>In the Basel III Final Rule, numerous adjustments are to be made to incorporate the requirements of the Basel Committee.</li> <li>The standard rate for credit risk weighting will be adjusted by: <ul style="list-style-type: none"> <li>- greater differentiation of risk weights instead of flat rates, in particular for mortgage-backed positions in residential and commercial property based on collateral; and</li> <li>- enhanced assessment requirements for the use of external ratings</li> </ul> </li> <li>The existing approaches to determining the capital adequacy for operational risks (basic indicator, standard and institution-specific approach) will be replaced through a standard rate based on revenue components and historic losses.</li> <li>The method of calculating the leverage ratio will be adjusted and a leverage ratio buffer will be introduced for global systemically important banks (G-SIBs).</li> <li>The output floor of internal models will be determined according to standard rates for at least 72.5% of risk-weighted assets.</li> <li>Simplified implementation for banks in supervisory categories 3 to 5</li> <li>In this context, the Federal Department of Finance opened the consultation on the amendment of the Capital Adequacy Ordinance (CAO) on 4 July 2022. The consultation will last until 25 October 2022, subject to an extension if important jurisdictions publish their draft regulations shortly before its expiry.</li> </ul>	<b>Expected entry into force: probably 2023</b>
Banks and securities firms	Asset management institutions	Portfolio managers and trustees
Directly concerned	Not concerned	Not concerned

## Current draft regulations

Topic	Main news	Timeline
<b>Review of Stock Corporation Law</b>	<ul style="list-style-type: none"> <li>• Introduction of a gender ratio of 30% (BoD) and 20% (EB) with 'Comply or Explain' approach for large listed companies               <ul style="list-style-type: none"> <li>- Companies are considered 'large' if they exceed two of the threshold values under CO Article 727(1) (2) (balance sheet total of CHF 20 million, revenue of CHF 40 million or 250 FTEs) in two consecutive financial years.</li> <li>- Transition periods of five years (BoD) or ten years (EB)</li> </ul> </li> <li>• Improving corporate governance of non-listed companies, as well:               <ul style="list-style-type: none"> <li>- Increasing the shareholders' rights to information and inspection</li> <li>- Lowering the required minimum values for the exercise of information and inspection rights</li> </ul> </li> <li>• Increased flexibility of capital regulations               <ul style="list-style-type: none"> <li>- Introduction of the permissible range of capital adjustments</li> <li>- Possibility of reporting share capital in foreign currencies</li> </ul> </li> <li>• Introduction of written or virtual general meetings</li> <li>• Restriction of the powers of independent voting proxies</li> <li>• Alignment of company law with new financial reporting laws</li> <li>• Implementation of the 'Rip-Off Initiative' [Abzocker-Initiative]</li> </ul>	<b>Entry into force:</b> <b>1 January 2023</b> (Gender quotas as early as 1 January 2021; with transition periods)
Banks and securities firms	Asset management institutions	Portfolio managers and trustees
Directly concerned	Directly concerned	Directly concerned

Topic	Main news	Timeline
<b>Introduction of Swiss trusts</b>	<ul style="list-style-type: none"> <li>• To ensure that actors in Switzerland do not have to resort to foreign trusts, Parliament has instructed the Federal Council with a motion to create a Swiss trust.</li> <li>• Besides providing for trusts in the Swiss Code of Obligations, various federal laws are to be amended accordingly. In particular, tax laws should in future explicitly regulate how trusts are treated for tax purposes. Currently, taxation is based on the general principles of tax law and two circulars. Specifically, the Federal Council proposes to maintain the existing principles. Irrevocable trusts without fixed claims of the beneficiaries are now in principle to be taxed in the same way as foundations.</li> <li>• In line with international requirements, the Federal Council's preliminary draft also contains special information and documentation obligations for all trustees. In particular, trustees must identify the beneficial owners. The proposal thus takes into account Switzerland's current obligations with regard to combatting money laundering and the financing of terrorism as well as in the area of tax transparency.</li> </ul>	<b>Consultation period until</b> <b>30 April 2022</b>
Banks and securities firms	Asset management institutions	Portfolio managers and trustees
Indirectly or partially concerned	Indirectly or partially concerned	Indirectly or partially concerned

## Current draft regulations

Topic	Main news	Timeline
<b>Revision of chattel mortgage law</b>	<ul style="list-style-type: none"> <li>Under Swiss chattels law, collateral on movable goods can only be created by transferring possession of the collateral from the debtor to the creditor (principle of pledging chattels). The consequence of this legal situation is that Swiss companies can hardly use mobile means of production such as machines, vehicles, raw materials, stocks or other movable goods as collateral for receivables or loans.</li> <li>Against this background, the Federal Council included in-depth regulatory impact assessment (RIA) in its 2020 annual goals. This analysis shows that Swiss SMEs face severe restrictions in accessing secured debt financing compared to virtually all foreign jurisdictions. The authors recommend a gradual revision of the collateral provisions in chattels law, which should be applicable only to companies.</li> <li>Important elements are the admission of a chattel mortgage with publication in the register, a modernisation of the retention of title and the right of assignment as well as a modernisation with regard to intangible property rights and intangible assets. The authors also recommend the establishment of a digital, central register as well as the rapid ratification of the Cape Town Convention, which creates a uniform security interest for high-value, cross-border means of production (especially aircraft, railway rolling stock and satellites).</li> <li>The results of the in-depth RIA are now being examined by the responsible departments.</li> </ul>	<b>Entry into force: open</b>
Banks and securities firms	Asset management institutions	Portfolio managers and trustees
Indirectly or partially concerned	Indirectly or partially concerned	Indirectly or partially concerned

Topic	Main news	Timeline
<b>Revision of the Federal Intermediated Securities Act</b>	<ul style="list-style-type: none"> <li>The revised Federal Intermediated Securities Act (FISA) introduces an obligation for all custodians of intermediated securities to separate proprietary and client holdings. If the custody chain leads abroad, the last Swiss custodian must take measures to protect the intermediated securities held with the foreign custodian. In this context, information to clients should also be improved.</li> <li>The draft was adopted by the National Council in the spring session of 2021 and by the Council of States in the autumn session of 2021.</li> </ul>	<b>Entry into force: 1 January 2023</b>
Banks and securities firms	Asset management institutions	Portfolio managers and trustees
Indirectly or partially concerned	Not concerned	Not concerned

## Current draft regulations

Topic	Main news	Timeline
<b>Revision of FINMA Circular 'Operational risks at banks'</b>	<ul style="list-style-type: none"> <li>The Basel Committee on Banking Supervision published revised principles on operational risk and new principles on operational resilience in March 2021. They aim to increase banks' ability to withstand serious, complex, systemic or prolonged operational issues.</li> <li>FINMA bases its supervisory practice on qualitative requirements on these principles, thereby implementing the Basel standards in a principles-based, technology-neutral and proportionate manner. To this end, FINMA is completely revising the Circular 2008/21 'Operational risks at banks'.</li> </ul>	<b>Entry into force:</b> <b>1 January 2023</b> (Consultation until 11 July 2022)
Banks and securities firms	Asset management institutions	Portfolio managers and trustees
Directly concerned	Not concerned	Not concerned

Topic	Main news	Timeline
<b>FinSA – key information document</b>	<ul style="list-style-type: none"> <li>The Financial Services Act (FinSA) stipulates that the creators of a more complex financial instrument offered to private clients must prepare a so-called key information document (KID). This duty applies from 1 January 2022 and is in line with the current EU regulation that replaces UCITS-KIID with PRIIPS-KID. Due to delays in the EU, the UCITS-KIID will now only be replaced by the PRIIPS-KIID as of 1 January 2023; the Federal Council also extended the applicable transitional period for all financial instruments until that date.</li> <li>In circular no. 8063 dated 2 November 2021, SwissBanking clarified the scope of the duty to provide a key information document in situations where a custodian bank cooperates with an external portfolio manager appointed by the client.</li> </ul>	<b>Entry into force:</b> <b>31 December 2022</b>
Banks and securities firms	Asset management institutions	Portfolio managers and trustees
Directly concerned	Directly concerned	Directly concerned



## Current draft regulations

Topic	Main news	Timeline
<b>Amendment of FinMIO-FINMA</b>	<ul style="list-style-type: none"> <li>• FINMA is amending the Financial Market Infrastructure Ordinance-FINMA in two separate areas and held a consultation on this until 5 July 2022:               <ul style="list-style-type: none"> <li>- Firstly, FINMA wants to define more precisely in the ordinance the content to be reported in the case of derivatives transactions subject to reporting requirements (Art. 39 FinMIA).</li> <li>- Secondly, in response to the benchmark reform (replacement of reference rates such as LIBOR), FINMA is updating the catalogue of interest rate derivatives subject to settlement via a central counterparty. As before, FINMA is closely following EU law.</li> </ul> </li> </ul>	<b>Entry into force: 1. October 2022</b>
<b>Banks and securities firms</b>	<b>Asset management institutions</b>	<b>Portfolio managers and trustees</b>
<b>Directly concerned</b>	<b>Indirectly or partially concerned</b>	<b>Indirectly or partially concerned</b>

## Notes

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