

# Update

## Newsflash August 2017

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### Update on the new Swiss legislation on financial services and financial institutions

**The purpose of this Newsflash is to provide an update on the proposed new Swiss legislation on financial services and the supervision of financial institutions. This new legislation will be embodied in the Swiss Federal Financial Services Act (“FFSA”) and the Swiss Federal Act on Financial Institutions (“FAFI”). The Commission on Financial Affairs of the National Council has now finalized its deliberations on the drafts of the FFSA and FAFI and resolved on August 14 and 15, 2017 to submit the new legislation to the National Council for debate and discussion. This decision follows the first round of the Parliament debates which took place in the Council of States at the end of 2016.**

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#### 1. Enactment process and timeline

In the context of the legislative process in Switzerland, any draft legislation has first to be deliberated by the relevant commissions before it is debated in each of the two chambers of the Parliament, meaning the Council of States and the National Council. In view of the debates in the Council of States, the Commission on Financial Affairs of the National Council (the “**Commission**”) has, after an article by article discussion of the draft FFSA and FAFI, resolved to submit the draft legislation to the National Council for debate and discussion during the fall session of 2017. The publication of the consolidated draft FFSA and FAFI with all amendments and minority proposals is expected shortly.

It is currently expected that the draft legislation will again be submitted to the Council of States in the winter session of 2017 and then finally agreed on and passed by both chambers during the first quarter of 2018.

Upon the agreement of the Council of States and the National Council on all provisions of the FFSA and the FAFI, the new legislation will be final. On this basis, the Swiss Federal Department of Finance will finalize the drafting of the implementing ordinances and proceed with the formal consultation process on the implementing ordinances. This “level two legislation”, mainly the implementing ordinances to the FFSA and FAFI as well as the implementing ordinance of FINMA to the FFSA and FAFI (if any), will specify many key provisions of the new legislation. It is expected that the formal consultation on these draft ordinances will start in the first quarter of 2018.

The most likely date for the entry into effect of the FFSA and the FAFI is currently January 1, 2019. Most of the transitional provisions to implement the new rules, which are key for the industry, will be defined in the implementing ordinances.

## **2. Key findings after the deliberations in the Commission**

The Commission in its deliberations essentially supported the modifications made by the Council of States on December 11, 2016 to the draft proposed by the Swiss government.

This being said, there were remaining disagreements on certain major policy matters as well as discussions on more technical points. One of the first discussion points in the Commission related to proposed new Swiss legislation on FinTech.

In August 2017, the Commission had to decide on certain FinTech-related amendments to the Federal Consumer Credit Act, which had been integrated in the draft of the Council of States. The Commission approved these amendments, but a minority of the Commission proposed to consolidate all provisions regarding FinTech into a separate draft to be submitted once again to the Commission for the purpose of a thorough review of the consequences of said regulations.

Furthermore, the discussions in the Commissions related also to the precise scope of the applicable criminal sanctions, in case of a breach of the obligations under the FFSA and the FAFI, as

well as the submission of insurance companies to the new legislation and the prudential supervision over independent asset managers.

On more technical points, as regards the FFSA, the main differences with the version approved by the Council of States in December 2016 relate to the prospectus requirements and the civil and criminal liability regime for false or missing information in the prospectus or in the key information document.

## **3. Conclusion**

As a result of the discussions in the Commission, it is expected that the National Council will hold formal debates in the plenum in September 2017 on a number of minority proposals on the issues referred to above. This being said, we conclude that the assessments made in our Newsflash of January and June 2017 remain essentially valid. As indicated therein, the current drafts of the FFSA and the FAFI are largely aligned with MiFID II and MiFIR while at the same time also providing for more flexible provisions.

**Please do not hesitate to contact us if you have any questions.**

**Legal Note:** The information contained in this UPDATE Newsflash is of general nature and does not constitute legal advice. In case of particular queries, please contact us for specific advice.

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