

Update

Newsflash November 2017

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 (“FFSA”) and on the supervision of financial institutions (“FAFI”). The National Council and the Council of States, the two chambers of the Swiss Parliament, both reviewed the drafts FFSA and FAFI. During the last parliamentary session, the Commission in charge to review the remaining differences between the versions of the two chambers was not in a position to finalize its deliberations. This delay will certainly postpone the entry into force of the FFSA and the FAFI.

1) Latest overview

The Commission on Financial Affairs of the Council of States undertook the review and elimination of the remaining differences between the versions of the two chambers. On October 18 and November 3, 2017, the Commission on Financial Affairs of the Council of States issued two press releases in which it explained that, contrary to its initial schedule, the Commission was not in a position to finalize its deliberations.

The Commission on Financial Affairs of the Council of States continues therefore to discuss the drafts FAFI and FFSA.

2) Amendment of the current drafts

In most cases, the Commission on Financial Affairs of the Council of States proposed to endorse the amendments made by the National Council.

The Commission did not accept all amendments and wishes to modify the current drafts on certain points.

The most important change concerns the distinction between the duties of a financial service arising from civil law and those from regulatory law standards in the draft FFSA. The Commission thereby goes back to the Federal Council's initial draft. In their view, civil law and regulatory law standard do not overlap as much as had been thought by both Councils. Further, the Commission does not want the Swiss Financial Market Supervisory Authority (“FINMA”) circulars to be binding on civil courts; in their view, FINMA should remain a supervisory authority and not an authority entrusted also with legislative power.

In a nutshell, the Commission further proposes the following amendments:

- › with regard to the FFSA, to amend the chapter on responsibility by excluding any liability if the required diligence was observed when offering financial products;
- › to introduce an exception for the obligation to publish a prospectus for public offerings not exceeding a total value of CHF 8 million, calculated over a 12 month period, instead of CHF 2.5 million (similar to the EUR 8 million prospectus exemption under the new EU Prospectus Regulation);
- › to confirm that the procedure before the mediation body should remain free of charge;
- › to maintain the decision of the Council of States on the two articles relating to criminal sanctions as well as on minimum capital and guarantees under the FFSA.

3) Current Status

The drafts will be discussed during the Council of States 2018 spring session with any remaining differences being dealt with in the 2018 summer session. Due to this delay, we do not expect to see the first drafts of the ordinances implementing the FFSA and the FAFI before the second part of 2018.

In view of the current state of progress, an entry into force of the two legislations on January 1, 2019 seems compromised. In our view, the earliest date for their entry into force is July 1, 2019 but most probably January 1, 2020.

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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