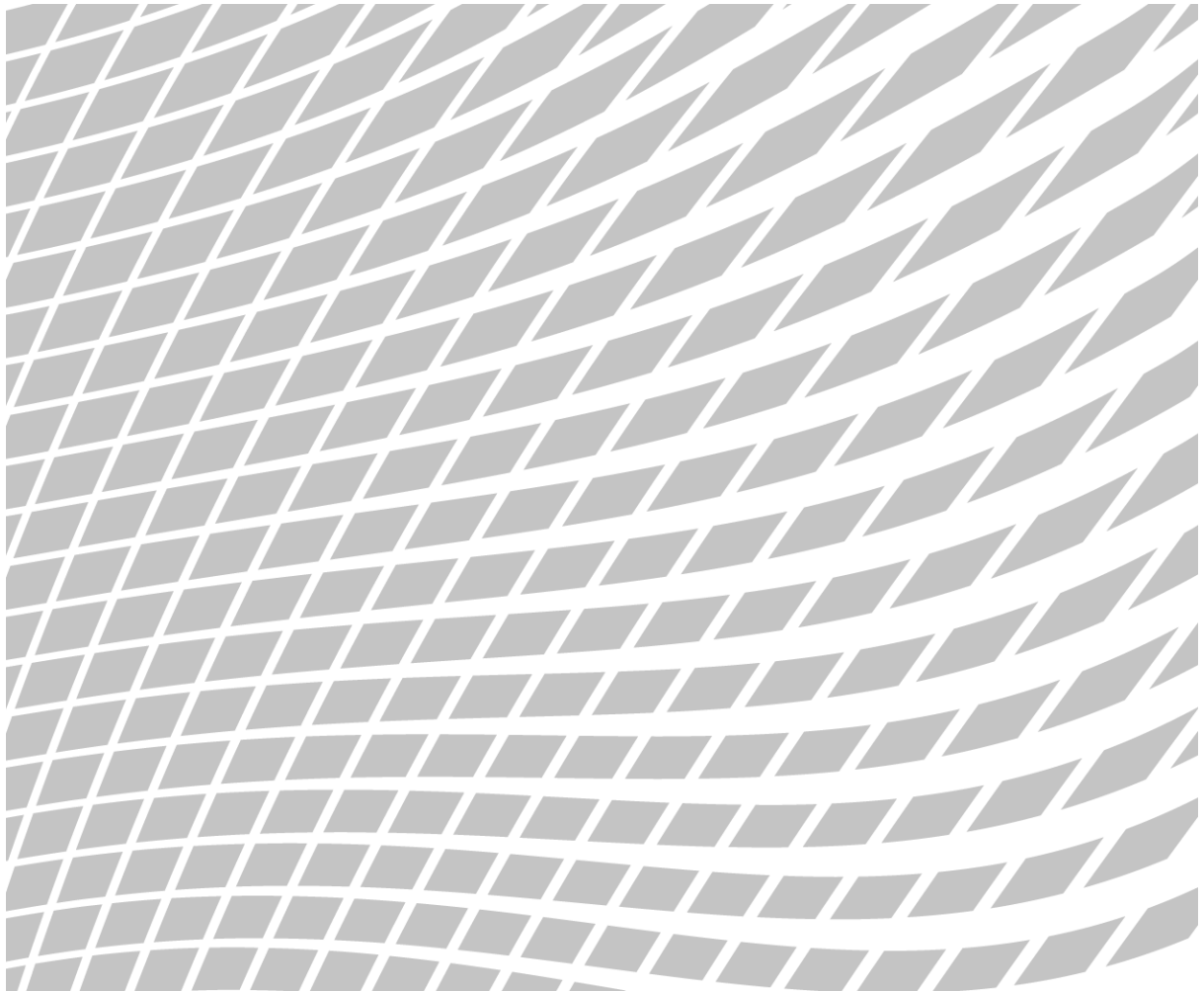


10 July 2012

Draft FINMA Collective Investment Schemes Bankruptcy Ordinance

Key points



Background

Since 1 September 2011, FINMA has been responsible for initiating and conducting bankruptcy proceedings concerning certain institutions subject to the Collective Investment Schemes Act (CISA; SR 951.31).

The CISA itself does not regulate bankruptcy proceedings but refers instead to Articles 33-37g of the Banking Act (BA; SR 952.9), which provide a rudimentary framework for bankruptcy proceedings. In addition, only certain points of the rules set out in the BA are materially suited to institutions subject to the CISA. This Ordinance provides further clarification and specific details regarding these rules.

Both the content and the entry into force of the present draft of the Ordinance of the Swiss Financial Market Supervisory Authority on the Bankruptcy of Collective Investment Schemes (FINMA Collective Investment Schemes Bankruptcy Ordinance, CISBO-FINMA) are intended to be aligned with the revised CISA, which is currently being prepared. However, if the revised CISA does not enter into force in the first quarter of 2013 as planned, this Ordinance will nevertheless enter into force on 1 January 2013 and be revised when the revised CISA enters into force.

Objectives

Speedy bankruptcy proceedings: The process will be speeded up by streamlining it and placing it under the control of a single authority, namely FINMA.

Efficient bankruptcy proceedings: Bankruptcy proceedings will be organised in a more efficient manner in that a variety of instruments geared specifically to collective investment schemes will be placed at the disposal of FINMA and the bankruptcy liquidator.

Improved investor protection: Protection for investors will be improved by taking account of the particular circumstances applying, especially in relation to SICAVs, for example, where there are various subfunds with different liability regimes.

Improved legal certainty: Bankruptcy proceedings will benefit from greater legal certainty because this Ordinance will create transparency and predictability.

Important aspects of the Ordinance

FINMA has already published two draft ordinances concerning bankruptcy proceedings for specific types of financial intermediary under its supervision: the Bank Insolvency Ordinance and the Insurance Bankruptcy Ordinance. In view of the close relationship between these two fields and that of collective investment schemes, the two said ordinances serve as the basis for the present draft of the CISBO-FINMA (D-CISBO-FINMA).

This Ordinance creates a flexible process attuned to the needs of the institution to be liquidated in each case. In particular, it proposes rules for the bankruptcy of fund management companies and SICAVs that are adapted to the respective legal forms.

Most of the institution-specific rules in the D-CISBO-FINMA concern SICAVs. The principles that every subfund is liable for its own liabilities and that the claims of the company's shareholders are subordinated make it necessary to treat the various subfunds differently.

Some institution-specific rules for the bankruptcy of fund management companies are standardised. In addition, the legal requirement for assets belonging to an investment fund to be segregated in the event of bankruptcy is taken into account.

There is no need for special provisions geared to the legal forms of SICAFs and limited partnerships for collective investment.

The D-CISBO-FINMA will not result in any organisational adjustment or conversion for institutions governed by it because the new provisions apply exclusively to legal entities to be liquidated under bankruptcy law. Accordingly, no additional costs will arise for institutions supervised by FINMA when the Ordinance enters into force.