



Ordinance of the Swiss Financial Market Supervisory Authority on the Bankruptcy of Collective Investment Schemes

(Collective Investment Schemes Bankruptcy Ordinance-FINMA,
CISBO-FINMA)

951.315.1

Dated 6 December 2012 (Status as at 1 January 2021)

Ordinance of the Swiss Financial Market Supervisory Authority on the Bankruptcy of Col- lective Investment Schemes

(Collective Investment Schemes Bankruptcy Ordinance-FINMA, CISBO-FINMA)

951.315.2

Dated 6 December 2012 (Status as at 1 January 2021)

Ordinance 951.315.2 of the Swiss Financial Market Supervisory Authority on the Bankruptcy of Collective Investment Schemes

(Collective Investment Schemes Bankruptcy Ordinance-FINMA, CISBO-FINMA)

Dated 6 December 2012 (Status as at 1 January 2021)

The Swiss Financial Market Supervisory Authority (FINMA),
based on Articles 138(3) of the Collective Investment Schemes Act of 23 June 2006¹ (CISA)
decrees:

Section 1: General Provisions

ARTICLE 1 Subject

This Ordinance shall specify the bankruptcy proceedings in accordance with Articles 137-138c CISA for licensees as per Article 2.

ARTICLE 2 Scope of application

- 1 This Ordinance shall be applicable to the following types of institutions and persons (licensees):
 - a.² ...
 - b. investment companies with variable capital (SICAVs) in accordance with Article 13(2)(b) CISA;
 - c. limited partnerships for collective investment schemes in accordance with Article 13(2)(c) CISA;
 - d. investment companies with fixed capital in accordance with Article 13(2)(d) CISA;
 - e.³ ...
 - f. all natural and legal persons operating without licence in accordance with Article 13(2)(a)-(d) and (f) CISA.
- 2 It shall also apply to all natural and legal persons operating without license in accordance with

¹ SR **951.31**

² Repealed by Annex Section 2 of the Ordinance of 4 November 2020 on financial institutions, with effect from 1 January 2021 (AS **2020** 5327).

³ Repealed by Annex Section 2 of the Ordinance of 4 November 2020 on financial institutions, with effect from 1 January 2021 (AS **2020** 5327).

Article 13(2)(b)-(d) and (f) CISA.⁴

ARTICLE 3 Universality

- 1 If bankruptcy proceedings are opened, it shall cover all realizable assets belonging to the licensee at that point in time, regardless of whether these are located in Switzerland or abroad.
- 2 All Swiss and foreign creditors of the licensee and of any of its foreign branch offices shall be entitled to participate in the bankruptcy proceedings opened in Switzerland equally and with the same privileges.
- 3 The assets of a foreign licensee's branch office operating in Switzerland shall consist of all of the assets located in Switzerland and abroad, which have been created by persons active on behalf of such branch office.

ARTICLE 4 Public notices and communications

- 1 Public notices shall be published in the Swiss Official Gazette of Commerce, on FINMA's website and in the publication media listed in Article 39 of the Collective Investment Schemes Ordinance (CISO) of 22 November 2006⁵.
- 2 Creditors known to the collective investment scheme by name and address shall be notified directly. FINMA may, if this helps to simplify the procedure, oblige creditors residing or domiciled abroad to appoint a person authorized to receive service of official communications on their behalf in Switzerland. In emergencies or for the sake of simplifying the procedure, the direct notification of creditors may be waived.
- 3 With regard to the deadlines and the legal consequence associated with a public notice, publication in the Swiss Official Gazette of Commerce shall be authoritative.

ARTICLE 5 File inspection

- 1 Anyone able to *show prima facie* evidence to the effect that its financial interests are being directly affected by a bankruptcy may inspect the bankruptcy files; in doing so, such persons shall maintain professional secrecy to the furthest extent possible.⁶
- 2 The file inspection may be limited to files relevant to a certain stage of the proceedings or be limited or refused based on overriding conflicting interests.
- 3 Anyone who is granted the right to inspect files may only use the information received through inspecting files to safeguard their own direct financial interests.

⁴ Inserted with Annex, Section 2 of the FINMA Ordinance dated 4 November 2020 on financial institutions, in force since 1 January 2021 (AS **2020** 5327).

⁵ SR **951.311**

⁶ Version according to Annex Section 2 of the FINMA Ordinance of 4 November 2020 on financial institutions, in force since 1 January 2021 (AS **2020** 5327).

- 4 The inspection of files may depend on a declaration given that the information received through inspecting files will only be used to safeguard one's own direct financial interests. There may be a prior reference to the penalty in accordance with Article 48 of the Financial Market Supervision Act of 22 June 2007⁷ and Article 292 of the Swiss Penal Code⁸ in case of non-compliance.
- 5 The bankruptcy liquidator and, once the proceedings have closed, FINMA shall decide on the right to inspect files.

ARTICLE 6 Reporting to FINMA

- 1 Anyone whose interests are adversely affected by a decision, an act or omission by a person who was entrusted by FINMA with duties according to this Ordinance, may report this incident to FINMA.
- 2 The decisions made by such person are not deemed to be orders and those notifying FINMA are not considered parties in accordance with the Federal Act on Administrative Procedure of 20 December 1968⁹.
- 3 FINMA shall assess the reported facts, decide on the necessary measures and if necessary, issue an order.

ARTICLE 7 Appointment of a bankruptcy liquidator

- 1 If FINMA does not assume the liquidation task itself, it shall appoint a bankruptcy liquidator by means of an order.
- 2 Should FINMA appoint a bankruptcy liquidator, it shall ensure upon the latter's selection that such bankruptcy liquidator has sufficient time and expertise to perform the mandate diligently, efficiently and effectively and is not subject to conflicts of interest that preclude the appointment.
- 3 It shall define the details of the mandate, especially regarding the fees, the reporting and the supervision of the bankruptcy liquidator.

ARTICLE 8 Duties and powers of the bankruptcy liquidator

The bankruptcy liquidator shall conduct the proceedings. Specifically, it shall

- a. create the technical and administrative conditions for the bankruptcy to take place;
- b. secure and realize the bankruptcy assets;
- c. execute the management necessary in the bankruptcy proceedings;
- d. represent the bankruptcy estate in court and towards other authorities.

⁷ SR **956.1**

⁸ SR **311.0**

⁹ SR **172.021**

ARTICLE 9 Tasks of the bankruptcy liquidator in the case of a SICAV's bankruptcy

In the case of a SICAV's bankruptcy, the bankruptcy liquidator shall have the following tasks beyond the ones stipulated in Article 8:

- a. ascertaining the claims against each of the liable sub-funds taking into consideration Article 94(2) CISA;
- b. ascertaining all claims existing between the sub-funds and considering these when distributing the proceeds of the sub-funds.

ARTICLE 10 Place of bankruptcy

- 1 The place of bankruptcy shall be at the domicile of the licensee or the branch office of a foreign licensee in Switzerland.
- 2 Should a foreign licensee have several branch offices, there shall only be one place of bankruptcy. This is to be defined by FINMA.
- 3 In the case of natural persons, the place of bankruptcy shall be the place where the business is domiciled at the time of the opening of the bankruptcy proceedings.

ARTICLE 11 Coordination

FINMA and the bankruptcy liquidator shall coordinate their actions with those of Swiss and foreign authorities and bodies to the extent possible.

ARTICLE 12 Recognition of foreign bankruptcy orders and measures

- 1 Should FINMA recognize a foreign bankruptcy order in accordance with Article 138c CISA in conjunction with Article 37g Banking Act of 8 November 1934¹⁰ (BA), then the provisions of such order shall be applicable to the assets located in Switzerland.
- 2 If it is in the interest of the creditors involved, FINMA may also accept a request to recognize a bankruptcy order even if there is no reciprocity in law.
- 3 It shall define a sole place of bankruptcy in Switzerland and the group of creditors in accordance with Article 138c CISA in conjunction with Article 37g(4) BA.
- 4 It shall make public the recognition as well as the group of creditors involved.
- 5 Should it recognize another foreign insolvency measure, it shall regulate the applicable procedure.

¹⁰ SR 952.0

Section 2: Procedure

ARTICLE 13 Publication and call to creditors

- 1 FINMA shall notify the licensee of its decision to open bankruptcy proceedings, make such decision public and simultaneously issue a call to creditors.
- 2 The publication shall specifically contain the following information:
 - a. the name of the licensee and its domicile as well as any branch offices;
 - b. date and time of the commencement of declaration of bankruptcy;
 - c. place of bankruptcy
 - d. name and address of the bankruptcy liquidator;
 - e. call to creditors and other persons who claim rights in assets in possession of the licensee to file their claims within the set deadline with the bankruptcy liquidator, together with evidence of such claims;
 - f. reference to the surrender and reporting obligations in accordance with Articles 20 and 21.
- 3 The bankruptcy liquidator may send a copy of the publication to known creditors and investors.

ARTICLE 14 Publication and call to creditors in the case of a SICAV's bankruptcy

In the case of a SICAV's bankruptcy, the publication must also contain the following information in addition to the information in accordance with Article 13:

- a. indication to creditors that they will have to specify which sub-fund(s)'s assets of the SICAV are made liable with regard to their claims;
- b. call to investors to provide the bankruptcy liquidator with the following within the set deadline:
 1. information on which sub-funds and unit classes they have invested to what extent, and
 2. the corresponding evidence.

ARTICLE 15 Meeting of creditors

- 1 Should the bankruptcy liquidator consider it appropriate to convoke a meeting of creditors, it shall file a corresponding request with FINMA. FINMA shall define the powers of the meeting of creditors as well as the quorum requirements of presence and voting rights for passing resolutions.
- 2 All creditors may attend the meeting of creditors or arrange to be represented. In cases of doubt, the bankruptcy liquidator shall decide on the admission to the meeting of creditors.

- 3 The bankruptcy liquidator shall chair the meeting and shall report on the licensee's financial situation and the status of the proceedings.
- 4 Creditors may also pass circular resolutions. Should a creditor not explicitly refuse the bankruptcy liquidator's motion within the set deadline, this shall be deemed as approval.

ARTICLE 16 Creditors' committee

- 1 Upon motion of the bankruptcy liquidator, FINMA shall decide on the establishment, the composition of, the duties and powers of a creditors' committee.
- 2 FINMA shall appoint the chair for this committee, the procedure how resolutions are to be passed and the remuneration of each member.

ARTICLE 17 Creditors' rights in a SICAV's bankruptcy

- 1 The creditor rights in a SICAV's bankruptcy refer to the sub-funds against which the claim is filed.
- 2 FINMA may provide for a separate meeting of creditors and a separate creditors' committee for each sub-fund.

Section 3: Bankruptcy assets

ARTICLE 18 Inventory of assets

- 1 The bankruptcy liquidator shall prepare an inventory of the assets in the bankruptcy estate.
- 2 The inventory shall be taken in accordance with Articles 221-229 of the Swiss Federal Act on Debt Enforcement and Bankruptcy of 11 April 1889¹¹ (DEBA) unless this Ordinance stipulates otherwise.
- 3 The bankruptcy liquidator shall request from FINMA the measures required to secure the assets that are part of the bankruptcy estate.
- 4 The bankruptcy liquidator shall present the inventory to the person appointed by the owners of the licensee to act as a body of the licensee. This person shall state whether the inventory is complete and correct. This statement shall be included in the inventory.

ARTICLE 19 Taking inventory in the case of a SICAV's bankruptcy

The assets belonging to each sub-fund shall be recorded in the inventory in a separate paragraph.

¹¹ SR 281.1

ARTICLE 20 Surrender and reporting obligation

- 1 Debtors of the licensee as well as persons who possess assets of the licensee as pledgees or for other reasons must notify the bankruptcy liquidator within the deadline stipulated in Article 13(2)(e) and make available these assets.
- 2 Receivables must also be reported if a claim for set-off is asserted.
- 3 Existing preferential rights shall expire if a reporting or surrender is not made for unjustified reasons.

ARTICLE 21 Exceptions to the surrender obligation

- 1 Securities and other financial instruments serving as collateral do not have to be surrendered if the legal conditions for their realization by the collateral-taker remain intact.
- 2 However, such assets shall be reported to the bankruptcy liquidator with evidence proving the realization rights. The bankruptcy liquidator shall then record such assets in the inventory.
- 3 The collateral-taker must account for the realization proceeds of such assets to the bankruptcy liquidator. Any surplus proceeds resulting from the realization will be included in the bankruptcy estate or the relevant sub-fund.

ARTICLE 22¹²

ARTICLE 23 Segregation

- 1 The bankruptcy liquidator shall review whether assets claimed by third parties should be surrendered.
- 2 If the bankruptcy liquidator perceives a surrender claim to be justified, it shall give the creditors the possibility to demand the assignment of the right to contest pursuant to Article 260(1) and (2) DEBA¹³ and set an adequate deadline.
- 3 Should the bankruptcy liquidator perceive a surrender claim to be unjustified or if creditors have requested an assignment of the right to contest, the bankruptcy liquidator shall set a deadline within which the claimant may file a lawsuit in a court at the place of bankruptcy. If the deadline is allowed to expire the surrender claim shall be considered waived.
- 4 In case of an assignment, the lawsuit shall be filed against the assignment creditors. The bankruptcy liquidator shall inform the claimant of the assignment creditors at the time when setting a deadline.

¹² Repealed by Annex Section 2 of the Ordinance of 4 November 2020 on financial institutions, with effect from 1 January 2021 (AS **2020** 5327).

¹³ SR **281.1**

ARTICLE 24 Assets, bankruptcy estate and contestation

- 1 Receivables which have fallen due and which are included in the bankruptcy estate shall be collected by the bankruptcy liquidator, if necessary by way of debt enforcement proceedings.
- 2 The bankruptcy liquidator shall review the claims made on movable objects of the bankruptcy estate which are in custody or co-custody of a third party or on immovable property which registered in the land register in the name of a third party.
- 3 The bankruptcy liquidator shall review whether legal transactions may be contested in accordance with Articles 285-292 DEBA¹⁴. The duration of a preceding reorganization proceeding shall not be taken into account in the deadlines in accordance with Articles 286-288 DEBA.
- 4 If the bankruptcy liquidator intends to pursue a contested claim in accordance with (2) or (3) by way of a lawsuit, it shall obtain FINMA's approval and relevant guidelines.
- 5 If the bankruptcy liquidator does not file a lawsuit, it may give the creditors the possibility to demand the assignment in accordance with Article 260(1) and (2) DEBA or realize the relevant claims and other entitlements in accordance with Article 33.
- 6 Should the bankruptcy liquidator give the creditors the possibility to demand an assignment, it shall set an adequate deadline.
- 7 The realization of assets as per Article 33 shall be excluded in the case of rights to contest in accordance with (3) and in case of responsibility claims in accordance with Article 145 CISA.

ARTICLE 25 Continuation of pending civil law and administrative lawsuits

- 1 The bankruptcy liquidator shall assess claims of the bankruptcy estate that were already subject to civil or administrative proceedings at the time of the declaration of bankruptcy. It shall request FINMA's approval for their continuation.
- 2 Should FINMA refuse to approve the continuation, the bankruptcy liquidator shall give the creditors the possibility to demand the assignment of the right to continue the lawsuit in accordance with Article 260(1) and (2) DEBA¹⁵ and set an adequate deadline.

ARTICLE 26 Termination of the proceedings for lack of assets

- 1 Should the bankruptcy estate not suffice to carry out the bankruptcy proceedings, the bankruptcy liquidator shall request FINMA to terminate the proceedings for lack of assets.
- 2 In exceptional cases, FINMA shall carry out the proceedings despite the lack of assets, namely where there is a special interest in the execution of the proceedings.

¹⁴ SR 281.1

¹⁵ SR 281.1

- 3 Should FINMA intend to terminate the proceedings, it shall make this fact public, thereby stating that it will continue the proceedings should a creditor provide security for the portion of the proceedings costs not covered by the bankruptcy estate within a specified deadline. FINMA shall define the deadline as well as the type and the amount of the collateral.
- 4 Should the defined collateral not be provided within the set deadline, each pledgee may demand the realization of its pledge by FINMA within a deadline set by it. FINMA shall mandate the bankruptcy liquidator with the realization of the pledge.
- 5 With legal entities, the FINMA shall order the realization of assets for which no pledgee requested the realization within the set deadline. Any proceeds remaining after covering the costs of the realization and the charges on each asset, shall go to the Swiss federal government after FINMA has deducted its costs.
- 6 If the bankruptcy proceedings against natural persons has been terminated, Article 230(3) and (4) DEBA¹⁶ shall apply to the enforcement proceedings.

Section 4: Bankruptcy liabilities

ARTICLE 27 Review of claims

- 1 The bankruptcy liquidator shall review the claims that have been filed and those that have to be considered by law. It may collect data on its own and require the creditors to provide additional evidence.
- 2 Claims listed in the land register, including accrued interest, shall be considered by law.
- 3 The bankruptcy liquidator shall obtain a statement on the claims from the person appointed by the owners of the licensee as a body of the licensee.

ARTICLE 28 Review of claims in the case of a SICAV's bankruptcy

- 1 In the case of a SICAV's bankruptcy the bankruptcy liquidator shall also review in which amount claims are permitted against which sub-fund.
- 2 Subject to (3) the investor sub-funds shall be liable only for their own liabilities. The company shareholders' sub-funds shall be subsidiarily liable for such liabilities.
- 3 Unless contracts with third parties stipulate a limitation of liability towards a sub-fund, the company shareholders' sub-funds are primarily liable and the investor sub-funds are subsidiarily liable in proportion to the fund assets.

¹⁶ SR 281.1

ARTICLE 29 Schedule of claims

- 1 The bankruptcy liquidator shall decide whether, to what extent and in which rank a claim is recognized and prepare a schedule of claims.
- 2 If an immovable property is part of the bankruptcy estate, the bankruptcy liquidator shall list all encumbrances, such as charges, easements, real burdens and personal rights entered under priority notice in the land register. The list of encumbrances shall form the schedule of claims.
- 3 In a SICAV's bankruptcy, the scheduled claims must be separated relating to the various sub-funds liable to such claims.

ARTICLE 30 Claims subject to civil or administrative proceedings

- 1 Claims, which at the time of the declaration of bankruptcy are subject to civil or administrative proceedings in Switzerland shall be noted in the schedule of claims pro memoria).
- 2 Should the bankruptcy liquidator choose not to continue the civil or administrative proceedings, it shall give the creditors the possibility to demand an assignment in accordance with Article 260(1) DEBA¹⁷.
- 3 Should civil or administrative proceedings not be continued by either the bankruptcy estate or the creditors who have demanded the assignment, the claim shall be deemed to be admitted, which means the creditors forfeit their right to contest it via an action to contest the schedule of claims.
- 4 Should individual creditors who had demanded the assignment continue the civil or administrative proceedings, the amount by which success of these proceedings reduces the losing creditor's share of the bankruptcy estate shall serve to satisfy the creditors who had demanded the assignment until their scheduled claims have been fully covered, as well as the costs of the lawsuit. Any surplus shall go to the bankruptcy estate or the relevant sub-fund.

ARTICLE 31 Inspection of the schedule of claims

- 1 The creditors may inspect the schedule of claims during a period of at least 20 days, respecting Article 5.
- 2 The bankruptcy liquidator shall inform the public from when and in what form the schedule of claims may be inspected.
- 3 The bankruptcy liquidator may provide for inspection at the bankruptcy office at the place of bankruptcy.
- 4 The bankruptcy liquidator shall inform each creditor whose claim was not scheduled in the schedule of claims as filed or as registered in the land register of the reasons why the claim has been dismissed in full or in part.

¹⁷ SR 281.1

ARTICLE 32 Action to contest the schedule of claims

- 1 Actions to contest the schedule of claims are governed by Article 250 DEBA¹⁸.
- 2 The deadline for actions shall start on the date the schedule of claims may first be inspected.

Section 5: Realization of assets

ARTICLE 33 Type of realization

- 1 The bankruptcy liquidator shall determine how and when assets are to be realized and shall carry out the realization.
- 2 Pledged assets may be sold in a manner other than by public auction only if the pledgee agrees.
- 3 Assets may be sold immediately, if they:
 - a. are subject to a rapid depreciation;
 - b. generate unreasonably high administrative costs;
 - c. are traded on a representative market; or
 - d. are of insignificant value.

ARTICLE 34¹⁹

ARTICLE 35 Realization of assets in a SICAV's bankruptcy

- 1 Should the continuation of one or several investor sub-funds be in the interest of the investors, the bankruptcy liquidator shall request of FINMA to have this or these sub-funds with all of their rights and obligations transferred to another SICAV.
- 2 If no other SICAV will accept this investor sub-fund or these investor sub-funds, the bankruptcy liquidator shall request of FINMA to liquidate the investor sub-fund(s) in the course of the SICAV's bankruptcy.

ARTICLE 36 Public auction

- 1 Public auctions shall be held in accordance with Articles 257-259 DEBA²⁰, unless this Ordinance stipulates otherwise.

¹⁸ SR **281.1**

¹⁹ Repealed by Annex Section 2 of the Ordinance of 4 November 2020 on financial institutions, with effect from 1 January 2021 (AS **2020** 5327).

²⁰ SR **281.1**

- 2 The bankruptcy liquidator shall perform the auction. The auction terms and conditions may provide for a minimum offer for a first auction.
- 3 The bankruptcy liquidator shall publicly communicate the possibilities to inspect the auction terms and conditions. It may provide that the inspection take place at the bankruptcy office or debt enforcement office of the place where assets to be realized in the public auction are situated.

ARTICLE 37 Assignment of legal claims

- 1 In the confirmation on the assignment of a bankruptcy estate's legal claim, the bankruptcy liquidator shall define a deadline by when assignment creditors have to assert their claim by judicial process in accordance with Article 260 DEBA²¹. If the deadline is allowed to expire, the assignment shall be forfeited.
- 2 Assignment creditors shall inform the bankruptcy liquidator and, upon the closing of bankruptcy proceedings, FINMA without delay on the result of the assertion of claims.
- 3 Should no creditor demand an assignment or if the deadline for asserting a claim has expired unused, the bankruptcy liquidator and, upon the closing of bankruptcy proceedings, FINMA shall decide on the possible further realization of such legal claims.

ARTICLE 38 Contestation of realizations

- 1 The bankruptcy liquidator shall periodically prepare a realization plan providing information on the pending realization of bankruptcy assets and how they will be realized.
- 2 Realizations which may be performed without delay in accordance with Article 33(3) do not have to be listed in the realization plan.
- 3 The assignment of legal claims in accordance with Article 37 shall not be deemed as realization action.
- 4 The bankruptcy liquidator shall inform the creditors of the realization plan and set a deadline by when they may demand a contestable order from FINMA on specific realizations listed therein.

Section 6: Distribution and closing

ARTICLE 39 Obligations of the bankruptcy estate

- 1 The following shall be covered by the bankruptcy estate, in the sequence listed:
 - a. obligations the bankruptcy estate entered into during the bankruptcy proceedings;
 - b. all costs for opening and carrying out the bankruptcy proceedings;

²¹ SR 281.1

- c. commitments towards a custodian bank.
- 2 In principle, the proceeds from the liquidation of investor sub-funds of a SICAV shall only be used to cover the costs for inventory, administration and the realizations of such sub-funds.

ARTICLE 40 Distribution

- 1 The bankruptcy liquidator may provide for advance distributions. For this purpose, it shall prepare a provisional distribution list and submit such list to FINMA for approval.
- 2 ...²²
- 3 Once the distribution list has been approved, the bankruptcy liquidator shall make the payments to the creditors.
- 4 No payments shall be made for claims
- a. whose existence or amount have not been established definitively;
 - b. whose creditors are not known definitively;
 - c. which are partially covered by unrealized collateral abroad or in accordance with Article 21; or
 - d. which are likely to be partially satisfied in the course of pending foreign foreclosure proceeding related to the bankruptcy.

ARTICLE 41²³

ARTICLE 42 Distribution of assets in a SICAV's bankruptcy

- 1 The proceeds resulting from the realization of assets shall be used to satisfy the creditors of the relevant sub-funds.
- 2 Any remainder of a sub-fund shall be distributed to the investors of this sub-fund in proportion to the units they hold.

ARTICLE 43 Final report and consignment

- 1 The bankruptcy liquidator shall provide FINMA with a summary of the bankruptcy proceedings' progress.
- 2 The final report shall also contain:

²² Repealed by Annex Section 2 of the Ordinance of 4 November 2020 on financial institutions, with effect from 1 January 2021 (AS 2020 5327).

²³ Repealed by Annex Section 2 of the Ordinance of 4 November 2020 on financial institutions, with effect from 1 January 2021 (AS 2020 5327).

- a. information on the completion of all processes relating to determination of the bankruptcy assets and liabilities;
 - b. information on the status of the legal rights assigned to creditors in accordance with Article 260 DEBA²⁴; as well as
 - c. a list of units that were not paid out as well as of safe-custody assets, which were separated and not surrendered, with an explanation of why the payment or the surrender could not yet take place.
- 3 FINMA shall give the necessary orders regarding the consignment of the units that were not paid out as well as the separated safe-custody assets that were not surrendered.
 - 4 FINMA shall make public the closing of the bankruptcy proceedings.

ARTICLE 44 Loss certificates

- 1 Against payment of a flat fee, creditors may obtain loss certificates in accordance with Article 265 DEBA²⁵ from the bankruptcy liquidator and after the bankruptcy proceedings have closed, from the FINMA in the amount of their claim that was not covered.
- 2 The bankruptcy liquidator shall draw creditors' attention to this fact at the time the units are paid out.

ARTICLE 45 Retention of records

- 1 FINMA shall define how bankruptcy and business documents shall be archived after the closing or termination of the bankruptcy proceedings.
- 2 Upon FINMA's instruction, bankruptcy documents as well as any still available business documents shall be destroyed ten years after the closing or termination of the bankruptcy proceedings.
- 3 Certain files may be subject to different retention provisions based on special laws, which shall remain applicable.

ARTICLE 46 Assets discovered or deposited retroactively

- 1 If assets or other legal rights are discovered that up to this point had not been part of the bankruptcy estate within 10 years of the closing of the bankruptcy proceedings, FINMA shall appoint a bankruptcy liquidator to re-open the bankruptcy proceedings without further formalities.
- 2 Assets or legal rights discovered after this point shall be distributed to the creditors who incurred a loss and whose data required for the payment is available to the bankruptcy liquidator. The bankruptcy liquidator may request the creditors to provide up-to-date information or else they would forfeit their claims. It shall set an adequate deadline.

²⁴ SR 281.1

²⁵ SR 281.1

- 3 If it is obvious that costs incurred through the re-opening of the bankruptcy proceedings would not be covered or only marginally exceeded by the expected proceeds from the realization of the assets discovered retroactively, FINMA may refrain from re-opening the proceedings. The assets discovered retroactively shall be forwarded to the Swiss federal government.
- 4 Deposited assets which become available to surrender or which have not been claimed after ten years shall be dealt with in the same fashion as described in (1) and distributed in accordance with (2). (3) remains applicable.

Section 7: Final provisions

ARTICLE 47 Transitional provision

The provisions of this Ordinance shall also apply to proceedings that are pending at the time this Ordinance enters into force.

ARTICLE 48 Entry into force

This Ordinance shall enter into force on 1 March 2013.

Contacts

Philipp Rickert

Partner, Head of Financial Services,
Member of the Executive Committee
Zurich
Tel. +41 58 249 42 13
prickert@kpmg.com

Helen Campbell

Partner, Banking Transformation
Tel. +41 58 249 35 01
hcampbell@kpmg.com

Thomas Dorst

Partner, Assurance & Regulation
Tel. + 41 58 249 54 44
tdorst@kpmg.com

Nicolas Moser

Partner, Geneva Office
Tel. +41 58 249 37 87
nmoser@kpmg.com

www.kpmg.ch

The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received, or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation. The scope of any potential collaboration with audit clients is defined by regulatory requirements governing auditor independence.

© 2021 KPMG AG is a subsidiary of KPMG Holding AG, which is a member of the KPMG network of independent firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss legal entity. All rights reserved.