

# Consultation on a new FINMA Ordinance on the In- solvency Proceedings at Fi- nancial Market Institutions (FINMA Insolvency Ordi- nance)

Key Points

9 October 2024

## Key Points

1. The Banking Act, the Insurance Supervision Act and the Collective Investment Schemes Act set out institution-specific provisions for restructuring proceedings and bankruptcy proceedings. They each contain delegation norms which allow FINMA to regulate these proceedings in more detail. On the basis of cross-reference provisions in the Financial Market Infrastructure Act, the Mortgage Bond Act and the Financial Institutions Act, the insolvency provisions of the Banking Act equally apply to the institutions subjected to these aforementioned laws. The institution-specific procedural rules are currently set out in three separate FINMA ordinances: the FINMA Banking Insolvency Ordinance (BIO-FINMA), the FINMA Insurance Bankruptcy Ordinance (IBO-FINMA) and the FINMA Collective Investment Schemes Bankruptcy Ordinance (CISBO-FINMA).
2. The aim of the present draft ordinance is, on the one hand, to consolidate FINMA's existing, institution-specific, insolvency and bankruptcy ordinances in a single FINMA Insolvency Ordinance. On the other hand, it is necessary to take into account and reflect therein the amendments made to the Banking Act and the Insurance Supervision Act since the last update of the current ordinances, together with relevant practical and academic findings.
3. Further, and as a result of the new restructuring law introduced in the Insurance Supervision Act, the restructuring procedure for insurance companies is now also regulated in more detail at the FINMA ordinance level. These rules were deliberately kept concise and principle-based so that FINMA retains the necessary flexibility in the event of a restructuring and can respond to the specific characteristics of the individual institution.
4. Overall, the procedural rules of the FINMA Insolvency Ordinance are intended to speed up the proceedings, to recognise the specific characteristics of each institution and to allow special features to be considered in individual cases. Finally, the standardisation and unification of the procedural rules for all institutions falling under FINMA's insolvency jurisdiction in a single ordinance aims to facilitate their application in practice and to increase legal certainty.