ADVESTRA ALERT

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Federal Council launches consultation on amendments to Banking Act and Liquidity Ordinance on too big to fail regulation

On 12 August 2026, the Federal Council launched the consultation on amendments to the Banking Act and the Liquidity Ordinance. The requirements on bank governance and on crisis preparations for systemically important banks are to be increased. In addition, the tools and powers of the Swiss Financial Market Supervisory Authority (FINMA) are to be extended, and banks' access to liquidity from the Swiss National Bank (SNB) is to be expanded. The consultations will run until 19 November 2026.

At its meeting on 12 August 2026, the Federal Council launched the consultation on amendments of the Federal Law on Banks and Savings Banks of 8 November 1934 ("**BankA**") and of the Ordinance on the Liquidity of Banks and Securities Firms of 30 November 2012 ("**LiqO**"). The amendments provide for measures relating to corporate governance at banks, supervision and crisis preparations including liquidity provision. These measures supplement those already adopted by the Federal Council with regard to capital, and, thus, complete the overall "too big to fail" (TBTF) package. The focus is on the senior managers regime, remuneration, FINMA's tools and powers, recovery and resolution planning for systemically important banks, and liquidity support from the SNB.

As regards corporate governance, the consultation draft introduces a **senior managers regime**. This regime will not be limited to systemically important banks but will apply to banks with a complex organization, which should be defined in an ordinance as banks with 250 or more employees. Such banks must ensure that responsibilities are clearly defined and assigned to specific individuals. In the event of breaches, either the banks themselves or FINMA can take targeted action. Other existing governance requirements are now regulated at legislative level rather than ordinance level.

As regards **remuneration**, new general principles on risk mitigation and moral hazard are introduced imposing, in particular, retention periods for variable compensation and clawbacks for the most senior or most highly paid managers at systemically important banks. Furthermore, FINMA shall be granted the authority to intervene in this area.

More generally, FINMA should receive additional **tools and supervisory powers**. In particular, FINMA shall be allowed to take early intervention measures if FINMA detects that a bank's financial situation has deteriorated significantly, in order to ensure that a bank's organisation remains appropriate, to prevent a deterioration in the economic situation or to protect the interests of clients without having to wait for a risk of insolvency within the meaning of Art. 25 et seq. of the BankA or face an actual violation of supervisory law that would permit enforcement measures.

In the realm of enforcement, FINMA should also be able to impose fines on non-compliant institutions and penalties for late implementation of ordered measures (periodic penalty payments), as well as additional powers for FINMA to communicate more actively with the public about concluded enforcement proceedings. Particularly the ability by FINMA to impose fines and penalties has been heavily debated ahead of today's proposal: The draft proposal would now create an explicit legal basis that enables FINMA to impose a monetary administrative sanction in cases of serious violations of Swiss financial market laws; the sanction may amount to up to 10 percent of the average annual operating income for the last three fiscal years.

The Federal Council also intends to clarify and strengthen the requirements regarding **recovery and resolution plans** for systemically important banks. The consultation draft also provides for extensive clarifications on resolution of banks that go beyond the current rules focusing on a restructuring (*Sanierung*, *assainissement*).

Finally, the consultation draft proposes to simplify the transfer of collateral to the SNB in order to facilitate banks' access to **liquidity support** in times of stress, in particular by requiring the preparation of the collateral transfer to the SNB or foreign central banks be arranged in advance. These measures will apply to category 1 through 3 banks, but will not apply to small banks of category 4 and 5. Category 3 banks will be able to determine the volume of assets to be prepared on the basis of the risk indicators set out in the LiqO.

In a separate press release, FINMA expressed its support for the proposed changes.

The consultation drafts provide for phasing-in periods.

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