Corporates – Impact of the New Financial Market Regulation

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- **Corporates' financial services aresubject to FIDLEG regulation**
- **Term "financial instruments" relatively broad**
- **Organizational and conduct obligations**

1. Current Regulatory Regime

Only persons and entities that under the financial market acts require a license from or need to be registered by the Financial Market Supervisory Authority (FINMA) are subject to financial market supervision. Corporates are currently not subject to an entity-related regulatory and prudential supervision unless they are – additionally – classified as a regulated entity (such as an insurance company, a financial services company or – inter alia – a financial intermediary) through the scope of their business activities.

The following acts are specified as financial market acts:

- Anti-Money Laundering Act (Geldwäschereigesetz);
- Banking Act (Bankengesetz);
- Collective Investment Schemes Act (Kollektivanlagengesetz);
- Contracts of Insurance Act (Versicherungsvertragsgesetz);
- Insurance Supervision Act (Versicherungsaufsichtsgesetz);
- Mortgage Bond Act (Pfandbriefgesetz);
- Stock Exchange Act (Börsengesetz);

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Thus, corporates that – today – do not fall within one of the aforesaid categories are generally able to engage in financial market activity without the need to apply for authorization and – consequently – they can operate without financial supervision.

2. Overview of the New Financial Market Regulation

The new Federal Financial Market Infrastructure Act (FinfraG), the new Federal Financial Institutions Act (FINIG) and the new Federal Financial Services Act (FIDLEG) will not only change and reshape the regulatory regime for corporates but also close the loopholes which corporates have used in the past, even if their business model included high-risk financial products and services. As such, the over-the-counter (OTC) derivatives business of corporates will be governed by the FinfraG with specific obligations, such as reporting duties, risk mitigation as well as clearing obligations.

3. Selected Key Points for Corporates

Even if corporates don't qualify as a financial institution in accordance with FINIG, they potentially will be subject to FIDLEG obligations in case they offer securities and / or distribute financial instruments or advise clients who are recipients of financial services.

The term of financial instruments is relatively broad. With the entering into force of the new financial market regulation business and trading activities currently not regulated may fall under the new laws and may trigger certain obligations, such as information duties, organizational and conduct obligations.

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