



## THE EFFECTS OF FMIA FOR SWISS COMPANIES

**The FMIA (Financial Market Infrastructure Act) is a Swiss federal law which affects all Swiss companies that are registered in the commercial register. The newsletter summarises the most important points concerning the FMIA.**

### What is the FMIA?

The FMIA is a Swiss federal law regulating over the counter derivatives trading, which affects all Swiss companies registered in the commercial register (Art. 93 – Para.3 FMIA in connection with Article 77 Para.1 of the Financial Market Infrastructure Regulation). These also include individual companies and foundations among others.

The FMIA came into effect with its regulation (Financial Market Infrastructure Regulation) on 1.1.2016. It serves to regulate uniformly the financial market infrastructures and trading of derivatives. According to Article 1 of the FMIA, this law regulates the “Organisation and operation of financial market infrastructures as well as the conduct obligations of financial market participants in securities and derivatives trading.”

### What requirements does the FMIA have for Swiss companies registered in the commercial register?

- The FMIA distinguishes three different counterparties:
  - Financial counterparty (FC), e.g. banks
  - Large Non-Financial Counterparty (NFC +), e.g. large traders (they exceed the thresholds listed under 3.)
  - Small Non-Financial Counterparty (NFC), e.g. Commodity trader without large securities trading. To be considered an NFC, the following thresholds must not be exceeded:
    - Credit and equity derivatives: CHF 1.1 billion
    - Interest, foreign exchange, commodities and other derivatives: CHF 3.3 billion
    - Hedging transactions are not included in the thresholds
    - Securities, fund investments, structured products, etc. are also not included
- For NFCs, the following requirements apply:
  - Monitoring the above thresholds
  - Notification to a trade repository (transaction reporting obligation)
  - Risk mitigation
  - Trading via trading centres and organised trading systems approved by FINMA.
  - Documentation obligation (list of all transactions)
- The **reporting obligation** depends on which counterparty one is subject to. FC are obligated to report from 1.10.2017, NFC+ from 1.1.2018 and NFC- from 1.4.2018.



- The **reporting obligation** for derivatives transactions via Swiss banks lies with the Swiss banks themselves, and for foreign banks with the customers (i.e. the Swiss companies).
- When **mitigating risk**, all counterparties must confirm the contract details within a set period, agree on processes and procedures, analyse and compress portfolios of over 500 open transactions at least every two years, and report the transactions to the trade repository.  
In addition, the large FCs and large NFCs must rate and calculate all open positions daily and settle the transactions through an eligible central counterparty (e.g. stock exchange).

What does that mean for you as a Swiss company registered in the commercial register?

- You must check whether you trade with derivatives as a Swiss business (= Swiss company).
- You must classify the counterparty to ensure they meet all requirements.
- Swiss companies that trade in derivatives
  - must check whether they trade the derivatives through a Swiss bank or through a foreign bank. If trading through a foreign bank, the reporting obligation is via the Swiss business (i.e. your Swiss company), as mentioned above.
  - These must be documented using a transaction register and reported to FINMA as of 1.1.2019.
  - For large futures transactions, the company must log and monitor the process (internal control system).
- Swiss companies that do not trade in derivatives may record this in writing in the minutes of the Board of Directors and are then exempt from the obligation to settle in writing the procedures by which they ensure the implementation of the obligations (Article 113 Para.2 of the Financial Market Infrastructure Regulation). It must be noted in the minutes of the Board of Directors that the company waives the use of derivatives in the year 20xx. For 2017, the company still has to prepare a separate minutes of the Board of Directors, as the board meetings in 2016 and 2017 have already been held. From 2018, the standard wording can be integrated into the annual Board of Directors minutes.
- The auditors check compliance with the FMIA, meaning also whether a resolution of the Board of Directors is present to waive derivatives.

If you need assistance in identifying or creating the protocol, we will be pleased to help you.



For questions or queries, please contact the author.

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