

## The Swiss Federal Administrative Court has annulled FINMA's Decision on Credit Suisse AT1 Bonds (B-2334/2023)

*Today, 14 October 2025, the Swiss Federal Administrative Court ("SFAC") has overturned FINMA's 19 March 2023 decision ordering the write-off of CHF 16.5 billion in Additional Tier 1 ("AT1") capital instruments issued by Credit Suisse during its takeover by UBS.*

On 19 March 2023, representatives of the Federal Department of Finance, the Swiss Financial Market Supervisory Authority ("FINMA"), the Swiss National Bank ("SNB"), and the banks involved announced a comprehensive set of measures to facilitate UBS's acquisition of Credit Suisse. One such measure was the write-down of all AT1 capital instruments, amounting to approximately CHF 16.5 billion.

That same day, the Federal Council amended the emergency ordinance of 16 March 2023 to include a provision (Art. 5a) authorising FINMA to order the write-down of AT1 capital. Based on this provision, FINMA instructed Credit Suisse, by decision of 19 March 2023, to immediately write down all AT1 bonds and inform the creditors accordingly.

The SFAC based its decision on the following grounds:

- **No contractual trigger event** justified the write-off: Credit Suisse was still adequately capitalized and met all regulatory capital requirements.
- **Lack of a clear legal basis:** The court found that neither the Banking Act ("BA"), the Financial Market Supervision Act ("FINMASA"), nor the Federal Council's emergency ordinance provided a valid legal foundation for such a measure.
- Article 5a of that ordinance was deemed **unconstitutional**, violating property rights and constitutional limits on emergency powers.

While the SFAC has not yet ruled on potential compensation or restitution, the decision marks an important step in the proceedings initiated by AT1 bondholders (approximately 3,000 appellants). The ruling may still be appealed to the Swiss Federal Supreme Court.

Should you require any further information on this subject, please do not hesitate to contact the authors or your usual contact person at Borel & Barbey. Our specialists will be pleased to assist you.

