

The litigation

*Dr Alexander Ressos, TEP
Attorney-at-Law (Switzerland), Solicitor (Hong Kong),
Solicitor (England & Wales)*

The write-down provoked one of the largest bodies of litigation in Swiss legal history. Several thousand investors, among them institutional investors, hedge funds and private clients of banks in Asia and Europe, challenged FINMA's order before the Federal Administrative Court. According to reports, more than three hundred and sixty appeals were filed on behalf of about three thousand claimants.¹ The court first had to resolve procedural questions, including access to FINMA's order and to the files, which FINMA had initially treated as confidential.

In a partial decision dated 1 October 2025 and published in the middle of that month, the Federal Administrative Court held that the write-down lacked a sufficient legal basis. According to the published summaries, the court found that the contractual conditions for a write-down had not been met. The viability event that required a determination by FINMA had not been triggered in the required form, while the support provided by the state had served to secure liquidity and had not been granted to restore the bank's capital. The court also found that the emergency ordinance could not supply the missing basis, because the provision authorising the write-down was insufficiently specific to justify such a serious interference with property rights.²

FINMA announced that it would appeal to the Federal Supreme Court, as did UBS in its capacity as the legal successor of Credit Suisse. The other pending appeals were suspended until the final decision. In parallel, groups of foreign investors initiated proceedings against Switzerland under bilateral investment treaties, claiming that the write-down amounted to an expropriation without compensation.³ As this book went to press, the Federal Supreme Court had not given its final ruling. Its decision will determine whether a debt of about sixteen billion francs is revived, which would fall on UBS, and whether the Confederation could face claims in the investment treaty proceedings.

The litigation

The litigation also has a bearing on the international reputation of Swiss AT1 instruments. If the Federal Supreme Court confirms the decision of the lower court, investors will conclude that the Swiss legal order protects their contractual rights even against an emergency ordinance of the Federal Council. If it reverses the decision, they will conclude that Swiss AT1 instruments carry a political risk that is absent from comparable instruments elsewhere. In either case, the episode is likely to lead to a revision of the design of AT1 instruments. In its proposals of June 2025, the Federal Council suggested changes to the requirements for AT1 instruments of systemically important banks. In April 2026 it decided to defer these changes until the international discussion on the future of AT1 capital in the Basel Committee had progressed.⁴

1 Notes

1. On the number of appeals (more than 360) and claimants (about 3,000) before the Federal Administrative Court against the AT1 write-down, see the analyses of the litigation published by law firms in November 2025 and the press releases of the Federal Administrative Court. Figures to be verified. ↩
2. Federal Administrative Court, partial decision of 1 October 2025 on the write-down of Credit Suisse AT1 instruments, published in October 2025, and FINMA's statement of 15 October 2025 announcing its appeal to the Federal Supreme Court. Case number and details of the reasoning to be verified. ↩
3. On the appeals of FINMA and UBS to the Federal Supreme Court, the suspension of the remaining proceedings before the Federal Administrative Court and the investment treaty claims of foreign investors against Switzerland, see the press releases of FINMA and UBS and the relevant financial press. Status to be verified. ↩
4. On the Federal Council's proposals of 6 June 2025 on AT1 instruments of systemically important banks and its decision of April 2026 to defer the amendment of the AT1 requirements pending international developments, see the publications of the Federal Department of Finance. Status to be verified. ↩

For general information only. This article does not constitute legal or tax advice, does not replace advice on an individual case and creates no lawyer-client relationship. It reflects the legal position as of September 2026.

Online version: helveticaregister.com/basel-the-litigation