

Frequently asked questions (FAQs)

Authorization requirements

(status on 1 April 2009)

1. Which financial activities require a licence?

As a basic principle accepting and managing assets deposited by the public under one's own or a company name for commercial purposes requires a FINMA licence. Every activity which involves more than 20 customers qualifies as being commercial in nature. However, the figure may also be below 20. The Banking Act¹ (BA; SR 952.0) forbids generally the acceptance of deposits from the public other than in the context of a debenture issue or that it falls under the exemptions foreseen by the Banking Ordinance² (BO; SR 952.02). A banking activity arises whenever the deposits accepted are used to finance third parties. Banks are also reserved the right to execute foreign exchange dealings for their customers.

In addition to stock exchanges and similar institutions, the Stock Exchange Act³ (SESTA; SR 954.1) subjects various types of trading in securities to a licensing requirement, e.g. trading in securities as a principal for client accounts whenever the securities dealer himself maintains accounts or security deposits for these clients or with third parties (client trader). Where collective investment schemes are concerned, accepting money from the public for the purpose of collective investments managed by a third party requires an authorization.

Under the Collective Investment Schemes Act⁴ (CISA; SR 951.31) and subject to the exemptions from the authorization requirement pursuant to Art. 8 of CISO⁵ (CISO; SR 951.311), any individual or entity that manages or acts as a custodian of collective investments is required to obtain a licence from FINMA. This includes fund management companies, SICAVs (investment companies with variable capital), SICAFs (investment companies with fixed capital), limited partnerships for collective investments, custodian banks, asset managers of Swiss collective investment schemes, and distributors of Swiss and foreign and representatives of foreign collective investment schemes. Asset managers of foreign collective investment schemes may apply to be supervised by FINMA.

The legislation listed under footnotes 1-5 is available only in German, French and Italian.

¹ www.admin.ch/ch/d/sr/c952_0.html

² www.admin.ch/ch/d/sr/c952_02.html

³ www.admin.ch/ch/d/sr/c954_1.html

⁴ www.admin.ch/ch/d/sr/c951_31.html

⁵ www.admin.ch/ch/d/sr/c951_311.html

In addition, the following documents for collective investment schemes require FINMA's approval⁶: the collective investment contract of investment funds, SICAV's and SICAF's articles of association and by-laws, and the partnership agreements of limited partnerships for collective investments. In the case of foreign investment schemes, the relevant documents require approval once public distribution is conducted within or from Switzerland. If these activities are conducted online, special rules may apply.

In accordance with the Insurance Supervision Act⁷ (ISA; SR 961.01), insurance companies dealing in direct insurance (damage and life insurance) or re-insurance require a licence. Private health insurances, i.e. supplementary insurances pursuant to the Swiss Federal Act on Insurance Contracts⁸ (ICA; SR 221.229.1) also require a licence from FINMA. Anyone representing an insurance company or other persons who sell and draw up insurance contracts must register⁹ at FINMA as insurance intermediaries if they are not legally or de facto affiliated to an insurance company. Affiliated insurance brokers are entitled to have their names entered in the register.

All other financial dealers (e.g. independent asset managers, precious metal and commodity dealers, leasing, factoring and other financial institutions) that accept or hold assets from third parties, or assist in the investment of or transfer of assets will be supervised with regard to the combatting of money laundering¹⁰. Basically they can choose between being affiliated to a self-regulatory organisation¹¹ (SRO) or being directly supervised by FINMA¹².

2. What measures are taken against unauthorised institutions?

Depending on the individual case, FINMA will seek to restore compliance with the law for companies and persons engaged in activities requiring authorization. Possible measures¹³ taken may result in liquidation.

FINMA publishes a list¹⁴ of companies and persons whose activities may be unauthorised. However, if a company or a person is listed, it does not necessarily mean that it is conducting illegal activities. This list serves rather to draw the attention of investors and market participants to the fact that the companies listed have not obtained a licence from FINMA.

3. Who can I contact if I have any more questions?

info@finma.ch or Tel. +41 31 327 91 00

⁶ www.finma.ch/e/beaufsichtigte/pages/bewilligungstraeger.aspx

⁷ www.admin.ch/ch/d/sr/c961_01.html

⁸ www.admin.ch/ch/d/sr/c221_229_1.html

⁹ www.vermittleraufsicht.ch

¹⁰ www.finma.ch/e/faq/privaten/pages/faq-geldwaescherei.aspx

¹¹ www.finma.ch/e/beaufsichtigte/pages/sro.aspx

¹² www.finma.ch/e/beaufsichtigte/pages/dufi.aspx

¹³ www.finma.ch/e/faq/privaten/pages/faq-vorgehen-unbewilligte.aspx

¹⁴ www.finma.ch/e/sanktionen/unbewilligte-institute/pages/default.aspx