New regime for portfolio managers and trustees

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2020
Agenda

I. Introduction

II. Current legal situation

III. Risk-based checking of licence applications

IV. Licensing process

V. Questions
I. Introduction
Asset Management division

Licensing and changes to licences for PMs and trustees
• Authorisation enquiries
• Voluntary release from supervision
• Point of contact for market participants

Intensive supervision of PMs and trustees
Markets division

- Licensing of SOs
- Supervision of SOs
New supervised community of portfolio managers and trustees

- **2,521** portfolio managers and trustees will apply for a FINMA licence before the end of 2022, according to reports received

- Market studies show that portfolio managers manage client assets of between CHF 475 and CHF 600bn in Switzerland and Liechtenstein. This corresponds to a market share of around 11%*

- Heterogeneous supervised community with variations in company size (including sole traders), client structures and business models

- No “one size fits all” approach, but instead risk-based checking of licence applications to ensure uniform quality standards

- A FINMA licence is an opportunity / seal of quality

*Source: Institut für Finanzdienstleistungen Zug IFZ - Vermögensverwalter Guide 2019
Distribution of applications based on reports received

Region

1,258 / 53%
German-speaking Switzerland

851 / 36%
French-speaking Switzerland

271 / 11%
Ticino

Year

- 2020: 284; 12%
- 2021: 685; 29%
- 2022: 1'434; 59%

Licence type

- VV: 2'128; 84%
- Trustee: 393; 16%
Assisting the new supervised community during the licensing process

✓ Proactive information

- FINMA has held a total of six information events in the three parts of Switzerland (ZH/GE/TI), which were attended by almost 1,500 interested parties

- Further information about the FinSA/FinIA and a mailbox for enquiries are available on the FINMA homepage

✓ Dialogue with the industry

- FINMA is in close contact with various associations, as well as the supervisory organisations

✓ Efficient processes

- New organisational unit within the Asset Management division

- As far as possible, the processes will be handled electronically and automatically via the FINMA survey and application platform (EHP). Additional aids such as explanatory videos will be provided for this.
Challenges and opportunities

- Organisation
- Capital adequacy
- Rules of conduct pursuant to the FinSA
- Costs
- Market environment
- Indirect supervisory system

Opportunities
- FINMA seal of quality
- Optimisation of processes
- Stronger focus
- International recognition
- Competitiveness
II. Current legal situation
A look at the new institutional and regulatory landscape

Preparations for the implementation of the Financial Institutions Act (FinIA) and Financial Services Act (FinSA) are complete

- 5 supervisory organisations (SOs) for the supervision of portfolio managers and trustees
- 3 registration bodies for client advisers
- 2 reviewing bodies for prospectuses

Implementing regulation adopted

- FinIO-FINMA enters into force on 1 January 2021

Transitional periods

- Portfolio managers and trustees must apply for a licence from FINMA by the end of 2022, which includes proving that they are affiliated to an SO
- Portfolio managers and trustees who commenced operations in 2020 must contact FINMA without delay and be affiliated to an SO by 6 July 2021 at the latest and submit a licence application to FINMA
New supervisory structure for portfolio managers / trustees

- **Licensing**
  - Intensive supervision
  - Enforcement

- **Affiliation**
  - Licence application

- **Ongoing supervision**

**PMs / trustees**

**SOs**

**Licensing**

**Supervision**

**Enforcement**

**Escalation of cases for intensive supervision**
# Supervision requirement

## Who is subject to supervision?

<table>
<thead>
<tr>
<th>Portfolio managers</th>
<th>Trustees</th>
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<tbody>
<tr>
<td>• Manage assets in the name of and on behalf of clients</td>
<td>• Manage a separate fund based on the instrument creating a trust within the meaning of the Hague Convention</td>
</tr>
<tr>
<td>• Managers of collective assets below the thresholds defined in Article 24 para. 2 FinIA are deemed to be portfolio managers</td>
<td></td>
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</tbody>
</table>

**Commerciality**

\( \triangleq \) existing AMLA regulation
## Supervision requirement
### Exemptions

<table>
<thead>
<tr>
<th>Category</th>
<th>Exemptions</th>
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</thead>
<tbody>
<tr>
<td>Business ties (Art. 3 FinIO)</td>
<td>• Provision of financial services or services in the capacity of trustee for other companies or units of the same group</td>
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<tr>
<td>Family ties (Art. 4 FinIO)</td>
<td>• <strong>Single family offices / private trust companies</strong> that are directly or indirectly controlled by persons who have family ties with one another</td>
</tr>
<tr>
<td></td>
<td>• Relatives by blood or by marriage, spouses, coheirs</td>
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<tr>
<td>Employee participation schemes (Art. 5 FinIO)</td>
<td>• Plans which are directed at employees who are not under notice</td>
</tr>
<tr>
<td></td>
<td>• Investment in the company of the employer or in a group company</td>
</tr>
<tr>
<td>Lawyers and notaries</td>
<td>• Insofar as they are bound in their activities by professional secrecy</td>
</tr>
<tr>
<td>Legally regulated mandates (Art. 6 FinIO)</td>
<td>• Advance care directive</td>
</tr>
<tr>
<td></td>
<td>• Deputyship</td>
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<tr>
<td></td>
<td>• Executorship, estate administration</td>
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Supervision requirement
Authorisation enquiry to FINMA

Do I need a licence as a portfolio manager or trustee?

Yes
- Observe transitional provisions
- Observe licensing process

No
- No report or licence required

Uncertainty regarding the supervision requirement?
- Own analysis, possibly with the involvement of third parties
- Possibility of submitting an authorisation enquiry to FINMA
  - Written application with justification as to why subject to supervision or not
  - Detailed description of the business model
  - Subject to a fee; costs dependent on complexity and quality of the application
II. Risk-based checking of licence applications
Authorisation conditions
Basic principles

- Affiliation to an SO
- Organisation
- Financial guarantees
- Guarantee of irreproachable business conduct
- Risk management

No “one size fits all” approach, but instead risk-based checking of licence applications
## Authorisation conditions

### Risk management

<table>
<thead>
<tr>
<th>Basic principles</th>
<th>Organisation</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Must have adequate risk management in place</td>
<td>• Perception of qualified managers, qualified employees or delegation to a qualified external body</td>
</tr>
<tr>
<td>• Effective internal controls are in place</td>
<td>• Persons who perform risk management tasks must not be involved in the performance of activities they monitor</td>
</tr>
<tr>
<td>• Ensures that statutory and internal provisions are complied with</td>
<td>• Risk management is not required to be independent of revenue-based activities if the portfolio manager or trustee:</td>
</tr>
<tr>
<td></td>
<td>a. is a company which has five or fewer full-time positions or annual gross earnings of less than CHF 2 million; and</td>
</tr>
<tr>
<td></td>
<td>b. adheres to a non-high-risk business model.</td>
</tr>
<tr>
<td></td>
<td>• All material risks must be</td>
</tr>
<tr>
<td></td>
<td>▪ identified</td>
</tr>
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<td></td>
<td>▪ assessed</td>
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<td></td>
<td>▪ controlled</td>
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<td>▪ monitored</td>
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Authorisation conditions
Risk-based approach to licensing

- Type, number and domicile of clients
- Volume of assets under management
- Investment strategies and products used
- Number and types of services offered

Risk-based approach to licensing
Authorisation conditions
Focus on conduct when checking applications

Confidence in functioning financial markets and in financial service providers is of key importance for client protection.

**SUITABILITY**
Suitability of products and services for clients
- Implementation of the new FinSA requirements
- Client relationships with unrestricted powers of attorney
- Use of financial instruments with conflicts of interests

**ANTI-MONEY LAUNDERING REQUIREMENTS**
Money laundering and financial crime
- Foreign / off-shore custodian banks
- Large number of high-risk business relationships / PEP

**CROSS-BORDER**
Cross-border business activities
- Market access (legal and liability risks)
- Large number of clients from different jurisdictions

**MARKET CONDUCT**
Market integrity
- Insider trading and market manipulation
- Front running / churning

Various business models involve a wide range of different risks in the four conduct areas. These risks must be limited and monitored by means of appropriate processes and controls.
The higher the risks inherent in a business model, the higher the requirements with regard to adequate risk management and effective controls.

It cannot be ruled out that particularly risky business models will not be granted a licence.
IV. Licensing process
Licensing process in general

- Electronically via the FINMA survey and application platform (EHP)
- No licence audit report required

The pathway to licensing consists of the following steps:

1. Self-registration
2. Report
3. Complete licence application
4. Affiliation to an SO
5. Submit licence application
6. FINMA checks licence application
Survey and application platform (EHP)

- Electronic submission of surveys, reports and applications
- Free to use
- Encrypted transfer of data
- Various quality checks
- Access to the EHP is effected via 2-factor identification, for which a mobile phone is required

The goal is the secure, paperless and efficient electronic processing of licence applications and data
Licensing process

- Licence application is only available in the EHP
  - A full PDF version is available on the FINMA homepage as a guide
- Applicant completes the application including the required documents
- Applicant grants the SO the right to access the licence application in the EHP
Licensing process

− After being authorised to do so, the SO is able to view the information in the licence application

− Advantage: Information and documents only need to be compiled once and can be used for the SO affiliation and the FINMA licence

− SOs can transfer the data to their own systems

− Close communication and cooperation between FINMA and the SO

− After the check has been completed successfully, the SO uploads the confirmation of affiliation to the licence application
Licensing process

- After the confirmation of SO affiliation has been received, the complete application can be sent to FINMA via the EHP

- Submission is possible without a signature

- Original documents must be kept by the applicant
Licensing process

- Initial feedback on application within 20 working days

- Tariff for the ruling on the issuance of a licence as a portfolio manager or trustee: CHF 2,000 to 20,000

- **Does not include** the costs of the affiliation process and ongoing supervision by the SO
Aids and support

1 January 2021

New regime for portfolio managers and trustees

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IV. Questions

Any questions…

...of a technical nature? → FIDLEG-FINIG@finma.ch
…concerning the EHP or IT? → www.finma.ch/ehp-support

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