PESTALOZZI

ATTORNEYS AT LAW

Completion of preparations for implementation of FinSA and differing transition deadlines

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Key takeaways

- **Recent FINMA authorisations of additional supervisory organisations and registration bodies for client advisors under the Financial Services Act ("FinSA") and the Financial Institutions Act ("FinIA")**
- **Successful completion of the preparations for the implementation of FinSA and FinIA**
- **Duty of portfolio managers, trustees and independent client advisors to fulfil their authorisation and registration obligations in time**

Authorisation of institutional bodies

By licensing various supervisory organisations (SO), registration bodies, reviewing bodies for prospectuses and ombudsman's offices in the last few months, FINMA has put all institutional conditions for the implementation of FinIA and FinSA in place. There are currently no further pending authorisation applications.

Supervisory organisations

According to Article 61 FinIA, portfolio managers and trustees are subject to supervision by FINMA with the assistance of a FINMA-approved supervisory organisation.

As of 20 November 2020, the following supervisory organisations have been authorised:

- AOOS - Schweizerische Aktiengesellschaft für Aufsicht, Zürich
- FINcontrol Suisse AG, Zug
- ORGANISME DE SURVEILLANCE DES INSTITUTS FINANCIERS OSIF, Genève 3

- OSFIN Organisation de surveillance financière, Neuchâtel
- SO-FIT Organisme de Surveillance pour Intermédiaires Financiers & Trustees en formation

Registration bodies for client advisors

According to Article 28 FinSA, client advisers of Swiss financial service providers not subject to supervision in accordance with Article 3 of the Financial Market Supervision Act (FINMASA) as well as client advisers of foreign financial service providers may carry out their activity in Switzerland only if they are entered in a register of advisers.

As of 20 November 2020, the following registration bodies for client advisors have been authorised:

- ASSOCIATION ROMANDE DES INTERMEDIAIRES FINANCIERS (ARIF), Genève 3
- BX Swiss AG, Zürich
- PolyReg Services GmbH, Zürich

Reviewing bodies for prospectuses

Any person in Switzerland who makes a public offer for the acquisition of securities or any person who seeks the admission of securities to trading on a trading venue must first publish a prospectus which is subject to review by one of the authorised reviewing bodies according to Article 51 FinSA.

As of 20 November 2020, the following reviewing bodies for prospectuses have been authorised:

- BX Swiss AG, Zürich
- SIX Exchange Regulation AG, Zürich

Ombudsman’s offices

According to Article 77 et seq. FinSA, financial service providers must affiliate to an ombudsman's office when commencing their activity and participate in the proceedings for dispute resolution.

As of 20 November 2020, the following ombudsman's offices have been authorised:

- Stiftung Schweizerischer Bankenombudsman
- Verein "Ombudsstelle Finanzdienstleister (OFD)"
- Verein "Finanzombudsstelle Schweiz (FINOS)"

- Stiftung "Ombud Finance Switzerland"
- Financial Services Ombudsman (FINSOM)
- Swiss Chambers' Arbitration Institution (SCAI)
- Terraxis SA

Next steps/need for action

Differing transition deadlines for licensing and registration obligations

With the necessary institutional bodies having been authorised by FINMA, portfolio managers, trustees and independent client advisers must now ensure that they fulfil their licensing and registration obligations in time. The deadlines for implementing FinIA and FinSA differ depending on the financial services provider's activity.

Portfolio managers and trustees

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. They may continue to operate until a licensing decision has been made, provided they are also affiliated to a self-regulatory organisation. Portfolio managers and trustees who commence operations in 2020 must register with FINMA immediately. They must be affiliated to an SO by 6 July 2021 at the latest and submit a licence application.

Client advisers

Client advisers of financial service providers not subject to prudential supervision must register with one of the authorised registration bodies by 20 January 2021.

Ombudsman's offices

With respect to legal clarification regarding the limitation on the ombudsman's affiliation requirement for financial service providers serving institutional and professional clients only, please see our separate Legal Update on this topic.

Prospectus

From 2 December 2020, a prospectus must be published prior to making a public offer for the purchase of securities or prior to the admission of securities for trading on an exchange. The prospectus must have been approved by one of the reviewing bodies authorised by FINMA.

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No legal or tax advice

This Legal Update provides a high-level overview and does not claim to be comprehensive. It does not represent legal or tax advice. If you have any questions relating to this Legal Update

or would like to have advice concerning your particular circumstances, please get in touch with your contact at Pestalozzi Attorneys at Law Ltd. or one of the contact persons mentioned in this Legal Update.

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