De Minimis Rule for Asset Managers under the Financial Institutions Act (FinIA)

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On 1 January 2020, the Financial Services Act and the Financial Institutions Act entered into force.

Key takeaways

- **Managers of collective assets may benefit from the de minimis rule subject to certain conditions; however, they will be subject to licensing requirements at a lower level**
- **Managers of collective assets are advised to assess the regulatory implications to ascertain if, or when, they have to notify the Swiss Financial Market Supervisory Authority FINMA and have to submit a request for authorization.**
- **Managers of collective assets should consider how to calculate the thresholds under the new rules and whether they may be subject to certain transitional periods.**

Introduction

As of 1 January 2020, asset managers are subject to the authorization requirements subject to the Financial Institutions Act ("FinIA"). The FinIA provides the licensing requirements for managers of collective assets as well as managers of individual assets (or portfolio managers).

De Minimis Rule for Managers of Collective Assets

A manager of collective assets is a person who manages assets on a commercial basis in the name and on behalf of: (a) collective investment schemes and (b) occupational pension schemes (pension funds).

For such asset managers the FinIA sets out a de minimis rule, according to which:

- managers of collective investment schemes, who manage collective investment scheme assets for qualified investors (in the sense of Article 10 (3) or (3ter) CISA):
- of up to CHF 100 million (including leverage) are exempt from the licensing requirements as managers of collective assets; or
- of up to CHF 500 million (without leverage and without a right of redemption in the first five years) are exempt from the licensing requirements as managers of collective assets.
- managers of pension fund assets are exempt, provided that the pension fund assets under management do not exceed CHF 100 million and that, with respect to the mandatory provision, a maximum of 20% of the assets of an individual pension fund are managed.

- of up to CHF 100 million (including leverage) are exempt from the licensing requirements as managers of collective assets; or
- of up to CHF 500 million (without leverage and without a right of redemption in the first five years) are exempt from the licensing requirements as managers of collective assets.

Particular consideration should be given with respect to the calculation of the assets for the thresholds because specific principles or rules will apply as to which assets may be included into the calculation.

Notification Requirements

A manager of collective assets exceeding the thresholds (as mentioned above) must notify FINMA within 10 days and submit a request for authorization within 90 days unless such asset manager amends its business model within a period of 90 days in a way that will seemingly prevent the reoccurrence that the thresholds will be exceeded again.

Licensing Requirements at a Lower Level

Managers of collective assets that benefit from the de minimis rule will, however, qualify as individual asset managers (resp. managers of individual assets or portfolio managers) and, as such, will be subject to the respective licensing requirements under the FinIA at a lower level (in contrast to managers of collective assets exceeding the thresholds).

Consequently, such asset managers must fulfil, inter alia, certain capital and organizational requirements in accordance with their legal form, the size, the complexity and the business risks.

Transitional Period

A manager of collective assets below the thresholds (as mentioned above) may, - as an individual asset manager - be subject to the transitional periods set out in the FinIA.

For example, existing asset managers must notify FINMA within six months, and submit a request for authorization and comply with the FinIA's rules within three years.

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