Financial Institutions Act (FinIA)

30.11.2018

- **Expected to enter into force on 1 January 2020**
- **New licensing regime for financial institutions**
- **Independent/external asset managers (newly designated as portfolio managers) and trustees to become subject to licensing and supervision**
- **Repeal of the Stock Exchange Act**

1. Introduction

FinIA regulates, in a single piece of legislation, the licensing requirements and additional organizational conditions for financial institutions that provide asset management services to third parties. This act moves away from the current sectorial regulation to create a "level playing field" for the supervised entities. It consolidates existing rules for banks, securities dealers (newly designated as 'securities firms'), fund management companies, and managers of collective assets; as well, it now expands the prudential licensing duty and supervision to trustees and portfolio managers. The FinIA's key features are further described in the overview below.

2. Overview of FinIA

New licensing regime

The following financial services providers qualify as financial institutions subject to FinIA and thus require a license from the supervisory authority:

- Portfolio managers;
- Trustees;

- Managers of collective assets (managers of collective investment schemes and managers of occupational pension schemes);
- Fund management companies;
- Securities firms (formerly securities dealers).

FinIA provides a licensing cascade resulting in the higher ranked type of license encompassing the lower ranked type of license. Thus, a licensed bank may also operate as a securities firm, a manager of collective assets, a portfolio manager, and a trustee; a securities firm may also operate as a manager of collective assets, a portfolio manager, and a trustee; a fund management company may also operate as a manager of collective assets and a portfolio manager; and finally, a manager of collective assets may also operate as a portfolio manager.

In addition, the license as a manager of collective assets also includes the authorisation to conduct the fund business, in particular, for foreign collective investment schemes. The license for a fund management company, however, is not part of the licensing cascade, which means that banks and securities firms are not automatically authorised to operate as a fund management company.

Even though one need not obtain an additional license as a result of the licensing cascade, the specific requirements and duties for each regulated additional activity must be complied with. Financial institutions that are already licensed by the Swiss Financial Market Supervisory Authority (FINMA) at the time FinIA enters into force need not apply for a new license but must comply with the applicable FinIA requirements within one year after its entry into force (i.e., 1 January 2021).

All financial institutions must comply with a uniform set of licensing requirements, especially in terms of the appropriate organization and the management's fitness to ensure a proper conduct of business. In addition, specific additional requirements apply for each type of financial institution, whose requirements become more extensive the higher the type of license. This means that both portfolio managers and trustees have the least requirements while banks have the most.

Licensing duties for portfolio managers in particular

One of FinIA's key changes is in establishing a prudential licensing duty and comprehensive supervision for all portfolio managers, including independent/external asset managers that operate without a license under the current regulatory regime and are only regulated by the anti-money laundering legislation. According to the FinIA, a portfolio manager manages assets on a professional basis on behalf of and for the account of clients, or may otherwise dispose of client assets based on an agreement. Portfolio managers can, in particular, manage individual portfolios, provide investment advice and portfolio analysis services, and offer financial instruments. Portfolio managers require an authorisation from FINMA and must be registered in the commercial register.

Investment advisory services also trigger an authorisation requirement under FinIA, and persons providing investment advice are subject to the rules of conduct and organizational

requirements under FinSA. However, persons who exclusively manage assets of persons with whom they have business or family ties or who manage assets solely within the context of employee participation schemes are not subject to FinIA. Accordingly, a single family office will typically not require a license under FinIA.

Supervision of portfolio managers is exercised by one or more supervisory organisations domiciled in Switzerland, which, in turn, are supervised by FINMA. The supervisory organisations require a license from FINMA before commencing their supervisory activity.

Modification and repeal of existing legislation

Incorporated into FinIA are all existing provisions for securities firms, fund management companies, and managers of collective assets currently regulated under the Stock Exchange Act, and the CISA. While the Stock Exchange Act will be repealed after the entry into force of FinIA, the Federal Council decided to abstain from repealing the Banking Act choosing rather to align the Banking Act with the new legislation. Similarly, while regulations concerning fund management companies and managers of collective assets are transferred to FinIA, the CISA subsists with the necessary modifications.

3. Key Points for Market Participants

As a novelty, FinIA expands the licensing duty and supervision to portfolio managers, i.e., to all persons or institutions that manage client assets in a professional capacity and to trustees. As a consequence of this new requirement regime, foreign portfolio managers and trustees, having a physical presence in Switzerland, will also require an authorization from FINMA. As of 1 January 2020, all existing portfolio managers must apply for a FINMA authorisation, which will likely require organizational adjustments. In the course of the parliamentary discussions, "grandfathering" provisions were rejected (i.e. the possibility of making an exception from the authorization requirements for well-established portfolio managers).

Portfolio managers who will be subject to the requirement for authorisation, must report to FINMA within six months of the FinIA's entering into force. They must comply with the FinIA requirements within three years of its entry into force and must submit a request for authorisation. Portfolio managers may continue their activities until a decision regarding their authorisation has been reached, as long as they are affiliated with a self-regulatory organisation (SRO) and supervised by it.

Already licensed financial institutions do not need to apply for a new license from FINMA but must comply with the relevant new FinIA requirements within the applicable transition periods.

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