Financial Market Supervision Act (FINMASA)

21.12.2018

- **FINMASA will stay in place, but any provisions will be moved to the new Swiss regulatory laws**
- **Supervision**
- **Enforcement tools**
- **Regulatory discretion**

1. Introduction

Under the Financial Market Supervision Act (FINMASA) (enacted in June 2007 and last changed January 2016) the Swiss Financial Market Supervisory Authority (FINMA) is the integrated supervisory authority across different sectors for the supervision of the financial market. FINMA is the responsible regulator for, among others, banks, securities firms, exchanges, fund management companies, managers of collective assets and insurance companies.

FINMASA governs, inter alia, (i) the organization of FINMA, (ii) FINMA's enforcement tools, (iii) FINMA's cooperation with other authorities, (iv) criminal sanctions in case of non-compliance and (v) the legal recourse system.

As of 1 January 2020, under the Financial Market Infrastructure Act (FMIA), the Banking Act, the Financial Services Act (FinSA) and the Financial Institutions Act (FinIA), FINMA is the responsible authority for ensuring compliance of the relevant market participants with these acts.

2. Overview of Amendments

Changes due to FMIA:

Pestalozzi Rechtsanwälte AG
Feldeggstrasse 4
CH-8008 Zürich
T +41 44 217 91 11
zrh@pestalozzilaw.com

Pestalozzi Avocats SA
Cours de Rive 13
CH-1204 Genève
T +41 22 999 96 00
gva@pestalozzilaw.com

pestalozzilaw.com

FINMA has additional powers, especially regarding the exchange of information between domestic authorities and governmental bodies. Collaboration competencies also expand to foreign regulators, provided that the following requirements are met: (i) the information is solely used or forwarded to other authorities (including tax authorities), courts and public bodies for financial market right-enforcement purposes; and (ii) the authorities asking for such information are bound by professional secrecy obligations.

FINMASA provides that, in case of administrative assistance procedures, FINMA shall not be obliged to inform the respective market participants prior to transferring data to domestic authorities and/or governmental bodies if the purpose of this assistance would be jeopardized otherwise.

Changes due to FinIA and FinSA:

Financial services providers that are subject to only a registration requirement under FinSA (for example financial services providers that provide crossborder services into Switzerland) are not directly subject to FINMA's overall supervision.

FINMA will be granted additional enforcement tools, such as the right to request collateral from supervised institutions to protect their clients and the right to issue bans (also vis-à-vis lower level employees).

3. Key Points for Market Participants

FINMASA provides more extensive rules on exchange of information among authorities as well as additional FINMA enforcement tools to sanction violations of financial services regulations. These enforcement tools also apply to certain market participants that are not subject to the prudential supervision of FINMA.

Oliver Widmer

Partner
Attorney at law
Head Financial Services

Pestalozzi Attorneys at Law Ltd
Feldeggstrasse 4
8008 Zurich
Switzerland
T +41 44 217 92 42
oliver.widmer@pestalozzilaw.com



Robert Furter



Senior Counsel
Attorney at law

Pestalozzi Attorneys at Law Ltd
Feldeggstrasse 4
8008 Zurich
Switzerland
T +41 44 217 91 55
robert.furter@pestalozzilaw.com