FinSA update – recent authorisations under FinSA/FinIA

22.07.2020

Key takeaways

- **Recognition of the first supervisory organisations responsible for the supervision of portfolio managers and trustees by FINMA: duty to affiliate and apply for a licence**
- **Recognition of the first registration body for client advisors by FINMA: duty to apply for registration with the registration body**
- **Recognition of the first ombudsman's offices by the FDF: duty to affiliate with the ombudsman's office – exemptions for professional and institutional clients de lege ferenda**

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Recognition of first supervisory organisations responsible for the supervision of portfolio managers and trustees

With effect as of 6 July 2020, the Organisme de Surveillance des Instituts Financiers (OSIF) based in Geneva and the Organisation de surveillance financière (OSFIN) based in Neuchâtel were the first organisations to be granted a licence from FINMA for their supervision of portfolio managers and trustees. Further applications for recognition as a supervisory organisation are currently being reviewed by FINMA. The supervision of portfolio managers and trustees has become mandatory with the enactment of the Financial Institutions Act (FinIA) and the Financial Services Act (FinSA). The supervisory organisations will monitor compliance with the obligations under FinSA and FinIA, as well as compliance with anti-money laundering rules (AMLA). By the end of 2022, portfolio managers and trustees have to prove their affiliation with a recognised supervisory organisation and apply for a licence from FINMA. The respective notifications had to be submitted to FINMA by 30 June 2020. By that date, 273 portfolio managers and trustees had notified FINMA of their intention to apply for a licence for 2020, while 629 announced their application for 2021 and 1,304 for 2022.

Recognition of first registration body for client advisors

FINMA recently also authorised BX Swiss AG as the first registration body for client advisors, effective as of 20 July 2020. Authorisations of further registration bodies are expected. The registration bodies will maintain a register of advisors in accordance with FinSA, which requires client advisors of financial service providers to register if they are not subject to supervision but provide their services in Switzerland. The registration bodies verify whether the client advisors have completed the necessary training and additional education measures. With the authorisation of the first registration body, the six-month transitional period in which client advisors must submit their application to be entered in the register of advisors has started and will expire on 19 January 2021.

Recognition of first ombudsman's offices under FinSA

Objective of the mediation procedure

FinSA provides for an ombudsman procedure for customers of financial service providers. In this mediation procedure, legal disputes should ideally lead to an amicable settlement. For this reason, all financial service providers or financial institutions subject to FinSA must affiliate with an ombudsman's office. This duty is subject to a special transitional period and to recent legal amendment proceedings as outlined below.

Transitional periods

The recognition of the first ombudsman's offices by the Federal Department of Finance (FDF) on 24 June 2020 marks the beginning of the six-month transitional period in which financial service providers and financial institutions should apply for their affiliation with an ombudsman's office.

Recognised ombudsman's offices

The list of the approved ombudsman's offices is now available on the FDF homepage:

List of approved ombudsman's offices

The financial service providers and financial institutions are free to choose amongst the recognised ombudsman's offices. The list is not exhaustive and is constantly being updated as further recognition procedures are pending.

Duties of the financial service providers

Once affiliated, the following duties become applicable:

Duty to participate (Art. 78 FinSA)

Financial service providers that are affected by a mediation request to an ombudsman for dispute resolution must participate in the proceedings. They must respond promptly to summonses, requests for comments, and any enquiries from ombudsman's offices.

Duty to provide information (Art. 79 FinSA)

Financial service providers shall inform their clients about the possibility of mediation proceedings through an ombudsman:

- on entering into a business relationship in accordance with the duty to provide information under Article 8 paragraph 1 letter c;
- in the event of the rejection of a legal claim asserted by a client; and
- at any time upon request.

The information shall be given in an appropriate form and contain the name and address of the ombudsman's office to which the financial service provider is affiliated.

Financial participation (Art. 80 FinSA)

Financial service providers shall make financial contributions to the ombudsman's office to which they are affiliated. Based on the volume of work caused, the contributions are in accordance with the ombudsman office's schedule of contributions and costs.

Exemptions for professional and institutional clients

In its recent parliamentary session on 17 June 2020, the National Council approved amendments to FinSA which would exempt financial service providers providing financial services exclusively to institutional or professional clients from the duty to join an ombudsman's office. Most likely, the Council of States will vote on this bill in its autumn session. However, it is uncertain whether this exemption will already be law on 23 December 2020 – when the transitional period expires. More realistic is that the new legislation will enter into force only after the end of the six-month deadline. This leads to the questionable legal consequence that financial intermediaries will have to submit their applications for affiliation

although a law is about to be passed but not yet in force, according to which the financial intermediary is released from the obligation to affiliate. We will monitor the ongoing legislative process and update on the relevant legal developments.

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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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