

New FINMA Circular on the Consolidated Supervision of Financial Groups under the Banking Act and the Financial Institutions Act

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Key takeaways

- **The new Circular 2025/04 outlines criteria applied in current FINMA practice for including group companies in consolidated supervision.**
- **The criteria are primarily the group entities' financial sector activities, the existence of an economic unit and a legal duty or de facto obligation to provide support.**
- **The provision of any kind of financial service may trigger the requirement for consolidated supervision, irrespective of Swiss financial market licensing or registration requirements.**

Introduction

FINMA has issued a new circular to provide more clarity on how financial groups are supervised on a consolidated basis under the Banking Act ("BA") and the Financial Institutions Act ("FinIA"). Consolidated supervision is intended to ensure that all risks taken by a financial group are properly overseen. FINMA's individual guidance based on the established supervisory practice has been provided to financial institutions on a case-by-case basis so far. The circular now formalises this practice. It will enter into force on 1 July 2025 (the "Circular").

Addressees of the Circular

The Circular outlines FINMA's established practice regarding consolidated supervision pursuant to Article 3b–3g BA and Articles 21–24a of the Banking Ordinance ("BO"). It is aimed at:

- Financial groups as defined in Article 3c BA and banks as defined in Article 1a which are part of such groups
- Financial groups led by securities firms in accordance with Article 49 FinIA
- Securities firms pursuant to Article 41 FinIA that are part of a financial group
- Financial groups dominated by persons pursuant to Article 1b BA (known as fintech licences) as well as persons pursuant to Article 1b BA that are part of a financial group

If an entity is part of a financial group, Articles 3b and 3d BA apply, meaning that FINMA generally makes the licence conditional upon the existence of appropriate consolidated supervision by a financial market supervisory authority. However, it is noted that the Circular does not provide any guidance as to the question of what is considered “appropriate” consolidated supervision by foreign supervisory authorities.

Regulatory scope of consolidation

As a preliminary remark, it should be noted that the following declarations concern the regulatory scope of consolidation, while the scope of consolidation for the consolidated financial statements is determined in accordance with the applicable accounting standards. Accordingly, the regulatory scope of consolidation may differ from that for the consolidated financial statements, particularly in the case of group companies that are not active in the financial sector.

The Circular states that the question of including an entity in the regulatory scope of consolidation requires an overall assessment on a case-by-case basis. The criteria based on which the inclusion in the regulatory scope of consolidation is to be determined are the business activity of the entity (operating primarily in the financial sector), the existence of an economic unit (control via majority shareholding or otherwise), and a legal duty or de facto obligation to provide support. The Circular provides detailed clarifications for each criterion, which are summarised below.

Activity in the financial sector

Firstly, it is clarified that the activities listed in Article 4 para. 1 lit. a BO are not exhaustive and that the term “activity in the financial sector” shall be interpreted broadly. In particular, activities in the financial sector shall include financial leasing, factoring, credit card business, participation in issuances, the custody of securities, payment services and issuance, custody of means of payment (including payment tokens) as well as activities in the insurance sector. The abovementioned activities shall, however, not trigger the consolidated supervision requirements in cases in which the group entities are engaged in purely commercial, industrial or administrative activities. FINMA emphasises that the assessment of the activities in the financial sector shall be technology neutral, applying an economic point of view.

Economic unit

According to the Circular, an interconnected system pursuant to Article 3c para. 1 lit. c BA shall be assumed, if the group entities form an economic unit or in cases in which they are linked by a legal duty or a de facto obligation to provide support. The technical description of an economic unit is described in Article 21 para. 2 BO and consists of a direct or indirect shareholding of more than 50% of the votes or capital in another entity or control by other means, e.g. voting rights agreements and rights to appoint or remove management or administrative bodies.

Without a majority shareholding or control, other circumstances that indicate a legal duty to provide support may lead to the assumption of an interconnected system. The Circular lists the following non-exhaustive examples of potential circumstances that could lead to the assumption of a legal or de facto obligation to provide support:

- Strategic, personnel, organisational or financial interdependencies
- Cooperations and dependencies
- Use of a joint company
- A uniform market presence
- Letters of comfort, keepwell agreements or similar guarantees

As long as the majority of 50% is not reached, the higher the participation rate and the lower the other links as described above can be while still triggering inclusion in consolidated supervision.

Financial group structures

The Circular categorises financial groups in accordance with their structure and describes the following types of financial group structures, providing guidance as to which group entities should be included in the regulatory scope of consolidation in each category:

- Parent company structure
- Holding structure
- Atypical structure
- Subgroup of a foreign financial group
- Subordinated financial group as part of a financial group subject to FINMA supervision

In principle, consolidated supervision by FINMA covers all group companies of a financial group irrespective of their legal form, meaning that, in particular, also SPVs shall be included, provided that the requirements for consolidated supervision are fulfilled. However, it is noted that significant group companies shall always be deemed to be active in the financial sector.

Ring-fencing exception

The wording of Article 3b and 3d BA suggest that FINMA has the discretion to require consolidated supervision as a prerequisite for a Swiss licence. While consolidated supervision is generally the rule, in certain exceptional circumstances FINMA may waive the requirement for consolidated supervision. In particular, the Circular clarifies that FINMA may require preventive measures such as ring-fencing or adjustments to the group structure in order to address specific risks.

Ring-fencing measures are especially foreseen in the international context. In particular, where there is no appropriate consolidated supervision abroad, links between the foreign financial group and the Swiss management may be eliminated by applying ring-fencing measures. This approach may only be considered where the ring-fencing measures are appropriate to mitigate the risks to which the concerned institution is exposed. The Circular provides the following (non-exhaustive) list of potential ring-fencing measures:

- Corporate governance measures to strengthen the independence of the institution's management and decision-making bodies vis-à-vis the financial group
- Financial measures to protect client assets or limit the financial links between the institution and the financial group
- Structural measures
- Operational measures addressing business links
- Specific information and reporting obligations vis-à-vis FINMA

Although ring-fencing and other measures are available, the Circular emphasises that consolidated supervision remains the standard due to its importance and international recognition.

Content of consolidated supervision

In addition to the comprehensive declarations as to the scope of consolidation, the Circular also provides for further details as to the content of consolidated supervision. In particular, it states that consolidated supervision shall be divided into qualitative and quantitative elements. The qualitative elements shall primarily address the internal organisation of the financial group, including (but not limited to) internal control systems, risk management, group-wide combating of money laundering as well as fit and proper requirements. The quantitative elements, on the other hand, include capital adequacy and risk diversification requirements as well as liquidity requirements, requirements regarding interest rate risk reporting and financial reporting standards.

Based on Article 23 para. 2 BO, the Circular specified the criteria that provide for an exemption from the quantitative elements, which are applicable to group companies deemed immaterial for consolidated supervision. The most important exemption from the quantitative elements is granted in cases in which the financial group only comprises immaterial group

companies. If only individual, but not all group companies are immaterial, the immaterial entities shall be excluded from the quantitative elements of consolidated supervision. It is noted that several group companies that are immaterial on an individual basis may be material as a whole. No exemptions are granted from the qualitative elements.

Next steps

The new Circular primarily establishes FINMA's existing practice and ensures legal certainty. Our team has many years of experience in financial market law and FINMA practice. We will be pleased to provide you with further information.

[Visit our Swiss Financial Market Regulation site to benefit from the latest guidance, tailored to your specific financial sector.](#)

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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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