

Transition periods FinIA/FinSA - Deadlines approaching

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As part of the implementation of the Financial Institutions Act (FinIA) and the Financial Services Act (FinSA), portfolio managers and trustees are required to obtain a licence from the Swiss Financial Market Supervisory Authority (FINMA) in order to carry out their activities. At the same time, all financial service providers subject to licensing fall within scope of the business conduct provisions under FinSA, which must be complied with by financial service providers vis-à-vis their private and professional clients. While the deadline for submitting the licence application for portfolio managers and trustees is 31 December 2022, the conduct obligations under FinSA must already be implemented as of 1 January 2022. Moreover, FINMA has recognised the revised self-regulatory ordinances of the Asset Management Association Switzerland (AMAS) as a minimum standard.

This legal update provides an overview of the areas in which action is required. For further information regarding initial practical experience of new licence applications of portfolio managers and trustees, please refer to our [Legal Update](#) of 7 June 2021.

Portfolio managers and trustees: Need for action in preparing licence applications

In the course implementing the new financial market regulation, portfolio managers and trustees must obtain a licence from FINMA. For this purpose, the financial service providers have to fulfill personnel, organisational and financial requirements. The preparation needed to meet licensing requirements will depend on the size of the business area, the client portfolio and the internal organisational structures. Typically, the following action may be needed:

- Restructuring of management and other central functions
- Adaptation of the articles of association
- Creation/adjustment of the organisational regulations
- Internal directives (internal control system; risk management; outsourcing; money laundering; compliance; IT infrastructure; cross-border)
- Adjustment of existing agreements (asset management contracts, service agreements)

As part of preparing the licence application, the internal organisation and processes will need to be reviewed and, if necessary, revised. This may take a certain amount of time. If the application is not submitted within the deadline, the respective institutions end up operating without authorisation, which may result in criminal consequences.

Since only around 7% of the portfolio managers and trustees presumed to be subject to licensing requirements have submitted a license application to FINMA so far, a flood of license applications is expected to be submitted by the end of 2022. The processing periods that are likely to result from this may, in turn, lead to delays in the granting of licenses. From 2023, it may not be clear to clients and custodian banks who has submitted a license application and who is acting without authorisation. The uncertainty may cause a competitive disadvantage, particularly with regard to the establishment of new client relationships. FINMA therefore strongly recommends portfolio managers and trustees to start the authorisation process promptly in order to avoid longer processing times and uncertainty.

For more detailed information on the preparation of the license application, the licensing requirements and the required content of the documents to be submitted, please refer to our [Legal Update](#) of December 1, 2020.

Need for action in the implementation of the rules of conduct under FinSA

It is not only FinIA that contains organisational provisions for financial service providers subject to authorisation. FinSA also imposes requirements relating to the internal organisation and internal processes of financial service providers. The corresponding obligations are specified in the Financial Services Ordinance (FinSO). The conduct provisions under FinSA must be complied with as of 1 January 2022. This deadline is also applicable to portfolio managers who have not yet submitted a license application for their activities or have not yet received authorisation.

First of all, the financial services provider must carry out a customer segmentation (for existing as well as for future customers), as different conduct rules apply to different customer segments. For example, the conduct rules vis-à-vis clients do not apply to transactions involving institutional clients. Professional clients may be given the opportunity to waive compliance with certain conduct rules by the financial services providers (i.e. to opt out).

Financial service providers are subject to various information obligations towards private and professional clients (i.e. end clients), which, on the one hand, relate to the financial service provider itself and its area of activity and, on the other hand, to the risks of the recommended financial services and financial instruments provided. The information obligations are subject to temporal and formal requirements and must generally be fulfilled prior to conclusion of the contract or provision of the service. Information can be provided to clients in standardised form on paper or electronically. Financial service providers are also subject to a documentation and accountability obligation with respect to the information collected and the services provided. FinSA also provides for various transparency and due diligence obligations when processing client orders.

From an organisational perspective, internal processes must be in place to ensure that employees and third parties involved have the necessary skills, knowledge and experience. In

addition, appropriate organisational precautions must be taken to identify and avoid conflicts of interest that may arise in the provision of financial services and to establish corresponding disclosure obligations. This includes, but is not limited to, designing remuneration systems that create no incentives for staff to disregard statutory duties or to conduct themselves in a manner detrimental to clients, as well as establishing rules for the acquisition and disposal of financial instruments by employees for their own account.

Compliance with the obligations shall be ensured, inter alia, in the following manner:

- Standardised forms and guidelines
- Internal directives on the duties of conduct
- Implementation of appropriate remuneration systems
- Functional separation of the organisation and the management of employees

Adapted self-regulation of AMAS as a minimum standard

Depending on the field of activity, the minimum AMAS standards set out in the revised codes of conduct as well as the new guidelines concerning real estate funds, fund performance, asset valuation, money market funds and total expense ratio must be considered. The respective implementation requires a review of the financial instruments and services offered to ensure their compatibility with the new standards. As part of this process, previous internal guidelines and specifications should be reviewed and updated.

Next steps

The licensing requirements and conditions for providing services under FinIA and FinSA have already been in force for almost two years. The implementation deadlines are approaching and it is important for financial service providers to analyse the structure and risks of their own business activities and to take the necessary restructuring and implementation measures. Depending on the size of the financial services provider and its client base, certain procedures can be harmonised and standardised to enable optimal internal implementation on all levels.

In order to avoid duplication of effort, it is advisable for portfolio managers to start preparing the application for authorisation under FinIA already when implementing the conduct provisions under FinSA.

Our team has many years of experience in implementing codes of conduct under financial market law and preparing and submitting licence applications. 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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