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## FINMA approves first supervisory organisations and registration office for client advisers

The Federal Council enacted the Financial Services Act (FinSA) and the Financial Institutions Act (FinIA) together with the implementing ordinances to apply as of 1 January 2020. As a consequence, asset managers and trustees will now require a licence and certain client advisers have to register in a client advisers registry. At the beginning of July 2020, FINMA approved the first two supervisory organisations for asset managers and trustees and a registration office for client advisers. Together with the ombudsman's offices also recently recognised by the Swiss Federal Department of Finance (FDF), this completes the regulatory FinSA/FinIA set-up. These new authorisations trigger various transition periods, which is why the licencing and implementation processes should be initiated.

### First approved supervisory organisations (SO) for asset managers and trustees

With the enactment of the FinIA, the licencing requirements for the majority of financial institutions were harmonised and a new licencing requirement for both asset managers and trustees was introduced. The ongoing supervision of asset managers and trustees will not be exercised directly by FINMA but by SOs which are approved and supervised by FINMA. On 6 July 2020, FINMA issued the first licences as SO to the Organisme de Surveillance des Instituts Financiers based in Geneva (OSIF) and the Organisation de Surveillance Financière based in Neuchâtel (OSFIN). Three further SO applications are currently still pending with FINMA.

The new licence categories for asset managers and trustees are accompanied by a complex transitional regime:

- Existing asset managers and trustees had to register with FINMA by the end of June 2020 and are obliged to apply for a licence to FINMA by the end of 2022 at the latest. They may continue engaging in their activities until a decision on the licence is made, provided they are affiliated with, and supervised by, a self-regulatory organisation (SRO) in accordance with the Anti-Money Laundering Act (AMLA).
- Asset managers and trustees who in their capacity as directly subordinated financial intermediaries under the AMLA were supervised by FINMA until 1 January 2020 are no longer required to join an SRO, provided that they have received confirmation of subordination from an SO and will submit an application for a licence to FINMA by the end of 2020.
- Asset managers and trustees who commenced their activities after 1 January 2020 must report to FINMA and, from the start of their activities, meet the licencing requirements – with the exception

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of supervision by an SO. By no later than 5 July 2021, they must have joined an SO and submitted a licence application to FINMA. Until a decision has been taken on the licence, they may continue to carry out their activities, provided they are affiliated with, and supervised by, an SRO.

For asset managers and trustees to be newly licensed, FinIA sets requirements for organisation, proper business conduct, risk management and internal control as well as for capital and own funds. The persons entrusted with the administration and management must meet the requirements for proper business conduct and enjoy an excellent reputation. The management must consist of at least two persons who have to substantiate certain qualifications. Both asset managers and trustees must have a minimum capital of CHF 100,000 and own funds of at least one quarter of the fixed costs of the last annual financial statement, but not exceeding CHF 10 million.

Alongside the preparation of the FinIA licence application, the implementation of the FinSA requirements must also be ensured. These requirements entail behavioral and organisational obligations which must be complied with by the end of 2021 at the latest. This is accompanied in particular by the complete documentation of the business activity as well as a contractual framework aiming at reducing the liability risks towards the client as effectively as possible.

#### **Client advisers registry – BX Swiss AG admitted as the first registration office**

Client advisers of financial service providers who are not subject to ongoing supervision by FINMA or an SO and who provide their services in Switzerland must, in order to carry out their activities, register themselves in a client advisers registry pursuant to FinSA, which is maintained by a so-called registration office. As of 20 July 2020, FINMA has approved BX Swiss AG as the first registration office, with further registration offices expected to follow suit.

This first FINMA approval triggers a six-month transition period. Affected client advisers must therefore submit an application for entry in the client advisers registry to a registration office by 19 January 2021. In addition to a professional liability insurance, the application must include proof of sufficient knowledge of the FinSA's rules of conduct and the expertise required to work as a client adviser. In particular, the completed training and continuing education will be entered in the registry. In the future, client advisers will be subject to a reporting obligation regarding any changes in specific circumstances. In addition, the regis-



tration must be actively renewed every two years, otherwise it will be deleted.

#### **First ombudsman's offices recognised by the FDF – deadline for affiliation is 24 December 2020**

Based on the FinSA, all financial service providers must join an ombudsman's office by no later than upon commencement of their activities. The first ombudsman's offices were recognised by the Federal Department of Finance (FDF) on 24 June 2020. This recognition triggered a six-month transition period, which means that financial service providers must submit an application for affiliation with an ombudsman's office by no later than 24 December 2020.

The respective ombudsman's office handles mediation procedures concerning disputes between clients and the financial service providers affiliated with it. The ombudsman's offices are obliged to accept the requesting financial service provider, provided that the latter meets the affiliation requirements.

#### **Need for action – better sooner than later**

Given the various approvals, recognitions and authorisations that are now in place, the regulatory FinSA/FinIA set-up is complete. It is now up to the financial service providers to comply with the transition periods and to develop a regulatory strategy to address the upcoming licencing and implementation processes. The FinSA and FinIA requirements involve a lot of work for financial service providers. However, the regulation is risk-based and allows for alleviating burdens on small financial service providers. It is worth to examine individual solutions which, in particular, also take the impact of the new rules on liability issues into account. We therefore recommend to kick off the implementation process early.