
**Federal Act
on Financial Institutions
(Financial Institutions Act, FinIA)**

954.1XX

of 15 June 2018

The Federal Assembly of the Swiss Confederation,

based on Articles 95 and 98 paragraphs 1 and 2 of the Federal Constitution¹, and having considered the Federal Council Dispatch of 4 November 2015²,

decrees:

Chapter 1 General Provisions
Section 1 Subject Matter, Purpose and Scope of Application

Art.1 Subject matter and Purpose

¹ This Act governs the requirements for the activities of financial institutions.

² It aims to protect investors and clients of financial institutions and to ensure the proper functioning of the financial market.

Art. 2 Scope of Application

¹ The following are financial institutions within the meaning of this Act, irrespective of their legal form:

- a. asset managers (Art. 17 para. 1);
- b. trustees (Art. 17 para. 2);
- c. managers of collective assets (Art. 24);
- d. fund management companies (Art. 32);
- e. securities firms (Art. 41).

¹ SR 101

² BBl 2015 8901

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² This Act does not apply to:

- a. persons who exclusively manage the assets of persons to whom they have economic or family ties;
- b. persons who exclusively manage assets within the framework of employee share ownership plans;
- c. lawyers, notaries and their respective auxiliaries, insofar as the activity is subject to professional confidentiality in accordance with Article 321 of the Swiss Criminal Code³ or Article 13 of the Law on Attorneys of 23 June 2000⁴, as well as the legal entity in which such persons are organised;
- d. persons who manage assets within the framework of a legally regulated mandate;
- e. the Swiss National Bank and the Bank for International Settlements;
- f. occupational benefits schemes and other institutions the purpose of which is the provision of occupational benefits (occupational benefits institutions), employer foundations (employer welfare funds), employers who manage the assets of their occupational benefits schemes, as well as employer and employee associations that manage the assets of their associations;
- g. social security institutions and compensation funds;
- h. insurance companies within the meaning of the Federal Act of 17 December 2004 on the Supervision of Insurance Companies⁵;
- i. public insurance institutions in accordance with Article 67 paragraph 1 of the Federal Act of 25 June 1982⁶ on Occupational Old Age, Survivors' and Invalidity Benefits;
- j. banks within the meaning of the Federal Act of 8 November 1934 on Banks and Savings Banks⁷ (Banking Act).

Art. 3 Commercial activity

Any independent, economic activity aimed at generating income on a permanent basis constitutes commercial activity within the meaning of this Act.

Art. 4 Group parent companies and significant group companies

¹ The following are subject to the insolvency measures under Article 67 paragraph 1, provided they are not subject to the bankruptcy jurisdiction of the Swiss Financial Market Supervisory Authority (FINMA) within the scope of the supervision of the individual institution:

- a. group parent companies of a financial group or financial conglomerate which have their registered office in Switzerland;

³ SR 311.0

⁴ SR 935.61

⁵ SR 961.01

⁶ SR 831.40

⁷ SR 952.0

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- b. those group companies which have their registered office in Switzerland and perform significant functions for activities which require authorisation (significant group companies).

² The Federal Council shall set the criteria for assessing significance.

³ FINMA shall identify significant group companies and keep a publicly accessible list of such companies.

Section 2 Common Provisions

Art. 5 Duty to obtain authorisation

¹ Financial institutions under Article 2 paragraph 1 require authorisation from FINMA.

² They may be entered in the commercial register only after such authorisation has been issued.

³ Financial institutions under Article 2 paragraph 1 letter c that are already subject to equivalent state supervision in Switzerland are exempt from the duty to obtain authorisation.

Art. 6 Cascade of authorisations

¹ Authorisation to operate as a bank within the meaning of the Banking Act⁸ also provides authorisation to operate as a securities firm, a manager of collective assets, an asset manager and a trustee.

² Authorisation to operate as a securities firm also provides authorisation to operate as a manager of collective assets, an asset manager and a trustee.

³ Authorisation to operate as a fund management company also provides authorisation to operate as a manager of collective assets and an asset manager.

⁴ Authorisation to operate as manager of collective assets also provides authorisation to operate as an asset manager.

Art. 7 Authorisation conditions

¹ Anyone who meets the conditions set out in this section and the supplementary conditions that apply to individual financial institutions is entitled to authorisation.

² Asset managers and trustees must provide evidence with their application for authorisation that they are being supervised by a supervisory organisation under Article 43a of the Financial Market Supervision Act of 22 June 2007⁹ (FINMASA).

³ The Federal Council may specify additional authorisation conditions if necessary for the implementation of recognised international standards.

⁸ SR 952.0

⁹ SR 956.1

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Art. 8 Changes in facts

¹ The financial institution shall notify FINMA of any changes in the facts on which its authorisation is based.

² If the changes are of material significance, then the financial institution must obtain prior authorisation from FINMA in order to pursue its activity.

Art. 9 Organisation

¹ The financial institution must establish appropriate corporate management rules and be organised in such a way that it can fulfil its statutory duties.

² It shall identify, measure, control and monitor its risks, including legal and reputational risks, and ensure effective internal controls.

³ The Federal Council shall set the minimum requirements for the organisation of financial institutions, taking into account in particular the various business activities and company sizes as well as the risks of financial institutions.

Art. 10 Place of management

¹ The financial institution must actually be managed from Switzerland. This does not apply to general directives and decisions within the framework of group supervision, provided that the financial institution is part of a financial group that is subject to appropriate consolidated supervision by foreign supervisory authorities.

² The persons responsible for managing the business of the financial institution must reside in a place from which they can actually exercise such business management functions.

Art. 11 Guarantee

¹ The financial institution and the persons responsible for its administration and management must guarantee irreproachable business conduct.

² The persons responsible for the administration and management of the financial institution must also enjoy a good reputation and have the specialist qualifications required for their function.

³ Qualified participants in a financial institution must also enjoy a good reputation and ensure that their influence is not detrimental to prudent and sound business activity.

⁴ Any person who directly or indirectly holds at least 10% of the share capital or votes or who can significantly influence its business activity in another manner is deemed to be a qualified participant in a financial institution

⁵ Each person must notify FINMA before directly or indirectly acquiring or disposing of a qualified participation in a financial institution in accordance with paragraph 4. This notification duty also applies if a qualified participation is

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increased or reduced in such a way as to reach, exceed or fall below the thresholds of 20%, 33% or 50% of the share capital or votes.

⁶ The financial institution shall notify FINMA of the persons who meet the conditions of paragraph 5 as soon as it becomes aware of the same.

⁷ Asset managers and trustees are excluded from paragraphs 5 and 6.

⁸ Qualified participants in asset managers and trustees are permitted to exercise business management functions.

Art. 12 Public offering of securities on the primary market

Any entity that operates primarily in the financial sector may only perform the following activities if it is authorised as a securities firm under this Act or as a bank under the Banking Act¹⁰:

- a. on a commercial basis take on securities issued by third parties and offer them publicly on the primary market;
- b. on a commercial basis create derivatives in the form of securities and offer them publicly on the primary market.

Art. 13 Protection against confusion and deception

¹ The name of the financial institution must not lead to confusion or deception.

² The terms "asset manager", "trustee", "manager of collective assets", "fund management company" and "securities firm" may only be used in the description of the business purpose or in the business documentation by persons alone or in word combinations in the firm, if such persons have obtained the corresponding authorisation. Article 52 paragraph 3 and Article 58 paragraph 3 are reserved.

Art. 14 Delegation of tasks

¹ Financial institutions may only delegate a task to third parties who possess the skills, knowledge and experience required for this activity and have obtained the necessary authorisations. They shall carefully instruct and supervise the third parties involved.

² FINMA may make the delegation of investment decisions to a person abroad contingent upon the conclusion between FINMA and the competent foreign supervisory authority of an agreement to collaborate and exchange information, namely when the foreign law requires the conclusion of such an agreement.

¹⁰ SR 952.0

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Art. 15 International business

A financial institution must notify FINMA before:

- a. establishing, acquiring or closing a foreign subsidiary, branch or representative office;
- b. acquiring or surrendering a qualified participation in a foreign company.

Art. 16 Ombud service

¹ Financial institutions must affiliate to an ombud service at the latest upon commencement of their activities.

² The provisions of Title 5 of the Financial Services Act of 15 June 2018¹¹ (FinSA) on ombud services apply mutatis mutandis.

Chapter 2 Financial Institutions
Section 1 Asset Managers and Trustees**Art. 17** Definitions

¹ An asset manager is a person who, on the basis of a mandate, engages in the commercial activity of disposing in the name and for the account of clients over their assets within the meaning of Article 3 letter c numbers 1-4 FinSA¹².

² A trustee is a person who, on the basis of the formation deed of a trust within the meaning of the Convention of 1 July 1985¹³ regarding the law applicable to trusts and their recognition, engages in the commercial activity of managing and disposing over the special purpose assets for the benefit of the beneficiaries or for a specific purpose.

Art. 18 Legal form

¹ Asset managers and trustees with their registered office or place of residence in Switzerland must have one of the following legal forms:

- a. sole proprietorship;
- b. commercial enterprise;
- c. cooperative.

² Asset managers and trustees are obliged to have themselves entered in the commercial register.

¹¹ SR ...; BBl 2018 ...

¹² SR ...; BBl 2018 ...

¹³ SR 0.221.371

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Art. 19 Tasks

¹ The asset manager manages individual portfolios.

² The trustee manages the special purpose assets, ensures their value retention and uses them for their intended purpose.

³ Asset managers and trustees may also provide the following services in particular:

- a. investment advice;
- b. portfolio analysis;
- c. offering financial instruments.

Art. 20 Qualified managing directors

¹ The business management body of an asset manager or trustee must consist of at least two qualified persons.

² The business management body may consist of only one qualified person if proof is made that the proper continuation of business operations is ensured.

³ A person is qualified as business manager if he or she has received appropriate training for the activity of an asset manager or trustee and at the time of taking over as business manager has sufficient professional experience in asset management for third parties or in the context of trusts. The Federal Council shall regulate the details.

Art. 21 Risk management and internal controls

¹ Asset managers and trustees must have an appropriately equipped risk management system and effective internal controls in place to, among other things, ensure compliance with legal and internal requirements.

² The risk management and internal control functions may be performed by a qualified business manager or delegated to suitably qualified employees or to a qualified external body.

³ Persons performing the risk management or internal control functions may not be involved in the activities they monitor.

Art. 22 Minimum capital and collateral

¹ The minimum capital of asset managers and trustees must be CHF 100,000 paid up in cash. It must be constantly kept at such level.

² In addition, asset managers and trustees must have adequate collateral or conclude a professional liability insurance.

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³ The Federal Council shall set the minimum amounts for the collateral and the insured amount under the professional liability insurance.

Art. 23 Capital adequacy

¹ Asset managers and trustees must have adequate capital at their disposal.

² The capital must at all times amount to at least one quarter of the fixed costs of the last annual financial statement, up to a maximum of CHF 10 million.

Section 2 Managers of Collective Assets

Art. 24 Definition

¹ A manager of collective assets is a person who engages in the commercial activity of disposing over assets in the name and for the account of:

- a. collective investment schemes;
- b. occupational benefits schemes.

² Asset managers within the meaning of Article 17 paragraph 1 are:

- a. managers of collective assets under paragraph 1 letter a, whose investors are ¹⁴ qualified within the meaning of Article 10 paragraph 3 or 3^{ter} of the Collective Investment Schemes Act of 23 June 2006 and who fulfil one of the following conditions:
 1. The total assets under management of the collective investment schemes, including assets acquired through the use of leveraged financial instruments, do not exceed a total of CHF 100 million.
 2. The total assets under management of the collective investment schemes do not exceed a total of CHF 500 million and do not include any leveraged financial instruments; the collective investment schemes do not grant a right to repayment in the first five years after making the first investment.
- b. managers of collective assets under paragraph 1 letter b, who manage the assets of occupational benefits schemes not exceeding a total of CHF 100 million and who additionally, in the mandatory area, manage no more than 20 percent of the assets of any single occupational benefits scheme.

³ Asset managers under paragraph 2 may request an authorisation as managers of collective assets if this is required by the country in which the collective investment scheme is established or offered or in which the occupational benefits scheme is managed. The Federal Council shall regulate the details.

¹⁴ SR 951.31

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Art. 25 Legal form

Managers of collective assets with their registered office in Switzerland must have the legal form of a commercial enterprise.

Art. 26 Tasks

¹ The manager of collective assets ensures portfolio management and risk management for the assets entrusted to it.

² In addition, the manager of collective assets may, in particular, conduct fund business for foreign collective investment schemes. If the foreign law requires an agreement to collaborate and exchange information between FINMA and the competent foreign supervisory authorities for fund business, it may only conduct such business if such an agreement is in place.

³ The manager of collective assets may also conduct administrative activities in connection with these tasks.

Art. 27 Delegation of tasks

¹ The manager of collective assets may delegate tasks to third parties, provided this is in the interest of efficient management.

² Anyone who delegates the management of the assets of an occupational benefits scheme or a collective investment scheme to a manager of collective assets remains responsible for compliance with the applicable investment regulations.

Art. 28 Minimum capital and collateral

¹ Managers of collective assets must have the required minimum capital at their disposal, which must be fully paid up.

² FINMA may allow managers of collective assets in the form of partnerships to provide adequate collateral instead of the minimum capital.

³ The Federal Council shall regulate the amount of the minimum capital and the collateral. It may also make the granting of the authorisation contingent on the conclusion of professional liability insurance.

Art. 29 Capital adequacy

¹ Managers of collective assets must have adequate capital at their disposal.

² The Federal Council shall set the amount of the capital based on the business activity and the risks.

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Art. 30 Group and conglomerate supervision

FINMA may, if provided by recognised international standards, subject a financial group dominated by a collective asset manager or a financial conglomerate dominated by a collective asset manager to group or conglomerate supervision.

Art. 31 Change of manager of collective assets

The manager of collective assets shall notify the supervisory authority responsible for the supervision of the collective investment scheme or the occupational benefits scheme in advance of the transfer of his rights and duties to a different manager of collective assets.

Section 3 Fund Management Companies**Art. 32** Definition

A fund management company is a company that independently manages investment funds in its own name and for the account of investors.

Art. 33 Legal form and organisation

¹ The fund management company must be a company limited by shares with its registered office and head office in Switzerland.

² The share capital must be divided into registered shares.

³ The managing directors of the fund management company and the custodian bank must be independent of the respective other entity.

⁴ The primary object of the fund management company is the conduct of fund business; this consists of offering units in the investment fund, its management and its administration.

Art. 34 Tasks

In addition to exercising its activities in accordance with this Act, the fund management company may, in particular, provide the following ancillary services:

- a. the safekeeping and technical administration of collective investment schemes;
- b. the administration of an investment company with variable capital (SICAV).

Art. 35 Delegation of tasks

¹ The fund management company may not delegate the management of the investment fund to third parties. It may, however, delegate investment decisions as well as specific tasks, provided this is in the interest of efficient management.

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² For collective investment schemes whose units are subject to simplified offering in the European Union under a specific treaty, investment decisions may not be delegated to the custodian bank or to other companies whose interests may conflict with those of the fund management company or the investors.

Art. 36 Minimum capital

¹ The fund management company must have the required minimum capital at its disposal, which must be fully paid up.

² The Federal Council shall regulate the amount of the minimum capital.

Art. 37 Capital adequacy

¹ There must be an appropriate relationship between the equity of the fund management company and the total assets of the collective investment schemes that it manages. The Federal Council regulates this relationship.

² In special cases, FINMA may grant a relaxation of the requirements, provided that the protective purpose of this Act is not impaired, or may order a tightening thereof.

³ The fund management company may not invest the prescribed equity in fund units which it itself has issued, nor may it lend the equity to its shareholders or to natural and legal persons connected to them through economic or family ties. The holding of liquid assets with the custodian bank is not deemed to be lending.

Art. 38 Rights

¹ The fund management company is entitled to:

- a. receive the fees stipulated in the fund contract;
- b. be exempt from any liabilities which may have arisen in the course of the proper execution of its duties;
- c. receive reimbursement of the expenses incurred in connection with such liabilities.

² These payments are made from the assets of the investment fund. Investors are not held personally liable.

Art. 39 Change of fund management company

¹ The rights and duties of the fund management company may be transferred to another fund management company.

² In order to be effective, the transfer agreement must be in writing or in another form verifiable by text, must have the consent of the custodian bank and be approved by FINMA.

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³ Prior to approval by FINMA, the outgoing fund management company publishes the proposed transfer in the media of publication.

⁴ The investors must be informed in these publications of their right to lodge objections with FINMA within 30 days from publication. The procedure is based on the Federal Act of 20 December 1968 on Administrative Procedure¹⁵.

⁵ FINMA authorises the change of fund management company if the legal requirements have been met and the continuation of the investment fund is in the interest of the investors.

⁶ It publishes its decision in the media of publication.

Art. 40 Segregation of fund assets

¹ In the case of bankruptcy, assets and rights belonging to the investment fund will be segregated in favour of the investors. The claims of the fund management company in accordance with Article 38 remain reserved.

² Debts of the fund management company which do not arise under the fund contract may not be set off against claims belonging to the investment fund.

Section 4 Securities Firms

Art. 41 Definition

A securities firm is a company which on a commercial basis:

- a. trades in securities in its own name for the account of its clients;
- b. trades in securities on a short-term basis for its own account, is primarily active on the financial market and:
 1. could thereby jeopardise the proper functioning of the financial market, or
 2. is active as a member of a trading venue; or
- c. trades in securities on a short-term basis for its own account and publicly sets prices for individual securities on a permanent basis or on request (*market maker*).

Art. 42 Legal form

A securities firm with its registered office in Switzerland must have the legal form of a commercial enterprise.

¹⁵ SR 172.021

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Art. 43 Foreign-controlled securities firms

The provisions of the Banking Act¹⁶ on foreign-controlled banks apply mutatis mutandis.

Art. 44 Tasks

¹ The securities firm may in particular:

- a. in the context of its activities under Article 41, manage accounts for the clients itself or at third parties for conducting securities transactions;
- b. store the securities of the clients itself or at third parties in its own name;
- c. on a commercial basis, take on securities issued by third parties, either on a firm or commission basis, and offer them publicly on the primary market;
- d. on a commercial basis, create derivatives itself, which it offers publicly on the primary market for its own account or for the account of third parties.

² Within the scope of its activities under paragraph 1 letter a, it may receive deposits from the public on a commercial basis.

³ The Federal Council may set requirements for the use of deposits from the public.

Art. 45 Minimum capital and collateral

¹ Securities firms must have the required minimum capital at their disposal, which must be fully paid up.

² FINMA may allow securities firms in the form of partnerships to provide adequate collateral instead of the minimum capital.

³ The Federal Council shall regulate the amount of the minimum capital and the collateral.

Art. 46 Capital adequacy, liquidity and risk diversification

¹ Securities firms must, individually and on a consolidated basis, have adequate capital and liquidity.

² They must diversify their risks appropriately.

³ The Federal Council shall regulate the risk diversification requirements. It shall set the amount of the capital based on the business activity and the risks.

⁴ In justified cases, FINMA may grant a relaxation of the requirements, provided that the protective purpose of this Act is not impaired, or may order a tightening thereof.

⁵ FINMA is authorised to issue implementing provisions.

¹⁶ SR 952.0

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Art. 47 Additional capital

The provisions of the Banking Act¹⁷ on additional capital shall apply mutatis mutandis.

Art. 48 Accounting

The provisions of the Banking Act¹⁸ on accounting shall apply mutatis mutandis.

Art. 49 Group and conglomerate supervision

¹ Two or more companies are deemed to be a securities firm dominated financial group:

- a. if at least one of them operates as a securities firm;
- b. they operate primarily in the financial sector; and
- c. they form an economic unit or other circumstances suggest that one or more of the companies under individual supervision is de jure or de facto obliged to provide assistance to group companies.

² A financial group under paragraph 1 is deemed to be a securities firm dominated financial conglomerate if it is primarily active in securities trading and if it is made up of at least one insurance company of significant economic importance.

³ The provisions of the Banking Act¹⁹ on financial groups and financial conglomerates shall apply mutatis mutandis.

Art. 50 Duty to keep records

The securities firm must keep a record of the orders and transactions it carries out, providing all the details necessary for overseeing and supervising its activity.

Art. 51 Duty to report

¹ The securities firm must report all of the information necessary for transparent securities trading.

² FINMA regulates which information is to be reported to whom and in what form.

³ If necessary in order to achieve the purpose of this Act, the Federal Council may also impose a duty to report in accordance with paragraph 1 on persons and companies that buy and sell securities on a commercial basis, but without the involvement of a securities firm. The companies must have an audit company admitted by the Federal Audit Oversight Authority (FAOA) in accordance with Article 9a paragraph 1 of the Audit Oversight Act

¹⁷ SR 952.0

¹⁸ SR 952.0

¹⁹ SR 952.0

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of 16 December 2005²⁰ (AOA) audit their compliance with this duty to report and are obliged to provide information to FINMA.

Section 5 Branch Offices

Art. 52 Duty to obtain authorisation

¹ Authorisation from FINMA is required for financial institutions with their registered office abroad (foreign financial institutions) wishing to establish a branch office in Switzerland, in which they will have employees who on a permanent and commercial basis in or from Switzerland will on behalf of the applicable foreign financial institution:

- a. manage assets or act as a trustee;
- b. perform asset management for collective investment schemes or occupational benefits schemes;
- c. trade in securities;
- d. conclude transactions; or
- e. manage client accounts.

² Foreign fund management companies may not establish branch offices in Switzerland.

³ The Federal Council may conclude treaties which provide that financial institutions from the countries to the treaty may open a branch office without authorisation from FINMA if both parties to the treaty recognise the respective regulations of the activities of financial institutions and the supervisory measures as equivalent.

Art. 53 Authorisation conditions

FINMA issues an authorisation to the foreign financial institution for the establishment of a branch office if:

- a. the foreign financial institution:
 1. is adequately organised and has sufficient financial resources and qualified staff to operate a branch office in Switzerland,
 2. is subject to appropriate supervision, which includes the branch office, and
 3. proves that the company name of the branch office can be entered in the commercial register;
- b. the competent foreign supervisory authorities:
 1. do not have any objections to the establishment of a branch office,

²⁰ SR 221.302

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2. undertake to immediately notify FINMA if circumstances arise which could seriously jeopardise the interests of investors or clients, and
3. provide FINMA with administrative assistance;
- c. the branch office:
 1. meets the conditions set forth in Articles 9-11 and has regulations in place that precisely describe the scope of its business and provide for a management or operational organisation corresponding to its business activities, and
 2. meets the additional authorisation conditions set forth in Articles 54-57.

Art. 54 Reciprocity requirement

FINMA may make the issuance of an authorisation to establish a branch office of a foreign financial institution contingent on the countries in which the foreign financial institution has its registered office or in which the foreign nationals with qualifying participation have their place of residence granting reciprocal rights.

Art. 55 Financial groups and financial conglomerates

If a foreign financial institution is part of a financial group or financial conglomerate, FINMA may make the issuance of an authorisation contingent on it being subject to appropriate consolidated supervision by foreign supervisory authorities.

Art. 56 Collateral

FINMA may make the issuance of an authorisation to establish a branch office of a foreign asset manager, a foreign trustee or a foreign manager of collective assets contingent on the provision of collateral if necessary for the protection of investors or clients.

Art. 57 Exemption

The Federal Council may provide that branches offices of foreign financial institutions are exempt from compliance with certain provisions of this Act.

Section 6 Representative Offices**Art. 58** Duty to obtain authorisation

¹ Authorisation from FINMA is required for foreign financial institutions if they have employees in Switzerland who on their behalf on a permanent and commercial basis in

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or from Switzerland are active in ways other than those under Article 52 paragraph 1, in particular if such employees forward client orders to them or representing them for advertising or other purposes.

² Foreign fund management companies may not establish representative offices in Switzerland.

³ The Federal Council may conclude treaties which provide that financial institutions from the countries to the treaty may open a representative office without authorisation from FINMA if both parties to the treaty recognise the respective regulations of the activities of financial institutions and the supervisory measures as equivalent

Art. 59 Authorisation conditions

¹ FINMA issues an authorisation to the foreign financial institution for the establishment of a representative office if:

- a. the foreign financial institution is subject to appropriate supervision;
- b. the competent foreign supervisory authorities do not have any objections to the establishment of a representative office;
- c. the persons responsible for managing the business provide a guarantee of irreproachable business conduct.

² FINMA may also make the issuance of an authorisation contingent on the country in which the foreign financial institution has its registered office granting reciprocal rights.

Art. 60 Exemption

The Federal Council may provide that representation offices of foreign financial institutions are exempted from compliance with certain provisions of this Act.

Chapter 3 Supervision

Art. 61 Responsibility

¹ Asset managers and trustees are supervised by FINMA with the involvement of a supervisory organisation in accordance with FINMASA²¹. The consolidated supervision by FINMA in accordance with Articles 30 and 49 of this Act or the financial market acts under Article 1 paragraph 1 FINMASA remains reserved.

² The ongoing supervision of asset managers and trustees is carried out by supervisory organisations authorised by FINMA.

³ Managers of collective assets, fund management companies and securities firms are supervised by FINMA.

²¹ SR 956.1

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⁴ If there is no supervisory organisation under paragraph 1, supervision is carried out by FINMA.

Art. 62 Auditing of asset managers and trustees

¹ Asset managers and trustees must commission an audit firm in accordance with Article 43k paragraph 1 FINMASA²² to conduct an annual audit, except to the extent such audit is conducted by the applicable supervisory organisation.

² The supervisory organisation may increase the audit period to a maximum of four years, taking into account the activities of the supervised person or entity and the associated risks.

³ In the years in which no periodic audit is conducted, the asset managers and trustees shall provide a report to the supervisory organisation regarding the compliance of their business activities with the legal requirements. This report may be submitted in a standardised form.

Art. 63 Auditing of managers of collective assets, fund management companies, securities firms, financial groups and financial conglomerates

¹ Managers of collective assets, fund management companies, securities firms, financial groups and financial conglomerates must:

- a. commission an audit firm licensed by the FAOA in accordance with Article 9a paragraph 1 AOA²³ to conduct an annual audit in accordance with Article 24 FINMASA²⁴;
- b. have their annual accounts and, if applicable, their consolidated accounts audited by an audit firm subject to state oversight in accordance with the ordinary auditing principles set out in the Code of Obligations (CO)²⁵.

² FINMA may provide for an audit period of several years for the audit under paragraph 1 letter a, taking into account the activities of the supervised persons or entities and the associated risks.

³ In the years in which no periodic audit is conducted, the financial institutions under paragraph 1 shall provide a report to FINMA regarding the compliance of their business activities with the legal requirements. This report may be submitted in a standardised form.

⁴ A fund management company shall commission the same audit company for itself and for the investment funds managed by it.

⁵ FINMA may itself conduct direct audits.

²² SR 956.1

²³ SR 221.302

²⁴ SR 956.1

²⁵ SR 220

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Art. 64 Information and reporting duty for transfers of significant functions

¹ If a financial institution transfers significant functions to other persons, they are subject to the information and reporting duty under Article 29 FINMASA²⁶.

² FINMA may audit these persons directly at any time.

Art. 65 Suspension of voting rights

FINMA may suspend the voting rights attached to shares or units held by qualified participants in order to enforce Article 11 paragraphs 3 and 5.

Art. 66 Liquidation

¹ If FINMA withdraws its authorisation from a financial institution, this shall cause dissolution in the case of legal entities and general and limited partnerships and deletion in the commercial register in the case of sole proprietorships.

² FINMA shall designate the liquidator and oversee its activity.

³ The provisions of insolvency law remain reserved.

Art. 67 Insolvency measures

¹ The provisions of the Banking Act²⁷ on measures in the event of risk of insolvency and on bank bankruptcy shall apply mutatis mutandis to fund management companies and securities firms.

² The provisions of the Banking Act on deposit protection and dormant assets shall apply mutatis mutandis to securities firms.

Chapter 4 Responsibility and Criminal Provisions**Section 1 Responsibility****Article 68** Responsibility

¹ The responsibility of the financial institutions and their bodies is governed by the provisions of the CO²⁸.

² Where a financial institution delegates the performance of a task to a third party, it shall be liable for any damage caused by such third party, unless it proves that it exercised due care as appropriate under the circumstances in the selection, instruction and supervision of such third party. The Federal Council may regulate the supervision requirements.

²⁶ SR 956.1

²⁷ SR 952.0

²⁸ SR 220

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³ A fund management company shall be liable for the actions of persons to whom it has delegated tasks in accordance with Article 35 paragraph 1 as if they were its own actions.

Section 2 Criminal Provisions

Art. 69 Violation of professional secrecy

¹ A custodial sentence not exceeding three years or a monetary penalty shall be imposed on any person who wilfully:

- a. discloses a secret entrusted to him or her in his or her capacity as a director or officer, employee, agent or liquidator of a financial institution or of which he or she become aware in such capacity;
- b. attempts to induce a violation of professional secrecy;
- c. discloses to other persons a secret disclosed to him or her in violation of letter a or exploits such a secret for his or her own benefit or for the benefit of others.

² A custodial sentence not exceeding five years or a monetary penalty shall be imposed on any person who obtains a pecuniary advantage for himself or herself or for another person through an action specified in paragraph 1 letters a or c.

³ A fine of up to CHF 250,000 shall be imposed on persons who commit the foregoing acts through negligence.

⁴ Any person who violates professional secrecy remains liable to prosecution after termination of the official or employment relationship or exercise of the profession.

⁵ The federal and cantonal provisions relating to the duty to testify and the duty to provide information to the authorities remain reserved.

⁶ The cantons are responsible for the prosecution and adjudication of acts under this provision.

Art. 70 Violation of the provisions on protection against confusion and deception and of the notification duties

A fine of up to CHF 500,000 shall be imposed on any person who wilfully:

- a. violates the provision on protection against confusion and deception (Art. 13);
- b. fails to provide FINMA with the prescribed notifications in accordance with Articles 11 and 15 or does so incorrectly or too late.

Art. 71 Violation of the recordkeeping and reporting duties

A fine of up to CHF 500,000 shall be imposed on any person who wilfully:

- a. violates the duty to keep records under Article 50;
- b. violates the duty to report under Article 51.

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Chapter 5 Final Provisions**Art. 72** Implementing provisions

The Federal Council shall enact the implementing provisions.

Art. 73 Repeal and amendment of other legislation

The repeal and amendment of other legislation is set out in the Annex.

Art. 74 Transitional provisions

¹ Financial institutions with authorisation for their respective activity in accordance with a financial market act under Article 1 paragraph 1 FINMA²⁹ at the time this Act enters into force do not require a new authorisation. They must meet the requirements of this Act within one year of its entry into force.

² Financial institutions which did not require authorisation under prior legislation, but which will require authorisation upon the entry into force of this Act, shall report to FINMA within six months of the entry into force of this Act. Within three years of its entry into force, they must satisfy the requirements of this Act and submit a request for authorisation. They may continue their activities until such time as a decision on the authorisation has been taken, provided that they are affiliated with a self-regulatory organisation under Article 24 of the Anti-Money Laundering Act of 10 October 1997³⁰ (AMLA) and supervised by it with regard to their compliance with the relevant obligations.

³ Asset managers and trustees that commence their activities within one year of the entry into force of this Act must report immediately to FINMA and meet the authorisation conditions with the exception of Article 7 paragraph 2 from the commencement of their activities. No later than one year after FINMA has approved a supervisory organisation in accordance with Article 43a FINMASA, they must affiliate with such a supervisory organisation and submit a request for authorisation. They may continue their activities until such time as a decision on the authorisation has been taken, provided that they are affiliated with a self-regulatory organisation under Article 24 AMLA and supervised by it with regard to their compliance with the relevant obligations.

⁴ In special cases, FINMA may extend the deadlines set out in paragraphs 1 and 2.

Art. 75 Referendum and commencement

¹ This Act is subject to an optional referendum.

² The Federal Council determines the date on which this Act comes into force.

³ This Act shall only come into force together with the FinSA³¹.

²⁹ SR 956.1

³⁰ SR 955.0

³¹ SR ...; BB1 2018 3615

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⁴ The Federal Council may bring the following provisions into force early:

- a. the amendments to the Federal Act of 23 March 2001 on Consumer Credit³² (Annex, no. 2);
- b. Article 9a paragraph 4^{bis} AOA³³ (Annex, no. 3);
- c. Articles 1a, 1b, 47 paragraph 1 letter a and 52a Banking Act³⁴ (Annex, no. 14);
- d. Article 2 paragraph 2 letter a AMLA³⁵ (Annex, no. 15);
- e. Articles 4, 5 and 15 paragraph 2 letter a FINMASA³⁶ (Annex, no. 16).

⁵ Article 15 paragraph 2 letter a FINMASA shall apply until the entry into force of Article 15 paragraph 2 letter a^{bis} FINMASA (Annex, no. 16).

Council of States, 15 June 2018
The President: Karin Keller-Sutter
The Secretary: Martina Buol

National Council, 15 June 2018
The President: Dominique de Buman
The Secretary: Pierre-Hervé Freléchoz

Date of publication: 26 June 2018³⁷

Expiration of the referendum period: 4 October 2018

³² SR 221.214.1
³³ SR 221.302
³⁴ SR 952.0
³⁵ SR 955.0
³⁶ SR 956.1
³⁷ BBl 2018 3557

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