

FINMA brings more clarity to transition regimes for financial service providers

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Introduction

New regulations for financial institutions, including portfolio managers and trustees

New regulations for financial service providers, including financial advisers

Transitory regimes

Introduction

The new Financial Services Act (FinSA) and Financial Institutions Act (FinIA) came into force on 1 January 2020 together with their implementing ordinances (the Financial Services Ordinance (FinSO), the Financial Institutions Ordinance (FinIO) and the Supervisory Organisations Ordinance (SOO)) passed by the Federal Council. The Swiss Financial Market Supervisory Authority's (FINMA's) implementing regulations are expected to be published in Q3 2020 in order to presumably enter into force in Q4 2020.

These laws oblige FINMA to license several new bodies like supervisory organisations responsible for supervising portfolio managers and trustees as well as registration bodies responsible for maintaining client advisory registers. The Federal Finance Department (FDF) must recognise new ombudsman's offices responsible for mediation proceedings between clients and financial service providers.

At the same time, the new laws impose a complex transitory regime for financial market participants with many transitory periods, some of which are triggered with regard to only the first respective bodies licensed by FINMA or the FDF.

New regulations for financial institutions, including portfolio managers and trustees

The FinIA standardises the licensing and ongoing business requirements for financial institutions that manage third-party assets, in particular:

- (external) portfolio managers;
- trustees;
- managers of collective assets;
- fund management companies; and
- securities firms (formerly securities brokers or dealers).

The managers of individual assets (so-called 'portfolio managers') and trustees are subject to only prudential supervision as of 1 January 2020 under the FinIA and are subject to less stringent requirements than those for managers of collective assets, fund management companies and securities firms. In particular, a person eligible to accept assets on a commercial basis in the name or on behalf of clients or who manages the assets of collective investment schemes or occupational pension funds below the defined thresholds must be licensed by FINMA as a portfolio manager and join a supervisory organisation for ongoing supervision. A person who, on a commercial basis manages or disposes of a separate fund for the benefit of a beneficiary or for a specified purpose based on the instrument creating a trust must be licensed by FINMA as a trustee and join a supervisory organisation for ongoing supervision.

Persons applying to a supervisory organisation for membership and to FINMA for a portfolio manager's or trustee's licence must meet a number of licensing conditions with regard to personal (eg, a fit and proper test for board members and executive management, experience and education), financial (eg, minimum capital and business plan) and organisational (eg, the separation of functions, internal control systems, risk and compliance and IT) elements.

Supervisory organisations are responsible for ensuring compliance by portfolio managers and trustees with licensing requirements and ongoing day-to-day supervision. Supervisory organisations are licensed and supervised by FINMA. Enforcement measures will be taken directly by FINMA based solely on a respective notification from a supervisory organisation.

New regulations for financial service providers, including financial advisers

Client advisers at the point of sale of financial service providers which are not licensed, registered, recognised or approved under Article 3 of the Swiss Financial Market Supervisory Act (FinMaSa) (eg, financial advisers, licensed foreign financial service providers providing financial services to Swiss retail clients or non-licensed foreign financial service providers providing financial services to Swiss clients) must register with a client advisory register according to FinSA. The so-called 'registration bodies' maintain a register of advisers as defined in the FinSA. These registration bodies will check that the client advisers have completed the necessary training and further education measures. FINMA is responsible for authorising the registration bodies, but not for their prudential supervision.

According to FinSA, all financial service providers must comply with FinSA's duties of conduct (eg, information and documentation duty, best execution duty and the suitability and appropriateness test) and organisational requirements (eg, disclosure of retrocession payments, dealing with conflicts of interest and employee transactions). In particular, they must join an ombudsman office. Unlike the self-regulatory ombudsman system that previously existed for banks, under the FinSA affiliation to an ombudsman's office has become obligatory for all financial service providers that provide their services in Switzerland. Further, ombudsman's offices must be recognised by the FDF. As in the past, ombudsman's offices should settle disputes regarding legal claims between clients and the financial service providers in mediation proceedings.

Transitory regimes

Portfolio managers and trustees already active before 2020 who have become subject to an authorisation requirement will have to:

- notify FINMA within six months of the FinIA coming into force (ie, by 30 June 2020);
- join a supervisory organisation; and
- file for a licence with FINMA within three years of FinIA coming into force (ie, until 31 December 2022).

This electronic notification process as well as the licensing and licensing amendment process is processed electronically via FINMA's new survey and application platform (the [EHP-platform](#)). All forms and information for submitting or changing a notification or application are stored thereon. Confirmation of affiliation with a supervisory organisation can be uploaded as an appendix to the licensing application. FINMA licensed the first two supervisory organisations on 6 July 2020 and informed that 2,066 portfolio managers and trustees were seeking a licence.

Financial advisers, licensed foreign financial service providers providing financial services to Swiss retail clients or non-licensed foreign financial service providers providing financial services to Swiss clients must register with a client advisory register within six months of FINMA granting the first licence to a registration body maintaining the client advisory register, which will come into effect on 20 July 2020. Therefore, such registration must be made by 19 January 2021 at the latest.

According to FinSA, financial service providers must join an ombudsman office within six months upon the FDF's recognition of the first ombudsman office, which took place on 24 June 2020. Therefore, the transitory period will last until 23 December 2020.

Overview of transitory regime

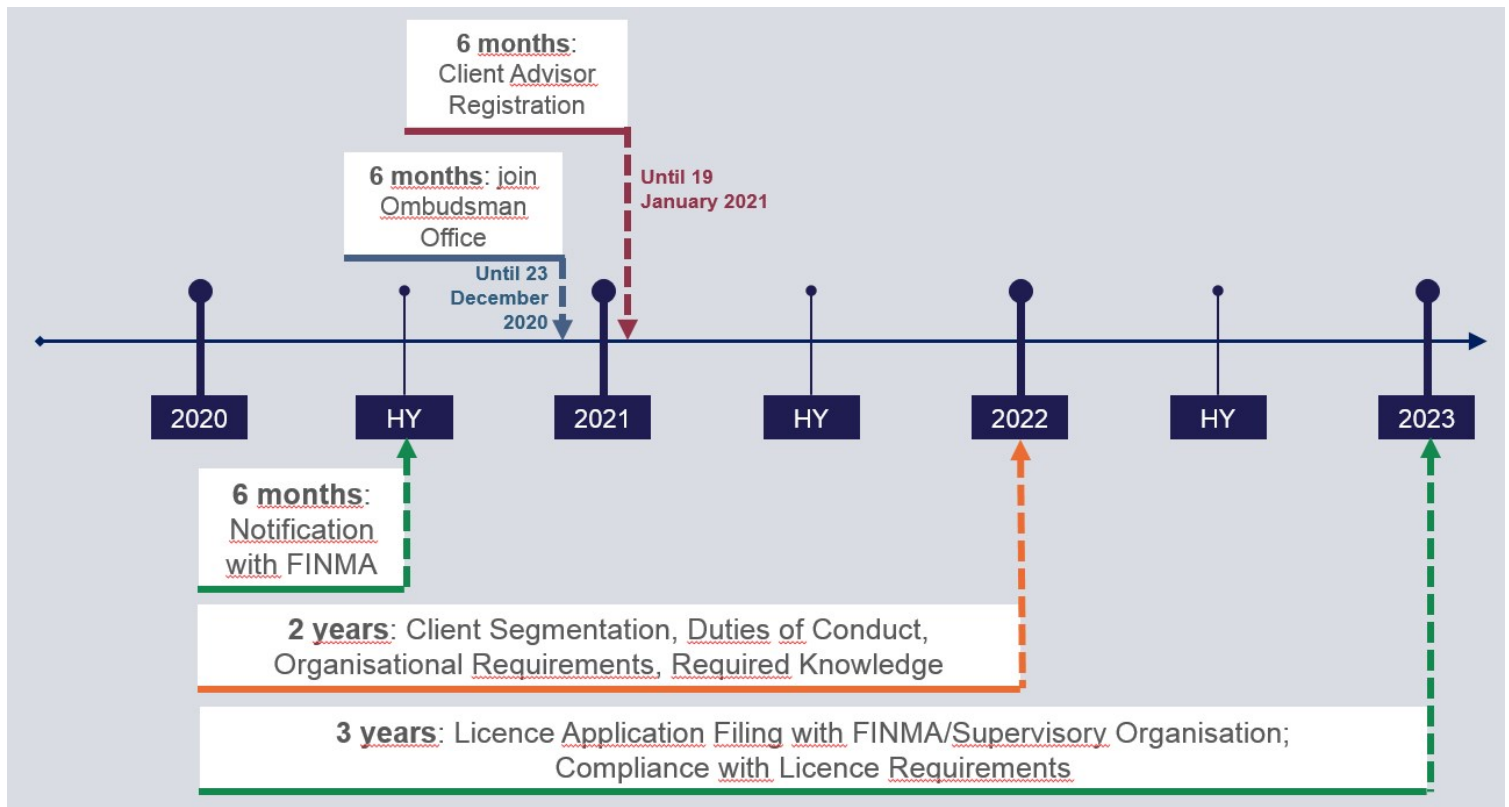
AUTHORS

Alexander Vogel



Reto Luthiger





For further information on this topic please contact [Alexander Vogel](mailto:alexander.vogel@mll-legal.com) or [Reto Luthiger](mailto:reto.luthiger@mll-legal.com) at Meyerlustenberger Lachenal by telephone (+41 44 396 91 91) or email (alexander.vogel@mll-legal.com or reto.luthiger@mll-legal.com). The Meyerlustenberger Lachenal website can be accessed at www.mll-legal.com.

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