

# FDF proposes key changes to FinSO and FinIO

27 September 2019 | Contributed by [Meyeralustenberger Lachenal](#)

## Legal background Key changes

This article provides a brief summary of the Federal Department of Finance's (FDF's) proposed changes to the draft Financial Services Ordinance (FinSO) and Financial Institutions Ordinance (FinIO) and an overview of the new legislation's key features. The Federal Council will make the final decision on the wording of the ordinances and their entry into force in November 2019.

### Legal background

The Financial Services Act (FinSA) and Financial Institutions Act (FinIA) will create uniform competitive circumstances for financial intermediaries and increase client protection. The FinSA encompasses code of conduct requirements with which financial service providers must comply at the point of sale. Further, it sets out provisions for prospectus duties and requires a clearly worded key information document for financial instruments. On the other hand, the FinIA standardises the authorisation rules for financial service providers.

The Federal Council has issued three ordinances that contain the implementing provisions for the FinSA and FinIA – namely:

- the FinSO;
- the FinIO; and
- the Supervisory Organisation Ordinance (SOO).

The FinSO stipulates financial service providers' duties to provide advice and information and includes provisions on their organisation, as well as the new register of client advisers, client documentation and ombudsman services. Moreover, the FinSO contains implementing provisions regarding prospectuses and key information documents, which should make it easier for clients to compare different financial instruments.

The FinIO governs the licensing requirements and obligations for and supervision of financial institutions. Asset managers of individual assets and trustees – who are now subject to prudential supervision – are subject to less stringent requirements than managers of collective assets, fund management companies and securities dealers (now referred to as 'securities firms').

The SOO expands the licensing requirements and activities for the newly introduced supervisory organisations.

The Federal Council submitted draft versions of the FinSA and FinIA to Parliament in November 2015. On 15 June 2018 Parliament adopted both bills in a final vote.

The FDF will ask the Federal Council to bring the FinSA, FinIA and the Federal Council's implementing ordinances into force on 1 January 2020. A two-year transitional period is anticipated for implementation.

### Key changes

On 9 September 2019 the FDF published a list of key amendments to the draft FinSO and FinIO. While the Federal Council's final decision on the wording of the ordinances remains to be seen, there are strong indications that it will follow the FDF's proposal.

The key amendments to the draft implementing ordinances proposed by the FDF are outlined below.

#### **FinSO**

The term 'financial service' – specifically, the one-off purchase and sale of financial instruments – has been adjusted; the reference to "intermediation" activities in the definition has been deleted.

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Moreover, the negative list of financial services in Article 3 of the FinSO has been extended. As such, corporate finance and M&A activities are now clearly exempted.

Regarding the rules of conduct, financial service providers are no longer obliged to inform customers of changes and need not register for foreign client advisers from licenced foreign institutions if they provide financial services to professional and institutional clients. In addition, the draft FinSO clarifies that key information documents relating to execution-only transactions must be made available if they can be found with reasonable effort.

A significant and welcome change in the draft FinSO is that key information documents for collective investment schemes can be written in English.

Further, the regulations on advertising have been abolished for unauthorised financial instruments and those which do not comply with a customer profile. However, it cannot be ruled out that a similar prohibition may already result from other general provisions on investor protection, such as the Federal Act on Unfair Competition.

### **FinIO**

For corporate treasury and trustees in particular, the draft FinIO clarifies the exemptions regarding family or economic ties, as well as of the management of assets within the framework of a specially regulated mandate (eg, guardianship or testamentary execution).

As regards collective investment management, the draft explicitly outlines that the delegation of tasks may also be performed by asset managers below the *de minimis* thresholds set out in Article 24(2) of the FinIO.

Moreover, the revised FinIO sets higher thresholds for the Financial Market Supervisory Authority to request the appointment of an independent body to:

- manage, supervise and control asset managers and trustees; and
- separate risk management and internal controls from operational activities.

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