

New licensing requirement for investment managers

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Introduction

The Financial Institutions Act (FinIA) came into force on 1 January 2020. It is crucial that the top management bodies of independent and external investment managers which manage the portfolios of individuals recognise whether a licensing obligation exists and whether appropriate measures must be initiated, as they are responsible for compliance with and the implementation of licensing obligations.

Unauthorised (illegal) financial market activities can trigger criminal proceedings by the Federal Department of Finance (FDF), as well as enforcement proceedings by the Swiss Financial Market Supervisory Authority (FINMA). In the worst-case scenario, it can lead to bans on entering certain professions for individuals and to the liquidation of the company. In addition, there is also the possibility of liability actions against members of the company's board of directors.

This article provides an overview of the following considerations for the board and management bodies of financial service providers:

- the authorisation requirements;
- the authorisation process; and
- the resulting organisational and personnel implications in connection with the new investment manager licence.

Licensing obligations

In principle, an investment manager must obtain a licence from FINMA in accordance with the FinIA if it disposes of its clients' assets in the name and for the account of its clients by means of a power of attorney. There are exceptions for investment managers with:

- fewer than 20 clients;
- a gross income of less than Sfr50,000; and
- less than Sfr5 million in assets under management.

The authorisation is linked to requirements on the organisation of the investment manager.

The investment manager can choose between the legal form of:

- a sole proprietorship;
- a commercial company; and
- a cooperative.

The persons responsible for the management and administration must provide a guarantee of a proper business activity. There must be two (exceptionally one) managing directors with more than five years' professional experience and appropriate training. If the investment manager has 10 or more full-time positions and gross revenues of more than Sfr5 million, FINMA may require the appointment of a senior management body that is independent of the management, such as a board of directors in a corporation.

Further, the investment manager must have in place risk management and internal control systems, including a compliance function, which is independent of the revenue-generating activities. However, this can be handled

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flexibly – for example, in the case of two managing persons, each with their own business area, the control structure can be designed in such a way that they supervise each other. If the risk profile of the business activities is low and there are no more than five full-time employees or if the annual gross income is less than Sfr2 million, the independence of risk management and internal control is not required. However, if the gross income exceeds Sfr10 million, an independent internal audit must be provided. Risk management and compliance can be outsourced to third parties. Even in this case, the expertise and human resources necessary for the selection, instruction, monitoring and risk management of the third party must remain with the investment manager.

Special attention should also be paid to compliance with professional secrecy (similar to bank client confidentiality), which now also applies to licensed investment managers and may require major adjustments to internal processes and organisation.

Finally, a minimum capital of Sfr100,000 is required. The equity capital must always amount to at least one-quarter of the fixed costs of the last annual financial statement, but cannot exceed Sfr10 million.

Planning of licence application project

Once the existence of a licensing requirement has been established, it is advisable to carry out a gap analysis as a first step based on:

- the specific level of organisation;
- the size of the company; and
- the amount of assets under management in order to determine the need for action.

Depending on the size and type of the business, it is advisable to set up an internal project with a corresponding budget. Within the framework of such a project, planning must be made for the creation of new positions, especially in the area of compliance, and the commission of external service providers in some cases.

The preparation for filing a licence application is largely self-explanatory. It can also be submitted online. However, for more complex situations, it is recommended that external expertise be sought in order to ensure that the licence filing process runs smoothly.

Takeaways

In connection with the new licensing requirement, investment managers should consider taking the following actions in any case:

- analysing the licensing requirement;
- conducting a gap analysis to determine the need for action;
- planning the licensing project with corresponding budgeting for project organisation and implementation work, including new personnel resources; and
- consulting with external experts in more complex cases or if there are uncertainties.

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