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

of 15 June 2018 (Status as of 1 August 2021)

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*The Federal Assembly of the Swiss Confederation,*

based on Articles 95 and 98 paragraphs 1 and 2 of the Federal Constitution<sup>1</sup>,  
and having considered the Federal Council Dispatch of 4 November 2015<sup>2</sup>,  
*decrees:*

### **Chapter 1 General Provisions**

#### **Section 1 Subject Matter, Purpose and Scope of Application**

**Art. 1** Subject matter and purpose

<sup>1</sup> This Act governs the requirements for acting as a financial institution.

<sup>2</sup> Its purpose is to protect the investors and clients of financial institutions and ensure the proper functioning of the financial market.

**Art. 2** Scope of application

<sup>1</sup> Financial institutions within the meaning of this Act are as follows, irrespective of their legal form:

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

<sup>2</sup> This Act does not apply to:

- a. persons who manage solely the assets of persons with whom they have business or family ties;

AS 2018 5247

<sup>1</sup> SR 101

<sup>2</sup> BBl 2015 8901

- b. persons who manage assets solely within the context of employee participation schemes;
- c. lawyers, notaries and their auxiliaries insofar as their activity is subject to professional confidentiality in accordance with Article 321 of the Swiss Criminal Code<sup>3</sup> or Article 13 of the Lawyers Act of 23 June 2000<sup>4</sup>, as well as the legal entities into which these 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 pension schemes and other occupational pension institutions (occupational pension schemes), employer-sponsored foundations (employer-sponsored welfare funds); employers who manage the assets of their occupational pension schemes; employer and employee associations which manage the assets of their association schemes;
- g. social security institutions and compensation funds;
- h. insurance companies as defined in the Insurance Supervision Act of 17 December 2004<sup>5</sup>;
- i. public insurance institutions in accordance with Article 67 paragraph 1 of the Federal Act of 25 June 1982<sup>6</sup> on Occupational Old Age, Survivors' and Invalidity Pension Provision;
- j. banks pursuant to the Banking Act of 8 November 1934<sup>7</sup> (BankA).

### Art. 3 Commerciality

Within the meaning of the present Act, the criterion of a commercial basis is deemed satisfied by an independent economic activity pursued on a permanent, for-profit basis.

### Art. 4 Group parent companies and significant group companies

<sup>1</sup> The following are subject to the insolvency law 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;
- b. those group companies which have their registered office in Switzerland and perform significant functions for activities which require authorisation (significant group companies).

<sup>3</sup> SR 311.0

<sup>4</sup> SR 935.61

<sup>5</sup> SR 961.01

<sup>6</sup> SR 831.40

<sup>7</sup> SR 952.0

<sup>2</sup> The Federal Council shall set the criteria for assessing significance.

<sup>3</sup> FINMA shall identify significant group companies and keep a publicly accessible list of said companies.

## **Section 2 Common Provisions**

### **Art. 5 Duty to obtain authorisation**

<sup>1</sup> Financial institutions under Article 2 paragraph 1 require authorisation from FINMA.

<sup>2</sup> They may be entered in the commercial register only after authorisation has been granted.

<sup>3</sup> Financial institutions in accordance with Article 2 paragraph 1 letter c that are already subject to other equivalent official supervision in Switzerland are exempt from the duty to obtain authorisation.

### **Art. 6 Authorisation chain**

<sup>1</sup> Authorisation to operate as a bank within the meaning of the BankA<sup>8</sup> also authorises an entity to operate as a securities firm, a manager of collective assets, a portfolio manager and a trustee.

<sup>2</sup> Authorisation to operate as a securities firm under Article 41 letter a also authorises an entity to operate as a manager of collective assets, a portfolio manager and a trustee.<sup>9</sup>

<sup>3</sup> Authorisation to operate as a fund management company also authorises an entity to operate as a manager of collective assets and a portfolio manager.

<sup>4</sup> Authorisation to operate as a manager of collective assets also authorises an entity to operate as a portfolio manager.

### **Art. 7 Authorisation conditions**

<sup>1</sup> Any party that meets the conditions set out in this section and the specific conditions that apply to individual financial institutions is entitled to authorisation.

<sup>2</sup> Portfolio managers and trustees submitting an application for authorisation are required to provide proof that they are subject to supervision by a supervisory organisation in accordance with Article 43a of the Financial Market Supervision Act of 22 June 2007<sup>10</sup> (FINMASA).

<sup>8</sup> SR 952.0

<sup>9</sup> Amended by No I 7 of the FA of 25 Sept. 2020 on the Adaptation of Federal Law to Developments in Distributed Ledger Technology, in force since 1 Aug. 2021 (AS 2021 33, 399; BBl 2020 233).

<sup>10</sup> SR 956.1

<sup>3</sup> The Federal Council may define additional authorisation conditions if this is necessary for implementing recognised international standards.

**Art. 8** Change in facts

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

<sup>2</sup> If the changes are of material significance, the financial institution must obtain prior authorisation from the supervisory authority in order to pursue its activity.

**Art. 9** Organisation

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

<sup>2</sup> It shall identify, measure, control and monitor its risks, including legal and reputational risks, and organise effective internal controls.

<sup>3</sup> The Federal Council shall set the minimum organisational requirements to be satisfied by financial institutions, taking into account their different business activities and sizes as well as the risks.

**Art. 10** Place of management

<sup>1</sup> The financial institution must effectively be managed from Switzerland. General directives and decisions within the context of group supervision are excluded if the financial institution forms part of a financial group that is subject to appropriate consolidated supervision by foreign supervisory authorities.

<sup>2</sup> The persons entrusted with managing the financial institution must be resident in a place from which they may effectively exercise such management.

**Art. 11** Guarantee of irreproachable business conduct

<sup>1</sup> The financial institution and the persons responsible for its administration and management must provide a guarantee of irreproachable business conduct.

<sup>2</sup> Moreover, the persons responsible for the administration and management of the financial institution must enjoy a good reputation and have the specialist qualifications required for their functions.

<sup>3</sup> 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.

<sup>4</sup> Persons who directly or indirectly hold at least 10% of the share capital or votes or who can significantly influence its business activity in another manner are deemed to be qualified participants in a financial institution.

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

<sup>6</sup> 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.

<sup>7</sup> Portfolio managers and trustees are exempt from the requirements of paragraphs 5 and 6.

<sup>8</sup> Qualified participants in portfolio managers and trustees are permitted to perform management duties

#### **Art. 12** Public offer of securities on the primary market

Persons operating primarily in the financial sector may perform the following activities only if they have authorisation as a securities firm as defined in this Act or as a bank in accordance with the BankA<sup>11</sup>:

- a. underwriting securities issued by third parties and offering these to the public on a primary market on a commercial basis;
- b. creating derivatives in the form of securities and offering these to the public on the primary market on a commercial basis.

#### **Art. 13** Protection against confusion and deception

<sup>1</sup> The name of the financial institution must not lead to confusion or deception.

<sup>2</sup> The terms «portfolio manager», «trustee», «manager of collective assets», «fund management company» or «securities firm» may be used, alone or in compound terms, in the company name, in the description of its business purpose or in commercial documents only if the corresponding authorisation has been obtained. The foregoing is without prejudice to Article 52 paragraph 3 and Article 58 paragraph 3.

#### **Art. 14** Delegation of tasks

<sup>1</sup> Financial institutions may delegate a task solely to third parties that possess the necessary skills, knowledge and experience and that have the required authorisations. They shall carefully instruct and supervise the appointed third parties.

<sup>2</sup> FINMA may make the delegation of investment decisions to a person located abroad subject to an agreement on cooperation and information exchange between FINMA and the competent foreign supervisory authority, in particular if such an agreement is required under the other country's legislation.

#### **Art. 15** International business

A financial institution must notify FINMA before:

- a. establishing, acquiring or closing a foreign subsidiary, branch or representation;

<sup>11</sup> SR 952.0