# Draft Financial Institutions Act and Draft Financial Services Act: new prudential requirements for independent asset managers

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The Swiss Federal Council has opened an unprecedented legal chapter in the area of financial services by publishing on 27 June 2014 two draft laws: the Financial Institutions Act (FinIA) and the Financial Services Act (FinSA). The FinSA provides for new rules governing both the provision of financial services and the offering of financial instruments. The FinIA, on the other hand, governs the supervision of all financial services providers, in particular those carrying out an asset management activity.

One of the major innovations brought by the FinIA is that independent asset managers shall be subject to a licensing and prudential supervision regime. This change marks the end of a Swiss exception in the area of asset management. It targets around 2,300 players with around 560 billion of assets under management, ie, ten per cent of the market share of asset management. It has a dual purpose: strengthening client protection; and creating a level playing field by setting up comparable competitive conditions between providers offering the same type of services. More generally, it aims at bringing Swiss law on financial services in line with international regulatory standards, in particular those applied in the European Union, with a view to allow Swiss providers access to the European market.

The authority that shall supervise asset managers is not yet defined: it could either be the FINMA, or a supervisory organisation especially created for asset managers on the basis of the American model of the Financial Industry Regulatory Authority (FINRA).

Asset managers of collective investment schemes, provided their assets under management exceed a certain threshold (CHF100 or 500 million for private equity funds of funds), as well as asset managers of Swiss pension funds shall be subject to strengthened obligations. On the other hand, unlike under MiFID, investment advisers may continue to carry out their activities without a licence, even though they shall comply with the new rules of conduct set forth in the FinSA.

Another important innovation introduced by the FinSA and already known under MiFID 2 relates to the topic of 'inducements', which has triggered a vigorous debate in Switzerland since the Supreme Court's landmark decision of 2006. Under the draft proposal, only asset managers who make use of a sufficient range of financial instruments offered on the market with regard to the global offer related to the type of financial instrument concerned, and who do not receive inducements, or pass on the inducements received to their clients, may designate themselves as independent.

Although the outlines of the new authorisation regime proposed for asset managers are yet to be specified through implementing ordinances, it already appears that this new regime will have a substantial impact on independent asset managers.

Most of the 2,300 asset managers operating in Switzerland have fewer than five employees and around 50 per cent of them have only one or two employees. Even if it is difficult to estimate the costs of future regulation, they will probably weigh particularly heavily on small structures. The adaptation of the organisation of asset managers to the new regulatory requirements shall mobilise most of these costs.

The draft laws will be the object of harsh debates before Parliament and could undergo significant amendments. However, this regulatory paradigm shift is ongoing and will have a major impact on independent asset managers. The costs triggered by the latter points out to a strong consolidation of the industry within the next three years. The FinSA and the FinIA are expected to enter into force in early 2017.