



## Main changes introduced by the newly adopted Swiss financial services regime for portfolio managers

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The new legislative package regarding the provision of financial services in Switzerland has finally been adopted and is expected to take effect on 1 January 2020. As anticipated, portfolio managers active in Switzerland must now prepare to be subject to a supervisory regime and comply with new regulatory duties.

Nearly three years after the publication of the Federal Council's position paper on the Financial Services Act ('FinSA') and the Financial Institutions Act ('FinIA'), these acts were passed by the Swiss Parliament on 15 June 2018. Both laws, along with their enabling legislation, are expected to take effect on 1 January 2020.<sup>[1]</sup>

Together with the Financial Market Infrastructure Act (FMIA), which took effect on 1 January 2016, these two acts are part of the Swiss financial market legislation reform designed to harmonise Swiss law with European legislation (Markets in Financial Instruments Directive 2004/39/EC ('MiFID II'), Markets in Financial Instruments (MiFIR) and the Prospectus Directive). Their main purpose is to enhance the protection of investors and clients of financial institutions, ensure the proper functioning of the Swiss financial market, create a level playing field with respect to the regulatory framework of financial services and reinforce the competitiveness of the Swiss financial centre.

Portfolio managers (independent investment managers of individual client assets) will be particularly affected by the implementation of this new set of laws in that it will subject them to a prudential supervision regime that is not provided for under the current system, as well as to new regulatory duties.

The main changes introduced by the FinIA are indeed that portfolio managers, together with trustees and managers of occupational benefits schemes' assets, will now be required to obtain a licence from the Swiss Financial Market Supervisory Authority (FINMA) in order to carry on their activities and will be subject to the day-to-day prudential supervision of supervisory bodies authorised by the FINMA. Portfolio managers already active at the time of the entry into force of the FinIA will, however, benefit from a transitional regime: they will have to declare themselves to the supervisory authority within six months from the entry into force of the FinIA, and will have a three-year period following the implementation of this new law to apply for a licence. Until the FINMA decides on their application, they will be authorised to carry on with their activities.

In terms of financial resources, FinIA will further require portfolio managers to have minimum capital of CHF100,000, entirely in cash, permanently on hand, professional liability insurance or appropriate security, and equity covering at least one-quarter of the fixed costs mentioned in the annual accounts of the financial institution concerned, but CHF10m at most.

Foreign financial institutions may also need to obtain a licence from the FINMA if they employ persons acting as portfolio managers on a continuous and commercial basis in Switzerland.

Portfolio managers will also be affected by the FinSA. This law requires financial services providers interested in offering financial services and products in Switzerland to comply with various regulatory duties such as, inter alia: (1) disclosure of general and specific information to their clients regarding all important matters concerning themselves, in particular, their experience and remuneration, as well as the financial services and instruments offered; (2) prior verification that a specific service or instrument is suitable or appropriate for a particular client; and (3) documentation of all relevant information regarding the financial services agreed with or provided to the client and reporting of this information to the clients, on request. Should they give their clients personal recommendations regarding financial instruments, portfolio managers may further be required to provide their clients with a fact sheet and/or prospectus. The extent of their duties will vary depending notably on the categorisation of their clients as non-professional, professional or institutional.

It is worth noting that the majority of these rules merely codify what is already the current practice of many financial institutions, as well as the standards imposed by the codes of ethics of self-regulatory organisations and professional associations. To the extent that they constitute public law provisions, the prudential rules of conduct set out in FinSA will, moreover, not directly interfere with the contractual relationship between financial services providers and their clients. In this context, a civil judge will continue to rule on the contractual relationship on the basis of private law provisions but will be able to recur to the prudential rules of the FinSA to specify these provisions.

The FinSA will affect both Swiss and foreign service providers that offer financial services or products to Swiss investors on a cross-border basis. In particular, these foreign service providers will have to list their advisers in an appropriate registry.

Overall, the prudential regime imposed by this new legislative package appears flexible relative to the European regulation and, contrary to what the industry feared, its implementation should not represent a disproportionate burden for portfolio managers. However, foreign portfolio managers were allowed until now to provide financial services (investment management services and advisory services) on a cross-border basis without being affected by Swiss regulation. This will no longer be the case because, as mentioned above, they will have to register their advisers and ensure that they comply with Swiss requirements, in particular, the rules of conduct. Requirements for foreign financial services providers are expected to enter into force on 1 January 2020.

## Note

<sup>[1]</sup> The texts of the FinSA and FinIA as at 15 June 2018 are available on the website of the Swiss financial markets supervisor (FINMA): **[www.finma.ch/en/authorisation/fidleg-und-finig](http://www.finma.ch/en/authorisation/fidleg-und-finig)** (**<http://www.finma.ch/en/authorisation/fidleg-und-finig>**) accessed 6 August 2018.