

The investment advisor according to FinSA and FinIA

Introduction

The Swiss Financial Institutions Act (hereinafter "**FinIA**"), the Swiss Financial Services Act (hereinafter "**FinSA**") and the associated ordinances have been in force since 1st January 2020.

With the FinSA and FinIA in force, participants and their activities in the financial market sector are now subject to a licensing requirement, which under the previous law could be exercised without a licence.

Investment advice vs. asset management

The investment advisor is on the threshold of being an asset manager (see separate GHR FactSheet). However, he is distinct from the latter in that he performs a purely advisory function for the customer. In contrast to the asset manager, he has no power of disposal over his customers' assets but advises them and makes non-binding recommendations for or against a transaction. The transaction takes place is the sole decision of the customer.

Market place Switzerland

The question of the applicability of the legal provisions is decided on the basis of the geographic market on which the investment advisor's activity has an impact. If a foreign investment advisor provides his services to customers in Switzerland, his activities are subject to the FinSA, regardless of whether he has a branch in Switzerland or is active exclusively according to the fly-in-fly-out model.

Registration obligation according to the FinSA

According to the provisions of the FinSA, investment advisors are considered as customer advisors and are not subject to the same licensing requirements as asset managers. However, they are obliged to be entered in the register of advisors.

The register of advisors is maintained by one or more registration offices that are authorised and supervised by the

Swiss Financial Market Supervisory Authority ("**FINMA**").

An exemption to the registration requirement exists for those investment advisors who exclusively advise FINMA-regulated customers: Banks, insurance companies, fund management companies, asset managers, securities houses and investment funds.

Registration requirements

The entry in the register of advisors of a registration office requires that the investment advisor

- has sufficient knowledge of the rules of conduct according to the FinSA and the specialist knowledge required for investment advice;
- has taken out a professional indemnity insurance or another equivalent financial security;
- is affiliated with an ombudsman service;
- faces no criminal conviction relevant to financial market law; and
- was not subject to a professional ban by FINMA.

Accession deadlines

Within 6 months of the approval of the first ombudsman service and registration office, investment advisors must join the same ombudsman service and register with the registration office. Both the ombudsman service and the registration office are themselves approved and monitored by FINMA.

FINMA has currently not approved either an ombudsman service or a registration office, which is why the follow-up period has not yet begun. However, the first approvals of such offices by FINMA are expected soon.

Conclusion and recommendation

The obligation to register investment advisors goes nowhere near as far as the licensing obligation for asset managers. Nevertheless, it must not be underestimated or even neglected.

We recommend that the investment advisors concerned prepare themselves now for connection to the ombudsman service and subsequent registration by formalising and, if necessary, adapting internal processes to meet the requirements. Half a year is a short period. Moreover, especially at the beginning, longer processing times on the part of the registration offices are to be expected.

We are happy to support you, both in the preparation of the necessary documentation to meet the accession requirements and as your partner in the accession procedure with the ombudsman service and registration offices.

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