

## The asset manager according to FinSA and FinIA

### Introduction

The Financial Institutions Act (hereinafter "**FinIA**"), the Financial Services Act (hereinafter "**FinSA**") and the associated ordinances have been in force since 1<sup>st</sup> 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.

### Asset management

The asset manager typically manages individual security portfolios. In doing so, he acquires and sells financial instruments on behalf and for the account of his customers, advises his customers on their financial planning and makes recommendations and manages the portfolio acquired in this way.

If the activity is limited to the issuing of recommendations, without decision-making power to implement the recommendations accepted by the customer, the financial market participant qualifies as a so-called investment advisor (see separate GHR FactSheet). As such he is subject to registration, but not to authorisation.

### Authorisation requirement

Anyone who, on the basis of an order, can dispose commercially of a customer's assets in the name and for the account of the customer is deemed to be an asset manager requiring a licence.

Excluded from the licence are asset managers who exclusively manage assets

- of persons (natural or legal) with whom they have economic or family links;

- within the framework of employee participation plans; or
- who are active only within the scope of a legal mandate.

### Asset manager vs. managers of collective assets

The main difference between asset managers and managers of collective assets is the nature of the assets under management: The former typically manage portfolios of individuals, while the latter manage collective assets (funds, investment foundations, etc.). Apart from that, the licensing requirements do not differ fundamentally, which is why the explanations on asset managers - with the exception of increased capital adequacy requirements - can also be applied to managers of collective assets.

A manager of collective investment schemes within the meaning of the Collective Investment Schemes Act ("**CISA**") must exceptionally "only" meet the requirements of an asset manager and not the stricter ones of a manager of collective assets if the collective investment scheme is open exclusively to qualified investors (professional customers pursuant to FinSA or MiFID II) and the collective investment scheme either comprises managed assets

- including leverage of not more than CHF 100 million; or
- up to CHF 500 million and provides for a prohibition of leverage and a lock-up of at least 5 years.

A further exception is the management of pension funds if the total assets do not exceed CHF 100 million and, in the field of mandatory insurance, a maximum of 20 percent of the assets of an individual pension fund.

### Conditions of approval

Only companies that are domiciled in Switzerland and entered in the commercial register in the form of a sole pro-

prietorship, a commercial company (Ltd., LLC) or a cooperative are permitted, when they fulfil the following conditions:

The asset manager has appropriate rules for corporate governance and is organised in such a way that he can fulfil his legal obligations. This includes in particular the following:

- Transparent and complete organisational documents;
- Guarantors who have a good reputation and professional competence;
- Clear and efficient corporate governance, both internally and towards subcontractors;
- Sufficient financial guarantees (minimum capital, own funds, etc.);
- Adequately resourced risk management and effective internal control;
- Affiliation with a recognised ombudsman service and a recognised supervisory organisation; and
- Prudential supervision either by the supervisory organisation itself, or by an auditor.

The licence itself is issued by the Swiss Financial Market Supervisory Authority ("FINMA"). Accession to an ombudsman's service and a supervisory organisation is a prerequisite for authorisation, but not the authorisation itself.

### Deadlines

Asset managers who do not require a licence under the old law are obliged to report to FINMA by 30<sup>th</sup> June 2019 at the latest. Asset managers taking up business activities on 1<sup>st</sup> January 2020 must report immediately to FINMA.

As soon as a supervisory organisation has been approved by FINMA, the asset manager must join such a supervisory organisation within one year and submit the application for approval to FINMA. The first supervisory organisations are expected to be approved in the first half of 2020.

In exceptional cases, the deadlines may be extended by FINMA. During the ongoing licensing procedure, the asset manager may continue his activity.

### Conclusion and recommendation

Asset managers affected should contact FINMA immediately and, as soon as possible, start the admission and licensing process without delay.

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