

## Switzerland: New Laws on Financial Institutions

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### Key Points

- Following the 2008 crisis, Switzerland launched a legislative project to create uniform competitive conditions for financial intermediaries and improve client protection.
- Swiss Parliament adopted the FinIA on 15 June 2018.
- The FinIA is part of the new financial market architecture and sets the authorization conditions and organisational requirements for financial institutions for prudential (official) supervision.
- On 24 October 2018, the Swiss Federal Counsel initiated the consultation on ordinances containing the implementing provisions for the FinIA.
- The FinIA is to enter into force together with the implementing ordinances on 1 January 2020.

### The background of the proposed rules

Following the 2008 crisis, Switzerland launched a legislative project to create uniform competitive conditions for financial intermediaries and improve client protection. The Financial Institutions Act (FinIA) is part of the new financial market architecture, which covers four areas:

- Supervision, governed by the Financial Market Supervision Act, which entered into force on 1 January 2009
- Infrastructure, governed by the Financial Market Infrastructure Act, which entered into force on 1 January 2016
- Services (Financial Services Act)
- Supervised entities (FinIA).

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# Key points of the FinIA

## General provisions

The FinIA provides for a uniform authorisation and ongoing supervision regime of financial institutions. The purpose is to protect the investors and clients of financial institutions, namely portfolio managers, trustees, managers of collective assets (pension funds and investment schemes), fund management companies and securities firms. In order to achieve a level playing field, the FinIA sets out common provisions applying to all financial institutions. In particular, all of the above-mentioned financial institutions will be under prudential supervision by the Swiss Financial Market Supervisory Authority (FINMA) and will have to establish appropriate organisation and guarantee an irreproachable activity. In addition, specific additional requirements apply for each type of financial institution.

In principle, a single family office will not require a licence under the FinIA.

## Asset managers and trustees

Until now, independent asset managers and trustees have been subject to only the rules regarding anti-money laundering. The FinIA introduces prudential supervision over them. An asset manager is a person who is mandated to manage assets on a commercial basis in the name of, and on the account of, clients and who may dispose of clients' assets. A trustee is a person who manages or disposes of a separate fund on a commercial basis for the benefit of a beneficiary, or for a specified purpose, based on a restricted grant given in the instrument creating a trust. Asset managers and trustees must have risk management and internal controls to ensure compliance with the legal and internal provisions. These tasks can be delegated to a qualified external third party.

## Managers of collective assets

A manager of collective assets is a person who manages assets on a commercial basis in the name of, and on behalf of, collective investment schemes or pension funds. The FinIA provides a supervision similar to the supervisory regime provided under the Swiss Collective Investment Schemes Act.

## Entry into force

The FinIA introduces a licencing duty and supervision over independent asset managers and trustees. Portfolio managers and trustees with a physical presence in Switzerland will also require an authorisation from the FINMA.

Already licenced financial institutions are not required to obtain new authorisation. They must, however, comply with the new requirements within one year upon the FinIA's entry into force.

Existing financial institutions that will be newly subject to authorisation have to report to FINMA within six months of the FinIA entering into force. They will have to comply with the FinIA's requirements and submit an authorisation application within three years of its entry into force.

Financial institutions should carefully consider how they will be affected by the new provisions.

It is currently expected that the FinlA is to enter into force together with its implementing ordinances on 1 January 2020.

Please contact us if you would like to discuss in more detail.