

What will change for asset managers with FIDLEG/FINIG?

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Formally, the new financial market regulations, the «Financial Services Act» (FIDLEG) and the «Financial Institutions Act» (FINIG), entered into force on January 1, 2020. However, in fact not a lot has changed on that date for Swiss asset managers. In the following, the changes that will have to be implemented over time will be explained.

FINIG primarily regulates the new licensing requirement for independent asset managers. Below you will find a list of the steps you are supposed to take to find out whether you require a license, and if so, what has to be done to obtain one.

1. Check whether you are subject to authorization under FINIG

First of all, you have to clarify whether your company needs to obtain a license by FINMA under FINIG. As an independent asset manager – meaning, if you manage the assets of third parties within the scope of a power of attorney – you are subject to FINIG's authorization requirement. Previously, asset managers of individual clients were not subject to any licensing requirement and only had to be affiliated to a self-regulatory organization (SRO) or monitored by FINMA for money laundering purposes.

Nevertheless, it is possible that you as an asset manager may still not require a license. This is the case for entities who manage solely the assets of persons with whom they have business or family ties (e.g. group companies); as well as if your annual gross return is less than CHF 50'000.-, if you hold business relations with less than 20 counterparties or if your assets under management are below CHF 5 million.

If none of these exceptions apply to you, you have a period of three years to fulfill the requirements needed for the license and to apply for it. However, as shown in the following, you must notify FINMA by mid-2020.

2. If a license is required: Notification to FINMA

If you are subject to authorization, you must notify FINMA within six months of FINIG coming into force (i.e. by June 30, 2020). FINMA has set up the survey and application platform (EHP) to register as an asset manager. The use of this website is free of charge. After the online [registration](#) with your e-mail address you will be invited to enter your personal data (name, country of residence) and your mobile phone number to activate your account. After entering the code which you will receive by SMS, your account is created. Go to «request access» and enter your further information to be able to use the platform. As relevant legal basis select «FINIG – Financial Institution Act» and as registration select «Asset Manager». Furthermore, it is recommended to tick the box «enter representative» and to register another person, who will be able to represent you. After FINMA has granted you access, you can process all notifications directly online via the EHP.

3. Apply for a FINMA license

However, notification to EHP is not sufficient to obtain a license, which has to be requested until 2023. Only after meeting certain requirements the license will be granted by FINMA. Amongst others, one of the requirements is to be affiliated with a supervisory organization (SO), which is responsible for the ongoing supervision of asset managers once they got a FINMA license. To this date, FINMA has not approved any SO yet. It is, therefore, in fact not possible to join a SO and therefore impossible to submit an application at the moment. It is recommended, due to the absence of a SO, to currently focus on the other requirements, which have to be met in order to apply, so that the submission of the application after approval of a SO runs smoothly. The first SO is expected to be approved by September 2020.

In addition to the affiliation to a SO, FINIG requires compliance in terms of organization, risk management, financial guarantees and assurance of proper business conduct. To the extent these aspects are not further specified by law, they are assessed based on a risk-based approach: the type and number of clients, assets under management, investment strategies and products used, and the number and types of services offered are considered for this purpose.

a) Organization (Art. 9 Abs. 1 and 20 FINIG)

In order to show that the organization of your company meets FINMA's requirements, you must submit a description of your business activities, covering both the factual and geographical aspects (generally, by submitting the organizational regulations, overview on internal controlling system, internal regulation on conflicts of interest, composition of the board). Among others, the following aspects must be met:

The management should present at least 40 hours of training, five years of professional experience and be domiciled in a place from where the business activity can be carried out (Art. 10 FINIG).

Furthermore, there should be at least two qualified managing directors, so that the business can be continued properly in case one manager becomes unable to carry out his or her duties. Exceptions are possible, in particular in the case of small companies.

Outsourcing shall only be made to qualified third parties and even then only with proper instruction and supervision. The establishment of letterbox companies should be avoided.

b) Risk management (Art. 9 Abs. 2 and 21 FINIG)

Risk management should cover the entire business activity and risks must be identified, assessed, managed and monitored. Risk management must be led by qualified persons (internal or external) and it has to be independent from the business side. Someone who is part of the risk management team must therefore not be involved in tasks that they are supposed to monitor. The relevant risk management policies are generally institutionalized by way of internal regulations of the asset manager (e.g. regarding anti-money laundering, client categorization, cross-border business) and shall be enclosed to the licensing application.

c) Financial guarantees (Art. 22 and 23 FINIG)

To be able to meet the financial guarantees, a minimum capital of CHF 100'000.- must be available. This must be maintained at all times. In addition, at least $\frac{1}{4}$ of the fixed costs (in particular personnel costs, operating expenses, amortization) of the last annual financial statement must be available as equity capital, but no more than CHF 10 million is required. If no annual financial statement has been made, this amount can also be calculated based on the tax return or the business plan. Professional liability insurances can be credited up to half of the equity capital to the extent they cover the risks of the business model.

d) Guarantee of irreproachable business conduct (Art. 11 FINIG)

The financial institution itself, as well as its management board and its board of directors, must provide a guarantee of proper business conduct. In addition, the management board, the board of directors and qualifying investors must have a good reputation and the necessary qualifications. Furthermore, qualified participations of third parties must not be detrimental to the business activity. For the license application, generally the CV, a copy of the passport and extracts of the criminal registry and the debt enforcement registry are required. Moreover, information on ongoing or previous court proceedings, qualifying participations and other mandates is required.

Conclusion

Although FINIG entered into force at the beginning of 2020 and will result in fundamental changes for asset managers, generous transition periods will allow sufficient time to adapt to the new regulatory framework. This applies not only to FINIG, but also to FIDLEG: The Financial Services Act (FIDLEG) primarily defines the conduct rules which financial institutions must comply with (client segmentation, appropriateness and suitability test, best execution, etc.). The majority of the new obligations under FIDLEG are subject to a transitional period of two years, i.e. abidance with such provisions is mandatory as of 2022. Therefore, for asset managers the only immediate first step is to register with EHP and notify FINMA accordingly - we will keep you regularly informed about everything else in the coming months.

Questions?

If you have any questions about FIDLEG/FINIG, please do not hesitate to contact us at jessica.gauch@leximpact.ch or lea.hungerbuehler@leximpact.ch.