

Client Alert



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An Introduction to the New Financial Institutions Act (FINIG)

Major changes concerning the regulation of financial institutions are currently in progress in Switzerland. The proposed Financial Institutions Act (FINIG) is intended to constitute one of the pillars of the future Swiss financial market architecture. The FINIG will have a strong impact on external asset managers with respect to license requirements and supervision. This client alert provides a brief overview on the expected key points of the new law and indicates its potential effects on financial services providers in Switzerland.

1. Introduction

In the Client Alert of June 17, 2014, we informed on the key points of the proposed Financial Services Act (FFSA) and the Financial Market Infrastructure Act (FMIA). On June 27, 2014, a draft of the new FINIG was published and is now in the hearing and examination phase. The FINIG will be a third pillar of the future Swiss financial market architecture (besides the FFSA and the FMIA). To some extent, the FINIG will consolidate provisions that are currently set out in the Banking Act (BA), the Stock Exchange Act (SESTA) and the Collective Investment Schemes Act (CISA). However, there are also new rules that will be implemented in the FINIG.

2. The FINIG

■ Scope of the new Regulation

The proposed law targets all financial institutions that provide asset management services of any kind. All such financial institutions shall be subject to prudential supervision in order to create a level playing field. In particular, asset managers, qualified asset managers (a new category introduced by the FINIG comprising asset managers of collective investment schemes and Swiss occupational benefits schemes), fund management companies, securities dealers, and banks will be subject to the new law. The licensing requirements and the supervisory regime for all these financial services providers will be governed in one act – the FINIG.

■ Key Points

The FINIG is expected to cover the following key points:

1. Adoption of the current rules regarding financial institutions that already require a license under existing law
2. Harmonized supervision of all financial institutions
3. Licensing requirements
4. Organizational requirements (assurance of proper business conduct)
5. Regulation of asset managers
6. Introduction of new categories „qualified asset manager“ and „securities house“
7. Due diligence obligations regarding tax compliance of accepted assets
8. Insolvency-law measures
9. Criminal provisions
10. Transitory provisions

■ Indicative Timetable

The following timetable represents an indicative schedule for the enactment of the FINIG. Financial institutions should be aware that the legislative process may differ from the dates set out below.

Timetable regarding the implementation of the FINIG										
2014		2015				2016			2017	
Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1
Hearing and examination phase (<i>Vernehmlassung</i>)		Preparation of the Federal Council's Message (<i>Botschaft</i>)	Submission of the Federal Council's Message (<i>Botschaft</i>)	Consideration 1 (National Council or Council of State)	Consideration 2 (National Council or Council of State)	Resolution of differences (<i>Differenzbereinigungsverfahren</i>)	-			Entering into effect of the FINIG

■ Possible Effects on Financial Services Providers

The FINIG will have an impact on all financial institutions. Qualified asset managers will be subjected to stricter requirements than „regular“ asset managers. External asset managers will presumably be obliged to apply for a license and become subject to prudential supervision of FINMA or another quasi-governmental supervisory authority. However, they may be able to benefit from a grandfathering clause and will, under certain conditions, not be subject to prudential supervision (i.e. if they exist since more than 15 years and do not accept new clients).

3. Conclusion

The FINIG represents a harmonized law for the regulation of financial institutions and contains some new rules. Financial services providers need to assess whether and to what extent their business will be affected. In particular, external asset managers are facing a changing landscape. Potentially, they will be required to apply for a regulatory license.

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