

*English is not an official language of the Swiss Confederation. This translation is provided for information purposes only and has no legal force.*

## **Ordinance on Financial Institutions (Financial Institutions Ordinance, FinIO)**

of 6 November 2019 (Status as of 1 January 2020)

---

*The Swiss Federal Council,*

based on the Financial Institutions Act of 15 June 2018<sup>1</sup> (FinIA),  
*ordains:*

### **Chapter 1    General Provisions Section 1    Subject Matter and Scope of Application**

**Art. 1**            Subject matter  
(Art. 1 and 72 FinIA)

This Ordinance governs:

- a. the authorisation conditions for financial institutions;
- b. the duties of the financial institutions;
- c. the supervision of the financial institutions.

**Art. 2**            Scope of application  
(Art. 2 FinIA)

This Ordinance applies to financial institutions operating in or from Switzerland.

**Art. 3**            Business ties  
(Art. 2 para. 2 let. a FinIA)

Companies or units of a group are deemed to have business ties insofar as they provide financial services or services in the capacity of trustee for other companies or units of the same group.

**Art. 4**            Family ties  
(Art. 2 para. 2 let. a FinIA)

<sup>1</sup> The following persons are deemed to have family ties with one another:

AS 2019 4633

<sup>1</sup> SR 954.1

- a. relatives by blood or by marriage in the direct line;
- b. relatives by blood or by marriage up to the fourth degree in the collateral line;
- c. spouses and registered partners;
- d. coheirs and legatees from succession until completion of the division of estate or allocation of the legacy;
- e. remaindermen and remainderwomen and residuary legatees in accordance with Article 488 of the Swiss Civil Code<sup>2</sup> (CC);
- f. Persons living in a permanent life partnership with a portfolio manager or trustee.

<sup>2</sup> Family ties are deemed to exist insofar as portfolio managers manage assets or trustees manage in-house funds in favour of persons who have family ties with one another, if the portfolio managers or trustees are directly or indirectly controlled by:

- a. third parties who have family ties with these persons;
- b. a trust, a foundation or a similar legal construct set up by a person with family ties.

<sup>3</sup> Paragraph 2 also applies insofar as, in addition to the persons with family ties, institutions with a public or not-for-profit purpose are also beneficiaries.

#### **Art. 5** Employee participation schemes

(Art. 2 para. 2 let. b FinIA)

Employee participation schemes are deemed to be plans which:

- a. represent a direct or indirect investment in the company of the employer or in another company which by virtue of a majority of votes or by some other means is under uniform management with the company of the employer (group); and
- b. are directed at employees who at the time of the offer are not under notice.

#### **Art. 6** Legally regulated mandates

(Art. 2 para. 2 let. d FinIA)

Legally regulated mandates are in particular:

- a. an advance care directive in accordance with Articles 360–369 CC<sup>3</sup>;
- b. a representative deputyship to manage assets in accordance with Article 395 CC;
- c. a general deputyship in accordance with Article 398 CC;
- d. an executorship in accordance with Articles 517 and 518 CC;
- e. an estate administration in accordance with Articles 554 and 555 CC;

<sup>2</sup> SR 210

<sup>3</sup> SR 210

- f. an official liquidation in accordance with Articles 593–596 CC;
- g. a representation of heirs in accordance with Article 602 paragraph 3 CC;
- h. a bankruptcy administration in accordance with Articles 237 paragraph 2 and Article 240 of the Federal Act of 11 April 1889<sup>4</sup> on Debt Enforcement and Bankruptcy (DEBA);
- i. an administrative receivership in accordance with Article 295 DEBA;
- j. enforcement tasks under an ordinary composition agreement in accordance with Article 314 paragraph 2 DEBA;
- k. an appointment as liquidator under a composition agreement with assignment of assets in accordance with Article 317 DEBA;
- l. an appointment as investigating agent in accordance with Article 36 of the Financial Market Supervision Act of 22 June 2007<sup>5</sup> (FINMASA);
- m. a restructuring mandate in accordance with Article 28 paragraph 3 of the Banking Act of 8 November 1934<sup>6</sup> (BankA), Article 67 paragraph 1 FinIA and Article 88 paragraph 1 of the Financial Market Infrastructure Act of 19 June 2015<sup>7</sup> (FMIA);
- n. a bankruptcy liquidation in accordance with Article 33 paragraph 2 BankA, Article 67 paragraph 1 FinIA, Article 137 paragraph 3 of the Collective Investment Schemes Act of 23 June 2006<sup>8</sup> (CISA), Article 88 paragraph 1 FMIA and Article 53 paragraph 3 of the Insurance Supervision Act of 17 December 2004<sup>9</sup> (ISA);
- o. a liquidation in accordance with Article 23<sup>quinquies</sup> paragraph 1 BankA, Article 66 paragraph 2 FinIA, Article 134 CISA, Article 87 paragraph 2 FMIA and Article 52 ISA.

**Art. 7** Exemption  
(Art. 2 FinIA)

Where there are legitimate grounds for so doing, the Swiss Financial Market Supervisory Authority (FINMA) may fully or partially exempt managers of collective assets from the provisions of the FinIA and the present Ordinance if:

- a. the protective purpose of the FinIA is not impaired; and
- b. the management of collective assets has been delegated to them solely by the following persons:
  - 1. authorised parties in accordance with Article 2 paragraph 1 letters c and d as well as paragraph 2 letters f–i FinIA,

4 SR 281.1  
 5 SR 956.1  
 6 SR 952.0  
 7 SR 958.1  
 8 SR 951.31  
 9 SR 961.01

2. authorised parties in accordance with Article 13 paragraph 2 letters b–d CISA<sup>10</sup>, or
3. foreign companies which with regard to organisation and investor rights are subject to rules that are equivalent to the provisions of the FinIA and the CISA.

**Art. 8** Significant group companies

(Art. 4 para. 2 FinIA)

The functions of a group company are significant with respect to the activities which require authorisation if they are necessary for the continuation of important business processes, in particular in the areas:

- a. liquidity management;
- b. treasury;
- c. risk management;
- d. master data administration and accounting;
- e. personnel;
- f. information technology;
- g. trading and settlement;
- h. legal and compliance.

## Section 2 Common Provisions

**Art. 9** Authorisation application and duty to obtain authorisation

(Art. 5 and 7 FinIA)

<sup>1</sup> The financial institution shall submit an authorisation application to FINMA. The application shall contain all information and documents required to assess it, specifically information and documents on:

- a. the organisation, in particular on corporate governance and control as well as on risk management (Articles 9, 20, 21 and 33 FinIA);
- b. the place of management (Article 10 FinIA);
- c. the guarantee (Article 11 FinIA);
- d. tasks and the delegation of such tasks (Articles 14, 19, 26, 27, 34, 35 and 44 FinIA);
- e. minimum capital and collateral (Articles 22, 28, 36 and 45 FinIA);
- f. capital (Articles 23, 29, 37 and 46 FinIA);
- g. the ombudsman's office (Article 16 FinIA);

<sup>10</sup> SR 951.31

h. the supervisory organisation and the audit firm (Articles 61–63 FinIA).

<sup>2</sup> Insurance companies as defined in the ISA<sup>11</sup> are exempt from the duty to obtain authorisation as a manager of collective assets.

<sup>3</sup> Exemption from the duty to obtain authorisation as a trustee from FINMA can be granted to trustees which act exclusively as trustees for trusts which were established by the same person or in favour of the same family and which are held and monitored by a financial institution which possesses authorisation in accordance with Article 5 paragraph 1 or Article 52 paragraph 1 FinIA.

**Art. 10** Change in facts  
(Art. 8 para. 2 FinIA)

Changes of material significance for financial institutions in accordance with Article 8 paragraph 2 FinIA are in particular:

- a. changes in organisational and partnership documents;
- b. changes in the persons responsible for administration and management;
- c. changes in minimum capital and capital adequacy, in particular falling short of minimum requirements;
- d. facts which are likely to call into question the good reputation or the guarantee of irreproachable business conduct on the part of the financial institution or of the persons entrusted with management tasks as well as of owners of a qualified participation, specifically the initiation of criminal proceedings;
- e. facts which call into question prudent and sound business activity on the part of the financial institution owing to the influence of owners of a qualified participation.

**Art. 11** Form for submission  
(Art. 5, 7 and 8 FinIA)

<sup>1</sup> FINMA may determine the form for submission, specifically for the following documents:

- a. applications for authorisation from financial institutions and necessary documents;
- b. reports of changes in accordance with Article 8 FinIA and necessary documents.

<sup>2</sup> It may designate a third party as recipient of submitted documents.

**Art. 12** Organisation  
(Art. 9 FinIA)

<sup>1</sup> Financial institutions must define their organisation in their organisational principles.

<sup>11</sup> SR 961.01

<sup>2</sup> They must describe their area of business in factually and geographically precise terms in the principal documents. The business area and its geographical extent must be commensurate with the financial possibilities as well as with the operational organisation.

<sup>3</sup> Financial institutions must have personnel in place who are appropriately and suitably qualified to perform their business activities.

<sup>4</sup> Risk management must encompass all business activities and be organised in such a way that all the main risks can be identified, assessed, controlled and monitored.

### **Art. 13**            Guarantee

(Art. 11 FinIA)

<sup>1</sup> The application for authorisation for a new financial institution must contain in particular the following information and documentation on the persons responsible for administration and management in accordance with Article 11 paragraphs 1 and 2 FinIA as well as on the owners of a qualified participation in accordance with Article 11 paragraph 3 FinIA:

- a. natural persons:
  1. details of nationality, place of residence, qualified participations in the financial institution or in other companies and pending court and administrative proceedings,
  2. a curriculum vitae signed by the relevant person,
  3. references,
  4. an extract from the register of convictions and the debt collection register or a corresponding attestation;
- b. companies:
  1. the articles of association,
  2. an extract from the commercial register or a corresponding attestation,
  3. a description of business activities, the financial situation and, if applicable, the group structure,
  4. details of completed and pending court or administrative proceedings.

<sup>2</sup> The envisaged activity at the financial institution as well as the nature of the intended investments must also be taken into account when assessing the good reputation, the guarantee of irreproachable business conduct and the required specialist qualifications of the persons responsible for administration and management.

<sup>3</sup> Owners of a qualified participation must make a declaration to FINMA stating whether they hold the participation in question for their own account or on a fiduciary basis for third parties, and whether they have granted options or similar rights with respect to this participation.

<sup>4</sup> Securities firms must submit to FINMA within 60 days of the end of the financial year a list of all persons who hold a qualified participation in them. This list shall contain details on the identity and percentage holding of all qualified participants as at the relevant closing date, as well as any changes relative to the prior-year closing

date. In addition, the information and documentation set out in paragraph 1 is to be submitted for any qualified participants being reported for the first time.

<sup>5</sup> Persons connected through business ties or in any other manner who jointly hold at least 10% of the share capital or votes of the financial institution or persons jointly significantly influencing the business activities of the financial institution in another manner are deemed to be a qualified participant in accordance with Article 11 paragraph 4 FinIA.

**Art. 14** Public offer of securities on the primary market  
(Art. 12 FinIA)

<sup>1</sup> The question of what constitutes a public offer is determined on the basis of Article 3 letters g and h of the Financial Services Act of 15 June 2018<sup>12</sup> (FinSA).

<sup>2</sup> Offers to schemes and persons in accordance with Article 65 paragraphs 2 and 3 are not deemed public.

**Art. 15** Delegation of tasks  
(Art. 14 para. 1 FinIA)

<sup>1</sup> Tasks in accordance with Article 14 paragraph 1 FinIA are deemed delegated if financial institutions appoint a service provider to independently and permanently perform in full or in part a material task, thereby changing the circumstances underlying the authorisation.

<sup>2</sup> Material tasks are deemed to be:

- a. for portfolio managers and trustees: tasks in accordance with Article 19 FinIA;
- b. for managers of collective assets: tasks in accordance with Article 26 FinIA;
- c. for fund management companies: tasks in accordance with Article 32, Article 33 paragraph 4 and Article 34 FinIA;
- d. for securities firms: tasks in accordance with Articles 41 and 44 FinIA.

**Art. 16** Delegable tasks  
(Art. 14 para. 1 FinIA)

<sup>1</sup> Financial institutions may delegate to third parties only tasks in accordance with Article 14 paragraph 1 FinIA which do not need to be within the decision-making remit of the body responsible for management or for governance, supervision and control.

<sup>2</sup> Delegation must not impair the appropriateness of the operational organisation.

<sup>3</sup> The operational organisation is no longer deemed to be appropriate if a financial institution:

- a. does not have the necessary personnel resources and specialist knowledge to select, instruct and monitor the third party and manage the associated risks, or
- b. does not have the necessary rights to issue instructions to or control the third party.

**Art. 17** Delegation of tasks: responsibility and procedures

(Art. 14 para. 1 FinIA)

<sup>1</sup> The financial institutions remain responsible for the fulfilment of supervisory duties and when delegating tasks shall safeguard clients' interests.

<sup>2</sup> They shall agree with the third party in writing or in another form demonstrable via text which tasks are to be delegated. The following in particular are to be laid down in the agreement:

- a. the authorities and responsibilities;
- b. any powers of sub-delegation;
- c. the third party's duty to render account;
- d. the financial institutions' rights of control.

<sup>3</sup> Financial institutions shall lay down in their organisational principles the tasks delegated as well as details of the possibility of sub-delegation.

<sup>4</sup> Delegation is to be defined such that the financial institution, its internal auditors, the audit firm, the supervisory organisation and FINMA can inspect and review the delegated task.

**Art. 18** International business

(Art. 15 FinIA)

<sup>1</sup> The notification which a financial institution is required to submit to FINMA before engaging in activities abroad must contain all the information and documents needed to assess such activities, specifically:

- a. a business plan describing in particular the nature of the planned transactions and the organisational structure;
- b. the name and address of the office abroad;
- c. the names of the persons responsible for administration and management;
- d. the auditing firm;
- e. the name and address of the supervisory authority in the foreign state in which the registered office or domicile is located.

<sup>2</sup> Furthermore, the financial institution shall notify FINMA of:

- a. the discontinuation of business activities abroad;
- b. any material change in business activities abroad;
- c. a change in audit firm;



- d. a change in the supervisory authority in the foreign state in which the registered office or domicile is located.

## **Chapter 2 Financial Institutions**

### **Section 1 Portfolio Managers and Trustees**

#### **Art. 19 Commerciality** (Art. 3 and 17 FinIA)

<sup>1</sup> Portfolio managers and trustees are deemed to pursue their activities on a commercial basis and, within the meaning of anti-money laundering legislation, on a professional basis if they:

- a. thereby generate gross earnings of more than CHF 50,000 per calendar year;
- b. establish business relationships with more than 20 contractual partners per calendar year, each of which relationships is not limited to a once-only activity, or they maintain at least 20 such relationships per calendar year; or
- c. have unlimited power of disposal over assets belonging to others, which assets exceed CHF 5 million at any given time.

<sup>2</sup> Activities for schemes and persons in accordance with Article 2 paragraph 2 letters a, b, d and e FinIA are not factored into the assessment of commerciality.

<sup>3</sup> Paragraphs 1 and 2 do not apply to portfolio managers in accordance with Article 24 paragraph 2 FinIA.

#### **Art. 20 Additional authorisation** (Art. 6 FinIA)

<sup>1</sup> Portfolio managers also wishing to act as trustees require additional authorisation for this.

<sup>2</sup> Trustees also wishing to act as portfolio managers require additional authorisation for this.

#### **Art. 21 Entitlement to be subject to supervision by a supervisory organisation** (Art. 7 para. 2 FinIA)

<sup>1</sup> Portfolio managers and trustees are entitled to be subject to supervision by a supervisory organisation if their internal rules and their operational organisation ensure that the supervisory requirements are satisfied.

<sup>2</sup> A supervisory organisation can make subjection to supervision dependent on portfolio managers and trustees being required to maintain special statutory professional confidentiality.

**Art. 22** Change in facts  
(Art. 8 FinIA)

<sup>1</sup> Portfolio managers and trustees shall notify the supervisory organisation of any changes in the facts on which its authorisation is based. The supervisory organisation shall periodically forward the changes to FINMA.

<sup>2</sup> If authorisation is required in accordance with Article 8 paragraph 2 FinIA, FINMA will as part of its assessment hear the supervisory organisation.

**Art. 23** Organisation  
(Art. 9 FinIA)

<sup>1</sup> Two authorised signatories must sign jointly. Article 20 paragraph 2 FinIA remains reserved.

<sup>2</sup> Portfolio managers and trustees must be able to be represented by a person who has their place of residence in Switzerland. This person must be a member of the body responsible for management or of the body responsible for governance, supervision and control in accordance with paragraph 3. Article 20 paragraph 2 FinIA remains reserved.

<sup>3</sup> With reservation as to Article 20 paragraph 2 FinIA, FINMA may require the portfolio manager or trustee to appoint a body responsible for governance, supervision and control the majority of whose members are not members of the body responsible for management if:

- a. it has ten or more full-time positions or annual gross earnings of more than CHF 5 million; and
- b. the nature and scope of its activities so demand.

**Art. 24** Tasks  
(Art. 19 FinIA)

<sup>1</sup> The portfolio manager shall ensure that the assets entrusted to it for management are held in safekeeping, segregated per client, with a bank pursuant to the BankA<sup>13</sup>, a securities firm pursuant to the FinIA or other institution that is subject to supervision equivalent to that in Switzerland.

<sup>2</sup> It shall manage the assets on the basis of authorisation given in writing or in another form demonstrable via text. The authorisation must be limited to administrative acts. If the portfolio manager is entrusted with the provision of further services which require more far-reaching authorisations, it shall document the basis of these activities.

<sup>3</sup> Portfolio managers shall take measures to avoid a break-off of contact with clients and to prevent client relationships from becoming dormant. If a business relationship becomes dormant, the portfolio manager shall take suitable steps to ensure that dormant assets are delivered to beneficiaries.

<sup>13</sup> SR 952.0

<sup>4</sup> Paragraph 2 applies by analogy to trustees. Moreover, trustees must, within the framework of the law applicable to the trust:

- a. act in the best possible interests of beneficiaries and with the required level of skill, care and diligence;
- b. take appropriate organisational precautions to avoid conflicts of interest or disadvantages for beneficiaries as a result of conflicts of interest.

<sup>5</sup> If the rendering of additional services increases the risks to which portfolio managers and trustees are exposed, this must be taken into account within the scope of supervision (Articles 61 and 62 FinIA).

#### **Art. 25** Qualified managers

(Art. 20 FinIA)

<sup>1</sup> A qualified manager is deemed to satisfy the requirements for training and professional experience at the time of assuming management duties if she or he can furnish evidence of the following:

- a. five years of professional experience:
  1. in the case of portfolio managers, in portfolio management for third parties,
  2. in the case of trustees, within the framework of trusts; and
- b. training of at least 40 hours:
  1. in the case of portfolio managers, in portfolio management for third parties,
  2. in the case of trustees, within the framework of trusts.

<sup>2</sup> Where there are legitimate grounds for so doing, FINMA may grant exemptions from these requirements.

<sup>3</sup> Portfolio managers and trustees shall engage in regular continuing professional development to maintain the skills acquired.

<sup>4</sup> They shall take the necessary precautions to ensure the continuation of business operations in the event that the qualified manager is prevented from acting or dies. If third parties from outside the company are appointed, the clients must be informed accordingly. In all other respects, Article 14 FinIA shall apply.

#### **Art. 26** Risk management and internal control

(Art. 9 and 21 FinIA)

<sup>1</sup> Portfolio managers and trustees shall set out guidelines for the basic principles of risk management and define their risk tolerance.

<sup>2</sup> Risk management and internal control are not required to be independent of revenue-based activities if the portfolio manager or trustee:

- a. is a company which has five or fewer full-time positions or annual gross earnings of less than CHF 2 million; and
- b. adheres to a non-high-risk business model.

<sup>3</sup> The thresholds in accordance with paragraph 2 letter a must be achieved in two of three past business years or be provided for in the business planning.

<sup>4</sup> If the portfolio manager or trustee has a body responsible for governance, supervision and control in accordance with Article 23 paragraph 3 and generates annual gross earnings of more than CHF 10 million, FINMA may also require that internal auditors who are independent of management be appointed where the nature and scope of activity so dictate.

#### **Art. 27** Minimum capital

(Art. 22 para. 1 FinIA)

<sup>1</sup> The minimum capital requirements of companies limited by shares and of partnerships limited by shares must be met with share and participation capital, those of limited liability companies must be met with nominal capital, and those of cooperatives must be met with cooperative capital.

<sup>2</sup> The minimum capital requirements of partnerships and sole proprietorships must be met with:

- a. the capital accounts;
- b. the limited partnership contributions;
- c. the assets of partners with unlimited liability.

<sup>3</sup> The capital accounts and assets of partners with unlimited liability may only be counted towards the minimum capital requirement if a declaration is provided to the effect that:

- a. in the event of liquidation, bankruptcy or probate proceedings, such accounts and assets shall be subordinate to the claims of all other creditors; and
- b. the portfolio manager or trustee undertakes:
  1. neither to net such accounts and assets with its own claims nor to secure them with its own assets,
  2. without the prior consent of the supervisory organisation, not to reduce any of the capital components as defined in paragraph 2 letters a and c to the extent that the minimum capital requirement is no longer met.

<sup>4</sup> The declaration in accordance with paragraph 3 is irrevocable. It must be made in writing or in another form demonstrable via text and filed with the supervisory organisation.

<sup>5</sup> FINMA may permit partnerships and sole proprietorships to provide, instead of minimum capital, collateral in the form of a bank guarantee or a cash deposit in a blocked account with a bank, said collateral being equivalent to the minimum capital in accordance with Article 22 paragraph 1 FinIA.

#### **Art. 28** Level of capital adequacy

(Art. 23 FinIA)

<sup>1</sup> The level of capital adequacy stipulated in Article 23 FinIA must be maintained at all times.

<sup>2</sup> The following are fixed costs in accordance with Article 23 paragraph 2 FinIA:

- a. personnel expenses;
- b. operating business expenses;
- c. depreciation of investment assets;
- d. expenses for valuation adjustments, provisions and losses.

<sup>3</sup> The portion of personnel expenses which is exclusively dependent on the business result or in relation to which no legal entitlement exists is to be deducted from personnel expenses.

<sup>4</sup> Where there are legitimate grounds for so doing, FINMA may ease requirements.

**Art. 29**                      Qualifying capital  
(Art. 23 FinIA)

<sup>1</sup> Legal entities may count the following as qualifying capital:

- a. the paid-up share and participation capital in the case of a company limited by shares and a partnership limited by shares, the nominal capital in the case of a limited liability company and the cooperative capital in the case of a cooperative;
- b. the general statutory and other reserves;
- c. retained earnings;
- d. the net profit for the current financial year after deduction of the estimated share in the profit distribution, provided an audit review or an audit pursuant to the CO<sup>14</sup> of the interim or annual accounts confirms the assurances stipulated;
- e. hidden reserves, provided they are assigned to a separate account and designated as capital and their qualifiability as such is confirmed on the basis of the audit in accordance with Article 62 FinIA.

<sup>2</sup> Partnerships and sole proprietorships may count the following as qualifying capital:

- a. the capital accounts and assets of partners with unlimited liability if the conditions under Article 27 paragraph 3 are satisfied;
- b. the limited partnership contribution.

<sup>3</sup> Portfolio managers and trustees may also count as qualifying capital any loans granted to them, including bonds with a maturity of at least five years, if a declaration is provided to the effect that:

- a. in the event of liquidation, bankruptcy or probate proceedings, such loans shall be subordinate to the claims of all other creditors; and
- b. the portfolio manager or trustee undertakes neither to net such loans with its own claims nor to secure them with its own assets.

<sup>4</sup> The declaration in accordance with paragraph 3 is irrevocable. It must be made in writing or in another form demonstrable via text and filed with the supervisory organisation.

**Art. 30** Deductions applied when calculating the level of capital adequacy  
(Art. 23 FinIA)

The following shall be deducted when calculating the level of capital adequacy:

- a. the loss carried forward and the loss for the current financial year;
- b. any unsecured valuation adjustments and provisions for the current financial year;
- c. in the case of loans in accordance with Article 29 paragraph 3: 20% of the original nominal amount per year for the last five years prior to repayment;
- d. intangible assets (including start-up and organisational costs as well as goodwill) with the exception of software;
- e. in the case of a company limited by shares and a partnership limited by shares: the shares which they hold in the company at their own risk;
- f. in the case of a limited liability company: the capital contribution which it holds in the company at its own risk;
- g. the carrying amount of participations.

**Art. 31** Collateral  
(Art. 22 para. 2 and 23 FinIA)

<sup>1</sup> Collateral is deemed to be appropriate if the applicable provisions on capital are complied with.

<sup>2</sup> Insofar as it covers the risks entailed by the business model, professional indemnity insurance may be counted 50% towards qualifying capital.

<sup>3</sup> FINMA shall regulate the details of professional liability insurance, in particular with regard to term, notice period, the amount of insurance cover, the professional liability risks to be covered and the reporting duties.

**Art. 32** Accounting  
(Art. 9, 22 and 23 FinIA)

<sup>1</sup> Portfolio managers and trustees are subject to the accounting regulations of the CO<sup>15</sup>. Article 957 paragraphs 2 and 3 CO are not applicable.

<sup>2</sup> Where portfolio managers and trustees are subject to specific, more stringent accounting standards, such standards take precedence.

<sup>15</sup> SR 220

**Art. 33** Internal documentation

(Art. 9 FinIA)

Internal documentation of the portfolio managers and trustees must allow the audit firm, the supervisory organisation and FINMA to form a reliable picture of the business activities.

**Section 2** **Managers of Collective Assets****Art. 34** Calculation of thresholds

(Art. 24 para. 1 and 2 FinIA)

<sup>1</sup>The following apply to calculation of the thresholds for collective investment schemes managed by the manager of collective assets in accordance with Article 24 paragraph 2 letter a FinIA:

- a. Assets managed include all Swiss and foreign collective investment schemes managed by the same manager irrespective of whether it manages them directly or via delegation or via a company with which it is connected through:
  1. a single management;
  2. a relationship of common control; or
  3. a significant direct or indirect participation.
- b. The value of the assets is calculated on at least a quarterly basis, under due consideration of any leverage effect.
- c. For collective investment schemes that were established more than 12 months previously, the threshold may be calculated on the basis of the average value of the assets over the last four quarters.
- d. The value of the collective investment schemes pursuant to Article 24 paragraph 2 letter a item 2 FinIA is calculated on the basis of the capital commitments or the nominal value of the collective investment schemes concerned, provided the price of the investments underlying such schemes is not obtained through trading on a regulated market.

<sup>2</sup>The following apply to calculation of the thresholds for the assets of occupational pension schemes managed by the manager of collective assets within the meaning of Article 24 paragraph 2 letter b FinIA:

- a. Assets of the following occupational pension schemes shall be included:
  1. registered and non-registered occupational pension schemes;
  2. employer-sponsored welfare funds;
  3. investment foundations;
  4. pillar 3a foundations;
  5. vested benefits foundations.
- b. The manager shall calculate on a quarterly basis whether the threshold of CHF 100 million has been reached.

- c. The occupational pension scheme shall calculate annually whether the threshold of 20% has been reached in the mandatory segment. It shall inform the manager of the value calculated.

<sup>3</sup> Threshold values in accordance with Article 24 paragraph 2 letters a and b FinIA shall not be added together.

<sup>4</sup> FINMA regulates the details for calculating the thresholds and the leverage effect in accordance with paragraphs 1 and 2.

**Art. 35** Procedure in the event that thresholds are exceeded

(Art. 24 para. 1 and 2 FinIA)

<sup>1</sup> If a manager exceeds a threshold in accordance with Article 24 paragraph 2 FinIA, it shall notify FINMA to that effect within 10 days.

<sup>2</sup> The manager must submit to the latter an application for authorisation pursuant to Article 24 paragraph 1 FinIA within 90 days if, during this period, they have not made changes to their business model which make a renewed exceeding of the thresholds appear unlikely.

<sup>3</sup> If changes are made to the business model within the meaning of paragraph 2 during an ongoing authorisation procedure, the authorisation procedure will be rendered unnecessary.

**Art. 36** Authorisation as manager of collective assets

(Art. 24 para. 3 FinIA)

FINMA shall grant a portfolio manager in accordance with Article 24 paragraph 2 FinIA authorisation in accordance with Article 24 paragraph 3 FinIA if:

- a. it has its registered office in Switzerland;
- b. the conditions of authorisation in accordance with Article 24 paragraph 1 FinIA are satisfied; and
- c. Swiss or applicable foreign law provides that the management of collective assets may only be delegated to a supervised manager of collective assets.

**Art. 37** Organisation

(Art. 9 FinIA)

<sup>1</sup> Two authorised signatories must sign jointly.

<sup>2</sup> Managers of collective assets must be able to be represented by a person who has their place of residence in Switzerland. This person must be a member of the body responsible for management or of the body responsible for governance, supervision and control.

<sup>3</sup> The body responsible for management must comprise at least two persons.

<sup>4</sup> Managers of collective assets must appoint a special body responsible for governance, supervision and control.



<sup>5</sup> Where there are legitimate grounds for so doing, FINMA may allow departures from these requirements; it may grant exemptions in particular from the duty in accordance with paragraph 4 where the nature and scope of activity so dictate, in particular if the company has ten or fewer full-time positions or annual gross earnings of less than CHF 5 million.

**Art. 38** Body responsible for governance, supervision and control  
(Art. 9 FinIA)

<sup>1</sup> The majority of the members of the body responsible for governance, supervision and control may not be members of the body responsible for management.

<sup>2</sup> The chair may not at the same time hold the office of chair of the body responsible for management.

<sup>3</sup> At least one third of members must be independent of the persons who hold a qualified participation in the manager of collective assets and in companies of the same conglomerate or group. Managers of collective assets which are part of a financial group subject to consolidated supervision by FINMA are exempted.

<sup>4</sup> Where there are legitimate grounds for so doing, FINMA may allow departures from these requirements.

**Art. 39** Tasks  
(Art. 26 FinIA)

<sup>1</sup> The receipt and transmission of orders in the name of and on behalf of clients in relation to financial instruments is deemed to be an administrative activity in accordance with Article 26 paragraph 3 FinIA which a manager of collective assets can perform within the scope of its tasks in accordance with Article 26 FinIA. Article 35 FinIA remains reserved.

<sup>2</sup> A manager of collective assets which also offers personalised asset management in accordance with Article 6 paragraph 4 in conjunction with Article 17 paragraph 1 FinIA may not invest the investor's assets, whether in full or in part, in units of collective investment schemes that it manages, unless the client has given their general consent beforehand.

<sup>3</sup> If the rendering of additional services increases the risks to which managers of collective assets are exposed, this must be taken into account within the scope of supervision (Articles 61 and 63 FinIA).

**Art. 40** Delegation of tasks  
(Art. 14 and 27 FinIA)

<sup>1</sup> Whether a delegation of investment decisions is deemed to have the necessary authorisation in accordance with Article 14 paragraph 1 FinIA is determined in accordance with Article 24 FinIA. Foreign managers of collective assets must be subject to authorisation and supervision which is at least equivalent.

<sup>2</sup> Where foreign law requires an agreement on cooperation and the exchange of information with the foreign supervisory authorities, investment decisions may only

be delegated to managers of collective assets abroad if such an agreement is in place between FINMA and the foreign supervisory authorities relevant for the respective investment decisions.

**Art. 41** Risk management and internal control

(Art. 9 FinIA)

<sup>1</sup> Managers of collective assets must have an appropriately defined risk management system in place as well as an effective internal control structure to ensure in particular compliance with legal and internal provisions.

<sup>2</sup> They shall set out guidelines for the basic principles of risk management and define their risk tolerance.

<sup>3</sup> They will keep the functions of risk management and compliance functionally and hierarchically separate from the operational business units, in particular from the function of investment decisions (portfolio management).

<sup>4</sup> The body responsible for the governance, supervision and control of the manager of collective assets is charged with establishing, securing and monitoring the internal control system (ICS). This body also defines risk tolerance.

<sup>5</sup> The body responsible for management implements the corresponding requirements stipulated by the body for governance, supervision and control, it develops suitable guidelines, procedures and processes, and reports periodically to the body responsible for governance, supervision and control.

<sup>6</sup> Paragraphs 4 and 5 do not apply to managers of collective assets which are granted an exemption in accordance with Article 37 paragraph 5.

<sup>7</sup> If a body responsible for governance, supervision and control has been appointed in accordance with Article 37 paragraph 4, FINMA may also require that internal auditors who are independent of management be appointed where the nature and scope of activity so dictate.

<sup>8</sup> Where there are legitimate grounds for so doing, FINMA may depart from these requirements.

<sup>9</sup> FINMA shall regulate the details.

**Art. 42** Minimum capital

(Art. 28 para. 1 and 3 FinIA)

<sup>1</sup> The minimum capital of managers of collective assets must amount to at least CHF 200,000 and be paid up in full. This amount must be maintained at all times.

<sup>2</sup> The minimum capital requirements of companies limited by shares and of partnerships limited by shares must be met with share and participation capital, those of limited liability companies must be met with nominal capital.

<sup>3</sup> The minimum capital requirements of partnerships must be met with:

- a. the capital accounts;
- b. the limited partnership contributions;

- c. the assets of partners with unlimited liability.

<sup>4</sup> The capital accounts and assets of partners with unlimited liability may only be counted towards the minimum capital requirement if a declaration is provided to the effect that:

- a. in the event of liquidation, bankruptcy or probate proceedings, such accounts and assets shall be subordinate to the claims of all other creditors; and
- b. the manager of collective assets undertakes:
  - 1. neither to net such accounts and assets with its own claims nor to secure them with its own assets,
  - 2. without the prior consent of the audit firm, not to reduce any of the capital components as defined in paragraph 3 letters a and c to the extent that the minimum capital requirement is no longer met.

<sup>5</sup> The declaration in accordance with paragraph 4 is irrevocable. It must be made in writing or in another form demonstrable via text and filed with the audit firm.

<sup>6</sup> If a manager of collective assets for foreign collective investment schemes conducts the fund business within the meaning of Article 26 paragraph 2 FinIA, FINMA can stipulate a higher minimum capital requirement.

#### **Art. 43** Collateral

(Art. 28 para. 2 and 3 FinIA)

<sup>1</sup> FINMA may permit partnerships to provide, instead of minimum capital, collateral in the form of a bank guarantee or a cash deposit in a blocked account with a bank, said collateral being equivalent to the minimum capital in accordance with Article 42.

<sup>2</sup> Where there are legitimate grounds for so doing, FINMA may stipulate a different minimum amount.

#### **Art. 44** Level of capital adequacy

(Art. 29 FinIA)

<sup>1</sup> The capital stipulated in Article 29 FinIA must be maintained at all times and amount to at least one quarter of the fixed costs reported in the most recent annual accounts and no more than CHF 20 million, including capital in accordance with paragraph 2.

<sup>2</sup> Managers of collective assets must:

- a. hold capital amounting to 0.01% of the total collective assets managed by the manager of collective assets; or
- b. take out professional liability insurance.

<sup>3</sup> FINMA shall regulate the details of professional liability insurance, in particular with regard to term, notice period, the amount of insurance cover, the professional liability risks to be covered and the reporting duties.

<sup>4</sup> Fixed costs in accordance with paragraph 1 are:

- a. personnel expenses;
- b. operating business expenses;
- c. depreciation of investment assets;
- d. expenses for valuation adjustments, provisions and losses.

<sup>5</sup> The portion of personnel expenses which is exclusively dependent on the business result or in relation to which no legal entitlement exists is to be deducted from personnel expenses.

<sup>6</sup> Where there are legitimate grounds for so doing, FINMA may ease requirements.

**Art. 45**            **Qualifying capital**  
(Art. 29 FinIA)

<sup>1</sup> Legal entities may count the following as qualifying capital:

- a. the paid-up share and participation capital in the case of a company limited by shares and a partnership limited by shares, and the nominal capital in the case of a limited liability company;
- b. the general statutory and other reserves;
- c. retained earnings;
- d. the net profit for the current financial year after deduction of the estimated share in the profit distribution, provided an audit review or an audit pursuant to the CO<sup>16</sup> of the interim or annual accounts confirms the assurances stipulated;
- e. hidden reserves, provided they are assigned to a separate account and designated as own capital and their qualifiability as such is confirmed on the basis of the audit in accordance with Article 63 FinIA.

<sup>2</sup> Partnerships may count the following as qualifying capital:

- a. the capital accounts and assets of partners with unlimited liability if the conditions under Article 42 paragraph 4 are satisfied;
- b. the limited partnership contribution.

<sup>3</sup> Managers of collective assets may also count as qualifying capital any loans granted to them, including bonds with a maturity of at least five years, if a declaration is provided to the effect that:

- a. in the event of liquidation, bankruptcy or probate proceedings, such loans shall be subordinate to the claims of all other creditors; and
- b. they have undertaken neither to net such loans with their own claims nor to secure them with their own assets.

<sup>4</sup> The declaration in accordance with paragraph 3 is irrevocable. It must be made in writing or in another form demonstrable via text and filed with the audit firm.

<sup>5</sup> Own capital in accordance with paragraphs 1 and 2 must amount to at least 50% of total capital required.

**Art. 46** Deductions applied when calculating the level of capital adequacy  
(Art. 29 FinIA)

The following shall be deducted when calculating the level of capital adequacy:

- a. the loss carried forward and the loss for the current financial year;
- b. any unsecured valuation adjustments and provisions for the current financial year;
- c. in the case of loans in accordance with Article 45 paragraph 3: 20% of the original nominal amount per year for the last five years prior to repayment;
- d. intangible assets (including start-up and organisational costs as well as goodwill) with the exception of software;
- e. in the case of a company limited by shares and of a partnership limited by shares: the shares which they hold in the company at their own risk;
- f. in the case of a limited liability company: the capital contribution which it holds in the company at its own risk;
- g. the carrying amount of participations.

**Art. 47** Accounting and annual report  
(Art. 9, 28 and 29 FinIA)

<sup>1</sup> Managers of collective assets are subject to the accounting regulations of the CO<sup>17</sup>. Where managers of collective assets are subject to specific, more stringent accounting standards, such regulations take precedence.

<sup>2</sup> The manager of collective assets shall submit to FINMA the annual report and the full report for the body responsible for governance, supervision and control within 30 days of receiving approval from the body responsible for management. The manager of collective assets shall append to the annual report a list of the prescribed and available capital as at the balance sheet date.

<sup>3</sup> Paragraph 2 does not apply to managers of collective assets which are granted an exemption in accordance with Article 37 paragraph 5.

**Art. 48** Internal documentation  
(Art. 9 FinIA)

Internal documentation of the managers of collective assets must allow the audit firm and FINMA to form a reliable picture of the business activities.

### Section 3 Fund Management Companies

#### Art. 49 Independent management of investment funds

(Art. 32 FinIA)

<sup>1</sup> The independent management of investment funds in its own name and for the account of investors by the fund management company comprises in particular:

- a. decisions on the issue of units, on investments and on their valuation;
- b. calculation of the net asset value;
- c. determination of the issue and redemption prices as well as distributions of profit;
- d. assertion of all rights pertaining to the investment fund.

<sup>2</sup> Institutions which engage solely in administration activities for externally managed SICAVs pursuant to CISA<sup>18</sup> manage investment funds independently and as fund management companies require authorisation in accordance with Article 5 paragraph 1 in conjunction with Article 32 FinIA.

#### Art. 50 Head office in Switzerland

(Art. 33 para. 1 FinIA)

The head office of the fund management company is deemed to be in Switzerland if the following conditions are met:

- a. The non-transferable and inalienable duties of the board of directors in accordance with Article 716a CO<sup>19</sup> are performed in Switzerland.
- b. For each of the investment funds managed by the fund management company, in minimum the following tasks are performed in Switzerland:
  1. decisions on the issue of units;
  2. decisions on investment policy and on the valuation of investments;
  3. valuation of investments;
  4. determination of issue and redemption prices;
  5. determination of distributions of profit;
  6. determination of the content of the prospectus and the key information document, of the annual or the semi-annual report, as well as of further publications intended for investors;
  7. keeping of accounts.

#### Art. 51 Organisation

(Art. 9 and 33 FinIA)

<sup>1</sup> Fund management companies shall as a rule have at least three full-time positions with authority to sign.

<sup>18</sup> SR 951.31

<sup>19</sup> SR 220

- <sup>2</sup> Two authorised signatories must sign jointly.
- <sup>3</sup> The body responsible for management must comprise at least two persons.
- <sup>4</sup> Fund management companies must appoint a special body responsible for governance, supervision and control.
- <sup>5</sup> Where there are legitimate grounds for so doing, FINMA may allow relaxations of these requirements or it may impose more stringent requirements.

**Art. 52**            Body responsible for governance, supervision and control  
(Art. 9 and 33 FinIA)

- <sup>1</sup> The body responsible for governance, supervision and control must comprise at least three members.
- <sup>2</sup> The majority of the members of this body may not also be members of the body responsible for management.
- <sup>3</sup> The chair may not at the same time hold the office of chair of the body responsible for management.
- <sup>4</sup> At least one third of members must be independent of the persons who hold a qualified participation in the fund management company and in companies of the same group. Fund management companies which are part of a financial group subject to consolidated supervision by FINMA are exempted.
- <sup>5</sup> Where there are legitimate grounds for so doing, FINMA may allow relaxations of these requirements or it may impose more stringent requirements.

**Art. 53**            Independence  
(Art. 33 para. 3 FinIA)

- <sup>1</sup> Simultaneous membership of the body responsible for governance, supervision and control of the fund management company and that of the custodian bank is permitted.
- <sup>2</sup> Simultaneous membership of the body responsible for management of the fund management company and that of the custodian bank is not permitted.
- <sup>3</sup> The majority of the members of the body responsible for governance, supervision and control of the fund management company must be independent of the persons at the custodian bank who are tasked with the duties in accordance with Article 73 CISA<sup>20</sup>. Persons at the custodian bank at management level tasked with duties in accordance with Article 73 CISA are not deemed to be independent.
- <sup>4</sup> None of the authorised signatories of the fund management company may at the same time be responsible at the custodian bank for duties in accordance with Article 73 CISA.

**Art. 54** Conduct of fund business

(Art. 33 para. 4 FinIA)

<sup>1</sup> In addition to the tasks specified in Articles 32 and 33 paragraph 4 FinIA as well as in accordance with Article 49, fund business specifically entails:

- a. the representation of foreign collective investment schemes;
- b. the acquisition of participations in companies whose main purpose is the collective investment scheme business;
- c. the keeping of unit accounts.

<sup>2</sup> The fund management company may only perform these activities and any further services in accordance with Article 34 FinIA if its articles of association so provide.

<sup>3</sup> Article 26 paragraph 2 FinIA applies by analogy to the conduct of fund business for foreign collective investment schemes.

**Art. 55** Tasks

(Art. 34 FinIA)

<sup>1</sup> Fund management companies shall keep their own assets separate from managed assets at all times.

<sup>2</sup> They shall ensure that the valuation of investments, portfolio management and trading and settlement are kept separate both functionally and in terms of personnel.

<sup>3</sup> A fund management company which also offers personalised asset management in accordance with Article 6 paragraph 3 in conjunction with Article 17 paragraph 1 FinIA may not invest the investor's assets, whether in full or in part, in units of collective investment schemes that it manages, unless the client has given their general consent beforehand.

<sup>4</sup> Where there are legitimate grounds for so doing, FINMA may allow exemptions or it may order the separation of further functions.

**Art. 56** Delegation of tasks

(Art. 14 and 35 FinIA)

<sup>1</sup> Whether a delegation of investment decisions is deemed to have the necessary authorisation in accordance with Article 14 paragraph 1 FinIA is determined in accordance with Article 24 FinIA. Foreign managers of collective assets must be subject to authorisation and supervision which is at least equivalent.

<sup>2</sup> Where foreign law requires an agreement on cooperation and the exchange of information with the foreign supervisory authorities, investment decisions may only be delegated to managers of collective assets abroad if such an agreement is in place between FINMA and the foreign supervisory authorities relevant for the respective investment decisions.



**Art. 57** Risk management and internal control

(Art. 9 FinIA)

<sup>1</sup> Fund management companies must have an appropriately defined risk management system in place as well as an effective internal control structure to ensure in particular compliance with legal and internal provisions.

<sup>2</sup> They shall set out guidelines for the basic principles of risk management and define their risk tolerance.

<sup>3</sup> They will keep the functions of risk management and compliance functionally and hierarchically separate from the operational business units, in particular from portfolio management.

<sup>4</sup> The body responsible for the governance, supervision and control of the fund management company is charged with establishing, securing and monitoring the ICS. This body also defines risk tolerance.

<sup>5</sup> The body responsible for management implements the corresponding requirements stipulated by the body for governance, supervision and control, it develops suitable guidelines, procedures and processes, and reports at appropriate intervals to the body responsible for governance, supervision and control.

<sup>6</sup> Where the nature and scope of activity so justify, FINMA may require the appointment of internal auditors who are independent of management.

<sup>7</sup> Where there are legitimate grounds for so doing, it may depart from these requirements.

<sup>8</sup> It shall regulate the details.

**Art. 58** Minimum capital

(Art. 36 FinIA)

The minimum capital of fund management companies must amount to at least CHF 1 million and be paid up in full. This amount must be maintained at all times.

**Art. 59** Level of capital adequacy

(Art. 37 FinIA)

<sup>1</sup> The level of capital adequacy stipulated in Article 37 FinIA must be maintained at all times. They must amount to no more than CHF 20 million, including the capital in accordance with paragraph 5.

<sup>2</sup> They will be calculated as follows in percentages of the total assets of the collective investment schemes managed by the fund management company:

- a. 1% for that portion of the total assets not exceeding CHF 50 million;
- b. ¾% for that portion of the total assets exceeding CHF 50 million, but not exceeding CHF 100 million;
- c. ½% for that portion of the total assets exceeding CHF 100 million, but not exceeding CHF 150 million;

- d. ¼% for that portion of the total assets exceeding CHF 150 million, but not exceeding CHF 250 million;
- e. ⅛% for that portion of the total assets exceeding CHF 250 million.

<sup>3</sup> Where the fund management company renders further services in accordance with Article 34 FinIA, the operational risks arising from such transactions are calculated using the basic indicator approach as defined in Article 92 of the Capital Adequacy Ordinance of 1 June 2012<sup>21</sup> (CAO).

<sup>4</sup> If the fund management company is entrusted with the administration and portfolio management of the assets of a SICAV, its total assets must be included in the calculation of capital in accordance with paragraph 2.

<sup>5</sup> If the fund management company is solely entrusted with the administration of a SICAV, it must hold additional capital of 0.01% of the total assets of the SICAV.

## **Art. 60**            Qualifying capital

(Art. 37 FinIA)

<sup>1</sup> Fund management companies may count the following as qualifying capital:

- a. the paid-up share and participation capital;
- b. the general statutory and other reserves;
- c. retained earnings;
- d. the net profit for the current financial year after deduction of the estimated profit distribution, provided an audit review of the interim accounts including a complete income statement is available;
- e. hidden reserves, provided they are assigned to a separate account and designated as capital and their qualifiability as such is confirmed on the basis of the audit in accordance with Article 63 FinIA.

<sup>2</sup> Fund management companies may also count as qualifying capital any loans granted to them, including bonds with a maturity of at least five years, if a declaration is provided to the effect that:

- a. in the event of liquidation, bankruptcy or probate proceedings, such loans shall be subordinate to the claims of all other creditors; and
- b. the fund management company undertakes neither to net such loans with its own claims nor to secure them with its own assets.

<sup>3</sup> The declaration in accordance with paragraph 2 is irrevocable. It must be made in writing or in another form demonstrable via text and filed with the audit firm.

<sup>4</sup> Capital in accordance with paragraph 1 must amount to at least 50% of total capital required.

<sup>21</sup> SR 952.03

**Art. 61** Deductions applied when calculating the level of capital adequacy  
(Art. 37 FinIA)

The following shall be deducted when calculating the level of capital adequacy:

- a. the loss carried forward and the loss for the current financial year;
- b. the unsecured valuation adjustments and provisions for the current financial year;
- c. in the case of loans in accordance with Article 60 paragraph 2: 20% of the original nominal amount per year for the last five years prior to repayment;
- d. intangible assets (including start-up and organisational costs as well as goodwill) with the exception of software;
- e. own shares held by the fund management company at its own risk;
- g. the carrying amount of participations.

**Art. 62** Accounting and annual report  
(Art. 9, 33, 36 und 37 FinIA)

<sup>1</sup> Fund management companies are subject to the accounting regulations of the CO<sup>22</sup>. Where fund management companies are subject to specific, more stringent accounting standards, such regulations take precedence.

<sup>2</sup> The fund management company shall submit to FINMA the annual report and the full report for the body responsible for governance, supervision and control within 30 days of receiving approval from the body responsible for management. The fund management company shall append to the annual report a list of the prescribed and available capital as at the balance sheet date.

**Art. 63** Internal documentation  
(Art. 9 and 33 FinIA)

Internal documentation of the fund management companies must allow the audit firm and FINMA to form a reliable picture of the business activities.

**Art. 64** Change of fund management company  
(Art. 39 FinIA)

Article 27 CISA<sup>23</sup> und Article 41 of the Collective Investment Schemes Ordinance of 22 November 2006<sup>24</sup> apply by analogy to a change of fund management company.

<sup>22</sup> SR 220

<sup>23</sup> SR 951.31

<sup>24</sup> SR 951.311

## Section 4 Securities Firms

### Art. 65 Commerciality

(Art. 3 and 41 FinIA)

<sup>1</sup> Securities firms within the meaning of Article 41 letter a FinIA are deemed to pursue their activities on a commercial basis if they directly or indirectly manage accounts or hold securities in safekeeping for more than 20 clients.

<sup>2</sup> The following are not deemed to be clients within the meaning of Article 41 letter a FinIA:

- a. domestic and foreign banks and securities firms or other companies under state supervision;
- b. shareholders or partners holding a qualifying participation and persons with whom they have business or family ties;
- c. institutional investors with professional treasury operations.

<sup>3</sup> Activities for schemes and persons in accordance with Article 2 paragraph 2 letters a, b, d and e FinIA are not factored into the assessment of commerciality.

<sup>4</sup> The proper functioning of the financial market is deemed potentially jeopardised within the meaning of Article 41 letter b item 1 FinIA if the total volume of executed trades in securities exceeds CHF 5 billion per calendar year in Switzerland.

<sup>5</sup> Any party admitted as a direct participant of a trading venue is deemed to be operating as a member of a trading venue within the meaning of Article 41 letter b item 2 FinIA.

<sup>6</sup> A securities firm shall publicly quote prices within the meaning of Article 41 letter c FinIA if the prices according to Article 3 letters g and h FinSA<sup>25</sup> are part of an offer to the public. Offers to schemes and persons in accordance with paragraphs 2 and 3 are not deemed public.

<sup>7</sup> Fund management companies are not deemed to be securities firms.

### Art. 66 Organisation

(Art. 9 FinIA)

<sup>1</sup> Securities firms must be able to be represented by a person who has their place of residence in Switzerland. This person must be a member of the body responsible for management or of the body responsible for governance, supervision and control.

<sup>2</sup> The body responsible for management must comprise at least two persons.

<sup>3</sup> Firms trading for the account of clients and firms acting as market makers within the meaning of Article 41 letters a and c FinIA must appoint a special body responsible for governance, supervision and control. Its members may not be members of the body responsible for management.

<sup>25</sup> SR 950.1

<sup>4</sup> Where there are legitimate grounds for so doing, FINMA may allow relaxations of these requirements or it may impose more stringent requirements.

**Art. 67**            Tasks  
(Art. 44 FinIA)

<sup>1</sup> Within the frame of their tasks in accordance with Article 44 FinIA, securities firms shall ensure an effective internal separation between the functions of trading, asset management and settlement. Where there are legitimate grounds for so doing, FINMA may allow exemptions or it may order the separation of further functions.

<sup>2</sup> If they do not operate primarily in the financial sector, firms trading for the account of clients and firms acting as market makers within the meaning of Article 41 letters a and c FinIA must keep securities trading activities legally separate.

<sup>3</sup> In all other respects, Article 14 applies.

**Art. 68**            Risk management and internal control  
(Art. 9 FinIA)

<sup>1</sup> Securities firms must have an appropriately defined risk management system in place as well as an effective internal control structure to ensure in particular compliance with legal and internal provisions.

<sup>2</sup> They shall set out guidelines for the basic principles of risk management and define their risk tolerance.

<sup>3</sup> They will keep the functions of risk management and compliance functionally and hierarchically separate from the operational business units, in particular from the function of trading.

<sup>4</sup> Firms trading for the account of clients and firms acting as market makers within the meaning of Article 41 letters a and c FinIA shall appoint internal auditors who are independent of management. Internal auditors must be provided with sufficient resources and have unlimited audit rights.

<sup>5</sup> Where there are legitimate grounds for so doing, FINMA may allow relaxations of these requirements or it may impose more stringent requirements.

**Art. 69**            Minimum capital and collateral  
(Art. 45 FinIA)

<sup>1</sup> The minimum capital of securities firms must amount to at least CHF 1.5 million and be paid up in full. This amount must be maintained at all times.

<sup>2</sup> In the case of companies formed using a contribution in kind, the value of the assets contributed and the extent of liabilities must be verified by a licensed audit firm. This also applies to the conversion of an existing company into a securities firm.

<sup>3</sup> In the case of securities firms in the form of a partnership, capital is deemed to be:

- a. the capital accounts; and

b. the assets of partners with unlimited liability.

<sup>4</sup> Assets in accordance with paragraph 3 may only be counted towards the minimum capital requirement if a declaration is provided to the effect that:

- a. in the event of liquidation, bankruptcy or probate proceedings, such assets shall be subordinate to the claims of all other creditors; and
- b. the securities firm undertakes:
  1. neither to net such assets with its own claims nor to secure them with its own assets,
  2. without the prior consent of the audit firm, not to reduce any of the capital components to the extent that the minimum capital requirement is no longer met.

<sup>5</sup> The declaration in accordance with paragraph 4 is irrevocable. It must be made in writing or in another form demonstrable via text and filed with the audit firm.

<sup>6</sup> FINMA may allow securities firms in the form of a partnership to provide, instead of minimum capital in accordance with paragraphs 3 and 4, collateral of at least CHF 1.5 million, for example in the form of a bank guarantee or a cash deposit in a blocked account with a bank.

<sup>7</sup> Where there are legitimate grounds for so doing, FINMA can stipulate a higher minimum capital requirement.

#### **Art. 70** Capital and risk diversification

(Art. 46 FinIA)

<sup>1</sup> Securities firms which themselves do not hold accounts in accordance with Article 44 paragraph 1 letter a FinIA must maintain at all times capital amounting to at least one quarter of the fixed costs reported in the most recent annual accounts and no more than CHF 20 million.

<sup>2</sup> Fixed costs are deemed to be:

- a. personnel expenses;
- b. operating business expenses;
- c. depreciation of investment assets;
- d. expenses for valuation adjustments, provisions and losses.

<sup>3</sup> The portion of personnel expenses which is exclusively dependent on the business result or in relation to which no legal entitlement exists is to be deducted from personnel expenses.

<sup>4</sup> Securities firms which themselves hold accounts in accordance with Article 44 paragraph 1 letter a FinIA must comply with the provisions of the CAO<sup>26</sup>.

<sup>26</sup> SR 952.03

**Art. 71** Liquidity  
(Art. 46 FinIA)

<sup>1</sup> Securities firms which themselves do not hold accounts in accordance with Article 44 paragraph 1 letter a FinIA must invest their resources such that sufficient liquidity is guaranteed at all times.

<sup>2</sup> Securities firms which themselves hold accounts in accordance with Article 44 paragraph 1 letter a FinIA must comply with the provisions of the Liquidity Ordinance of 30 November 2012<sup>27</sup>.

**Art. 72** Accounting  
(Art. 45–48 FinIA)

The provisions on accounting contained in the Banking Ordinance of 30 April 2014<sup>28</sup> apply by analogy.

**Art. 73** Internal documentation  
(Art. 9 FinIA)

Internal documentation of the securities firms must allow the audit firm and FINMA to form a reliable picture of the business activities.

**Art. 74** Record-keeping duty  
(Art. 50 FinIA)

<sup>1</sup> The securities firm must keep a record of all orders received by it and all transactions in securities executed by it.

<sup>2</sup> The record-keeping duty also applies to orders and transactions in derivatives whose underlying instruments are securities admitted to trading on a trading venue.

<sup>3</sup> It applies not only to transactions for own account, but also to transactions executed on behalf of clients.

<sup>4</sup> FINMA shall regulate which information is necessary and what form it is to be recorded in.

**Art. 75** Reporting duty  
(Art. 51 FinIA)

<sup>1</sup> The securities firm shall report all transactions it executes involving securities admitted to trading on a trading venue. In particular, the following must be reported:

- a. the designation and number of the securities purchased or sold;
- b. the volume, date and time of the transaction;
- c. the price;
- d. the details necessary to identify the beneficial owner.

<sup>27</sup> SR 952.06

<sup>28</sup> SR. 952.02

<sup>2</sup> The reporting duty also applies to transactions in derivatives whose underlying instruments are securities admitted to trading on a trading venue.

<sup>3</sup> It applies not only to transactions for own account, but also to transactions executed on behalf of clients.

<sup>4</sup> The following transactions executed abroad do not have to be reported:

- a. transactions in securities admitted to trading on a trading venue in Switzerland and in derivatives with such securities as their underlying instruments, provided the information in question is communicated to the trading venue on the basis of an agreement in accordance with Article 32 paragraph 3 FMIA<sup>29</sup> or within the framework of an exchange of information between FINMA and the competent foreign supervisory authority if:
  1. said transactions are executed by the branch of a Swiss securities firm or by a foreign admitted participant, and
  2. the branch or the foreign participant is authorised to trade by the relevant foreign supervisory authority and is required to report in the corresponding state or in its state of domicile;
- b. transactions in foreign securities admitted to trading on a trading venue in Switzerland and in derivatives with such securities as their underlying instruments, which transactions are executed on a recognised foreign trading venue.

<sup>5</sup> Third parties may be involved in reporting.

## Section 5 Branches

### Art. 76 Foreign financial institutions

(Art. 52 para. 1 FinIA)

<sup>1</sup> A foreign financial institution is any company organised in accordance with foreign legislation and which:

- a. possesses authorisation abroad as a financial institution;
- b. in the company name, in the description of its business purpose or in commercial documents uses terms in accordance with Article 13 paragraph 2 FinIA or a term of similar meaning; or
- c. operates a financial institution within the meaning of Article 2 paragraph 1 FinIA.

<sup>2</sup> If the foreign financial institution is effectively managed from Switzerland or if it executes its transactions exclusively or predominantly in or from Switzerland, it must be organised in accordance with Swiss legislation and be subject to the provisions governing domestic financial institutions.

<sup>29</sup> SR 958.1



**Art. 77** Duty to obtain authorisation and authorisation conditions

(Art. 52 para. 1 and 53 FinIA)

<sup>1</sup> The foreign financial institution must have:

- a. authorisation and supervision at least equivalent to the authorisation and supervision requested for the branch in Switzerland;
- b. collateral which is comparable to that in accordance with:
  1. Articles 22 and 23 FinIA in the case of foreign financial institutions which manage assets or act as a trustee (Article 52 paragraph 1 letter a FinIA),
  2. Articles 28, 29, 36 and 37 FinIA in the case of foreign financial institutions which perform fund business, portfolio management for collective investment schemes or portfolio management for occupational pension schemes (Article 52 paragraph 1 letter b FinIA),
  3. Articles 45–47 FinIA in the case of foreign financial institutions which trade securities, execute transactions or manage client accounts (Article 52 paragraph 1 letters c–e FinIA).

<sup>2</sup> The branch must:

- a. comply with the standards of the FinSA<sup>30</sup> if it provides financial services in accordance with Article 3 letter c FinSA;
- b. comply with the conditions in accordance with Article 20 FinIA in the case of foreign financial institutions which manage assets or act as a trustee (Article 52 paragraph 1 letter a FinIA);
- c. be subject to supervision:
  1. in accordance with Articles 61 and 62 FinIA in the case of foreign financial institutions which manage assets or act as a trustee,
  2. in accordance with Articles 61 and 63 FinIA in the case of foreign financial institutions in accordance with Article 52 paragraph 1 letters b–e FinIA.

<sup>3</sup> The foreign financial institution may only apply for entry of the branch in the commercial register when FINMA has granted said financial institution authorisation to establish the branch.**Art. 78** Multiple branches

(Art. 52 para. 1 and 53 FinIA)

<sup>1</sup> If a foreign financial institution establishes multiple branches in Switzerland, it must:

- a. obtain authorisation for each one;
- b. designate one among them which is responsible for relations:
  1. with FINMA and the supervisory organisation in the case of Article 52 paragraph 1 letter a FinIA,

<sup>30</sup> SR 950.1

2. with FINMA in the case of Article 52 paragraph 1 letters b–e FinIA.

<sup>2</sup> These branches must jointly meet the conditions of the FinIA and the present Ordinance. An audit report is sufficient.

**Art. 79** Annual and interim accounts of branches

(Art. 52 para. 1 and 53 FinIA)

<sup>1</sup> Branches may draw up their annual and interim accounts in accordance with the provisions which apply to the foreign financial institution, provided they satisfy international standards of accounting.

<sup>2</sup> Claims and liabilities must be stated separately:

- a. in respect of the foreign financial institution;
- b. in respect of companies active in the financial sector or real estate firms if:
  1. the foreign financial institution forms an economic unit with them, or
  2. it is to be assumed that the foreign financial institution is de jure or de facto obliged to provide assistance to group companies.

<sup>3</sup> Paragraph 2 also applies to off-balance-sheet business.

<sup>4</sup> A branch shall send its annual and interim accounts:

- a. to the supervisory organisation for submission to FINMA in the case of Article 52 paragraph 1 letter a FinIA;
- b. to FINMA in the case of Article 52 paragraph 1 letters b–e FinIA.

<sup>5</sup> Publication is not required.

**Art. 80** Audit report

(Art. 52 para. 1 and 53 FinIA)

<sup>1</sup> The audit firm shall send its audit report:

- a. to the supervisory organisation for submission to FINMA in the case of Article 52 paragraph 1 letter a FinIA;
- b. to FINMA in the case of Article 52 paragraph 1 letters b–e FinIA.

<sup>2</sup> It shall provide a copy to the branch manager responsible.

<sup>3</sup> The branch will send the copy of the audit report to the unit of the foreign financial institution which is responsible for the business activities of the branch.

**Art. 81** Closure of a branch

(Art. 52 para. 1 and 53 FinIA)

The foreign financial institution shall obtain the approval of FINMA before closing a branch.

## Section 6 Representations

(Art. 58 para. 1 and 59 FinIA)

### Art. 82

The representation of a foreign institution must:

- a. comply with the standards of the FinSA<sup>31</sup> if it provides financial services in accordance with Article 3 letter c FinSA;
- b. be subject to supervision:
  1. in accordance with Articles 61 and 62 FinIA in the case of Article 58 paragraph 1 in conjunction with Article 52 paragraph 1 letter a FinIA,
  2. in accordance with Articles 61 and 63 FinIA in the case of Article 58 paragraph 1 in conjunction with Article 52 paragraph 1 letters b–e FinIA. Article 63 paragraph 1 letter b FinIA is not applicable.

## Chapter 3 Supervision

### Section 1 Portfolio Managers and Trustees

#### Art. 83 Domestic group companies

(Art. 61 para. 1 and 2 FinIA)

<sup>1</sup> For domestic portfolio managers and trustees which form part of a financial group FINMA can provide that ongoing supervision is performed exclusively within the framework of group supervision. This is conditional on the group company being closely integrated into the risk management, internal control and internal auditing structures of the financial group.

<sup>2</sup> FINMA shall publish a list of the group companies monitored by it in accordance with paragraph 1.

#### Art. 84 Ongoing supervision

(Art. 61 para. 2 and 62 FinIA)

<sup>1</sup> The supervisory organisation shall verify on an ongoing basis whether the entities under its supervision specifically:

- a. satisfy the requirements of the FinIA;
- b. observe the duties pursuant to the Anti-Money Laundering Act of 10 October 1997<sup>32</sup> (AMLA);
- a. observe the duties pursuant to the FinSA<sup>33</sup> if they provide financial services in accordance with Article 3 letter c FinSA;

<sup>31</sup> SR 950.1

<sup>32</sup> SR 955.0

<sup>33</sup> SR 950.1

- d. observe the duties pursuant to the CISA<sup>34</sup> if they perform activities falling under the CISA.

<sup>2</sup> FINMA shall provide the supervisory organisations with guidelines for auditing and supervision. In particular, it shall set down for the supervisory organisations a system of risk assessment as well as minimum requirements to be met by the supervision concept. It shall consult with the supervisory organisations beforehand.

<sup>3</sup> Audit actions and their findings shall be recorded in audit reports. Audit reports shall be published in an official language. Exemptions through audit firms in accordance with Article 43*k* FINMASA<sup>35</sup> require the consent of the supervisory organisation.

<sup>4</sup> If the supervisory organisation supervises a financial institution whose activity requires a higher authorisation level on exceeding thresholds, the supervisory organisation will monitor compliance with these thresholds and notify FINMA and the financial if they are exceeded.

<sup>5</sup> The issuance of rulings is reserved to FINMA. FINMA shall intervene in the ongoing supervision by the supervisory organisation if this is necessary to enforce the financial market acts in accordance with Article 1 paragraph 1 FINMASA.

#### **Art. 85** Coordination of supervisory activities

(Art. 5 and 62 FinIA)

With respect to the supervision of portfolio managers and trustees, FINMA and the supervisory organisations will coordinate their supervisory activities in order to avoid duplication.

#### **Art. 86** Appointment of audit firms

(Art. 62 para. 1 FinIA)

Where the supervisory organisation does not itself conduct the audit of supervised entities, it will ensure that:

- a. the appointed audit firm is correctly mandated and authorised in accordance with Article 43*k* FINMASA<sup>36</sup>;
- b. the appointed audit firm implements the guidelines provided by FINMA;
- c. the areas audited and the corresponding depths of audit of risk assessments are commensurate with its supervision concept; and
- d. it is informed immediately of any irregularities.

<sup>34</sup> SR 951.31

<sup>35</sup> SR 956.1

<sup>36</sup> SR 956.1

**Art. 87**            Audit frequency  
(Art. 62 para. 2 and 3 FinIA)

<sup>1</sup> When defining the audit frequency and the intensity of supervision, the supervisory organisation shall be guided by the risks associated with the activity of those supervised and the risks associated with their organisation.

<sup>2</sup> In years in which no regular audit takes place, the supervisory authority shall collect standardised data on the risks associated with those supervised.

<sup>3</sup> It shall assess the self-declared data collected and take further measures where necessary.

<sup>4</sup> FINMA shall set down for, and in consultation with, the supervisory organisation guidelines for conducting an assessment in accordance with paragraphs 1–3.

**Section 2**  
**Managers of Collective Assets, Fund Management Companies,  
Securities Firms, Financial Groups and Financial Conglomerates**

**Art. 88**            Auditing  
(Art. 61 para. 3 and 63 FinIA)

<sup>1</sup> The audit firm shall verify whether the entities under its supervision specifically:

- a. satisfy the requirements of the FinIA;
- b. observe the duties pursuant to the AMLA<sup>37</sup>;
- c. observe the duties pursuant to the FinSA<sup>38</sup> if it provides financial services in accordance with Article 3 letter c FinSA;
- d. observe the duties pursuant to the CISA<sup>39</sup> if they perform activities falling under the CISA.

<sup>2</sup> Supervised entities for which the audit firm submits an annual risk analysis are exempted from the duty to report on their business activity's compliance in accordance with Article 63 paragraph 3 FinIA.

**Art. 89**            Cooperation between audit firms  
(Art. 63 FinIA)

The audit firms of supervised entities which cooperate in accordance with Article 14, 27 or 35 FinIA must themselves cooperate closely.

<sup>37</sup> SR 955.0

<sup>38</sup> SR 950.1

<sup>39</sup> SR 951.31

### Section 3 Measures under Insolvency Law

(Art. 67 FinIA)

#### Art. 90

Article 24 BankA<sup>40</sup> applies by analogy to fund management companies and securities firms.

### Chapter 4 Final Provisions

#### Art. 91 Repeal and amendment of other legislative instruments

(Art. 73 FinIA)

The repeal and amendment of other legislative instruments are set out in the Annex.

#### Art. 92 Transitional provisions for portfolio managers and trustees

(Art. 74 FinIA)

<sup>1</sup> Portfolio managers and trustees which until entry into force of the FinIA were supervised by FINMA as financial intermediaries directly subordinated to it pursuant to the AMLA<sup>41</sup> are no longer required to be affiliated to a self-regulatory organisation in accordance with Article 24 AMLA if, within one year of entry into force of the FinIA, they:

- a. receive confirmation from a supervisory organisation that they are subject to supervision in accordance with Article 7 paragraph 2 FinIA; and
- b. submit an authorisation application to FINMA.

<sup>2</sup> They shall submit a report on their business activity's compliance with the provisions of the AMLA:

- a. to the supervisory organisation prior to being subject to supervision in accordance with Article 7 paragraph 2 FinIA; or
- b. to the self-regulatory organisation prior to affiliation accordance with Article 14 AMLA.

#### Art. 93 Further transitional provisions

(Art. 74 FinIA)

<sup>1</sup> Article 5 paragraph 2 FinIA is not applicable to financial institutions which on entry into force of the FinIA are already entered in the commercial register.

<sup>2</sup> Financial institutions which provide services in accordance with the FinSA<sup>42</sup> must be affiliated to the ombudsman's office within six months of the Federal Department of Finance recognising or establishing for them an ombudsman's office in accord-

<sup>40</sup> SR 952.0

<sup>41</sup> SR 955.0

<sup>42</sup> SR 950.1

ance with Article 84 FinSA. The period is deemed met on submission of the application.

<sup>3</sup> Financial institutions that have their registered office abroad and by reason of a branch or representation in Switzerland already hold authorisation are not required to submit a new application for authorisation. They must satisfy the legal requirements within one year of entry into force.

<sup>4</sup> Financial institutions that have their registered office abroad and by reason of a branch or representation in Switzerland are newly required to obtain authorisation pursuant to the FinIA shall report to FINMA within six months of entry into force. They must satisfy the legal requirements and submit an application for authorisation within three years of entry into force. They may continue their activities until a decision on authorisation is made.

<sup>5</sup> Article 77 paragraph 3 is not applicable to branches which on entry into force of the FinIA are already entered in the commercial register.

<sup>6</sup> Exemptions granted by FINMA based on Article 18 paragraph 3 CISA<sup>43</sup> in the version of 28 September 2012<sup>44</sup> to managers of collective investment schemes remain valid under Article 7 of the present Ordinance.

#### **Art. 94** Commencement

This Ordinance enters into force on 1 January 2020.

<sup>43</sup> SR 951.31

<sup>44</sup> AS 2013 585

*Annex I*  
(Art. 91)

## **Repeal and amendment of other legislative instruments**

I

The Stock Exchange Ordinance of 2 December 1996<sup>45</sup> is repealed.

II

The legislative instruments below are amended as follows:

...<sup>46</sup>

<sup>45</sup> [AS **1997** 85 2044 Art. 2, **2004** 2781, **2005** 4849 No III, **2006** 4307 Annex 7 No 2, **2008** 5363 Annex No 9, **2012** 5441 Annex 6 No 3, **2013** 1111, **2014** 1269 Annex 2 No 6 2321 Annex 4 No 2 4295 Annex No 4, **2015** 5413 Annex 1 No 12, **2017** 3715 No III]

<sup>46</sup> The amendments may be consulted under AS **2019** 4633.