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Federal Act on Financial Institutions (Financial Institutions Act, FinIA)

of 15 June 2018 (Status as of 1 February 2021)

*The Federal Assembly of the Swiss Confederation,
based on Articles 95 and 98 paragraphs 1 and 2 of the Federal Constitution¹,
and having considered the Federal Council Dispatch of 4 November 2015²,
decrees:*

Chapter 1 General Provisions

Section 1 Subject Matter, Purpose and Scope of Application

Art. 1 Subject matter and purpose

¹ This Act governs the requirements for acting as a financial institution.

² Its purpose is to protect the investors and clients of financial institutions and ensure the proper functioning of the financial market.

Art. 2 Scope of application

¹ Financial institutions within the meaning of this Act are as follows, irrespective of their legal form:

- a. portfolio managers (Article 17 paragraph 1);
- b. trustees (Article 17 paragraph 2);
- c. managers of collective assets (Article 24);
- d. fund management companies (Article 32);
- e. securities firms (Article 41).

² This Act does not apply to:

- a. persons who manage solely the assets of persons with whom they have business or family ties;

AS 2018 5247

¹ SR 101

² BBl 2015 8901

- b. persons who manage assets solely within the context of employee participation schemes;
- c. lawyers, notaries and their auxiliaries insofar as their activity is subject to professional confidentiality in accordance with Article 321 of the Swiss Criminal Code³ or Article 13 of the Lawyers Act of 23 June 2000⁴, as well as the legal entities into which these persons are organised;
- d. persons who manage assets within the framework of a legally regulated mandate;
- e. the Swiss National Bank and the Bank for International Settlements;
- f. occupational pension schemes and other occupational pension institutions (occupational pension schemes), employer-sponsored foundations (employer-sponsored welfare funds); employers who manage the assets of their occupational pension schemes; employer and employee associations which manage the assets of their association schemes;
- g. social security institutions and compensation funds;
- h. insurance companies as defined in the Insurance Supervision Act of 17 December 2004⁵;
- i. public insurance institutions in accordance with Article 67 paragraph 1 of the Federal Act of 25 June 1982⁶ on Occupational Old Age, Survivors' and Invalidity Pension Provision;
- j. banks pursuant to the Banking Act of 8 November 1934⁷ (BankA).

Art. 3 Commerciality

Within the meaning of the present Act, the criterion of a commercial basis is deemed satisfied by an independent economic activity pursued on a permanent, for-profit basis.

Art. 4 Group parent companies and significant group companies

¹ The following are subject to the insolvency law measures under Article 67 paragraph 1 provided they are not subject to the bankruptcy jurisdiction of the Swiss Financial Market Supervisory Authority (FINMA) within the scope of the supervision of the individual institution:

- a. group parent companies of a financial group or financial conglomerate which have their registered office in Switzerland;
- b. those group companies which have their registered office in Switzerland and perform significant functions for activities which require authorisation (significant group companies).

³ SR 311.0
⁴ SR 935.61
⁵ SR 961.01
⁶ SR 831.40
⁷ SR 952.0

² The Federal Council shall set the criteria for assessing significance.

³ FINMA shall identify significant group companies and keep a publicly accessible list of said companies.

Section 2 Common Provisions

Art. 5 Duty to obtain authorisation

¹ Financial institutions under Article 2 paragraph 1 require authorisation from FINMA.

² They may be entered in the commercial register only after authorisation has been granted.

³ Financial institutions in accordance with Article 2 paragraph 1 letter c that are already subject to other equivalent official supervision in Switzerland are exempt from the duty to obtain authorisation.

Art. 6 Authorisation chain

¹ Authorisation to operate as a bank within the meaning of the BankA⁸ also authorises an entity to operate as a securities firm, a manager of collective assets, a portfolio manager and a trustee.

² Authorisation to operate as a securities firm also authorises an entity to operate as a manager of collective assets, a portfolio manager and a trustee.

³ Authorisation to operate as a fund management company also authorises an entity to operate as a manager of collective assets and a portfolio manager.

⁴ Authorisation to operate as a manager of collective assets also authorises an entity to operate as a portfolio manager.

Art. 7 Authorisation conditions

¹ Any party that meets the conditions set out in this section and the specific conditions that apply to individual financial institutions is entitled to authorisation.

² Portfolio managers and trustees submitting an application for authorisation are required to provide proof that they are subject to supervision by a supervisory organisation in accordance with Article 43a of the Financial Market Supervision Act of 22 June 2007⁹ (FINMASA).

³ The Federal Council may define additional authorisation conditions if this is necessary for implementing recognised international standards.

⁸ SR 952.0

⁹ SR 956.1

Art. 8 Change in facts

¹ The financial institution shall notify FINMA of any changes in the facts on which its authorisation is based.

² If the changes are of material significance, the financial institution must obtain prior authorisation from the supervisory authority in order to pursue its activity.

Art. 9 Organisation

¹ The financial institution must establish appropriate corporate management rules and be organised in such a way that it can fulfil its statutory duties.

² It shall identify, measure, control and monitor its risks, including legal and reputational risks, and organise effective internal controls.

³ The Federal Council shall set the minimum organisational requirements to be satisfied by financial institutions, taking into account their different business activities and sizes as well as the risks.

Art. 10 Place of management

¹ The financial institution must effectively be managed from Switzerland. General directives and decisions within the context of group supervision are excluded if the financial institution forms part of a financial group that is subject to appropriate consolidated supervision by foreign supervisory authorities.

² The persons entrusted with managing the financial institution must be resident in a place from which they may effectively exercise such management.

Art. 11 Guarantee of irreproachable business conduct

¹ The financial institution and the persons responsible for its administration and management must provide a guarantee of irreproachable business conduct.

² Moreover, the persons responsible for the administration and management of the financial institution must enjoy a good reputation and have the specialist qualifications required for their functions.

³ Qualified participants in a financial institution must also enjoy a good reputation and ensure that their influence is not detrimental to prudent and sound business activity.

⁴ Persons who directly or indirectly hold at least 10% of the share capital or votes or who can significantly influence its business activity in another manner are deemed to be qualified participants in a financial institution.

⁵ Each person must notify FINMA before directly or indirectly acquiring or disposing of a qualified participation in accordance with paragraph 4 in a financial institution. This mandatory notification also applies if a qualified participation is increased or reduced in such a way as to reach, exceed or fall below the thresholds of 20%, 33% or 50% of the share capital or votes.

⁶ The financial institution shall notify FINMA of the persons who meet the conditions of paragraph 5 as soon as it becomes aware of the same.

⁷ Portfolio managers and trustees are exempt from the requirements of paragraphs 5 and 6.

⁸ Qualified participants in portfolio managers and trustees are permitted to perform management duties

Art. 12 Public offer of securities on the primary market

Persons operating primarily in the financial sector may perform the following activities only if they have authorisation as a securities firm as defined in this Act or as a bank in accordance with the BankA¹⁰:

- a. underwriting securities issued by third parties and offering these to the public on a primary market on a commercial basis;
- b. creating derivatives in the form of securities and offering these to the public on the primary market on a commercial basis.

Art. 13 Protection against confusion and deception

¹ The name of the financial institution must not lead to confusion or deception.

² The terms «portfolio manager», «trustee», «manager of collective assets», «fund management company» or «securities firm» may be used, alone or in compound terms, in the company name, in the description of its business purpose or in commercial documents only if the corresponding authorisation has been obtained. The foregoing is without prejudice to Article 52 paragraph 3 and Article 58 paragraph 3.

Art. 14 Delegation of tasks

¹ Financial institutions may delegate a task solely to third parties that possess the necessary skills, knowledge and experience and that have the required authorisations. They shall carefully instruct and supervise the appointed third parties.

² FINMA may make the delegation of investment decisions to a person located abroad subject to an agreement on cooperation and information exchange between FINMA and the competent foreign supervisory authority, in particular if such an agreement is required under the other country's legislation.

Art. 15 International business

A financial institution must notify FINMA before:

- a. establishing, acquiring or closing a foreign subsidiary, branch or representation;
- b. acquiring or surrendering a qualified participation in a foreign company.

¹⁰ SR 952.0

Art. 16¹¹ Ombudsman

Financial institutions that provide financial services under Article 3 letter c of the Financial Services Act of 15 June 2018¹² (FinSA) must affiliate to an ombudsman as stipulated in the provisions of Title 5 of the FinSA at the latest on assuming their activity.

Chapter 2 Financial Institutions

Section 1 Portfolio Managers and Trustees

Art. 17 Definitions

¹ A portfolio manager is a person mandated to manage assets on a commercial basis in the name of and on behalf of clients within the meaning of Article 3 letter c items 1 to 4 FinSA¹³.

² A trustee is a person who on a commercial basis manages or holds a separate fund for the benefit of the beneficiaries or for a specified purpose based on the instrument creating a trust within the meaning of the Hague Convention of 1 July 1985¹⁴ on the Law Applicable to Trusts and on their Recognition.

Art. 18 Legal form

¹ Portfolio managers and trustees which have their registered office or place of residence in Switzerland must have one of the following legal forms:

- a. sole proprietorship;
- b. commercial enterprise;
- c. cooperative.

² Portfolio managers and trustees must be listed in the commercial register.

Art. 19 Tasks

¹ The portfolio manager manages individual portfolios.

² The trustee manages the separate fund, ensures its value is maintained and employs it for the specified purposes.

³ Portfolio managers and trustees may also provide the following services in particular:

- a. investment advice;

¹¹ Amended by No 17 of the FA of 25 Sept. 2020 on the Adaptation of Federal Law to Developments in Distributed Ledger Technology, in force since 1 Feb. 2021 (AS **2021** 33; BBl **2020** 233).

¹² SR **950.1**

¹³ SR **950.1**

¹⁴ SR **0.221.371**

- b. portfolio analysis;
- c. offering of financial instruments.

Art. 20 Qualified managers

¹ The management body of a portfolio manager or trustee entity must consist of at least two qualified persons.

² The management body may consist of only one qualified person subject to proof that continuation of business operations on a going concern basis is guaranteed.

³ A person is deemed qualified to manage business operations if they have received appropriate training in the activities of a portfolio manager or trustee and at the time of assuming management duties has had sufficient professional experience in portfolio management for third parties or within the framework of trusts. The Federal Council shall regulate the details.

Art. 21 Risk management and internal control

¹ Portfolio managers and trustees must have an appropriately defined risk management system in place as well as an effective internal control structure to ensure, among other requirements, compliance with legal and internal provisions.

² The tasks of risk management and internal control may be carried out by a qualified manager or delegated to one or more suitably qualified employees or to a qualified external entity.

³ Persons who carry out the tasks of risk management and internal control may not be involved in the activities which they supervise.

Art. 22 Minimum capital and collateral

¹ The minimum capital of portfolio managers and trustees must amount to CHF 100,000 and be paid up in cash. The minimum capital requirement must be complied with at all times.

² Portfolio managers and trustees must have adequate collateral or take out professional liability insurance.

³ The Federal Council shall set the amount of collateral and the sum to be insured under professional liability insurance.

Art. 23 Own funds

¹ Portfolio managers and trustees must have sufficient own funds.

² Own funds must at all times amount to at least one quarter of the fixed costs reported in the most recent annual financial statement and no more than CHF 10 million.

Section 2 Managers of Collective Assets

Art. 24 Definition

¹ A manager of collective assets is a person who manages assets on a commercial basis in the name and on behalf of:

- a. collective investment schemes;
- b. occupational pension schemes.

² Portfolio managers within the meaning of Article 17 paragraph 1 are:

- a. Managers of collective assets in accordance with paragraph 1 letter a whose investors are qualified within the meaning of Article 10 paragraph 3 or 3^{ter} of the Collective Investment Schemes Act of 23 June 2006¹⁵ and fulfil one of the following conditions:
 1. The assets of collective investment schemes under their management, including the assets acquired through the use of leveraged finance, amount in total to no more than CHF 100 million.
 2. The assets of collective investment schemes under their management do not exceed CHF 500 million in total and do not include leveraged financial instruments. The collective investment schemes give no right to redemption in the first five years after making the first investment.
- b. Managers of collective assets in accordance with paragraph 1 letter b who manage the assets of occupational pension schemes totalling no more than CHF 100 million and in the mandatory segment manage no more than 20% of the assets of an individual occupational pension scheme.

³ Portfolio managers in accordance with paragraph 2 may request authorisation as managers of collective assets provided this is required by the state where the collective investment scheme is established or offered or where the occupational pension scheme is managed. The Federal Council shall regulate the details.

Art. 25 Legal form

Managers of collective assets who have their registered office in Switzerland must have the legal form of a commercial enterprise.

Art. 26 Tasks

¹ Managers of collective assets are responsible for the portfolio and risk management of the assets entrusted to them.

² In addition, managers of collective assets may conduct fund business, in particular, for foreign collective investment schemes. If the foreign country's law requires an agreement on cooperation and information exchange between FINMA and the foreign supervisory authorities of relevance for the fund business, they may perform this business only where such an agreement exists.

¹⁵ SR 951.31

³ Managers of collective assets may also perform administrative activities within the scope of these tasks.

Art. 27 Delegation of tasks

¹ Managers of collective assets may delegate tasks to third parties, provided this is in the interests of efficient management.

² Any person who delegates the management of the assets of an occupational pension scheme or collective investment scheme to a manager of collective assets remains responsible for adhering to the relevant investment guidelines.

Art. 28 Minimum capital and collateral

¹ Managers of collective assets must possess the required minimum capital. This must be fully paid up.

² FINMA may permit managers of collective assets in the form of partnerships to provide appropriate collateral instead of minimum capital.

³ The Federal Council shall regulate the amount of the minimum capital and of the collateral. It may furthermore make the granting of authorisation contingent upon possession of professional liability insurance.

Art. 29 Own funds

¹ Managers of collective assets must possess an appropriate level of own funds.

² The Federal Council shall set the amount of own funds based on the business activity and the risks.

Art. 30 Group and conglomerate supervision

Where a financial group is dominated by a manager of collective assets or a financial conglomerate is dominated by a manager of collective assets, FINMA may make these subject to group or conglomerate supervision, provided this is in accordance with recognised international standards.

Art. 31 Change of manager of collective assets

A manager of collective assets shall give advance notice of the assumption of its rights and obligations by another manager of collective assets to the relevant supervisory authority for the collective investment scheme or occupational pension scheme.

Section 3 Fund Management Companies

Art. 32 Definition

A fund management company is an entity that manages investment funds independently in its own name and for the account of investors.

Art. 33 Legal form and organisation

¹ The fund management company must be a company limited by shares that has its registered office and head office in Switzerland.

² The share capital shall be divided into registered shares.

³ The persons managing the fund management company and the custodian bank must be independent of each other's company.

⁴ The main purpose of the fund management company is to conduct the fund business; this consists of the offering of units in the investment fund and its management and administration.

Art. 34 Tasks

In addition to conducting activities in accordance with the present Act, the fund management company may perform the following other services, in particular:

- a. the safekeeping and technical management of collective investment schemes;
- b. the administration of an investment company with variable capital (SICAV).

Art. 35 Delegation of tasks

¹ The fund management company may not delegate the management of the investment fund to third parties. However, it may delegate investment decisions as well as specific tasks to third parties, provided this is in the interests of efficient management.

² In the case of collective investment schemes for which the facilitated offering of shares exists in the European Union based on a treaty, investment decisions may not be delegated to either the custodian bank or any other companies whose interests may conflict with those of the manager of collective assets or the fund management company or the investors.

Art. 36 Minimum capital

¹ The fund management company must possess the required minimum capital. This must be fully paid up.

² The Federal Council shall regulate the amount of the minimum capital.

Art. 37 Own funds

¹ There must be an appropriate ratio between the fund management company's own funds and the overall assets of the collective investment schemes under its management. The Federal Council shall specify this ratio.

² In special cases, FINMA may ease the requirements, provided this does not adversely affect the protective purpose of this Act, or it may order more stringent requirements.

³ The fund management company may not invest the prescribed level of its own funds in fund units that it has issued itself or lend its own funds to its shareholders or any natural or legal person with whom they have business or family ties. The holding of liquid funds with the custodian bank shall not constitute a loan.

Art. 38 Rights

¹ The fund management company is entitled to:

- a. receive the fees stipulated in the fund contract;
- b. an exemption from any liabilities which may have arisen in the course of the proper execution of its tasks;
- c. receive reimbursement of the expenses incurred in connection with such liabilities.

² These payments are made from the assets of the investment fund. Investors are not held personally liable.

Art. 39 Change of fund management company

¹ The rights and duties of the fund management company may be transferred to another fund management company.

² In order to be effective, the transfer agreement between the outgoing and incoming fund management company must be made in writing or in another form demonstrable via text and must have the consent of the custodian bank and the approval of FINMA.

³ Prior to approval by FINMA, the outgoing fund management company shall publish the proposed transfer in the publication media.

⁴ The investors must be informed in these publications of their right to lodge objections with FINMA within 30 days of publication. The procedure is based on the Administrative Procedure Act of 20 December 1968¹⁶.

⁵ FINMA shall approve the change of fund management company if the legal requirements are met and the continuation of the investment fund is in the interest of the investors.

⁶ It shall publish the decision in the publication media.

¹⁶ SR 172.021

Art. 40 Segregation of the fund assets

¹ In the event of the bankruptcy of the fund management company, assets and rights belonging to the investment fund shall be segregated in favour of the investors. The foregoing is without prejudice to the fund management company's claims under Article 38.

² Debts incurred by the fund management company that do not result from the fund contract may not be set off against claims belonging to the investment fund.

Section 4 Securities Firms**Art. 41** Definition

A securities firm is an entity that, on a commercial basis:

- a. trades in securities in its own name for the account of clients;
- b. trades in securities for its own account on a short-term basis, operates primarily on the financial market and:
 1. could thereby jeopardise the proper functioning of the financial market, or
 2. is a member of a trading venue; or
- c. trades in securities for its own account on a short-term basis and publicly quotes prices for individual securities upon request or on an ongoing basis (*market maker*).

Art. 42 Legal form

A securities firm that has its registered office in Switzerland must have the legal form of a commercial enterprise.

Art. 43 Foreign-controlled securities firms

The provisions of the BankA¹⁷ on foreign-controlled banks apply by analogy.

Art. 44 Tasks

¹ In particular, the securities firm may:

- a. hold accounts for settling securities trade within the context of its activity under Article 41 for clients, either itself or with third parties;
- b. act as custodian of clients' securities, either itself or in its own name with third parties;

¹⁷ SR 952.0

- c. underwrite securities issued by third parties as a firm commitment or on commission and offer these to the public on the primary market on a commercial basis;
- d. create derivatives itself on a commercial basis, which it offers to the public on the primary market on its own behalf or that of another party.

² It may accept deposits from the public on a commercial basis within the context of its activity under paragraph 1 letter a.

³ The Federal Council may regulate the use of deposits from the public.

Art. 45 Minimum capital and collateral

¹ Securities firms must possess the required minimum capital. This must be fully paid up.

² FINMA may permit securities firms in the form of partnerships to post appropriate collateral instead of the minimum capital.

³ The Federal Council shall regulate the amount of the minimum capital and of the collateral.

Art. 46 Own funds, liquidity and risk diversification

¹ Securities firms must have sufficient own funds and liquidity individually and on a consolidated basis.

² They must diversify their risks appropriately.

³ The Federal Council shall regulate the risk diversification requirements. It shall set the amount of own funds and liquidity based on the business activity and the risks.

⁴ Where there are legitimate grounds for so doing, FINMA may ease the requirements, provided this does not adversely affect the protective purpose of the law, or it may order more stringent requirements.

⁵ FINMA may issue implementing regulations.

Art. 47 Additional capital

The provisions of the BankA¹⁸ on additional capital apply by analogy.

Art. 48 Accounting

The provisions of the BankA¹⁹ on accounting apply by analogy.

Art. 49 Group and conglomerate supervision

¹ Two or more companies are deemed to be a financial group dominated by a securities firm if:

¹⁸ SR 952.0

¹⁹ SR 952.0

- a. at least one of them operates as a securities firm;
- b. they operate primarily in the financial sector; and
- c. they form an economic unit or other circumstances suggest that one or more of the companies under individual supervision is de jure or de facto obliged to provide assistance to group companies.

² A financial conglomerate dominated by a securities firm is a financial group as defined in paragraph 1 operating primarily in the field of securities trading and comprising at least one insurance company of considerable economic significance.

³ The provisions of the BankA²⁰ on financial groups and financial conglomerates apply by analogy.

Art. 50 Record-keeping duty

The securities firm must keep a record of the orders and transactions it conducts together with all the details necessary for their traceability and for the supervision of its activity.

Art. 51 Reporting duty

¹ The securities firm must report all of the information necessary for transparent securities trading.

² FINMA shall regulate which information is to be reported to whom and in what form.

³ Provided this is required for the purposes of the Act, the Federal Council may also impose the reporting duty in accordance with paragraph 1 on persons and companies that buy and sell securities on a commercial basis but without the involvement of a securities firm. Any such company must instruct an audit firm licensed by the Federal Audit Oversight Authority (FAOA) in accordance with Article 9a paragraph 1 of the Auditor Oversight Act of 16 December 2005²¹ (AOA) to audit compliance with this reporting duty and must inform FINMA.

Section 5 Branches

Art. 52 Duty to obtain authorisation

¹ Authorisation from FINMA is required by financial institutions that have their registered office abroad (foreign financial institutions) and that wish to establish a branch in Switzerland that employs persons who perform any of the following activities in the name of the foreign financial institution on a permanent commercial basis in Switzerland or from Switzerland:

- a. asset management or trustee activities;

²⁰ SR 952.0

²¹ SR 221.302

- b. portfolio management for collective investment schemes or occupational pension schemes;
- c. securities trading;
- d. conclusion of transactions; or
- e. client account management.

² Foreign fund management companies may not establish branches in Switzerland.

³ The Federal Council may sign international treaties allowing financial institutions from the treaty states to open a branch without requiring authorisation from FINMA if both sides recognise the equivalent nature of the respective regulation of financial institutions' activity and the supervisory measures.

Art. 53 Authorisation conditions

FINMA shall grant the foreign financial institution authorisation to establish a branch if:

- a. the foreign financial institution:
 1. is sufficiently organised and has adequate financial resources and qualified personnel to operate a branch in Switzerland,
 2. is subject to appropriate supervision that includes the branch, and
 3. proves that the business name of the branch can be entered in the commercial register;
- b. the competent foreign supervisory authorities:
 1. do not raise any objections to the establishment of a branch,
 2. undertake to notify FINMA immediately if any circumstances arise that could seriously prejudice the interests of the investors or clients, and
 3. provide FINMA with administrative assistance;
- c. the branch:
 1. fulfils the conditions set out in Articles 9 to 11 and has a set of regulations that accurately describes the scope of business and provides for an administrative or operational organisation corresponding to its business activity, and
 2. fulfils the additional authorisation conditions under Articles 54 to 57.

Art. 54 Requirement of reciprocity

FINMA may make the granting of authorisation to establish a branch of a foreign financial institution additionally contingent upon a guarantee of reciprocity with the states in which the foreign financial institution or the foreigners with qualified participations have their place of residence or registered office.

Art. 55 Financial groups and financial conglomerates

Where a foreign financial institution is part of a financial group or financial conglomerate, FINMA may make the granting of authorisation contingent upon it being subject to appropriate consolidated supervision by foreign supervisory authorities.

Art. 56 Collateral

FINMA may make the granting of authorisation to establish a branch of a foreign portfolio manager, a foreign trustee or a foreign manager of collective assets additionally contingent upon the posting of collateral if so required for the protection of investors or clients.

Art. 57 Exemptions

The Federal Council may make provision for exempting branches of foreign financial institutions from certain provisions of this Act.

Section 6 Representations**Art. 58** Duty to obtain authorisation

¹ Foreign financial institutions require authorisation from FINMA if they employ persons in Switzerland who work for them on a permanent and commercial basis in Switzerland or from Switzerland in another manner than that set out in Article 52 paragraph 1, specifically where these persons forward client orders to them or represent them for marketing or other purposes.

² Foreign fund management companies may not establish representations in Switzerland.

³ The Federal Council may sign international treaties allowing financial institutions from the treaty states to open a representation without requiring authorisation from FINMA if both sides recognise the equivalent nature of the respective regulation of financial institutions' activity and the supervisory measures.

Art. 59 Authorisation conditions

¹ FINMA shall grant the foreign financial institution authorisation to establish a representation if:

- a. the foreign financial institution is subject to appropriate supervision;
- b. the competent foreign supervisory authorities do not raise any objections to the establishment of the representation;
- c. the persons entrusted with its management provide a guarantee of irrevocable business conduct.

² FINMA may make authorisation additionally contingent upon the granting of reciprocity by the state in which the foreign financial institution has its registered office.

Art. 60 Exemptions

The Federal Council may make provision for exempting representations of foreign financial institutions from certain provisions of this Act.

Chapter 3 Supervision

Art. 61 Competence

¹ Portfolio managers and trustees are supervised by FINMA in consultation with a supervisory organisation under FINMASA²², subject to consolidated supervision by FINMA in accordance with Articles 30 and 49 of the present Act or Article 1 paragraph 1 FINMASA.

² Ongoing supervision of portfolio managers and trustees will be performed by FINMA-approved supervisory organisations.

³ Managers of collective assets, fund management companies and securities firms are supervised by FINMA.

⁴ Where no supervisory organisation exists in accordance with paragraph 1, supervision is performed by FINMA.

Art. 62 Auditing of portfolio managers and trustees

¹ Portfolio managers and trustees must appoint an audit firm in accordance with Article 43*k* paragraph 1 FINMASA²³ to perform an annual audit, provided that this audit is not conducted by the respective supervisory organisation itself.

² The supervisory organisation may increase the audit frequency to a maximum of four years taking account of the activity of those supervised and the associated risks.

³ In the years without a periodic audit, portfolio managers and trustees shall submit to the supervisory organisation a report on their business activity's compliance with the legislative provisions. This report may be delivered in a standardised format.

Art. 63 Auditing of managers of collective assets, fund management companies, securities firms, financial groups and financial conglomerates

¹ The managers of collective assets, fund management companies, securities firms, financial groups and financial conglomerates must:

²² SR 956.1

²³ SR 956.1

- a. appoint an audit firm licensed by the FAOA under Article 9a paragraph 1 AOA²⁴ to carry out an annual audit under Article 24 FINMASA²⁵;
- b. have their annual accounts, and if applicable their consolidated accounts, audited by an audit company subject to state oversight in accordance with the ordinary auditing principles set out in the Swiss Code of Obligations²⁶ (CO).

² FINMA may establish an audit frequency of several years for the audit in accordance with paragraph 1 letter a taking account of the activity of those supervised and the associated risks.

³ In the years without a periodic audit, financial institutions in accordance with paragraph 1 shall submit a report to FINMA on their business activity's compliance with the legislative provisions. This report may be delivered in a standardised format.

⁴ The fund management company shall appoint the same audit firm for itself and for the investment funds it manages.

⁵ FINMA may itself conduct audits directly.

Art. 64 Duty to provide information and to report in the case of delegation of significant functions

¹ If a financial institution delegates significant functions to other persons, these shall be subject to the duty to provide information and to report in accordance with Article 29 FINMASA²⁷.

² FINMA may conduct audits of these persons at any time.

Art. 65 Suspension of voting rights

In order to enforce Article 11 paragraphs 3 and 5, FINMA may suspend the voting rights attached to equities or shares held by qualified participants.

Art. 66 Liquidation

¹ If FINMA withdraws authorisation from a financial institution, this shall result in liquidation in the case of legal entities and general and limited partnerships and in deletion from the commercial register in the case of sole proprietorships.

² FINMA shall designate the liquidator and oversee its activity.

³ The provisions under insolvency law are reserved.

²⁴ SR 221.302

²⁵ SR 956.1

²⁶ SR 220

²⁷ SR 956.1

Art. 67 Measures under insolvency law

¹ The provisions of the BankA²⁸ on measures in case of the risk of insolvency and bankruptcy apply by analogy to fund management companies and securities firms.

² The provisions of the BankA on the protection of deposits and dormant assets apply by analogy to securities firms.

Chapter 4 Liability and Criminal Law Provisions**Section 1 Liability****Art. 68**

¹ The liability of the financial institutions and their bodies is based on the provisions of the CO²⁹.

² Where a financial institution delegates performance of a task to a third party, it remains liable for any losses caused by the latter unless it proves that it took the due care required in that party's selection, instruction and monitoring. The Federal Council may set out the requirements for such monitoring.

³ The fund management company remains liable for the actions of persons to whom it has delegated tasks in accordance with Article 35 paragraph 1 as if it had performed those tasks itself.

Section 2 Criminal Provisions**Art. 69** Violation of professional confidentiality

¹ A custodial sentence not exceeding three years or a monetary penalty shall be imposed on any person who wilfully:

- a. discloses a secret entrusted to them in their capacity as a director or officer, employee, agent or liquidator of a financial institution or of which they have become aware in said capacity;
- b. attempts to induce a violation of professional secrecy;
- c. discloses to other persons a secret disclosed to them in violation of letter a or exploits such a secret for their own benefit or for the benefit of others.

² A custodial sentence not exceeding five years or a monetary penalty shall be imposed on any person who obtains a pecuniary advantage for themselves or another person through an action as detailed in paragraph 1 letter a or c.

³ A fine not exceeding CHF 250,000 shall be imposed on persons who commit the foregoing acts through negligence.

²⁸ SR 952.0

²⁹ SR 220

⁴ Any person who violates professional confidentiality remains liable to prosecution after termination of the official or employment relationship or exercise of the profession.

⁵ The federal and cantonal provisions relating to the duty to testify and the duty to provide information to the authorities are reserved.

⁶ The cantons are responsible for the prosecution and adjudication of acts under this provision.

Art. 70 Violation of the provisions on protection against confusion and deception and notification duties

A fine not exceeding CHF 500,000 shall be imposed on any person who wilfully:

- a. violates the provision on protection against confusion and deception (Article 13);
- b. fails to provide FINMA with the prescribed notifications in accordance with Articles 11 and 15, or does so incorrectly or too late.

Art. 71 Violation of the record-keeping and reporting duties

A fine not exceeding CHF 500,000 shall be imposed on any person who wilfully:

- a. violates the record-keeping duty set out in Article 50;
- b. violates the reporting duty in accordance with Article 51.

Chapter 5 Final Provisions

Art. 72 Implementing provisions

The Federal Council shall issue the implementing provisions.

Art. 73 Repeal and amendment of other legislative instruments

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

Art. 74 Transitional provisions

¹ Financial institutions that already possess authorisation by virtue of a financial market act pursuant to Article 1 paragraph 1 FINMASA³⁰ for the corresponding activity at the time of this Act coming into force are not required to obtain new authorisation. They must fulfil the requirements of this Act within one year of its coming into force.

² Financial institutions that under prior law are not subject to an authorisation requirement but are newly subject to an authorisation requirement at the time of this

³⁰ SR 956.1

Act coming into force shall report to FINMA within six months of this Act coming into force. They must satisfy the requirements of this Act and submit an authorisation application within three years of the Act coming into force. They may continue to perform their activity until a decision has been made concerning authorisation, provided that they are affiliated to a self-regulatory organisation in accordance with Article 24 of the Anti-Money Laundering Act of 10 October 1997³¹ (AMLA) and are supervised by said organisation with regard to compliance with the corresponding duties.

³ Portfolio managers and trustees that assume their activity within one year of this Act coming into force must report immediately to FINMA and after assuming their activity must satisfy authorisation conditions with the exception of Article 7 paragraph 2. No later than one year after FINMA has authorised a supervisory organisation in accordance with Article 43a FINMASA, they must affiliate to such an organisation and submit an application for authorisation. They may perform their activity until a decision has been made concerning authorisation, provided that they are affiliated to a self-regulatory organisation in accordance with Article 24 AMLA and are supervised by said organisation with regard to compliance with the corresponding duties.

⁴ In special cases, FINMA may extend the deadlines under paragraphs 1 and 2.

Art. 74a³² Coordination with the Amendment of the Anti-Money Laundering Act within the context of the Gambling Act of 29 September 2017

...³³

Art. 75 Referendum and commencement

¹ This Act is subject to an optional referendum.

² The Federal Council will determine the commencement date.

³ This Act shall only come into force with the FinSA³⁴.

⁴ The Federal Council may implement the following provisions early:

- a. Amendments to the Federal Act of 23 March 2001³⁵ on Consumer Credit (annex No. 2);
- b. Article 9a paragraph 4^{bis} AOA³⁶ (Annex No 3);
- c. Articles 1a, 1b, 47 paragraph 1 letter a and 52a BankA³⁷ (Annex No 14);

³¹ SR 955.0

³² Inserted by the correction made by the Federal Assembly Drafting Committee of 24 Sept. 2019 (AS 2019 5065).

³³ The coordination provisions can be consulted under AS 2019 5065 and AS 2020 501. Correction by Federal Assembly Drafting Committee of 31 Jan. 2020, published on 18 Febr. 2020 (AS 2020 501).

³⁴ SR 950.1

³⁵ SR 221.214.1

³⁶ SR 221.302

³⁷ SR 952.0

- d. Article 2 paragraph 2 letter a AMLA³⁸ (Annex No 15);
- e. Articles 4, 5 and 15 paragraph 2 letter a FINMASA³⁹ (Annex No 16).

⁵ Article 15 paragraph 2 letter a FINMASA shall apply until Article 15 paragraph 2 letter a^{bis} FINMASA (Annex No 16) comes into force.

Commencement date: 1 January 2020⁴⁰

³⁸ SR **955.0**

³⁹ SR **956.1**

⁴⁰ O of 6 Nov. 2019 (AS **2019** 4631).

Annex
(Art. 73)

Repeal and Amendment of other Legislative Instruments

I

The Stock Exchange Act of 24 March 1995⁴¹ is repealed

II

The legislative instruments below are amended as follows:

...⁴²

⁴¹ [AS 1997 68 2044, 2005 5269 Annex No II 7, 2006 2197 Annex No 146, 2008 5207 Annex No 16, 2012 6679 Annex No 8, 2013 1103, 2014 4073 Annex No 6, 2015 1535 No 13 5339 Annex No 11]

⁴² The amendments may be consulted under AS 2018 5247.

