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Ordinance on Financial Institutions (Financial Institutions Ordinance, FinIO)

of 6 November 2019 (Status as of 1 August 2021)

*The Swiss Federal Council,
based on the Financial Institutions Act of 15 June 2018¹ (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)

¹ The following persons are deemed to have family ties with one another:

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¹ 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 Code² (CC);
- f. persons living in a permanent life partnership with a portfolio manager or trustee.

² 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.

³ 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 CC³;
- 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;

² SR 210

³ 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 1889⁴ 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 2007⁵ (FINMASA);
- m. a restructuring mandate in accordance with Article 28 paragraph 3 of the Banking Act of 8 November 1934⁶ (BankA), Article 67 paragraph 1 FinIA and Article 88 paragraph 1 of the Financial Market Infrastructure Act of 19 June 2015⁷ (FinMIA);
- 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 2006⁸ (CISA), Article 88 paragraph 1 FinMIA and Article 53 paragraph 3 of the Insurance Supervision Act of 17 December 2004⁹ (ISA);
- o. a liquidation in accordance with Article 23^{quinquies} paragraph 1 BankA, Article 66 paragraph 2 FinIA, Article 134 CISA, Article 87 paragraph 2 FinMIA 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 CISA¹⁰, 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)

¹ 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);

¹⁰ SR 951.31

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

² Insurance companies as defined in the ISA¹¹ are exempt from the duty to obtain authorisation as a manager of collective assets.

³ 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)

¹ 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.

² It may designate a third party as recipient of submitted documents.

Art. 12 Organisation

(Art. 9 FinIA)

¹ Financial institutions must define their organisation in their organisational principles.

¹¹ SR 961.01