

FinSO, FinIO and SOV: Federal Council finalizes ordinances

Dear Sir or Madam

Dear Member

The Swiss Federal Council has finalized the respective ordinances to FinIA and FinSA and puts both the laws and ordinances into force on 1 January 2020.

Most of the suggestions made by the State Secretary for International Finance (SIF) in September 2019 have been implemented into the final versions of the ordinances (please cf. also VQF-Newsletter 641).

Both the Independent Asset Managers (IAM) as well as the Trustees which currently are members with an SRO will have to register with FINMA within the first six months of next year (until 30 June 2020), indicating through this registration their inherent intention to obtain the respective licence by FINMA. The said institutions will have to formally apply for and obtain the said license until the end of 2022.

Asset Managers of Pension Funds will newly also have to register with FINMA and obtain a license as "Asset Manager of Collective Funds", if they manage assets of at least CHF 100 million. The current admission issued by the Occupational Pension Supervisory Commission OPSC will be voided by 1 January 2020.

The ordinances also make clear that advisors who accept, forward or execute instructions by their clients (based on a power of attorney) will be considered as IAM under FinIA. These institutions/individuals will also have to obtain a FINMA license and will require the ongoing supervision rendered by a Supervisory Organization SO.

Additionally, the majority of the obligations of FinSA will come into force after a transitional period of newly two years. Thus, those obligations have to be fulfilled by the end of 2021.

The core elements of the ordinances for Independent Asset Managers IAM can be summarized as follows:

Organization

With regards to the organizational requirements for IAM, the Federal Council has taken over the suggestions made during the consultation process as well as made by SIF and has risen the thresholds relevant for mandatory separations of tasks and duties:

- An independent controlling body (risk management and internal control) is required if an IAM employs more than five full time employees *and* generate a gross income of at least CHF 2 million. Outsourcing of these controlling tasks is still possible.
If the aforementioned factors are not met *and* if the business model of the IAM includes no enhanced risks, a separation of risk management and internal control from operations is not mandatory.
- A (predominantly) independent board of directors may be required by FINMA if i) the gross income is higher than CHF 5 million *and* ii) the IAM employs at least 10 full time employees *and* iii) if the nature and scope of the business activity require such a corporate structure. In case of a yearly turnover of at least CHF 10 million FINMA may additionally require an internal audit independent from the management.

Education and advanced training

Regarding the requirements of the qualified managing directors' education and advanced trainings, the ordinances still lack a clear indication. As was known so far, a comparison with leading auditors was suggested, but the latest versions of the laws and the ordinances are still imprecise in that regard.

Recently, the Supervisory Organizations seems to be entitled to offer trainings as well. In the course of our own project FINcontrol Suisse this new possibility is currently being assessed with meticulous scrutiny. Our goal is to avoid any potential conflicts of interest, namely with regards to any independence aspects. The supervised institutions of FINcontrol Suisse will however always have all possibilities to train their staff – be it through FINcontrol Suisse itself or through either one of the associations VQF or VSV (SAAM).

Industry Organisation: continuation of BOVV-Status

The standards for IAM defined by VQF as an Industry Organisation officially acknowledged by FINMA (for concerned VQF-members: the BOVV-membership) will remain valid until the end of 2021. In the future, these standards will be regulated through and thus replaced by the rules of FinSA – but until the regulations of FinSA come into force after the transitional period of two years, IAMs are supposed to upkeep the known and still acknowledged BOVV-standards. In addition, the further obligations of FinSA have to be implemented until the end of 2021. After the end of the transitional period, all relevant obligations of FinSA need to be fulfilled; the BOVV-membership will then no longer be valid.

For VQF's BOVV-members, this means that their membership and the concerned obligations will remain valid until the end of 2021.

Project Supervisory Organization FINcontrol Suisse

After reviewing the definite version of the ordinances, VQF and VSV (SAAM) feel encouraged to pursue their endeavour to establish FINcontrol as a Supervisory Organization under FinIA. The path chosen can be pursued while treating all concerned members of both SRO equally during their transition into the prudential supervision.

We would hereby also like to draw your attention to our presentation that was made in the course of our event held on 6 November 2019 (you can find the respective documentation in German on our homepage in the Newsflash section).

Additionally, we would like to inform you about our VQF Academy Event on 27 November 2019. During this half-day event we will explain the implementation of the laws and ordinances with focus on selected topics. We will then also give you an update regarding the status of our project for FINcontrol Suisse.

Lastly, we would like to refer to the news-notifications of our partner VSV (SAAM) to the published ordinances (you can find these notifications in the News-Section of VSV/SAAM).

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