FINANCIAL SERVICES COMPLIANCE

Switzerland

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Financial Services Compliance

Consulting editors

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Quick reference guide enabling side-by-side comparison of local insights, including into the regulatory framework; registration and authorisation regimes; enforcement; compliance programmes; cross-border regulation and international standards; and other recent trends.

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Switzerland

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REGULATORY FRAMEWORK

Regulatory authorities

What national authorities regulate the provision of financial products and services?

The Swiss Financial Market Supervisory Authority (FINMA) is the primary regulator in Switzerland for all types of financial services. With respect to financial markets infrastructures (eg, securities settlement systems, central counterparties and exchanges, among others), the Swiss National Bank (SNB) also has certain supervisory powers, although they are limited with respect to systemically important institutions. In addition, Swiss financial services rules and regulations rely to a large extent on rules set by the various self-regulatory organisations (SROs) and industry organisations (eg, the Swiss Banking Association (SBA) and the Asset Management Association Switzerland (previously the Swiss Funds and Asset Management Association)), the rules of which FINMA may recognise as binding minimum standards.

Furthermore, in connection with the Financial Institutions Act (FinIA), which entered into force on 1 January 2020, several private supervisory organisations (SOs) have been established and authorised by FINMA. The SOs are responsible for the day-to-day supervision of portfolio managers and trustees.

Law stated - 20 January 2022

What activities does each national financial services authority regulate?

FINMA is the primary regulator in Switzerland. As such, it regulates all types of activities in the financial sector, including banking, securities trading, fund services and financial market infrastructures. In contrast, the SNB's role is much more limited and its regulatory powers primarily cover systemically important financial market infrastructures and macro-level oversight of the financial system.

The SOs are responsible for the day-to-day supervision of portfolio managers and trustees, including compliance with anti-money laundering (AML) laws.

SROs are solely responsible for supervising non-FINMA- and non-SO-supervised financial intermediaries (eg, financial advisers and money transmitting businesses) for the purposes of compliance with AML laws.

The SBA is active in the area of banking, securities trading (eg, brokerage) and AML laws. It has issued a comprehensive set of self-regulatory rules, most of which have been recognised by FINMA as binding minimum standards. The Asset Management Association Switzerland is the industry and self-regulatory organisation for the fund and asset management industries.

Law stated - 20 January 2022

What products does each national financial services authority regulate?

Until 1 January 2020, Swiss legislation did not regulate the offering of financial products, with the exception of collective investment schemes. FINMA is responsible for supervising products that fall within the scope of the Collective Investment Schemes Act (CISA). FINMA monitors whether Swiss collective investment schemes comply with the specifications set out in their fund contract and prospectus. FINMA's assessment is based on a regular audit of the company's financial statements and prospectus by an audit company.

As of 1 January 2020, subject to the transitional provisions that, with a few exceptions, expired on 31 December 2021, the Financial Services Act (FinSA) has introduced uniform cross-sector regulations for the offering of financial

instruments. The term ‘financial instrument’ encompasses equity securities, debt instruments, units in collective investment schemes, structured products and derivatives, as well as certain deposits and bonds. The FinSA provides for a regulatory obligation to prepare a prospectus in connection with public offerings of securities (subject to broad range of exemptions) or the admission of securities to trading on a trading venue. The prospectuses must be reviewed and approved by an independent reviewing body (authorised by FINMA). Collective investment schemes are, however, not in the scope of the harmonised FinSA prospectus rules. Swiss collective investment schemes continue to be authorised and supervised directly by FINMA (including with respect to any prospectus requirements).

Law stated - 20 January 2022

Authorisation regime

What is the registration or authorisation regime applicable to financial services firms and authorised individuals associated with those firms? When is registration or authorisation necessary, and how is it effected?

FINMA grants four types of authorisation: licensing, approval, recognition and registration. The degree of supervisory monitoring varies depending on the type of authorisation concerned. Companies or individuals wishing to engage in financial market activity shall file an application to FINMA. They must obtain authorisation from FINMA that attests that they meet the relevant regulatory requirements prior to starting the supervised financial activity. Only those satisfying the financial, personnel and organisational requirements qualify for authorisation. With regard to legal entities, FINMA grants the licence to the legal entity pursuing supervised activities and not to the managers or the shareholders of such an entity. If, at a later stage, any of the licence requirements are no longer satisfied, FINMA may take administrative measures including, in extreme cases, the withdrawal of the licence.

With the entry into force of the FinIA on 1 January 2020, subject to the transitional provisions that, with a few exceptions, expired on 31 December 2021, all financial institutions are required to obtain a licence from FINMA. The term ‘financial institutions’ encompasses portfolio managers, trustees, managers of collective assets, fund management companies and securities firms. The various criteria to be complied with to obtain a licence are set out in each relevant section of the FinIA and its implementing ordinances (known as FinIO and FinIO-FINMA). By contrast, the FinIA abolishes the authorisation requirement for distributors of collective investment schemes and does not set an authorisation requirement for investment advisers.

In addition, pursuant to the FinSA, individuals performing financial services on behalf of a Swiss or foreign financial services provider are characterised as client advisers. Client advisers of Swiss financial services providers, which are not subject to FINMA supervision, and client advisers of foreign financial services providers are under the obligation to register in a Client Advisor Register. However, client advisers of a foreign financial services provider that is subject to prudential supervision in its home jurisdiction do not have to register, provided that they render their services exclusively to per se professional and institutional clients.

Law stated - 20 January 2022

Legislation

What statute or other legal basis is the source of each regulatory authority’s jurisdiction?

FINMA takes actions based on the legal provisions set out in financial market law and relevant implementing ordinances. The regulations defined in the Financial Market Supervision Act lay the legal foundations upon which FINMA was established. The following acts also govern financial market regulation:

- the FinSA;
- the FinIA;
- the Mortgage Bond Act;
- the Insurance Contract Act;
- the CISA;
- the Banking Act;
- the Anti-Money Laundering Act;
- the Insurance Supervision Act; and
- the Financial Market Infrastructure Act.

Statutory provisions are also detailed in ordinances issued by the Federal Council and FINMA for almost every financial market regulation. Lastly, FINMA issues a series of circulars setting out its interpretation of the regulatory framework.

With regard to the supervision activities of the SNB, the National Bank Act and its implementing ordinance, the National Bank Ordinance, circumscribe its jurisdiction.

With the entry into force of the FinSA and the FinIA in 2020, the Stock Exchanges and Securities Act (SESTA) was abolished. In addition, the provisions regarding the authorisation and supervision of fund management companies and asset managers of collective investment schemes, formerly regulated in the CISA, were transferred largely unchanged in substance to the FinIA. Under the current financial market law architecture, the CISA mainly covers the product licensing requirements for collective investment schemes.

Law stated - 20 January 2022

What principal laws and financial service authority rules apply to the activities of financial services firms and their associated persons?

In the past, Switzerland did not have a unified set of rules that applied to financial services firms. Rather, Swiss law provided for institution-specific sets of rules, such as the Banking Act, the SESTA or the CISA, each with a set of implementing ordinances and regulatory guidance. In recent years, Swiss legislation has started moving away from institution- or product-specific legislation and towards regulations that apply to all industry players, regardless of the type of licence they hold. The 2016-enacted Financial Market Infrastructure Act that governs, among other things, derivative trading and market conduct rules is an example of such industry-wide rules. Similarly, with the FinSA and the FinIA, financial services rules have been harmonised across the financial services industry.

The above-mentioned legislative acts are in line with the traditional Swiss approach to legislation, drafted with a principle-based approach, and leaving room for regulatory guidance and self-regulation. Thus, on a practical level, the circulars issued by FINMA and self-regulatory rules enacted by industry organisations and SROs play an important role in financial services compliance. Examples of such self-regulatory rules are FINMA's circulars on market conduct (Circular 2013/08), outsourcing (Circular 2018/3) and guidelines on asset management (Circular 2009/1). On the level of industry organisations, the following are examples of noteworthy self-regulatory rules: the SBA Code of Conduct with regard to the exercise of due diligence and the Code of Conduct of the Asset Management Association Switzerland.

With the FinIA and the FinSA, the regulatory guidance on collective investment schemes, structured products and related financial institutions established by industry organisations and SROs over the past few years have been partly integrated into new laws and ordinances, rendering the respective circulars, codes of conduct and regulatory guidance redundant.

Law stated - 20 January 2022

Scope of regulation

What are the main areas of regulation for each type of regulated financial services provider and product?

All regulated financial services providers have to obtain authorisation from FINMA prior to starting a supervised financial activity. The main areas of regulation for all types of regulated financial services providers relate, in particular, to their organisation and their minimum capital requirement. They must establish appropriate corporate management rules and be organised in such a way that they can fulfil their statutory duties. They must also identify, measure, control and monitor their risks, including legal and reputational risks, and organise an effective internal control system. Moreover, the regulatory framework requires that the financial services providers are effectively managed from Switzerland, which implies that the persons entrusted with management must be resident in a place from which they may effectively exercise such management. The persons responsible for the administration and management of financial institutions and their qualified participants (ie, any individual or legal entity that directly or indirectly owns at least 10 per cent of the capital or voting rights of a licensed institution, or that can otherwise influence its business activities in a significant manner) must provide the guarantee of irreproachable business conduct.

In particular, banks and securities firms are required to keep sufficient capital available for the business that they conduct pursuant to the Capital Adequacy Ordinance. Banks shall further comply with qualitative and quantitative liquidity requirements enshrined in the Liquidity Ordinance.

The FinIA has introduced uniform authorisation and supervisory requirements for financial institutions, extending its scope to portfolio managers, trustees and managers of occupational pension schemes. The main areas of regulation concerning organisational and minimum capital requirements have been transferred largely unchanged in substance from the CISA and the SESTA into the FinIA. On a product and services level, the FinSA provides for a comprehensive and cross-sectoral set of rules for the provision of financial services and the offering of financial instruments, regardless of whether the respective service provider qualifies as a financial institution under the FinIA or not. The FinSA has introduced, among other things, a new client classification regime, a comprehensive set of rules of conduct, and new rules on prospectus and key information documentation.

Law stated - 20 January 2022

Additional requirements

What additional requirements apply to financial services firms and authorised persons, such as those imposed by self-regulatory bodies, designated professional bodies or other financial services organisations?

Swiss financial services rules and regulations rely to a large extent on the rules set by the various SROs. In this self-regulatory environment, the two most prominent organisations are the SBA with respect to the banking industry and the Asset Management Association Switzerland with respect to the fund and asset management industries.

Over the years, the SBA has drawn up binding codes of conduct in the form of guidelines and agreements, which define what constitutes good industry practice. One of the most prominent examples of a code of conduct is the due diligence agreement, which applies to all banks and securities firms. The agreement mainly focuses on the identification of a contracting partner as well as the beneficial owner of assets, and also includes provisions on the prohibition of active assistance in the light of capital and tax evasion.

The Asset Management Association Switzerland has taken a similar approach and issued, among other guidance, its Code of Conduct that constitutes the core element of the code of self-regulation. It is deliberately restricted to the

essentials and specifies the minimum standards that are to be observed. It therefore takes into account the differences in the business operations of the licensees that must comply with its provisions. The Code of Conduct covers the main functions of the fund business and was recently amended following the entry into force of the FinSA and the FinIA in 2020.

Law stated - 20 January 2022

ENFORCEMENT

Investigatory powers

What powers do national financial services authorities have to examine and investigate compliance? What enforcement powers do they have for compliance breaches? How is compliance examined and enforced in practice?

As a rule, compliance is enforced by way of a dualistic system in which regular compliance reviews are undertaken by regulatory auditors (ie, audit firms appointed by each supervised institution). These regulatory auditors review the supervised institutions on a regular basis and will prepare a regulatory audit report that is shared with the Swiss Financial Market Supervisory Authority (FINMA) and, with respect to portfolio managers and trustees, the relevant supervisory organisation (SO). Based on these reports, FINMA may decide to issue recommendations, order follow-up audits or take other enforcement measures.

FINMA will also follow up and investigate any information that it receives about potentially unauthorised activities. Such information may be brought to FINMA's attention by other market participants, investors or other third parties. Where there are grounds to suspect unauthorised activity, FINMA will open formal investigative proceedings to decide whether enforcement actions are warranted.

Law stated - 20 January 2022

Disciplinary powers

What are the powers of national financial services authorities to discipline or punish infractions? Which other bodies are responsible for criminal enforcement relating to compliance violations?

FINMA has a wide set of enforcement tools, which are, however, all of an administrative nature. FINMA does not have the power to impose civil or criminal liability. Rather, where FINMA is of the view that non-compliance with financial services regulations also constitutes a criminal offence, it will notify the relevant prosecutors (eg, the Swiss Department of Finance or the Swiss Attorney General's Office). The SOs do not, however, have any enforcement powers. Rather, they will have to notify FINMA of any potential breach or non-compliance by the relevant portfolio managers and trustees.

FINMA's administrative law enforcement tools include the following:

- preliminary injunctions;
- ordering a supervised institution to restore compliance with the law;
- declaratory rulings;
- prohibiting individuals from exercising a professional activity;
- cease-and-desist orders and bans on trading;
- publication of rulings ('naming and shaming');
- disgorgement of profits;
- withdrawal of licences; and

- ordering the liquidation of financial institutions.

As mentioned above, FINMA does not have the power to impose criminal liability and, as a result, FINMA may not impose monetary penalties on supervised institutions. When deciding which enforcement tools to apply in a particular case, FINMA has to take into account the goals of the relevant financial services legislation (eg, protection of investors, fair competition or the stability of the financial system as a whole) and the general principles of constitutional and administrative law (such as proportionality).

Law stated - 20 January 2022

Tribunals

What tribunals adjudicate financial services criminal and civil infractions?

Where criminal infractions are found and when the facts are clear, FINMA files a criminal complaint pursuant to the administrative criminal law directly with the Federal Department of Finance (FDF). In some cases, an appeal can be brought against the decision rendered by the FDF to the Federal Criminal Court and then to the Federal Supreme Court.

With regard to civil infractions, civil proceedings take place in two instances, usually within the state where the parties are domiciled. It is also possible to appeal to a third court, which is the Federal Supreme Court.

Law stated - 20 January 2022

Penalties

What are typical sanctions imposed against firms and individuals for violations? Are settlements common?

FINMA has a broad range of enforcement tools to uphold supervisory law. Typical enforcement tools at FINMA's disposal include the following.

- Precautionary measures: FINMA takes appropriate precautionary measures where there is a risk to investors, policyholders, creditors or the financial market as a whole. A typical example is appointing an investigating agent.
- Ordering action to restore compliance with the law: pursuant to article 31 of the Financial Market Supervision Act (FINMASA), FINMA shall take action when supervised institutions violate financial market laws or other irregularities arise. It empowers FINMA to issue a ruling ordering proportionate measures to address the problem. In contrast to the enforcement instruments set out in articles 32–37 of the FINMASA, article 31 only applies if no serious violation of supervisory law has occurred.
- Declaratory rulings: pursuant to article 32 of the FINMASA, declaratory rulings or reprimands are the mildest official measure that FINMA can use to sanction licence holders and individuals found to have committed market abuse.
- Industry bans: pursuant to article 33 of the FINMASA, FINMA can ban individuals responsible for serious violations of supervisory law from acting in a senior function at a supervised institution for up to five years.
- Cease-and-desist orders and bans on trading: where FINMA identifies financial market participants operating without the requisite authorisation, it can issue a ruling expressly banning those responsible from continuing to operate. It also has the power to ban securities firms' employees who have committed serious violations of stock exchange law from trading.
- Publication of rulings: pursuant to article 34 of the FINMASA, FINMA can publish its final rulings and name those

involved, once a ruling becomes legally binding.

- Ordering the disgorgement of profits: pursuant to article 35 of the FINMASA, FINMA can confiscate profits generated or losses avoided through serious violations of supervisory law by supervised institutions or individuals in senior functions. Any confiscated assets that do not have to be paid out to injured parties are passed to the federal government.
- Withdrawal of authorisation, liquidation and bankruptcy: pursuant to article 37 of the FINMASA, FINMA can withdraw its authorisation of individuals and legal entities that no longer meet the authorisation requirements or have committed serious violations of supervisory law. The law requires certain licence holders to be liquidated when this happens. FINMA also applies these rules to financial market participants operating without the requisite authorisation.

The Swiss regulatory framework does not provide for a proper settlement procedure. This being said, the supervised entity under investigation by FINMA usually makes every reasonable effort to restore compliance with the law during the enforcement proceeding to mitigate the effect of the supervisory violation and diminish the risk of incisive measures rendered by FINMA.

Law stated - 20 January 2022

COMPLIANCE PROGRAMMES

Programme requirements

What requirements exist concerning the nature and content of compliance and supervisory programmes for each type of regulated entity?

The main requirements relating to the structure and content of compliance programmes are set out in Circular 2017/1 of the Swiss Financial Market Supervisory Authority (FINMA) on corporate governance, risk management and internal controls at banks (FINMA Circular 17/1). Even if FINMA Circular 17/1 applies per se to banks and securities firms, it constitutes a market standard for all regulated entities.

FINMA Circular 17/1 consistently implements the principle of proportionality, leaving institutions free to implement the requirements in a way that takes account of their differing business models and of the particular risks associated with them. It therefore takes into account the differences in the business operations of the licensees that must comply with its provisions.

The duties and responsibilities of the compliance function include the following activities.

- Conducting an annual assessment of the compliance risk of the institution's business activities and developing a risk-oriented activity plan for approval by the executive board. The activity plan must also be made available to internal audit.
- Reporting promptly to the executive board on any major changes in the compliance risk assessment.
- Reporting annually to the board of directors on the assessment of compliance risk and the activities of the compliance functions. A copy of the relevant reports must be provided to internal audit and the regulatory audit firm.
- Reporting serious compliance breaches and matters with far-reaching implications in a timely manner to the executive board and the board of directors, as well as supporting the executive board in the choice of appropriate instruction and measures. Internal audit must be informed accordingly.

Law stated - 20 January 2022

Gatekeepers

How important are gatekeepers in the regulatory structure?

The function of chief compliance officer is crucial in the regulatory structure and, as such, must provide the guarantee of irreproachable business conduct. This particularly means that the person acting as a chief compliance officer within a financial services firm is subject to enhanced administrative supervision by FINMA.

According to FINMA Circular 17/1, banks and securities firms shall appoint an internal auditor. If it seems inappropriate to appoint an internal auditor because of the size of the regulated entity, the relevant duties and responsibilities can be delegated to an internal auditor of another company of the same group, a second audit firm that is independent of the regulatory audit firm or is an independent third party.

The internal auditor shall report directly to the board of directors or its audit committee, and fulfil the auditing and monitoring responsibilities assigned to it in an independent fashion. This means in particular that it has an unlimited right of inspection, information and audit within the regulated entity.

The main roles of the internal auditor are to deliver independent audits and assessments of the appropriateness and effectiveness of the regulated entity's organisation and business processes, particularly with regard to the risk management and internal control system, and to ensure that the executive board, the board of directors or its audit committee and the regulatory audit firm are informed about the risk assessment and audit objectives. Furthermore, the internal auditor defines the audit objectives and planning for the next audit period and submits them and any necessary changes to the board of directors or its audit committee for approval.

With regard to entities authorised by virtue of the Financial Services Act (FinSA) and Collective Investment Schemes Act (CISA), FINMA may require that an internal audit be performed if the scope and nature of their activities demand it.

Special rules apply to portfolio managers and trustees under the Financial Institutions Act (FinIA). Under the FinIA, a risk-based approach is used with respect to separate internal audit and risk management functions. Small portfolio managers and trustees are thus not required to have an independent internal audit and risk management function.

Law stated - 20 January 2022

Directors' duties and liability

What are the duties of directors, and what standard of care applies to the boards of directors of financial services firms?

The board of directors of a Swiss company is responsible for the ultimate management and oversight of the company. As such, the board of directors is also responsible for the oversight of compliance matters. FINMA has issued regulatory guidance with respect to corporate governance that further specifies the board of directors' corporate governance-related obligations. According to the guidance, the board of directors is responsible for ensuring an adequate organisation, and appropriate and effective internal control systems. The board of directors is also responsible for appointing the head of the internal audit and, where required by FINMA regulations, the chief risk officer. Senior managers are typically responsible for the day-to-day management of the company.

Law stated - 20 January 2022

When are directors typically held individually accountable for the activities of financial services firms?

Traditionally, FINMA enforcement actions have focused on the institutions rather than individual members of management. More recently, FINMA has also started to focus on individual decision-makers as part of its enforcement actions. From a regulatory perspective, directors and other members of senior management of financial institutions are held responsible where they have breached their duties and where such breaches were of a significant nature. In such cases, FINMA has, in the past, ordered bans of a professional activity in the regulated sector. Generally, FINMA will open enforcement proceedings against individuals where it has reason to believe that the individual no longer guarantees proper business conduct.

Law stated - 20 January 2022

Private rights of action

Do private rights of action apply to violations of national financial services authority rules and regulations?

Traditionally, Swiss law does not provide for private rights of action to enforce violations of financial market rules. Rather, enforcement of such rules is seen as a task that should fall within the scope of activity of regulators and prosecutors. As a rule, clients of financial institutions may sue financial services providers for individual breaches of contract (ie, breaches of the contractual relationship between the financial services provider and its client), though in such a civil suit, non-compliance by a financial services provider with regulatory rules of conduct (or similar) would be taken into account when assessing an alleged breach of contractual obligations. In cases where Swiss law provides for possibilities of civil law right of action for breaches of financial services regulations (eg, in the context of the CISA, such having been transferred on a cross-sector level into the FinSA), a plaintiff would still have to show individual damages for such a suit to be successful.

Law stated - 20 January 2022

Standard of care for customers

What is the standard of care that applies to each type of financial services firm and authorised person when dealing with retail customers?

Financial services firms and authorised persons have to comply with the following rules of conduct at the point of sale when dealing with retail customers: a duty to provide information, an obligation to verify the appropriateness and suitability of financial instruments and services (as regards investment advice or asset management, but not for execution-only transactions such as recovery time objective services), and a documentation and reporting duty, as well as a duty of transparency and of care. In addition, the appropriate and proper business conduct requires all types of financial services firms and their agents to act with loyalty and diligence, and provide all necessary information to their customers.

As regards collective investment schemes, the rules of conduct set out in the CISA on the level of the fund and the product are recognised as minimum standards by FINMA. These rules are specified by the Code of Conduct of the Asset Management Association Switzerland and provide clarifications as to the duties with which persons administering, holding or representing collective investments schemes as well as their agents shall comply when dealing with customers, as follows.

- Duty of loyalty: they act independently and exclusively in the interests of the investors and avoid any conflict of interests.
- Due diligence: they implement the organisational measures that are necessary for proper management and ensure the best execution of the clients' orders.
- Duty to provide information: they ensure the provision of transparent financial statements and provide appropriate information about their activity; they disclose all charges and fees incurred directly or indirectly by the investors and their appropriation; and inform them in particular about the risks related to a given type of transaction.

Law stated - 20 January 2022

Does the standard of care differ based on the sophistication of the customer or counterparty?

Financial services providers have to distinguish retail clients from professional clients and institutional clients. The FinSA provides for opting-in and opting-out possibilities for professional and institutional clients. As a matter of principle, financial services providers must comply with the FinSA rules of conduct. However, no rules of conduct apply in relation to institutional clients. Furthermore, professional clients may partially waive specific rules of conduct by means of an express declaration. It is noteworthy that the organisational requirements under the FinSA (except the obligation to affiliate with an ombudsman service) apply in all cases and irrespective of the customers' sophistication.

Law stated - 20 January 2022

Rule-making

How are rules that affect the financial services industry adopted? Is there a consultation process?

New legislation in Switzerland, including that which relates to the financial services industry, is adopted only after a consultation process. These consultation procedures are available at all levels of the legislative process, with consultation periods typically being longer for parliamentary acts as opposed to implementing ordinances or regulations issued by the Swiss regulator. The consultation process is generally open to all interested parties. In addition, the relevant industry organisations (such as the Swiss Banking Association, the Asset Management Association Switzerland and the self-regulatory organisations) regularly participate in the consultation process to ensure that the industry points of view are taken into account early on in the legislative process.

Law stated - 20 January 2022

CROSS-BORDER ISSUES

Cross-border regulation

How do national financial services authorities approach cross-border issues?

As a rule, financial services such as banking, securities brokerage or investment advice can be offered to Swiss clients on a purely cross-border basis without triggering licensing or registration requirements in Switzerland. Where, however, a foreign financial services provider maintains a physical presence in Switzerland (ie, employs, on a permanent basis, staff in Switzerland that act for the foreign financial service provider (eg, for marketing purposes)), licensing requirements will be triggered.

Client advisers of foreign financial services providers are under an obligation to register with a client adviser register in

Switzerland. However, client advisers of a foreign financial service provider that is subject to prudential supervision in its home jurisdiction will not have to register, provided that they render their services exclusively to per se professional and institutional clients. Further, foreign financial services providers have to affiliate themselves with a Swiss ombudsman service (subject to certain exemptions for financial services providers that exclusively offer their financial services to per se professional and institutional clients).

The Financial Services Act (FinSA) has a substantial impact on the cross-border provision of financial services. Financial services providers based outside Switzerland offering financial services or products on a cross-border basis to clients in Switzerland also fall within the scope of the FinSA. Swiss financial services providers must apply the FinSA regardless of whether they provide financial services for clients in Switzerland or abroad.

The FinSA and the Collective Investment Schemes Act also provide for a number of product-specific requirements, such as authorisation requirements for non-Swiss collective investment schemes to be marketed and offered to retail investors in Switzerland or a general requirement to provide retail investors with a key information document if they are offered financial instruments with a derivative component.

Law stated - 20 January 2022

International standards

What role does international standard setting play in the rules and standards implemented in your jurisdiction?

International standard-setting plays a significant role in the Swiss legislative process and such standards are generally taken into account when drafting and implementing new legislation. This is particularly true with respect to legislative developments in the European Union and the European Economic Area. While not itself a member of the European Union or the European Economic Area, Switzerland generally tries to implement financial services legislation that is largely in line with the rules in the European Union or the European Economic Area, in particular where such European rules provide for third-country regimes that require comparable and equivalent rules to gain access to the European markets.

Law stated - 20 January 2022

UPDATE AND TRENDS

Key developments of the past year

Are there any other current developments or emerging trends that should be noted?

On 1 February 2021, several amendments to the financial services regulations with respect to financial instruments that make use of distributed ledger technology became effective. It allows Swiss companies limited by shares to issue digital shares in the form of cryptographic tokens, which are represented on a blockchain.

With respect to the new obligations under the Financial Services Act (FinSA) (ie, rules of conduct and organisational requirements), the two-year transitional period expired on 31 December 2021. Such rules are now fully applicable.

On 17 December 2021, a new fund category for qualified investors – the Limited Qualified Investor Fund (known as the L-QIF) – was enacted through an amendment to the Collective Investment Schemes Act (CISA).

The Asset Management Association Switzerland recently published a revised version of its self-regulation, which is the result of the revision of the CISA triggered by the FinSA and the Financial Institutions Act. This revised Asset Management Association Switzerland self-regulation is of particular practical importance, due to the recognition by the Swiss Financial Market Supervisory Authority of several documents that set a minimum standard to which all markets

must adhere.

Law stated - 20 January 2022

Jurisdictions

Australia	Herbert Smith Freehills LLP
Brazil	Pinheiro Neto Advogados
Canada	Gowling WLG
Egypt	Soliman, Hashish & Partners
Hong Kong	Davis Polk & Wardwell LLP
Indonesia	ABNR
Ireland	Dillon Eustace LLP
Italy	Legance - Avvocati Associati
Japan	Anderson Mōri & Tomotsune
Luxembourg	AKD
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