

FinIA asset manager license

How external asset managers prepare best for a successful transition

With FinIA coming into force, external asset managers and managers of collective assets – i.e. of assets on behalf of collective investment schemes or occupational pension schemes – below the de-minimis threshold have to make significant adjustments to be able to manage assets in the future as a regulated institution.

The licensing requirement puts these asset managers on equal footing with other regulated financial institutions. They may, therefore, benefit from an enhanced standing in the market.

This factsheet highlights the factors impacting the asset management industry, what external asset managers and managers of collective assets operating below the de-minimis threshold should consider and where they should start.

Given the fundamental impact, the implementation challenges and the time required for a proper setup, early action should be a priority for asset managers.

Background

For external asset managers managing portfolios of individual clients and asset managers managing assets on behalf of occupational pension schemes, the Financial Institutions Act (FinIA) introduced a licensing requirement: for the former, FinIA requires a license as portfolio manager, for the latter, a license as manager of collective assets is required.

However, managers of collective assets (i.e. managers of assets on behalf of collective investment schemes and on behalf of occupational pension schemes) can make use of de-minimis provisions if they stay under certain thresholds laid out by the FinIA. Unlike under the old law, remaining under the de-minimis threshold does not exempt from the licensing requirements altogether: under FinIA, managers of collective assets remaining under the de-minimis threshold

are still subject to a licensing requirement as portfolio managers if they plan to continue their asset management activities in the future.

By July 2020, interested asset managers had to notify FINMA of their intention to apply for a license and subject themselves to prudential supervision. With the approval of the first two supervisory organizations (SO) on 6 July 2020, the last regulatory conditions to apply for a license have been set. This also means that the clock on the one-year deadline for the external asset managers to join an SO has started to tick.

Key challenges for asset managers

Financial expenditure

First to note are the minimum capital and collateral requirements linked to the FINMA license: asset managers now must have capital of at least CHF 100,000 fully paid in, at all times. In addition, they must have adequate collateral or take out a professional liability insurance, 50% of which may be counted towards qualifying capital. Further requirements the professional indemnity insurance must fulfil will be specified in the yet to-be enacted FinIO-FINMA.

Beyond this, the costs of obtaining and upholding the license itself must be factored into the equation. These will vary significantly based on the level of support needed by each individual asset manager, either in obtaining the license (e.g. regulatory support with the preparation and/or the filing of the application) and/or in ensuring compliance

with the new requirements (e.g. additional staffing, ongoing compliance support, etc.). Furthermore, material organizational changes and amendments to key internal regulations will, in future, be subject to FINMA notification and approval, thereby increasing the administrative burden of running the business.

Minimum organizational requirements

In addition to financial expenditures, a license as asset manager under the FinIA also entails organizational challenges. Due to the strict requirement to segregate the operational (portfolio management) and the control functions, license applicants will regularly face challenges to find the necessary qualified resources. In exceptional cases, a single qualified manager may assume all roles within the asset manager. Mostly, however, it will not be possible that a single person has all of the required knowledge and experience, particularly in the fields of regulatory compliance and risk management. However, asset managers will be able to fulfill the organizational requirements by delegating the functions or adopting support provided by group-internal or third party providers.

Internal regulations

Just like other regulated financial institutions, asset managers are obliged to establish appropriate corporate management rules. In order to apply for the license and to ensure compliant business conduct, a number of key internal regulations and documents must be put in place. Beyond the organizational requirements, the policies have to generally address following topics: asset management, the FinSA code of conduct, risk management, compliance and internal controls and anti-money laundering and terrorist financing. Asset managers planning to delegate certain functions will also have to make sure these are embedded in the appropriate internal framework.

Client segmentation

Clients must be classified as either retail, professional or institutional clients. The client segment determines the duties which financial service providers must comply with by default. Professional clients may expressly release asset managers from the duties of information, documentation and accountability (waiver), while transactions involving institutional clients do not fall under the scope of the FinSA code of conduct. Asset managers servicing high-net-worth retail clients and private investment structures created for them may wish to obtain opt-out declarations from these as well as waivers for the above-mentioned conduct rules.

FinSA conduct rules

The provision of a financial service (e.g. asset management) triggers a variety of conduct rules according to the FinSA. Notably, client advisers must be sufficiently familiar with the code of conduct and have the expertise necessary to perform their activities. Further duties relate to the provision of information to clients, documentation, accountability and best execution. At the core of the

legislation are the duties to perform suitability or appropriateness assessments. Asset managers will do well to ensure that their employees obtain sufficient preliminary and ongoing training on these new duties.

Further guidance on these provisions will be provided by the relevant implementing ordinances of the FINMA and industry guidelines. It is expected that the Swiss Funds and Asset Management Association (SFAMA) will publish updated guidance in the first quarter of 2021.

Audit duty

Asset managers must appoint an audit firm to conduct an annual audit, unless the SO itself performs the audit. Audit frequency may be decreased by the SO to a maximum of four years, depending on the activity and the associated risks of the asset manager. In the years not subject to an audit, asset managers must report on the compliance of their business activities with the relevant statutory provisions to the SO.

Transitional periods

Asset managers assuming their activity within one year of the FinIA entering into force must satisfy the act's authorization conditions (with the exception of the duty to affiliate to an SO, which expires one year after the licensing of the first SO) after assuming their activity. Provided that they are affiliated with and supervised by a self-regulatory organization as per the Anti-Money Laundering Act, they may already perform their activities while the license application is pending.

The FinSA duties are also subject to transitional periods. Most duties, notably conduct and organizational duties, will become binding by 1 January 2022. Financial service providers who wish to already adhere to and be audited on the basis of these duties before the transitional period has expired must irrevocably notify their auditor of the date of transition in writing.

Where should Asset Managers start?

Impact assessment – The first step in preparing for such a comprehensive regulatory undertaking is to identify the relevant requirements and assess the required changes to the status quo.

Governance and organizational setup – As outlined, more or less far-reaching organizational changes and governance questions will need to be addressed. For many, this will require additional personnel and/or the delegation of certain functions.

Compliance and risk management – Securing the necessary expertise and resources for these vital functions, whether in-house or from third party providers, is an important step in ensuring a compliant organization.

Client segmentation and outreach – Clients not classified as retail clients must be proactively informed of the possibility of opting in. The segmentation and corresponding client communication should be prepared well in advance of the provision of services.

Internal regulations and contracts – A range of policies and agreements (e.g. asset management agreements, delegation agreements) must be established or amended in light of the new regulation.

How KPMG can help

We understand the significant impact the new licensing requirement has (particularly on external asset managers) and recognize the need for long-term planning with minimal disruption to your client portfolios. Our experienced team members actively engage with the regulator and industry participants of all sizes.

As a result, we have an in-depth understanding of the challenges the industry is facing. We have developed solutions that are a cost and time-efficient, making for a painless transition to a regulated institution.

Our committed team of regulatory advisers on all levels specializes in supporting small and large clients in licensing proceedings and implementing the new laws. Our mission is to help our clients in establishing a structure that is cost-efficient and adapted to their specific needs and circumstances. This ensures that regulatory compliance is efficient and unobtrusive, so that clients can focus on their core business.

KPMG Service Offering

We offer comprehensive services in connection with licensing procedures before FINMA, including the following services:

- gap analysis
- structuring & setup advice
- evaluation & discussion of business case
- amendment / drafting of internal regulations and policies
- contract drafting
- compliance & risk management support
- AML support
- license application and FINMA correspondence
- outsourcing / delegation advice & support in provider selection
- FinSA training

Depending on your concrete business needs, we can mobilize our internal network and involve specialists from other departments, such as risk management, tax, IT advisory, deal advisory, corporate legal, digital transformation, ESG, etc. to ensure the right outcome for your business.

Why KPMG?

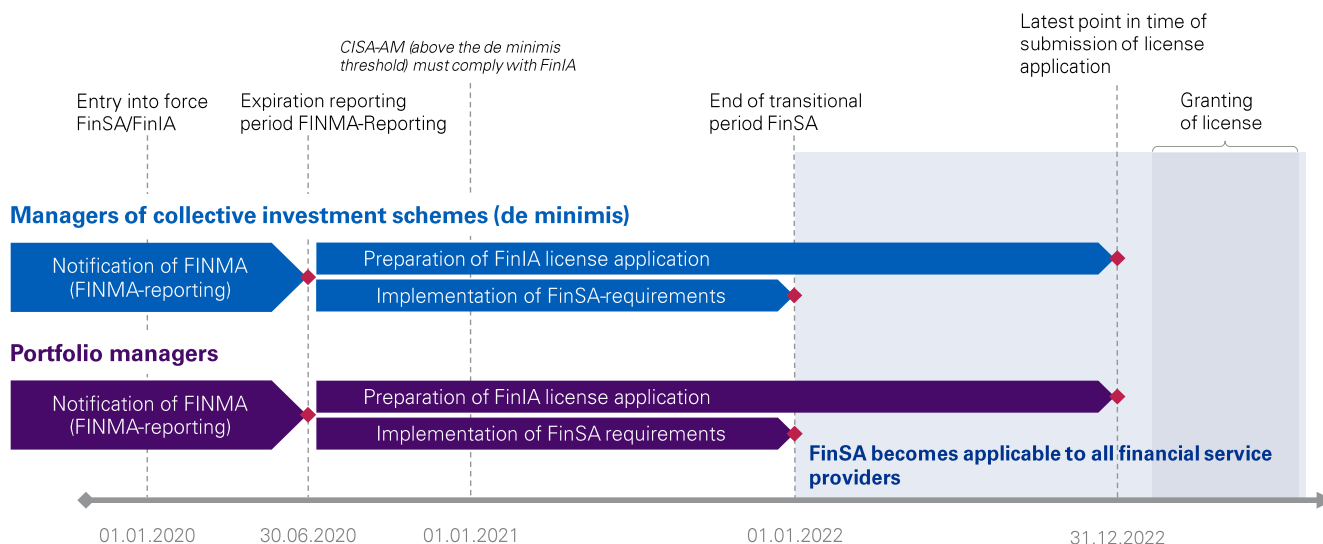
Because we understand ourselves as a sparring partner to our clients and care for your business.

When deciding whom to entrust with your licensing project, you may want to consider the following:

- We are a small and highly specialized team offering expert knowledge on all levels – backed by a global organization of specialists of all backgrounds, ready to provide support as needed;
- We are interested in your business and know your industry very well;
- We care for our clients and are dedicated to providing tailored solutions that are cost-efficient, giving you more time to devote yourself to your business;
- We are equally skilled at helping clients navigate the challenges resulting from regulatory change and disruptive technologies;
- As a locally rooted firm with a global reach, we are perfectly positioned to help our clients realize their objectives, optimize opportunities presented by today's market and accelerate growth;
- Our vast experience and reach enable us to offer competitive prices and hands-on solutions for your business.

„Regulation is
our focus – so
it doesn't have
to be yours.“

Timeline for asset managers & de-minimis managers of collective assets



Licensing project schedule (indicative)

Phase	Main tasks
1 Internal evaluation / strategy	<ul style="list-style-type: none"> Evaluation of the possible options in light of business case / strategic assessment. Preliminary clarification on regulatory requirements.
2 Preparation for application	A Gap analysis <ul style="list-style-type: none"> Identification of the gaps between the status quo and the regulatory requirements → action plan.
	B Corporate governance <ul style="list-style-type: none"> Setup of main organizational requirements. Evaluation of key personnel (required for application) and functions, including compliance, risk management and internal control system, ensuring segregation of functions.
	C Internal regulations & contractual framework <ul style="list-style-type: none"> Review / drafting of organizational regulations and necessary policies (e.g. asset management, FinSA conduct rules, risk management, compliance and internal controls, AML). Revision / drafting of contracts (e.g. asset management, delegation).
3 Preparation and submission of application	<ul style="list-style-type: none"> Preparation of the formal FINMA application (at the time of the application, the main organization should be implemented already). FINMA's evaluation depends on the complexity of the setup as well as on the number of other applications filed (efficient planning can help avoid falling into a period of mass-filings).
FINMA decision	
4 Operating as licensed entity	Ongoing / selective support (e.g. compliance, AML, FINMA) as required.

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