

FinIA license for portfolio managers and trustees

How asset managers and trustees manage a successful transition

Since the Financial Institutions Act (FinIA) entered into force on 1 January 2020, portfolio managers and trustees must obtain FINMA authorization to continue their business activities. After authorization has been granted, portfolio managers and trustees will be prudentially supervised by a FINMA-authorized supervisory organization (SO).

Under the new Financial Institutions Act (FinIA), which entered into force on 1 January 2020, portfolio managers, trustees and multi-family offices that manage families' assets are subject to a licensing requirement. The licensing and the prudential supervision put them on equal footing with other regulated financial institutions. This is why the licensing requirement is not only accompanied by numerous organizational and financial obligations, but may also lead to an enhanced standing in the market.

According to the transitional provisions, existing portfolio managers, trustees and multi-family offices **must submit a license application to FINMA by 31 December 2022**. Prior to this, the chosen supervisory organisation (SO) must review the licence application and issue a confirmation of connection (Anschlussbestätigung), which must definitely be factored into the time schedule.

Some of these institutions are also subject to the Financial Services Act (FinSA) and must therefore comply with the client segmentation duty and conduct rules stipulated therein. The **deadline for implementing FinSA is already on 31 December 2021**.



This factsheet highlights the key challenges for portfolio managers, trustees and multi-family offices when implementing the new requirements and how they can manage a successful transition.

Key challenges

Financial aspects

First to note are the minimum capital and collateral requirements linked to the FINMA license: portfolio managers and trustees must at all times have capital of at least CHF 100,000 fully paid in. In addition, they must have adequate collateral or take out a professional liability insurance. The implementing ordinance by FINMA (FinIO-FINMA) specifies the requirements such a professional liability insurance must meet.

Beyond this, the costs of obtaining and upholding the license itself must be taken into account. These will vary significantly based on the level of third-party support needed by a license applicant, either in obtaining the license and/or ensuring compliance.

Especially for those **institutions with a rather simple set-up**, it may also be attractive to delegate certain functions, such as risk management and compliance, to a third-party service provider or to get professional support in these areas.

Furthermore, material organizational changes and amendments to key internal regulations will, in the 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 portfolio manager or trustee also entails organizational challenges. Due to the **strict requirement to segregate the operational (portfolio management) from the controlling functions**, institutions will regularly face challenges to find the necessary qualified resources.

In exceptional cases, a **single qualified manager may assume all roles** within the portfolio manager or trustee. As most of the time it is unlikely that a single person covers all the required knowhow and experience, particularly in the fields of compliance and risk management, delegating these functions or adopting support by group-internal or third party service providers will be the key.

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

Internal regulations

As a licensing requirement and to ensure compliant business conduct, a number of internal documents must be put in place. Beyond the organizational regulations, the key policies must address the following topics: asset management, conduct rules, risk management, compliance & internal controls, as well as anti-money laundering and terrorist financing. Portfolio managers and trustees planning to delegate certain functions will also have to make sure these are embedded in the appropriate internal framework.

Client segmentation

By the end of 2021, clients must be classified as either retail, professional or institutional clients. The client segment determines the duties which financial service providers are obliged to perform towards their clients. Professional clients may expressly release portfolio managers from some of these duties (waiver), while transactions involving institutional clients are not at all subject to the FinSA code of conduct. Portfolio managers servicing high-net-worth retail clients and private investment structures created for them may wish to obtain opt-out declarations and waivers for the above-mentioned conduct rules in order to facilitate regulatory compliance.

FinSA code of conduct

Providing financial service such as asset management requires a variety of conduct rules according to the FinSA. Notably, portfolio managers 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.

Further guidance on these provisions will be provided by industry guidelines.

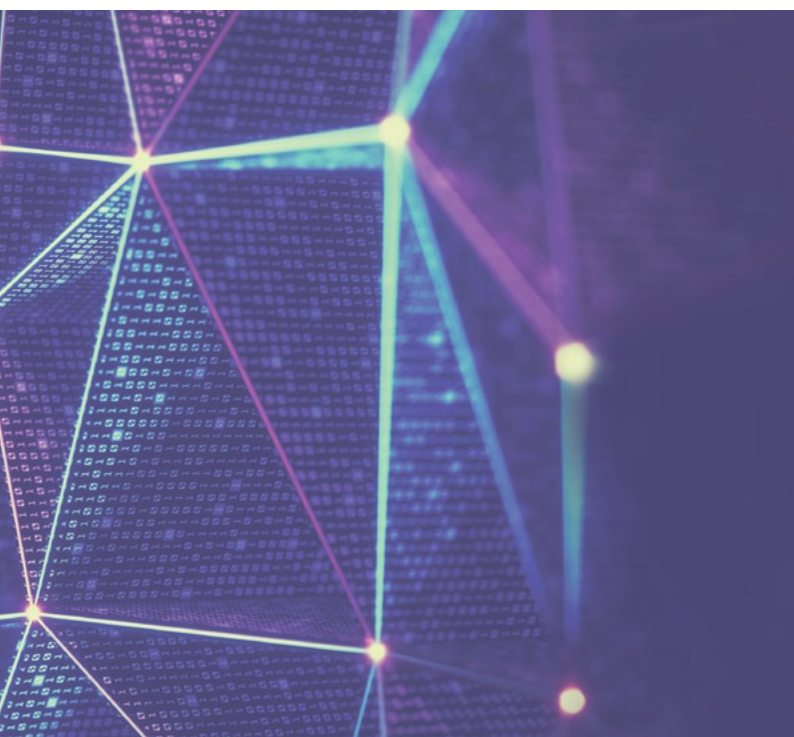
Audit duty

Portfolio managers and trustees must now appoint an audit firm to conduct an annual regulatory audit. Depending on the institution's activities and the associated risks, the SO may reduce its audit frequency (with the minimum being every four years).

Transitional periods

Portfolio managers, trustees and multi-family offices with existing business operations are required to submit a **license application by 31 December 2022**. The license application is first pre-assessed by the SO before being forwarded to FINMA for final assessment and approval.

It should be noted, however, that the **FinSA requirements regarding client segmentation and setting up a code of conduct have to be in place by 31 December 2021**.



Where to start?

Impact assessment – The first step in preparing for the license application is to identify the relevant requirements and assess the necessary changes to the status quo.

Governance and organizational setup – Depending on the status-quo, far-reaching organizational changes and governance questions will have 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.

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

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

How KPMG can help

We understand the significant impact the new licensing requirement has on portfolio managers, trustees and multi-family offices. We understand the need for an efficient implementation of the new rules with minimal disruption to your client portfolios.

Our experienced team members actively engage with regulatory bodies, industry organizations and market participants. As a result, we have an in-depth understanding of the challenges the industry is facing. We have developed timely solutions that are cost-efficient, making for a smooth transition to a regulated institution.

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

KPMG Service Offering

We offer comprehensive services in connection with licensing procedures, including but not limited to 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 incl. assessment and development of internal controls
- anti-money laundering (AML) support
- support with the implementation of new requirements concerning suitability, cross-border, market conduct, etc.
- license application and FINMA correspondence
- outsourcing / delegation advice & support in provider selection

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.

We understand the need of many customers for an effective and cost-efficient service. We offer a basic service package at a fixed-price, which can be expanded as needed to include additional services as required:

Package 1

Basic

- initial workshop (2-3 hours)
- amendment of articles
- drafting of organizational regulations
- basic set of policies
- preparation and submission of FINMA application

Package 2

Basic Plus

- services as per "Package 1 – Basic"

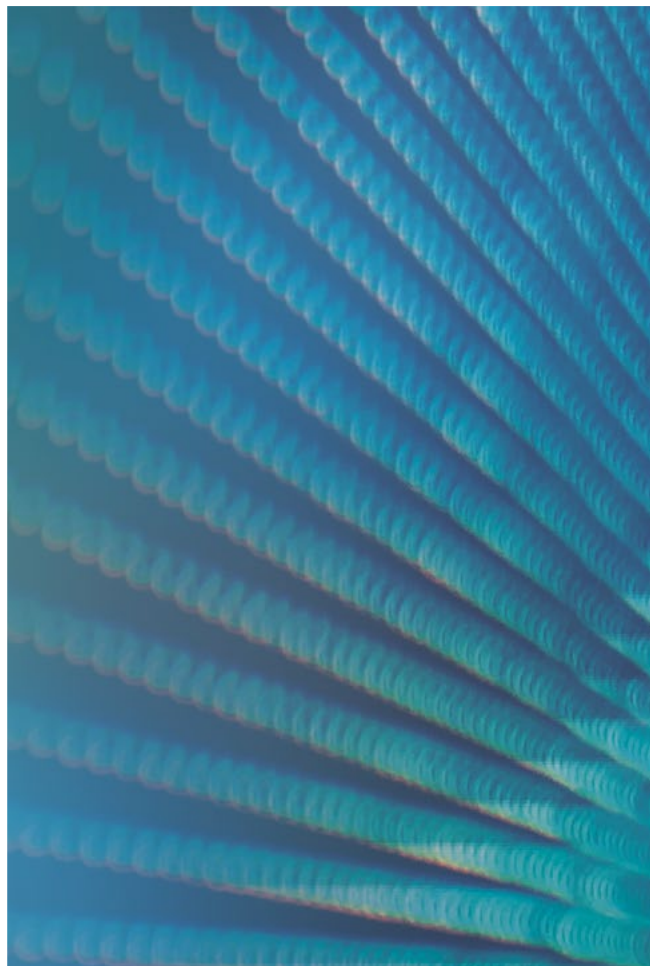
Additional modules (fixed price):

- a. client segmentation support and advice
- b. amendment of asset management agreement
- c. further policies (e.g. cross-border)
- d. compliance & risk management support
- e. full supervisory organization (SO) and FINMA correspondence
- f. FinSA training

Why KPMG?

We consider ourselves to be sparring partners to our clients and care for your business. When deciding whom to entrust 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.



Contacts

KPMG AG

Badenerstrasse 172
PO Box
8036 Zurich

kpmg.ch

Pascal Sprenger

Partner
Financial Services
Assurance & Regulation

+41 58 249 42 23
psprenger@kpmg.com

Dr. Thierry Ammann

Manager
Financial Services
Assurance & Regulation

+41 58 249 68 52
tammann@kpmg.com

Sandra Gasser-Habermacher

Senior Manager
Financial Services
Assurance & Regulation

+41 76 510 58 04
sgasser@kpmg.com

Felix Metzler

Assistant Manager
Financial Services
Assurance & Regulation

+41 58 249 75 96
fmetzler@kpmg.com

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