

Categories, requirements and the personal licence

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The law of 2009 distinguished three categories of fiduciario. The commercial fiduciary (*fiduciario commercialista*, Art. 3 LFid) keeps accounts, gives tax advice, administers assets and manages companies on behalf of third parties. The real estate fiduciary (*fiduciario immobiliare*, Art. 4 LFid) acts as broker in real estate transactions and administers property. The financial fiduciary (*fiduciario finanziario*, Art. 5 LFid) gives investment advice, manages assets, trades in securities and intermediates fund units. For currency exchange and for brokerage the law provided limited authorizations.¹ A person could hold more than one authorization. At the end of 2018, 1,500 persons held 1,841 authorizations: 1,184 held one, 282 held two and 34 held three. In 2018 alone, 71 fiduciari were newly entered with 74 authorizations, and 61 were removed, two by revocation, five on death and 54 on ceasing activity.²

The authorization is personal and is granted only to natural persons (Art. 1 LFid). A fiduciary company may operate only through an authorized fiduciario who is responsible for its activity. Article 8 LFid sets out the requirements: full civil capacity, an "excellent reputation" with a guarantee of irreproachable activity (*gode di ottima reputazione e garantisce un'attività irreprensibile*), the absence of insolvency proceedings, a recognized qualification with two years' professional practice in Switzerland, and civil liability insurance.³ The requirement of irreproachable conduct mirrors the federal "guarantee of irreproachable business conduct" in banking law and in Article 11 FinIA. Employees of banks and other institutions supervised under federal financial market law are exempt for the activities they perform within their institution (Art. 7 LFid).⁴

Category	Article	Core activities	Status after 2020
Commercialista	Art. 3 LFid	Accounting, tax, company	Cantonal administration licence
Immobiliare	Art. 4 LFid	Real estate brokerage and	Cantonal administration licence
Finanziario	Art. 5 LFid	Asset management,	Federal

law investment advice (FinIA) Cambista Limited Currency exchange
Cantonal licence licence

1 One fiduciario, one company

Because the licence is personal, the market developed a practice in which an authorized fiduciario lent his name to several companies whose actual business was run by unlicensed persons. The Supervisory Authority answered with Directive No. 1 of 28 May 2019, in force from 1 June 2019, on the grant of exemptions under Article 6 paragraph 3 LFid. The general rule is that an authorized fiduciario may be responsible for only one legal entity. An exemption allowing responsibility for further entities is exceptional. It requires, cumulatively, the effective exercise of the profession and supervision within each entity, an employment contract of at least 50 per cent with appropriate pay, real logistical and operational unity (the same premises, staff and management) and an entry with signing authority in the commercial register. The directive states that its purpose is to prevent trafficking in authorizations and fiduciary companies that exist only on paper.⁵

2 Notes

1. LFid (above), Art. 3–5; the limited authorizations for currency exchange and brokerage are described in Rapporto 7753 R (above). ↩
2. Commissione Costituzione e leggi, Rapporto 7753 R (above), figures as at 31 December 2018. ↩
3. LFid (above), Art. 1 and 8. ↩
4. LFid (above), Art. 7. ↩
5. Autorità di vigilanza sull'esercizio delle professioni di fiduciario, Direttiva n. 1 – Rilascio della deroga, 28 May 2019, in force 1 June 2019, https://m4.ti.ch/fileadmin/DI/DG/FIDUCIARI/DIRETTIVA_N.1-_Rilascio_della_deroga.pdf. ↩

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