

Organization, risk management and internal control

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FinIA requires an adequate organization, risk management and internal control (Art. 21 FinIA). Risk management and internal control may be delegated to a qualified external provider, but must in principle be independent of the revenue-generating activities.¹ The ordinance relaxes this requirement for small firms. A company with five or fewer full-time positions or annual gross earnings of less than CHF 2 million, which does not pursue a business model with increased risks, need not separate risk management from revenue activities. The thresholds must be met in at least two of the three previous financial years or, for a new firm, appear in its business plan. For larger firms with annual earnings above CHF 10 million and a governance body under Article 23 paragraph 3 FinIO, FINMA may require an internal audit function (Art. 26 FinIO).²

The ordinance also regulates the governance of the firm. The persons entrusted with management must sign jointly with another person. FINMA may require a separate board of directors for supervision and control if the firm has ten or more full-time positions or gross earnings above CHF 5 million, or if the nature and scope of its activity require it (Art. 23 FinIO).³ Most Lugano managers stay below these thresholds and are run by their owners as directors and managers at the same time, which the law permits for persons with a qualified participation (Art. 11 para. 8 FinIA).⁴

1 Capital, own funds and insurance

A portfolio manager must have a minimum capital of CHF 100,000, which must be fully paid in cash and permanently held (Art. 22 para. 1 FinIA). In addition, he must have adequate collateral or professional indemnity insurance. His own funds must at all times amount to at least one quarter of the fixed costs of the last annual accounts, up to a maximum of CHF 10 million (Art. 23 FinIA).⁵ The ordinance specifies how fixed costs are

calculated and which items are deducted from own funds. Professional indemnity insurance may be taken into account in part when assessing the adequacy of the financial guarantees.⁶ For a typical Lugano firm with fixed costs of CHF 1.2 million, the own funds requirement is CHF 300,000, which is three times the minimum capital and often more than the founders initially expect.

2 Guarantee, qualified participants and supervision

The persons entrusted with administration and management must enjoy a good reputation and offer the guarantee of irreproachable business conduct. The persons holding qualified participations must also enjoy a good reputation (Art. 11 FinIA). Unlike banks and securities firms, portfolio managers and trustees need not notify FINMA in advance of the acquisition or disposal of qualified participations (Art. 11 para. 7 FinIA), but they must notify FINMA of any change in the facts on which the licence is based and obtain its prior authorisation where the change is of material significance (Art. 8 FinIA).⁷ To obtain the licence, the manager must prove that he is subject to the supervision of a supervisory organisation under Article 43a FINMASA (Art. 7 para. 2 FinIA). FINMA grants the licence in consultation with the supervisory organisation, which then conducts the ongoing supervision (Art. 61 FinIA).⁸ An audit firm under Article 43k FINMASA audits the manager every year. The supervisory organisation may extend the cycle to up to four years if the firm's activity carries no increased risks. In the years without an audit the manager submits a report (Art. 62 FinIA).⁹

3 Notes

1. FinIA (above), Art. 21. ↩
2. FinIO (above), Art. 26, consulted at <https://lawbrary.ch/law/art/FINIV-v2023.01-en-art-26>. ↩
3. FinIO (above), Art. 23, consulted in the English and Italian versions on droit-bilingue.ch. ↩
4. FinIA (above), Art. 11 para. 8. ↩
5. FinIA (above), Art. 22 and 23. ↩
6. FinIO (above), Art. 28, 30 and 31 (calculation of fixed costs, deductions from own funds and the partial recognition of professional indemnity insurance), consulted on droit-bilingue.ch. ↩

7. FinIA (above), Art. 11 para. 7; on changes in the facts on which the authorisation is based, FinIA Art. 8, <https://www.droit-bilingue.ch/en-it/9/95/954.1-8-11.html>. ↩
8. FinIA (above), Art. 7 para. 2 and Art. 61. ↩
9. FinIA (above), Art. 62. ↩

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