

The inverse case: Article 28 FinSA and the reciprocity clause

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Swiss law treats foreign providers who serve clients in Switzerland more openly than Italy treats Swiss providers. Article 28 paragraph 1 FinSA provides that client advisers of Swiss financial service providers not subject to supervision under Article 3 of the Financial Market Supervision Act, as well as client advisers of foreign financial service providers, may carry out their activity in Switzerland only if they are entered in a register of advisers. Paragraph 2 allows the Federal Council to exempt prudentially supervised client advisers of foreign providers if the services they provide in Switzerland are exclusively for professional or institutional clients. Paragraph 3 allows the Federal Council to make this exemption dependent on reciprocity.¹

A registered adviser must show sufficient knowledge of the rules of conduct, professional indemnity insurance or equivalent financial security and affiliation with an ombudsman's office. Registration bodies licensed by FINMA keep the register, the first of which was authorized on 20 July 2020.² An Italian bank's relationship manager who wishes to advise Swiss residents in Lugano needs no Swiss licence for the bank. He needs only registration as an individual, without a branch or a licence for his employer. The asymmetry with the Italian regime is the subject of the political dispute described below. FINMA notes that representative offices of foreign banks in Switzerland must register their advisers if they wish to offer services to private clients in Switzerland.³

For the practitioner. - Treat the country manual for Italy as a binding instruction and document every deviation approved by compliance. - Record the client's initiative at account opening and again for each new service, and keep the evidence (call logs, e-mails from the client, visit reports in Lugano). - Obtain advance approval for every trip to Italy and report afterwards. No advice, product presentation, signature or

instruction may take place in Italy. - Classify each Italian client under Article 4 FinSA and check whether he is a per se professional client under Annex II MiFID II, since only the latter opens the authorization route without a branch.

1 Notes

1. FinSA, Art. 28, English text at <https://www.droit-bilingue.ch/en-de/9/95/950.1-28-31.html>. ↩
2. FINMA, "Registration body", <https://www.finma.ch/en/authorisation/registrierungsstelle/>; on the requirements (insurance, ombudsman, knowledge of the rules of conduct) "The New Registration Duty For Client Advisers: An Update On The Final FinSO", CapLaw 2019-55, Mondaq, <https://www.mondaq.com/Article/881814/The-New-Registration-Duty-For-Client-Advisers-An-Update-On-The-Final-FinSO>. ↩
3. FINMA, "Registration body" (above). ↩

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