

Wealth management under FinSA and FinIA: the regulatory frame in practice

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Since 1 January 2020 independent asset managers in Switzerland require a licence. The transition reshaped the market visibly: of 1,864 applications, FINMA had granted 1,532 licences by February 2025; 131 applications had been withdrawn, and some 1,060 firms had told FINMA beforehand that they would not apply. This article sets out what the two statutes require, where applications and audits fail, and what the regime means economically.

1 The division of labour between the two statutes

The Financial Institutions Act governs *who* may operate. It subjects asset managers, trustees, managers of collective assets, fund management companies and securities firms to supervision graduated by activity. For a plain asset manager this means a FINMA licence, ongoing monitoring by a supervisory organisation, and requirements as to organisation, capital, fitness and propriety, and risk management.

The Financial Services Act governs *how* the activity is carried on. It orders client segmentation, information duties, the appropriateness and suitability assessments, documentation and accounting duties, and the organisation required to avoid conflicts of interest. For financial instruments offered to retail clients a basic information sheet must be made available; shares and bonds without derivative features are exempt.

Reading them together: the first statute decides whether a business may exist, the second decides what it must do every day.

2 Client segmentation

Segmentation determines the extent of nearly every other duty, which is why it is examined first in any audit.

Category	Consequence
Retail client	full protection: information, basic information sheet, suitability, documentation
Professional client	reduced information duties; certain product rules disappplied
Institutional client	conduct rules largely disappplied

Opting out of retail status and opting in to it are both possible, and both must satisfy the statutory conditions and be documented. A classification that cannot afterwards be evidenced is the most common defect found in audit reports, and it is also the most expensive, because it affects every transaction carried out on the strength of it.

3 The suitability assessment

Where advice covers a portfolio, or where the manager exercises discretion, the suitability assessment applies. It requires knowledge of three things: the client's financial circumstances, the investment objectives, and knowledge and experience.

Three failures recur.

- **The frozen questionnaire.** Completed at the outset and never updated, it ceases to describe the client after the first change of circumstances — a sale of a business, a divorce, a change of residence, retirement.
- **Experience by assertion.** A client who ticks a box claiming familiarity with structured products has not thereby acquired it. Where the manager has reason to doubt the answer, the doubt must be resolved.
- **Objectives without horizon.** Capital preservation and growth mean nothing without a period and a tolerance for drawdown. The absence of those two figures makes any later assessment of suitability arbitrary.

4 Documentation and accounting to the client

The duty to document and the duty to account are separate. Documentation records what was agreed, advised and executed. Accounting answers the client's question about what happened to his assets, including what third parties paid in connection with them.

The case law on retrocessions continues to apply alongside the statute. Under Article 400(1) of the Code of Obligations the agent must hand over everything received in connection with the mandate; a waiver requires

knowledge of the parameters, in particular the basis of calculation and the range; and the claim prescribes after ten years under Article 127, with time running from the receipt of each individual payment. The Federal Supreme Court rejected the shorter five-year period for periodic payments, because each duty of restitution rests on its own ground.

5 The supervisory organisation

Ongoing supervision is not exercised by FINMA directly. A supervisory organisation licensed by FINMA audits periodically, requests reports, and reports to FINMA what is relevant under supervisory law; FINMA grants and withdraws the licence and conducts enforcement.

The two-tier construction is a Swiss particularity and it distributes the cost of supervision among the supervised. For a small firm the practical effect is that the audit relationship is the one that matters day to day, and the quality of that relationship depends on the firm's ability to produce documents on request.

6 Why firms failed to obtain a licence

The pattern across refused and abandoned applications is consistent.

- **Organisation that cannot be lived.** Separation of functions described on paper and impossible in a business of two people.
- **Unclear ownership.** Qualified participants must be disclosed and must satisfy the fitness requirement; nominee arrangements and undocumented trusts hold applications up for months.
- **Unevidenced qualification.** Experience in asset management must be documented, with references and periods, not asserted in a curriculum vitae.
- **Outsourcing without contracts.** A firm outsourcing portfolio administration, IT or compliance needs written agreements, rights of instruction, audit rights and an exit plan.
- **Capital calculated once.** Capital and collateral requirements are continuing; a firm that met them on the application date and not thereafter fails at the first audit.

7 The economics of the regime

Regulation operates as a filter by size. Compliance, risk management, audit and technology cost roughly the same whether a firm manages 200 million or 2 billion francs. Below a threshold — the figure discussed in the market

sits in the region of a few hundred million francs of assets, depending on the fee level and the client mix — the business no longer carries the cost.

That explains the three responses the market produced: mergers between firms of similar size, affiliation with platform providers that supply the regulated infrastructure, and the surrender of the licence in favour of acting as an adviser to a licensed house.

For advisers the order of work follows from this. Establish the viable size first, choose the structure second, draft the contracts third. Reversing the order builds an organisation the business cannot carry, and the cost of discovering that after the licence is granted is considerably higher than the cost of modelling it beforehand.

8 A short review list

1. Is every client classified, and is the classification evidenced by a document the client signed?
2. Do the suitability records show the date of the last update and the reason for it?
3. Are third-party payments disclosed with basis and range, and is the waiver, if any, informed?
4. Do the outsourcing agreements contain instruction, audit and termination rights?
5. Is capital adequacy monitored continuously and minuted?
6. Does the conflicts register record actual cases, and not only categories?
7. Is the annual audit plan reconciled with the firm's own risk analysis?

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