

NEWSLETTER 02 2019

LSFIN – LEFIN : Supervisory Body affiliation and timing for procedures



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Switzerland decided to enter into an in-depth reform of its financial environment with a declared objective of reinforcing investor protection reinforcement, for private and professional clients and to catch up with European standards.

Since the legislation process is close to the end with the vote of enforcement ordinances, it is important now to make a final point about consequences and repercussions of these new regulations.

This newsletter summarizes whose should be concerned by this reform and gives keys in terms of concrete actions and deadlines in order to respect the new regulations.

1) Who is concerned ?

Financial intermediaries concerned by the reform are divided into four large classes:

	Wealth managers	Trustees	Trade assayers	"Others"
Definitions	It concerns financial services providers and advisors in a broad sense as well as financial instruments providers.		It concerns trade assayers which trade banking precious metals.	It concerns asset managers ⁽¹⁾ funds managers in accordance with LPCC and brokers.
Exclusions	<ul style="list-style-type: none"> - Wealth managers who manage funds only for related parties (economical or familial links) - Non professional financial intermediaries, which are under below legal treshold (operating incomes < 50 TCHF, with < 20 relationships or with a proxy < 5 mios of wealth), - Trade assayers which do not trade banking precious metals. 			

⁽¹⁾ De minimis LPCC rules will continue to be applicable for funds asset management and advising activities. Therefore, the asset managers will be advisor of a professional client to be classified as such.

The two laws and the related ordinances clarified some terms that remained undefined and more specifically the concept on economical and familial links. Previously, some wealth managers that solely managed funds for related parties remained affiliated only because no definition exist for the term « related parties ». Article 4 OEFin list the related persons (parents and allied in direct line or collateral relatives till the 4th degree, spouse and registered partnership, co-inheritor and legatee, people who have been living with the manager or the trustee for a long period).

Likewise, the ordinances explain the economical link inside a group. Cash management and cash pooling and all the necessary activities to complete the significant operating processes (risk management, accounting, payroll, IT, Compliance...) inside a group are not concerned by the new regulation. About this specific point, the term of “operating entity” is not explained and the law give no information regarding the type of company concerned inside a group (on shore / off shore, operating / domicile company,...).

Nevertheless, the economical objective seems to be the predominant. Consequently, the domicile entity should not be included into this definition. Hence, unless the justification that the domicile companies have of a special utility for the group, the management of their cash and wealth will then imply the accreditation of the managing entity. Necessary clarifications should be further developed by the SB.

2) Who is not concerned ?

As opposed, all the other financial intermediaries...

So far, classic fiduciary activities, money transfer activity, trade assayers without trading of banking precious metals or crypto-currency activities should be excluded.

Those financial intermediaries should continue their business within the frame of the previous legislation of SRO where they are already accredited without any significant change (until the issuance of a new AML regulation... in 2021 ?)

3) Transition period and actions to be taken

Different cases have to be assessed in relation with history of the company and activities deployed by the financial intermediaries.

	Who ?	Duties	Announcement	Deadlines for compliance
For new professionnals	Financial intermediaries creating their entity between 01.01.2020 and 31.12.2020.	The new rules of business authorization must to be immediatly respected. To be authorized to work until the FINMA final authorization, concerned financial intermediaries must require for an affiliation by a SRO.	Immediatly to FINMA	None
	Financial intermediaries creating their entity after 31.12.2020.	The new rules of business authorization must be immediatly respected.	Immediatly to FINMA	None
For professionals previously without any regulated activity.	Financial intermediaries already active and affiliated to a SRO under the former regulation (for example, financial advisors without any proxy or power of attorney).	- Stay in compliance with the rules of the SRO until being granted with the new authorization - To be affiliated to the mediation organism at the latest 6 month after its creation.	Before the 30.06.2020 to FINMA	Full compliance with all legal requirements and request for authorization of activity before 31.12.2022 (3 years of transition)
For financial intermediaries affiliated into a SRO.	Wealth manager and trustees affiliated with a SRO for AML regulation purposes. These financial intermediaries could be either subject or not to wealth management framework rules established by its SRO.	- Stay in compliance with the rules of the SRO until being granted with the new authorization - Set up compulsory diligences to oversight relationships in accordance with LSFIn (for everyone now, there is no option available for acceptance of wealth management framework rules as it was previously possible with Polyreg, ARIF or OARG), - To be affiliated to the mediation organism at the latest 6 month after its creation.	Before the 30.06.2020 to FINMA	Full compliance with all legal requirements and request for authorization of activity before 31.12.2022 (3 years of transition)
For the IFDS / DUFI	Financial intermediaries directly affiliated to FINMA for the activity under AML regulations till the 31.12.2019.	Quicly request the authorization to the FINMA otherwise the financial intermediary will have to be affiliate to a SRO. Without SRO, the new SB will check the compliance with new regulations at 01.01.2020.	Before the 31.12.2020 to FINMA	Full compliance with all legal requirements and request for authorization of activity before 31.12.2022 (3 years of transition)

4) Personalized support service

All these changes requiring an immediate need of implementation will imply a close cooperation of financial intermediaries with their auditors and their advisors. A lot of choices will have to be done (choice of Supervisory Body, choice of internal organization, timing of authorization request,...) and these choices will deeply impact companies organization and perspectives. The “vagueness” created by the late voting of the new laws ordinances, with an entry into force for the 01.01.2020 while the creation of SB is not yet officially realized will require a numerous range of interactions between stakeholders. CF Compagnie fiduciaire and his team remain at your disposal and offer their knowledge and competencies to help you during this important change process.