

NEWSLETTER
BANKING & FINANCE
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Switzerland: Amendments to the Federal Act on Collective
Investment Schemes

BANKING & FINANCE

1. Introduction

Switzerland, as one of the leading places for asset management and collective investment schemes, has been closely monitoring the current developments within the European Union (EU) regarding the Alternative Investment Fund Managers Directive (AIFMD).

In order to maintain the attractiveness of Switzerland for the collective investment and asset management industry, and to ensure access to the European market for asset managers domiciled in Switzerland, it has been decided to amend the Federal Act on Collective Investment Schemes of June 23, 2006 (CISA) to bring it into line with the AIFMD. The Swiss Federal Council has instructed the Federal Department of Finance (FDF) to prepare a draft for such new legislation by summer 2011.

2. Third country asset managers

With respect to third country asset managers (i.e. asset managers that are not domiciled within the territory of a member state of the EU), the AIFMD sets forth certain requirements that must be met in order for such managers to be able to operate within the EU with respect to alternative investment funds (whereby alternative investment funds shall be understood as any collective investment undertaking, including investment compartments thereof, whose object is the collective investment in assets and which does not require authorization pursuant to the UCITS Directive). Inter alia, the AIFMD requires managers to be subject to supervision by governmental authorities.

3. Current regulatory regime in Switzerland

Today, except for asset managers of Swiss collective investment schemes, Swiss law does not require asset managers to apply for authorization with, and thereby become supervised by, the Swiss Financial Markets Supervisory Authority (FINMA). On a voluntary basis and provided certain requirements are met, asset managers of foreign collective investment schemes may apply for authorization (however, in the past, the FINMA has been rather reluctant to grant authorization).

4. Intended changes to the regulatory regime

With the aforementioned amendments to the CISA this is expected to change, asset managers shall be required to meet certain requirements (organization, equity, know how, etc.) and to apply for a licence with FINMA whereby they would become subject to the supervisory regime of the latter. Hence, asset managers are well advised to follow these developments closely in order to be able to comply with the new regulation with undue delay. In this context, it will be interesting to see to which extent the FDF will go beyond the requirements set forth in the AIFMD (Swiss finish). Further aims of the draft legislation are to improve the protection of the investors and to increase the quality of asset management.

5. Need for action?

As the wording of the new legislation has not been published yet, there is no need for action at this stage. However, this will change once the content and scope of the new regulations has been made public. Upon availability of the draft legislation, we will inform about the proposed amendments and the requirements set forth for asset managers to receive a license from, and become authorized by, the FINMA.

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