

FIDLEG / FINIG – what will change as of 1 January 2020?

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Formally, the new financial market regulations FIDLEG (Financial Services Act) and FINIG (Financial Institutions Act) enter into force as of 1 January 2020. The respective ordinances FIDLEV and FINIV, which were published on 6 November 2019, as well as the text of the acts themselves provide for generous transitional periods though. Accordingly, asset managers which will require a license by FINMA in the future, only need to notify FINMA by mid-2020, the license application needs to be submitted until the end of 2023. Large parts of the new conduct rules such as the suitability and appropriateness test apply as of 2022. The same holds true for the client segmentation (private clients, professional clients and institutional clients). The entry in the advisors' registry which shall be introduced has been postponed for the time being, since an entry will only be possible once a registry has been admitted by FINMA – and even after that a transitional period of six months will apply. Similarly, the new prospectus requirements are binding only six months upon availability of a prospectus review body and the duty to join an ombuds body enters into force only six months after the approval of an ombuds body by the Federal Finance Department.

Several provisions of FIDLEG / FINIG apply as of 1 January 2020 though. Of particular importance are the following ones:

- **Art. 19 FIDLEG:** The use of financial instruments from clients' portfolios for securities lending as a counterparty or the arrangement of such deals as an agent is only allowed with the explicit approval by the client. Before such approval, the client has to be made aware of risks such deals might entail, the client has a claim on compensation regarding any earnings on the borrowed financial instruments and the client has to be reimbursed for the lending. In case of private clients, uncovered deals are not permitted.
- **Art. 68 FIDLEG:** Any advertisements for financial instruments have to be marked as such and reference has to be made to potentially available documentation (prospectus, basic information sheet).
- **Art. 72 f. FIDLEG:** Clients will have a claim, at any time, to get a copy of their file, including any documents that concern them, free of charge (upon request by the client also in electronic form). The claim can be made by a request by the client, after which the file has to be handed over within 30 days. Refusal to do so may entail financial consequences in case of a civil procedure. Accordingly, it is advisable to manage client files in a way which allows for compliance with this provision in due course.

Regarding the aforementioned provisions, accordingly, no transitional provisions apply and full compliance as of 1 January 2020 is mandatory. In case of a violation of such provisions not only civil law consequences are possible, as it has been the case up until now, but also administrative sanctions by FINMA (up to ban from a profession or confiscation of profits) or even criminal sanctions with penalties up to CHF 500'000 might follow. As a consequence, a swift implementation of the provisions which do not benefit from transitional periods is highly recommendable.

The following table provides an overview over the applicable transitional periods:

FIDLEG		
Article	Content	Transitional period
Art. 1 – 3 FIDLEG	General provisions	none (applicable as of 1.1.2020)
Art. 4 – 5 FIDLEG	Client segmentation	2022
Art. 6 FIDLEG	Required knowledge	2022
Art. 7 – 9 FIDLEG	Information duties	2022
Art. 10 – 14 FIDLEG	Suitability and appropriateness test	2022
Art. 15 – 16 FIDLEG	Documentation and accountability	2022
Art. 17 – 18 FIDLEG	Best Execution	2022
Art. 19 FIDLEG	Use of clients' financial instruments	none (applicable as of 1.1.2020)
Art. 20 FIDLEG	Institutional and professional clients	(implicitly) 2022
Art. 21 – 24 FIDLEG	Organisatory measures	2022
Art. 25 – 27 FIDLEG	Conflicts of interest	2022
Art. 28 – 34 FIDLEG	Advisors' registry	6 months after approval of a registry by FINMA or designation of a body by the federal council (not the case yet)
Art. 35 – 57 FIDLEG	Prospectus requirements	6 months after the approval of a review body by FINMA (not the case yet), up until then current prospectus requirements applicable

Art. 58 – 63 FIDLEG	Basic information sheet	2022
Art. 64 – 67 FIDLEG	Publication	2022
Art. 68 FIDLEG	Advertisement	none (applicable as of 1.1.2020)
Art. 69 FIDLEG	Liability	none (applicable as of 1.1.2020), refers to prospectus requirements and, therefore, follows the transitional periods applicable in this area
Art. 70 – 71 FIDLEG	Structured products and in-house funds	none (applicable as of 1.1.2020)
Art. 72 – 73 FIDLEG	Edition of documents	none (applicable as of 1.1.2020)
Art. 74 - 86 FIDLEG	Ombuds body	6 months after approval of an ombuds body by the finance department or designation of an ombuds body by federal council (not the case yet)
Art. 87 – 88 FIDLEG	Supervision and exchange of information	none (applicable as of 1.1.2020)
Art. 89 – 92 FIDLEG	Criminal provisions	none (applicable as of 1.1.2020)
FINIG		
Art. 1 – 4 FINIG	Subject, aim and scope of application	none (applicable as of 1.1.2020)
Art. 5 FINIG	Licensing requirement	For institutions which are active already and will be subject to a licensing requirement in the future (asset managers, managers of assets of pension funds, trustees): notification of FINMA until mid-2020, submission of licensing application until 2023
Art. 6 – 15 FINIG	Common provisions regarding licensing	none (applicable as of 1.1.2020), bzw. implizit analog Art. 5 FINIG
Art. 16 FINIG	Ombuds body	6 months after approval of an ombuds body by the finance department or designation of an ombuds body by federal council (not the case yet)
Art. 17 – 23 FINIG	Asset managers and trustees	Notification to FINMA until mid-2020, submission of licensing application until 2023

Art. 24 – 31 FINIG	Managers of collective assets	Fund managers: no changes (license required already today); managers of assets of pension funds: notification to FINMA until mid-2020, submission of licensing application until 2023
Art. 32 – 40 FINIG	Fonds management body	none (applicable as of 1.1.2020)
Art. 41 – 51 FINIG	Investment firms	none (applicable as of 1.1.2020)
Art. 52 – 57 FINIG	Branches	none (applicable as of 1.1.2020)
Art. 58 – 60 FINIG	Representatives	none (applicable as of 1.1.2020)
Art. 61 – 67 FINIG	Supervision	none (applicable as of 1.1.2020) respectively as of license granted to a supervisory organization by FINMA
Art. 68 FINIG	Responsibility	none (applicable as of 1.1.2020)
Art. 69 – 71 FINIG	Criminal provisions	none (applicable as of 1.1.2020)

Do you have questions? Contact our specialists:

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