

November 2019

Are you a new professional trustee? What can you expect?

With the last version of 6 November 2019, the Swiss Federal Council finally enacted the Financial Services Act (FinSA) and the Financial Institutions Act (FinIA) which will come into effect on 1 January 2020. This not only achieved the equivalence of Swiss law with MiFID II / MiFIR, but also finally completed a long regulatory process that began in the last financial crisis of 2008.

Whilst FinSA regulates the provision of financial services and financial instruments, FinIA introduces supervisory rules for financial institutions. For the first time these rules also apply to professional* **trustees** who have not previously been subject to any regulation.

Trustees domiciled or resident in Switzerland must therefore meet all the organisational, financial and personal requirements of the FinIA, which can be summarised as follows:

Requirements

- | | |
|----------------------------------|---|
| *Professional
(alternatively) | <ul style="list-style-type: none"><input type="checkbox"/> Gross proceeds of more than CHF 50,000 per calendar year<input type="checkbox"/> More than 20 business partners<input type="checkbox"/> Power of disposal over third-party assets of CHF 5 Million |
| Organisational | <ul style="list-style-type: none"><input type="checkbox"/> Registration with FINMA by 30 June 2020<input type="checkbox"/> Trustees must have the legal form of a sole proprietorship, a trading company or a cooperative and be registered in the commercial register.<input type="checkbox"/> The trustee must be managed from Switzerland<input type="checkbox"/> Trustees must prove that they are supervised by a newly created supervisory organisation (SO), that they have joined an ombudsman and that an auditing company has been elected.<input type="checkbox"/> The trustee's organisation must meet the legal requirements of FinIA.<input type="checkbox"/> The SO examines the FinSA & FinIA requirements and the due diligence obligations under the AML.<input type="checkbox"/> A separate body must be appointed for the ultimate direction and control if the gross income exceeds CHF 5 million.<input type="checkbox"/> The trustee must be separate from the internal control function (depending on the size of the organisation).<input type="checkbox"/> Professional indemnity insurance with a minimum amount for the collateral and the sum insured must be available. |

- Financial The trustee's own funds must amount to at least one quarter of the fixed costs of their last annual accounts.
- Personal The management must consist of at least two qualified people who have appropriate trustee training and professional experience of at least five years.

Summary

Corporate trustees will have to comply with a large number of regulatory obligations and requirements from 1 January 2020 (or, after expiry of the transitional period, from 1 January 2023). These requirements are particularly important for individuals or companies that only occasionally act as trustees. But even smaller subsidiaries, which to date have operated under the umbrella of a (foreign) regulated parent company and have benefited from numerous outsourcing options, are now burdened with considerable additional administrative and financial work, without this improving their actual activity as a trustee.

Alternative options from CAREY

For those financial service providers who do not want their own licensing for operational or financial reasons, CAREY has developed various solutions that could be considered as viable alternatives. These range from a management solution via a platform variant to an asset / equity participation.

Mmgt Option(s)	Platform Option(s)	Asset / Equity Option(s)
Today's trustee will concentrate on acting as protector or advisory trustee. CAREY will become corporate trustee.	As a corporate trustee, CAREY assumes all technical (risk, compliance & reporting) and administrative tasks of a trustee. The previous trustee or the controlling party of the trustee can individually support this process as a CAREY employee or consultant.	tbd

As an experienced corporate trustee with a strong focus on individual needs, we would be delighted to actively support you in coping with these innovations and to develop the best possible options for you.