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## What happens to Swiss trustees without a FINMA license?

### What has happened so far

After several years of consultation, the Financial Services Act (FIDLEG) and the Financial Institutions Act (FINIG) came into force on January 1, 2020. The goals of this new regulatory framework, was to strengthen the competitiveness of the Swiss financial marketplace and improve client protection. All independent asset managers and trustees were granted an implementation period of three years up to the end of 2022.

### Where do we stand today?

The most recent data published by the Swiss Financial Market Supervisory Authority (FINMA) currently shows that at least 30% of all affected companies will not receive the requisite license to operate. It seems that professional trustees will be hit harder than asset managers. According to FINMA, by the end of July 2022 just 11 trustee licenses had been granted to individual companies with a further 38 applications under review. Even if one considers that this area is new to FINMA and that there are still a number of applications undertaking the licensing process with the various supervisory organizations, it would come as no surprise if there are only a few dozen trust companies operating in Switzerland in the future.

### What does this mean for trustees?

Since the activities of trustees includes the management of trust assets, professional trustees are explicitly subject to FINIG and exclusively considered as financial institutions. What at first glance appeared to be a simplification, however, turned out to be for a number of applicants, a too big task. After all, for many market observers it was clear from the outset that a FINMA licensing process would be a significant challenge. Nevertheless, the options for continuing to run a trustee business without a license are exceedingly limited.

### Summary

Corporate trustees will have to comply with a large number of regulatory obligations and requirements 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.

### CAREY's approaches to a solution

Without considering a complete cessation of business activities as an alternative, a trust company that has exceeded the thresholds of professional activity under FINIG but does not hold a FINMA license is left with only four options:

<p><b>Foreign Option</b></p> <ul style="list-style-type: none"> <li>✓ Difficult to convey beneficiaries</li> <li>✓ Exit strategy with no sustainability</li> </ul>	<p>Switching to a foreign trustee license is technically a simple step. However, it has the disadvantage that all trustee activities, including direct contact with the beneficiaries must be transferred to the new jurisdiction. This is a significant disadvantage particularly with a demanding clientele and from a professional point of view difficult to convey.</p>
<p><b>Technical option</b></p> <ul style="list-style-type: none"> <li>✓ Solution for consultants &amp; individuals</li> </ul>	<p>The current trustee can resign as trustee and be appointed as a protector. A protector is not subject to FINIG, and therefore the business can continue to play an important role for the settlor and the beneficiaries within the scope of its new legal responsibilities. However, the duties of a trustee would have to be assigned to a FINMA-licensed company.</p>
<p><b>Equity option</b></p> <ul style="list-style-type: none"> <li>✓ Risky, expensive &amp; complex</li> </ul>	<p>The current trustee seeks a FINMA-licensed buyer for the company. The equity option has the major disadvantage for the buyer that it assumes risks which may only come to light several years later. In addition, it is difficult to predict how the clientele will react.</p>
<p><b>Asset option</b></p> <ul style="list-style-type: none"> <li>✓ Sustainable for beneficiaries</li> <li>✓ Sustainable for employees</li> <li>✓ Professional &amp; simple</li> </ul>	<p>The current trustee transfers his client relationship together with the responsible employees to a FINMA regulated trust company for a commission or profit participation. This asset option has the major advantage that ultimately little changes for the beneficiaries, provided the account manager remains the same and the license holder is flexible enough to respond to individual needs. The disadvantage is that not every trustee relationship may meet the criteria of the new FINMA regulated entity.</p>

The **asset option** in particular is well suited for an orderly transition, especially for smaller and medium-sized trust companies, and is also often the simplest alternative way from a regulatory perspective. As an experienced professional trustee with a FINMA Trust License and a strong focus on individual needs, CAREY Zurich would be delighted to actively support you in coping with these innovations and to develop the best possible options for you.