

February 2024

New approach for Swiss trustees

Anyone acting as a trustee on a commercial basis in Switzerland requires a license from the Swiss Financial Market Supervisory Authority (FINMA). In Art. 19 FINIO (Financial Institutions Ordinance) of 6 November 2019 the following thresholds are defined. If only one of the three is exceeded, a trustee is deemed to act on a commercial basis for the purposes of Swiss financial market regulations and must be licensed:

1. Gross income (as trustee) of more than CHF 50,000 is generated in a calendar year
- or -
2. Business relationships are entered into with more than 20 contracting parties per calendar year that are not limited to a one-off activity, or at least 20 such relationships are maintained per calendar year - or -
3. The trust assets managed by a trustee exceed CHF 5 million at any one time.

In the past years, FINMA has not taken the CHF 5 million Trust assets threshold into account when determining the commercial activity of trustees. It was only following a judgement by the Federal Criminal Court on 17 October 2022 that prompted FINMA to change its practice.

A game changer!

In its latest press release dated 2 February 2024, FINMA announced that, with immediate effect, trustees will also require a corresponding license if the assets of the trusts exceed CHF 5 million at any one time. Trustees who are now subject to the authorization requirement under FinIA must apply for authorization by the end of 2024.

What does this mean for Swiss trustees?

The consistent implementation of the thresholds provided for in the FinIA law announced on 2 February 2024 makes it nearly impossible for trustees based in Switzerland to maintain their trustee activities without a FINMA license. This means that a substantial number of Swiss trustees who benefited from the previous FINMA practice are now required to apply for a FINMA license or find an alternative solution.

What alternative solutions are there?

CAREY's solution for trustees!

Without considering a complete cessation of business activities as an alternative, a Swiss trustee who exceeded the thresholds of commercial activity under FinIA but does not hold a FINMA license is left with only four options:

<p>Offshore Solution</p> <ul style="list-style-type: none"> • Difficult to convey beneficiaries. • Exit strategy with no sustainability. 	<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>Technical Solution</p> <ul style="list-style-type: none"> • Solution for consultants & individuals 	<p>The current trustee could resign as trustee and be appointed as a protector. A protector is not subject to FinIA and could therefore 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>Equity Solution</p> <ul style="list-style-type: none"> • Risky, expensive & complex. 	<p>The current trustee seeks a FINMA-licensed buyer for the company. The equity solution 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>CAREY Solution</p> <ul style="list-style-type: none"> • Sustainable for beneficiaries & employees. • Professional & simple. • Cost efficient. • Fast execution. 	<p>The current trustee joins the Carey Trust platform. This cooperation can be organized in various and individual ways so that all legal, technical and personal requirements are met. The Carey platform has proven its functionality and practicality in many instances, it's fast and reliable.</p> <p>This CAREY solution has the major advantage that ultimately results in little changes for the beneficiaries, provided the account manager remains the same.</p>

CAREY Zurich (FINMA licensed since August 2022) has proven in several successful cases, that our **Trustee-Platform** fulfils all technical, legal and compliance-specific requirements to support the asset solution in a most professional and efficient way.

We would be delighted to actively support you in coping with these challenges and to develop the best possible options for you - before the end of 2024.

Just call Beat Haering, CEO, on +41 (0) 43 499 11 44 for more information.