



FinConTec AG
Hauptstrasse 53 – 9053 Teufen
Tel: +41 71 333 46 68
www.fincontec.ch
info@fincontec.ch

FAQs

about the laws for financial services
and financial institutions (FIDLEG/FINIG)

DEAR COLLEAGUES,

Swiss financial service providers have always been able to offer reassuring advice by being close to their clients and demonstrating their expertise.

The new laws for financial services and financial institutions have led to a paradigm shift in client consulting. The wide range of new duties and regulations has led to existential fears amongst many colleagues.

However, we see this as a great opportunity to place ourselves, as advisors, in an even better position for clients.

As the president of VALIDITAS, I have been involved in the legislation process for years. This intensive involvement in the legislature is what led to the revolutionary financial consulting business software FinConPro.

We use it to provide you with the best support, so that you can combine your personal touch with the latest technology.

FinConPro provides expert, professional support to help you achieve your objectives and comply with the regulations in the new laws. You will benefit from high client protection and consulting security, and you will enjoy your day-to-day work more.

These FAQs are intended to help you get your bearings with the new legislature.



FOUNDER WILLY GRAF, LIC. IUR. HSG
 More than 25 years spent in financial consulting



FINANCIAL SERVICES ACT (FIDLEG) / FINANCIAL INSTITUTIONS ACT (FINIG)

FIDLEG and FINIG present financial service providers with regulatory challenges. The objective of this brochure is to make financial service providers aware of the issues and challenges.

FIDLEG and FINIG came into effect on 1 January 2020, with temporary transitional periods. Immediate measures to implement these framework conditions are therefore inescapable.

This brochure is a service of FinConTec AG, Teufen, created in collaboration with Theodor Härtsch and Dr Alexander Eichhorn, lawyers at Walder Wyss AG, Zurich.



FAQ OVERVIEW

Question 1:	What is the purpose of FIDLEG (Financial Services Act) and FINIG (Financial Institutions Act)?	P. 5
Question 2:	How will the future regulatory landscape for financial service providers in Switzerland look?	P. 5
Question 3:	How can today's various areas of activity be divided between advisors and asset managers in the future?	P. 5
Question 4:	What should advisors be aware of when looking at FIDLEG?	P. 6
Question 5:	By when must I be entered in the advisor register? By when do I have to join an ombudsman association as a financial services provider?	P. 6
Question 6:	What types of organisation fall into the category of asset managers subject to FINIG?	P. 6
Question 7:	What are the legal requirements for asset managers who are subject to FINIG in terms of minimum capital, equity capital and professional indemnity insurance?	P. 7
Question 8:	Who will supervise asset managers in accordance with FINIG?	P. 7
Question 9:	What are the general obligations and requirements for asset managers according to FINIG?	P. 8
Question 10:	What are the transition rules for asset managers according to FINIG?	P. 8
Question 11:	What general requirements for the provision of financial services have to be fulfilled according to FIDLEG?	P. 9
Question 12:	What is the appropriateness and suitability test according to FIDLEG?	P. 10
Question 13:	What requirements for the provision of financial services have to be fulfilled in the future according to FIDLEG, in relation to organisation?	P. 10
Question 14:	What are the consequences of a failure to comply with the rules of conduct or the organisational requirements according to FIDLEG?	P. 10
Question 15:	What transition provisions exist in relation to the rules of conduct?	P. 11
Question 16:	Is there any specific action required from me as a financial service provider?	P. 11

QUESTION 1:

What is the purpose of FIDLEG (Financial Services Act) and FINIG (Financial Institutions Act)?

The primary purpose of FIDLEG and FINIG is to increase general protection for clients and investors. The individual protection requirements for clients are hereby given top priority.

The secondary purpose of FIDLEG and FINIG is as follows:

1. Maintain and guarantee the functionality of the financial market
2. Enable comparable conditions for the provision of financial services
3. Increase Switzerland's competitive edge as a financial centre

QUESTION 2:

How will the future regulatory landscape for financial service providers in Switzerland look?

Advisors can generally be differentiated from asset managers. Advisors are subject to FIDLEG. Asset managers are subject to both FIDLEG and FINIG. In addition, it is important to note that the term advisor has a double meaning in FIDLEG. Advisors can provide financial services on behalf of a financial service provider, or on their own. Legal persons cannot be considered advisors. It is also important to highlight the difference between advisors who are on the advisor register and those who are not.

QUESTION 3:

How can today's various areas of activity be divided between advisors and asset managers in the future?

Before 01.01.2020	Since 01.01.2020	Law
Distributors of collective capital investments	Advisors	FIDLEG
Investment advisors	Advisors	FIDLEG
Financial advisors providing investment advice	Advisors	FIDLEG
Independent asset managers	Asset managers	FIDLEG/FINIG
Financial planners providing asset management services	Asset managers	FIDLEG/FINIG
OAK BV asset managers	Managers of collective assets	FIDLEG/FINIG
Asset managers of collective capital investments	Managers of collective assets	FIDLEG/FINIG
Securities brokers	Investment firms	FIDLEG/FINIG
Insurance brokers	Insurance brokers	VAG*

*VAG = Versicherungsaufsichtsgesetz (Insurance Supervision Act)

QUESTION 4:**What should advisors be aware of when looking at FIDLEG?**

Advisors must generally be entered in an advisor register, in accordance with FIDLEG Art. 28. Advisors who work for supervised Swiss financial service providers (e.g. banks and asset management companies) are exempt from this rule. Under certain circumstances, this exemption also applies to advisors of supervised foreign financial service providers.

In accordance with FIDLEG Art. 29, the following requirements must be fulfilled for entry in the advisor register:

1. Sufficient expert knowledge and knowledge of the FIDLEG rules of conduct must be evidenced.
2. The advisor must have professional indemnity insurance.
3. The advisor must be part of an ombudsman association.
4. The advisor cannot be registered in the case of certain criminal convictions or a prohibition from carrying out such occupations or activities.

The registration body is authorised by the Financial Market Supervisory Authority (FINMA).

QUESTION 5:**By when must I be entered in the advisor register?****By when do I have to join an ombudsman association as a financial services provider?**

Advisors must be entered in the advisor register by 19 January 2021. They must join an ombudsman association by 23 December 2020.

QUESTION 6:**What types of organisation fall into the category of asset managers subject to FINIG?**

In accordance with Art. 2(1) FINIG, the following types of organisation are included in the term "asset manager":

- Asset managers and trustees (FINIG Art. 17)
- Managers of collective assets (FINIG Art. 24)
- Fund management companies (FINIG Art. 32)
- Securities firms (FINIG Art. 41)

QUESTION 7:

What are the legal requirements for asset managers who are subject to FINIG in terms of minimum capital, equity capital and professional indemnity insurance?

Asset managers subject to FINIG

Minimum capital, equity capital and professional indemnity insurance

Asset managers	Managers of collective assets	Securities firms
Minimum capital: CHF 100,000	Minimum capital: CHF 200,000	Minimum capital: CHF 1,500,000
Suitable equity: At least 1/4 of the fixed costs in the last annual financial statement, max. CHF 10,000,000	Suitable equity capital: Min. 1/4 of the fixed costs in the last annual financial statement, max. CHF 20,000,000 (Special provisions apply for securities firms with client accounts)	
Professional indemnity insurance	Professional liability insurance or higher equity capital	

QUESTION 8:

Who will supervise asset managers in accordance with FINIG?

FINMA and the supervisory organisation are responsible for the supervision of asset managers. FINMA is thereby responsible for the issuing of permits and enforcement. The supervisory organisation is responsible for constant supervision. Managers of collective assets and securities firms are only subject to FINMA supervision.



QUESTION 9:

What are the general obligations and requirements for asset managers according to FINIG?

1. Organisation (FINIG Art. 8):
 - Suitable internal rules for company management
 - Risk management (outsourcing is possible)
 - Effective internal controls
2. Guarantee (FINIG Art. 11):
 - Guarantee of flawless company management
 - Good reputation
 - Expert qualifications
 - Also applies to qualified participants (min. 10% capital/voting rights)
 - Obligation to report when above or below 10%, 20%, 33% and 50% of the entire capital or entire voting rights (exception for asset managers)
3. Protection against confusion and deceit (FINIG Art. 13):
 - Designation as an asset manager, manager of collective assets or securities firm etc. only with according permission
4. Outsourcing (FINIG Art. 14):
 - Permissible if third parties demonstrate necessary skills/knowledge/experience/permits
 - Meticulous selection/instruction/monitoring
5. International activities (FINIG Art. 15):
 - Obligation to report to supervisory authorities (subsidiary companies/branch offices/qualified holdings abroad)
6. Ombudsman body (FINIG Art. 16):
 - Joining upon starting activity at the latest

QUESTION 10:

What are the transition rules for asset managers according to FINIG?

Financial institutions which have permission to carry out the respective activity in accordance with Art. 1(1) of the Financial Market Supervision Act (FINMAG), once the law becomes effective, do not require new permits. They must fulfil the requirements of FINIG within one year of the law becoming effective.

Financial institutions which are not subject to any permit obligation in accordance with the current law, but will be subject to a permit obligation once FINIG becomes effective, in other words asset managers and trustees, must register within six months of FINMA becoming effective.

Within three years of the law becoming effective, they must fulfil its requirements and submit a licence application. They may continue their activities until a decision has been made about their licensing, provided that they are members of a GwG self-regulation organisation, which will supervise them to make sure they are complying with the according duties. Asset managers and trustees which start their activities within one year of FINIG becoming effective must register with

FINMA straight away and fulfil the licensing requirements upon commencing their activities, with certain exceptions. One year after FINMA has approved a supervisory organisation at the latest, they must join such a supervisory organisation and submit a license application. They may continue their activities until a decision has been made about their licensing, provided that they are members of a GwG self-regulation organisation, which will supervise them to make sure they are complying with the according duties.

QUESTION 11:**What general requirements for the provision of financial services have to be fulfilled according to FIDLEG?****Client segmentation (FIDLEG Art. 4 f)**

In the future, financial service providers will have to place clients into one of the following three categories:

1. Private clients: clients who are not professional clients
2. Professional clients
3. Institutional clients

Financial service providers do not have to segment clients if all clients are treated as private clients. Wealthy private clients and the private asset structures created for them can state that they want to be considered professional clients (opt-out). Certain professional clients can declare that they want to be considered institutional clients. Professional clients who are not institutional can state that they want to be considered private clients (opt-in). Institutional clients can declare that they only want to be considered professional clients.

Duties of conduct (FIDLEG Art. 7 ff)

The underlying duties of conduct are independent of the organisational relationship between the client and the company. The following underlying duties of conduct apply for both client advisors and asset managers as part of their execution-only activities, investment consulting and asset management:

1. Information obligation (general information requirements for clients before providing a service)
2. Transparency and due diligence (observation of good faith, equal treatment, best-possible implementation, special rules for securities lending)
3. Documentation and accountability

In addition, the following duties of conduct must be observed in investment consulting:

4. Additional needs of clients and the rationale for every recommendation must be recorded
5. Appropriateness test
6. Suitability test (for asset management or as soon as the entire portfolio is considered)

In asset management and portfolio-encompassing investment consulting, the suitability test must be considered in addition to the three points mentioned (information obligation, transparency and due diligence, and documentation and accountability). The specific points for investment consulting do not apply to asset managers. Unlike in investment consulting, the suitability test must be carried out in any case, and does not depend on whether or not the entire portfolio is considered. If the client is an institutional client, the advisor and asset manager are exempt from the rules of conduct. If the client is a professional client, it is possible to be exempt from certain obligations in the FIDLEG rules of conduct.

Advertisement (FIDLEG Art. 68)

Advertisements for financial instruments and financial services must be clearly identifiable as such. In the advertisements, the brochure and basic information leaflet for the respective financial instrument and the reference must be highlighted.

Issuing of documents (FIDLEG Art. 72 f)

Clients have the right to receive a copy of their dossier at any time, as well as any other documents concerning them and which the financial service provider has created as part of the business relationship. With the consent of the client, these documents can be provided electronically.

Further regulatory content of FIDLEG

As well as the named regulatory content, FIDLEG also regulates the structured products and the obligations in connection with the brochure and the basic information leaflet for financial instruments.

QUESTION 12:

What is the appropriateness and suitability test according to FIDLEG?

FIDLEG Art. 11: Appropriateness test

A financial service provider which provides investment advice for individual transactions without considering the entire client portfolio must inquire about the knowledge and experience of its clients, and before recommending financial instruments it must check whether they are appropriate for the client.

FIDLEG Art. 12: Suitability assessment

A financial service provider which provides investment consulting in consideration of the client portfolio or asset management must inquire about the financial circumstances and investment goals, and the knowledge and experience of the client. This knowledge and experience relates to the financial service and not the individual transactions.

FIDLEG Art. 17: Suitability assessment

In order to determine the financial circumstances of the client, the financial service provider reviews the origin and amount of the regular income, his or her wealth, and his or her current and future financial commitments.

When inquiring about the client's investment goals, the service provider considers the details, paying particular attention to the time frame and purpose of the investment, his or her ability and willingness to accept risk, and any investment restrictions.

The service provider may rely on the information provided by the client, provided there are no indications that it is false.

QUESTION 13:

What requirements for the provision of financial services have to be fulfilled in the future according to FIDLEG, in relation to organisation?

Organisational measures:

- Suitable organisation (instruction)
- Ensuring qualified staff
- Specific rules for the involvement of third parties

Conflict of interests/retrocession

- Precautions to prevent a conflict of interests
- Retrocession: disclosure and publication obligation, or waiver (signing)
- Measures to prevent unauthorised employee transactions

Burden of proof:

- There is no reverse onus for financial service providers. However, proper documentation of the client relationship, including logs and information leaflets, helps ensure dependable evidence in the event of any client complaints or disputes.

QUESTION 14:

What are the consequences of a failure to comply with the rules of conduct or the organisational requirements, according to FIDLEG?

Civil liability is possible in the event of claims made by a client. Criminal-law consequences: Fines of up to CHF 100,000 for failing to fulfil the information obligations, failing to carry out appropriateness and suitability checks, and dealing incorrectly with retrocession cases.

QUESTION 15:

What transition provisions exist in relation to the rules of conduct?

Financial service providers must follow the rules of conduct set by FIDLEG by 31 December 2021. Financial service providers who want to implement the rules of conduct before this deadline must inform their auditing body irrevocably and in writing, stating the selected point in time.

QUESTION 16:

Is there any specific action required from me as a financial service provider?

Evaluation: Am I just a client advisor or do I also need permission to act as an asset manager? What does my business model look like? Which category of asset manager does my organisation fall under?

Depending on the decisions made, the respective organisation may be subject to other regulatory requirements.

In any case, the business model must be adjusted to suit the future regulations.

This means establishing a suitable IT system which satisfies the increased requirements in relation to the textualisation of the client relationships.

- With no (IT) system, the fulfilment of the information, documentation and accountability obligations and in particular a systematic and standardised appropriateness and suitability assessment process will not be possible.
- A digitalised system solution from the first contact with the client to long-term support should be sought, and will likely be implemented as a market standard.

Creation (adjustment) of organisational regulations and an internal instruction system.

Registration as a client advisor or application for an asset manager permit, and notification to FINMA if applicable.

DO YOU HAVE ANY OTHER QUESTIONS?

Please feel free to call us or contact us electronically.





CONTACT US

FinConTec AG

**Do you also want more clients and more income, with fewer overheads?
A digital consulting process in compliance with FIDLEG, which supports you perfectly?**

Watch a live demo and sign up.



Hauptstrasse 53
CH-9053 Teufen



info@fincontec.ch



+41 71 333 46 68



www.fincontec.ch