

# INSIGHT

## Financial Institutions Act and Ordinance (FinIa and FinSO): a qualitative leap for Swiss trustees

June 2020

On June the 5th, 2018, the Swiss Parliament dismissed the "Financial Institutions Act (FinIa)": a regulatory act with a strong impact on the harmonization and the implementation of rules allowing financial service providers to operate.

As a result of FinIa, whose entry into force is set for January the 1st, 2020, the trustees are subject for the first time to prudential supervision by the Swiss Financial Market Supervisory Authority (FINMA), which becomes the guarantor of the integrity and professionalism of those who qualify as trustees, together with the adequacy of their structures and risk management procedures.

This regulatory development casts Switzerland at the forefront of the trust sector, introducing quality standards and guarantees for customers that demonstrate once again the legislator's foresight and Switzerland's firm determination to consolidate its position as a leading financial center at international level.

The trust in recent years had already experienced a new dimension thanks to the increased awareness of the legislator, the professionals of the field and the recipients of the instrument, who all have recognized the flexibility and great potential of this tool.

This positive trend has highlighted not only the necessity and importance of adequate regulation and supervision, but also the need to provide the Swiss legal system with an internal law on trusts, which will soon complete the regulatory framework of reference.

In this context were conceived the financial institutions act and ordinance, the provisions of which, have an impact on all the trustees who carry out their activity in Switzerland on a professional basis.

Swiss trustees are, in fact, demanded high quality and organizational standards, as well as adequate guarantees of irreproachability and financial soundness.

As a result, the obligations and requirements to fulfill for a trustee to work in Switzerland are many and highly articulated. Among them, by way of example, the duty to:

- a. have qualified personnel in charge of the management, as well as personnel with appropriate qualifications in order to carry out their duties;
- b. have an effective and appropriate internal control and risk management based on the activities performed;
- c. take the necessary measures to guarantee operative continuity;
- d. comply with the minimum capitalization standard and maintain adequate funds available.

As a matter of consequence, in order to be able to take on the management of a financial institution that operates as a trustee, it will be necessary to demonstrate an adequate professional experience.

In particular, the affiliation with internationally recognized professional associations will be considered a guarantee of good practice in the sector. Reason for which the legislator has expressly mentioned, among the elements suitable to demonstrate adequate professional training, the qualification of Trust and Estate Practitioner ("TEP"), that is to say ordinary member of the Society of Trust and Estate Practitioners (STEP).

What mentioned up to this point will allow the selection of the technically most qualified subjects to hold positions in the field of trusts, but a further strong guarantee for customers is represented by the provisions of the law that directly affect the internal organization of the trustees.

In fact, the Swiss Financial Market Supervisory Authority will be called upon to verify the implementation of an integrated internal control system that ensures not only the correct adaptation to the laws and regulations that govern the sector, but also an effective and transparent risk management (e.g. legal risks, credit, liquidity and market risks, operational risks, reputational risks, cyber risks), which must cover the entire activity of the trustee.

All essential risks associated with the activity, whether they are linked to the organization or to the internal control and corporate compliance system itself, must be appropriately ascertained, weighed, managed and monitored by qualified personnel, as well as having adequate decision-making power and the independence necessary to avoid any conflicts of interest.

Only those individuals who will be able to implement these processes and who will present financial statements demonstrating financial stability and adequate capitalization may be authorized to act as trustees and will be able to claim, in their own name and in their corporate object, to hold the qualification of "trustee".

The time granted to the operators of the sector to organize themselves and make their own the new provisions is relatively short. By the 30th of June 2020, the companies already established and active in this sector will have to officially inform FINMA of their desire to continue the activity. Subsequently, they must adhere to a Supervisory Body authorized and monitored by FINMA.

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Capital Trustees AG is an independent trustee company based in Switzerland, currently regulated by the Swiss Financial Market Supervisory Authority (FINMA).

As a ten-year member of the Swiss Association of Trust Companies (SATC), Capital Trustees is required to conform its activities to the high standards and best practices demanded by its members.



The affiliation of numerous members of its team to the main local and international professional associations - including the Society of Trust and Estate Practitioners (STEP) - allows Capital Trustee to assure its clients a high standing service.

