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areas of practice

collective investment schemes
regulatory banking and finance
regulatory insurance
licensing of banks, managers,
insurances and brokerage firms
exchange traded funds
exchange traded commodities
private equity schemes
listing of securities
tax related issue
corporate work

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Asset Managers – Regulatory Requirements

Comparison Chart – DIFC and Switzerland

TOPIC	DIFC	CH Current System	CH New System
Regulatory Status	<p>Regulated by the Dubai Financial Services Authority (“DFSA”)</p> <p>Asset Managers & Fund Managers – Category 3C</p>	<p>Fund Managers: Require a license and are supervised by the Swiss Financial Market Supervisory Authority (“FINMA”) (unless distributed to qualified investors and AUM under a <i>de minimis</i> threshold).</p> <p>Wealth Managers and RTOs: They can operate without a license and are not subject to the prudential supervision of FINMA. Registration to a self-regulatory organisation (e.g. OARG).</p>	<p>Fund Managers: Continue to be FINMA regulated.</p> <p>Wealth Manager and RTOs: Regulated and require a FINMA license (except where noted). They will be supervised by FINMA directly or by a new self-regulatory body (ongoing discussion).</p>
Authorised Activities	<ul style="list-style-type: none"> ▪ Managing a Collective Investment Fund. ▪ Managing Assets. ▪ Providing Trust Services as a Trustee of an Express Trust. ▪ Managing a Profit Sharing Investment Account. ▪ Providing Custody (other than for a fund). 	<p>Fund Managers:</p> <ul style="list-style-type: none"> ▪ Funds management (Swiss and foreign funds). <p>Wealth Managers and RTOs:</p> <ul style="list-style-type: none"> ▪ Discretionary manage account activity. 	
Surveillance – Initial authorisation and operating requirements	<ul style="list-style-type: none"> ▪ Regulatory Business Plan. ▪ Core Information Form. ▪ Asset Management Supplement - required to carry 	<p>Fund Managers: LFINMA/CISA/CISO/SFAMA Rules/FINMA-CISO and Anti-Money Laundering Regulations.</p>	<p>Fund Managers: LFINMA/LEFin/CISA and CISO Requirements remain the same.</p>

	<p>out business activities related to asset management.</p> <p>Information to be provided to DFSA:</p> <ul style="list-style-type: none"> • Corporate governance, strategy and business model • Financial and Operational Risks (<i>details regarding principal investors</i>) • Conduct of business risks to clients and markets (<i>e.g. procedures regarding client orders; procedures and controls; suitability test; inherent risks</i>) 	<ul style="list-style-type: none"> ▪ Organised as a legal entity i.e. limited company, partnership limited by shares or a limited liability company under Swiss law, as a general or limited partnership, or as a Swiss branch of foreign asset manager of collective investment schemes; ▪ Appropriate organisation; ▪ Required equity capital and financial guarantees; ▪ Articles of association, partnership agreement or organisational rules (<i>including accurate description of proposed operations</i>); ▪ Managing at least 1 collective investment scheme. <p>Wealth Managers and RTOs: SRO Rules and Anti-Money Laundering regulations.</p>	<p>Wealth Manager and RTOs: SRO Rules, LEFin.</p> <ul style="list-style-type: none"> ▪ Organised as a legal entity i.e. individual undertaking, trading company, etc. ▪ Appropriate organisation; ▪ Required share capital (<i>i.e. min. CHF 100,000.00</i>) and financial guarantees. ▪ Affiliation to an ombudsman body; ▪ Professional liability insurance.
<p>Registration of Client Relationship Managers</p>	<p>As specific requirement except fit and proper test.</p>	<p>N/A (<i>except for insurance brokers - LSA</i>)</p>	<p>LSFin (<i>only for Swiss providers not subject to FINMA, and foreign providers</i>)</p>

<p>Organisational Requirements - Rules on the organisational structure necessary to meet the professional/regulatory obligations, independence rules, segregation of functions, etc.</p>	<p>Board - At least 3 board members (<i>out which 1 must be a UAE resident</i>). Mandatory appointments/ the following key/licensed persons:</p> <ul style="list-style-type: none"> • Money Laundering Officer (MLRO); • Compliance Officer (CO); • Senior Executive Officer (SEO); and • Chief Financial Officer (CFO). <p>The MLRO, CO and SEO must be a UAE resident. Functions of the MLRO and CO can be combined and outsourced.</p> <p>Auditors - Mandatory appointment of DFSA registered auditors.</p> <p>Chinese wall – COB rules</p> <p>Internal control system – to be implemented</p>	<p>Fund Managers: CISA/FINMA/SFAMA Directives Board – At least 3 board members and the following conditions must be met:</p> <ul style="list-style-type: none"> ▪ 1/3 must be independent; and ▪ 1/2 shall not be in operation. <p>Management – At least 2 persons</p> <p>Auditors – Regulatory auditors appointed.</p> <p>Chinese Wall – segregation of functions between compliance / risk manager / operation / back office.</p> <p>Internal control system: to be implemented</p> <p>Wealth Managers and RTOs: SRO Rules</p>	<p>Fund Managers: Remain the same.</p> <p>Wealth Managers and RTOs: Rules remain to be defined by FINMA but lighter than for Fund Managers.</p>
<p>Competence Test - Formation & Training - Requirement of continuing Formation and Training of Service Providers</p>	<p>DFSA fit and proper test. Ongoing obligation to be updated.</p> <p>Carried out prior to approval. Fit and proper test will be carried out on the directors, shareholders (qualifying i.e. holders of 10% or more of the shares), and members of the senior management and all other individuals carrying out</p>	<p>Fund Managers: Fit and Proper Test</p> <p>Wealth Managers and RTOs: Light Regime – SRO checks fit and proper test.</p>	<p>Fit and Proper Test.</p>

	key/licensed functions. Full due diligence.		
Code of Conduct - Setting a universal Code of Conduct for Financial Service Providers	<p>DFSA Rulebook Modules:</p> <ul style="list-style-type: none"> • COB (<i>Code of Business</i>) • GEN (<i>General</i>) • PIB (<i>Prudential – Investment, Insurance Intermediation and Banking</i>) <p>(CIR: <i>Collective Investment Rules for Fund Managers</i>)</p> <p>DIFC Laws: Collective Investment Law of 2010, Law of Security of 2005</p>	<p>Fund Managers: CISA/SFAMA Rules/FINMA Directives / Swiss Code of Obligations</p> <p>Wealth Managers and RTOs: SRO Rules and Swiss Code of Obligations</p>	<p>LSFin/SFAMA Rules/FINMA Directives</p> <p>The rules of conduct include vast information and documentation obligations and they apply to all asset managers.</p>
Know-your-Customer – AML, Client Classification (Retail / Professional); Suitability and Appropriateness test	<p>DFSA Anti Money Laundering Module:</p> <p>s3.4/App1 - Customer Identification Requirements</p> <p>s3.7.1 – Risk Assessment</p> <p>App2 – Money Laundering Risks: KYC procedures established and managed according to risk.</p>	<ul style="list-style-type: none"> ▪ Client Classification, Suitability and Appropriateness test – Swiss Code of Obligations, Federal Court Ruling; / SBA Risk in Securities Trading Directive ▪ AML - AML Act / SBA Code of Conduct 	<ul style="list-style-type: none"> ▪ Client Classification, Suitability and Appropriateness test – LSFin / SBA Risk in Securities Trading Directive ▪ AML - AML Act / SBA Code of Conduct
“Best Execution” - to obtain the best possible result for the client	DFSA COB 6 – Additional Rules – Investment Business	Swiss Code of Obligations / SFAMA Rules / SBA Rules / Swiss Federal Court Rulings / Industry Practice	LSFin / FINMA Directives / SFAMA Rules / SBA Rules
Transparency of Services and Costs - Documentation and Disclosure - Transparency and Disclosure Requirements with view to Services and Service Providers	Disclosure to clients required regarding costs and fees to be included in client agreements and terms and conditions.	Swiss Code of Obligations (duty to report) / Federal Court Rulings / SRO Rules / SFAMA Rules	LSFin

Post-Licensing Ongoing Obligations – Audit, Reports to be submitted, etc.

Record Keeping – records re allocations, orders and transactions must be kept for a minimum of 6 years; duty to keep recordings of voice and electronic communications (6 months).

Confirmation Notes to clients - orders made

Periodic Statements – provide clients with a written statement at suitable intervals.

Client Disclosure and Reporting

Reporting to the DFSA – reporting requirements quarterly and annually regarding assets, liabilities, profit and loss, capital, IRAP, and AML (*not exhaustive*).

General obligation

- Duty to maintain all conditions, which have led FINMA to grant the licence.

Agreement

- Duty to conclude written agreements with clients.

Portfolio and risk management

- Duty to ensure proper portfolio and risk management of CIS under management.

Investment and Remuneration

- Duty to ensure investment policy matches investment characteristics of the CIF announced in the filing documents.
- Duty to ensure remuneration corresponds to the fees as set out in the filed documents.
- Duty to adjust remuneration scheme to minimum standards set out in FINMA circular 2010/1.

Securities transactions

- Duty to select counterparties carefully and re-assess selection on regular basis.

Duty of disclosure towards investors

Record keeping

- In case of direct contact with investors, duty to keep documentary records.
- Duty to observe applicable principles in case of distance distribution.

Legitimate acquisition of clients

- Duty to guarantee a proper conduct of business activity in compliance with SFAMA Guidelines of CIS.

Audit and supervision

- Duty to have an audit company examine proper compliance with statutory, contractual, regulatory, FINMA recognised self-regulatory provisions and conduct interim audits as necessary.

Market conduct in securities trading

		<ul style="list-style-type: none"> ▪ Duty to keep “watch list” and “restricted list” updated at all times (<i>by compliance team</i>). ▪ Duty to ensure documentation and recording transactions for a minimum of 2 years, ready for submission to FINMA upon request. <p>Reporting to FINMA</p> <ul style="list-style-type: none"> ▪ Duty to report any change in the circumstances (<i>one-off obligation</i>) (e.g. <i>plan to operate a subsidiary, any failure to fulfil the capital adequacy condition, termination of the CIS management activity, etc.</i>). <p>Anti-Money Laundering</p> <ul style="list-style-type: none"> ▪ Due diligence duty. ▪ Duty to have a transaction monitoring system. ▪ Duty to report Money Laundering concerns to the Reporting Office (<i>one-off obligation</i>). 	
Product Information - Rules on the layout and content of Prospectuses, Offering Memorandum and Supplements.	Several requirements to be met under DFSA rules for the marketing/management of foreign funds.	CISA / Swiss Code of Obligations/ Stock Exchange Rules	LSFin / CISA / Stock Exchange Rules
Product Governance and Control	COB, PIB, and CIR	Swiss code of Obligations (<i>responsibility</i>)	LSFin
Conflicts of Interest - Management of Conflicts of Interest and conflicts policy	COB rules regarding fair treatment and attribution of knowledge (Chinese Wall arrangements).	Swiss Code of Obligations, SRO Code of Conduct	LSFin, FINMA Directives
Inducements - Regulation of the acceptance of Inducements through inducement/remuneration Policies	COB rules regarding inducements such as commissions and soft dollar agreements.	Swiss Code of Obligations, Criminal Code, and Federal Court Rulings	LSFin (<i>allowed if transparent</i>), Criminal Code
Investor Compensation Schemes	Markets Law DIFC Law No. 1 2012: Civil Compensation – compensation to a person who	N/A	N/A (<i>light rules in the Procedural codes</i>)

	has suffered loss or damage after acquiring securities due to a misleading statement or omission in a Prospectus.		
Cross-Border Activities - Regulates the activity of foreign financial service providers.	Passporting?	Passporting – N/A	LSFin - Passporting – N/A; but newly monitors and regulates foreign providers.
Regulatory enforcement	<p>Enforcement actions at the DFSA includes:</p> <ul style="list-style-type: none"> ▪ To conduct investigations into suspected contraventions of the legislation it administers; ▪ To conduct inspections, compulsorily obtain books and records; ▪ To require individuals to participate in interviews under oath or affirmation; ▪ To refer any conduct which could constitute a breach of criminal law to the relevant local, Federal or international authority. 	<p>Wide range of enforcement tools at FINMA's disposal includes:</p> <ul style="list-style-type: none"> ▪ Precautionary measures; ▪ Ordering action to restore compliance with the law; ▪ Declaratory rulings; ▪ Industry bans; ▪ Cease and desist orders and bans on trading; ▪ Publication of rulings; ▪ Confiscation / ordering the disgorgement of profits; ▪ Withdrawal of authorisation, liquidation and bankruptcy. <p>Other key tools against individuals:</p> <ul style="list-style-type: none"> ▪ Watch list; ▪ Business conduct letter. 	