

Markets in Financial Instruments Act (Promulgation and Amendments)

Promulgation and Updates:

- **Promulgated:** SG No. 15/16.02.2018, effective 16.02.2018
- **Corrections:** SG No. 16/20.02.2018
- **Amendments and Supplements:**
 - SG No. 24/16.03.2018 (effective 16.02.2018)
 - SG No. 98/27.11.2018 (effective 7.01.2019)
 - SG No. 17/26.02.2019
 - SG No. 83/22.10.2019 (effective 22.10.2019)
 - SG No. 94/29.11.2019
 - SG No. 102/31.12.2019
 - SG No. 26/22.03.2020
 - SG No. 28/24.03.2020 (effective 13.03.2020)
 - SG No. 64/18.07.2020 (effective 21.08.2020)
 - SG No. 12/12.02.2021 (effective 12.02.2021)
 - SG No. 21/12.03.2021
 - SG No. 16/25.02.2022
 - SG No. 25/29.03.2022 (effective 29.03.2022)
 - SG No. 51/1.07.2022
 - SG No. 8/25.01.2023
 - SG No. 65/28.07.2023
 - SG No. 66/1.08.2023 (effective 5.08.2023)
 - SG No. 84/6.10.2023
 - SG No. 85/10.10.2023 (effective 10.10.2023)

PART ONE: GENERAL PROVISIONS

Chapter One: General Provisions

Subject Matter: *Article 1* outlines that the Act regulates:

1. Licensing and operation of investment firms and regulated markets in financial instruments.
2. Provision of investment services by companies from third countries via branch establishment.
3. Authorization and activity of approved reporting mechanisms and publication arrangements (aligned with Regulation (EU) No. 600/2014).
4. Requirements for management and control of investment entities and qualified holding stakeholders.
5. Activities of central securities depositories.
6. Requirements for central counterparties.
7. Requirements for benchmark administrators under Regulation (EU) 2016/1011.

Purpose: *Article 2* aims to:

1. Ensure investor protection through comprehensive market information.
2. Foster a transparent, efficient market.
3. Maintain market stability and public trust.

Regulation and Supervision: *Article 3* specifies the Financial Supervision Commission (FSC) and its Deputy Chairperson as responsible for regulatory oversight, detailing the scope of authority under various EU regulations.

Financial Instruments: *Article 4* (supplemented in SG No. 65/2023) defines the financial instruments covered, including:

- Transferable securities.
- Money market instruments.
- Derivative contracts relating to commodities, indices, and climate-related factors.
- Emission allowances.

Application of European Guidelines: *Article 4a* (introduced in SG No. 83/2019) discusses FSC's commitment to applying ESMA and EBA guidelines.

Exceptions: *Article 5* lists exemptions, such as insurers, subsidiaries providing intra-group services, and persons providing investment services incidentally under regulated professional activities.

Here's a refined version with your requested changes:

Maintenance of Balance in Supplies and Energy Consumption

1. **Balance Maintenance:** Maintenance of the balance of supplies and energy consumption when performing tasks in instances where individuals, in the context of their business, engage in investment activities or provide investment services related to commodity derivatives.
2. **Exemptions and Service Providers:**
 - Providers of services for collective financing under the ruling specified in Article 2, paragraph 1, letter (e) of Regulation (EU) 2020/1503 of the European Parliament and Council of 7 October 2020 on European crowdfunding service providers for businesses, which amends Regulation (EU) 2017/1129 and Directive (EU) 2019/1937 (OJ, L 347/1, 20 October 2020).
3. **Exemptions:**
 - The exemption under paragraph 1, item 12 does not apply to secondary market operations, including platforms for secondary trading in financial transmission rights.
4. **Exclusions and Counterparty Transactions:**

- The rights conferred herein do not cover services provided as a counterparty in transactions with government bodies managing public debt or by members of the European System of Central Banks (ESCB) as per the Treaty on the Functioning of the European Union (TFEU) and the Protocol concerning the Statute of the ESCB and the European Central Bank, or under equivalent national provisions.
- 5. Qualification for Exemption:**
- Persons identified in paragraph 1, items 1, 9, and 10 qualify for the exemption without needing to meet the conditions of paragraph 1, item 4.
- 6. Applicability of Articles:**
- Articles 102–108 apply to individuals in paragraph 1, items 1, 5, 9, and 10 when participating in regulated markets or multilateral trading facilities (MTFs).
- 7. Notification Requirements:**
- Persons under paragraph 10, item 1 must notify the Swiss Financial Commission (SFC) if they benefit from the exemption under paragraph 1, item 10 by 15 April of the relevant calendar year, with an explanation supporting the ancillary nature of the activity according to Delegated Regulation (EU) 2017/592.
- 8. Information Requests by the SFC:**
- Within one month of notification, the SFC may request additional justification for the ancillary nature of activities. Additional data must be provided within a set timeframe, not less than one month.
- 9. Decision-Making by the SFC:**
- The SFC, upon the Deputy Chairperson's proposal, decides on the application of the exemption under paragraph 1, item 10, based on Delegated Regulation (EU) 2017/592 and communicates the decision in writing within a month after receiving notification or additional data.
- 10. Group-Level Criteria for Ancillary Activities:**
- The following criteria apply to determine if activities are ancillary at the group level:
 - Net residual nominal exposure is under €3 billion annually.
 - Capital is predominantly allocated to the group's primary business.
 - Activity volume is less than other trading activities at the group level.
- 11. Group-Level Consideration:**
- Paragraph 10's activities are assessed at the group level.
- 12. Excluded Transactions:**
- Intra-group transactions for liquidity or risk management.
 - Commodity or emission allowance transactions mitigating commercial or financial risks.
 - Transactions ensuring trading venue liquidity mandated by regulators.
- 13. Application of Further Provisions:**
- Articles 192–204 are relevant for entities in paragraph 1.

PART TWO: MARKET PARTICIPANTS

TITLE ONE: INVESTMENT FIRMS

Chapter Two: Business Conduct Conditions

Section I: General Provisions

Investment Services and Activities

Article 6:

1. An investment firm refers to any entity offering one or more investment services or conducting investment activities as a primary business.
2. Services and activities include:
 - Accepting and forwarding orders for financial instruments.
 - Order execution for clients.
 - Proprietary trading.
 - Portfolio management.
 - Investment advice.
 - Underwriting financial instruments or guaranteeing subscriptions.
 - Initial sale of financial instruments without guarantee.
 - Operating MTFs.
 - Operating OTFs.

Article 7:

1. Only joint-stock or limited liability companies headquartered and registered in Switzerland, holding an SFC license, may offer investment services unless otherwise legally specified.
2. Investment firms must issue dematerialized shares conferring voting rights proportionate to shareholding.

Article 8:

1. Banks with an SFC license may offer investment services.
2. Licensed investment firms that meet "credit institution" criteria per Regulation (EU) No. 575/2013 and apply to the Swiss National Bank may continue operating until approval or refusal.
3. Licensing shifts or refusals must be notified as per established regulations.

Article 9:

1. Non-bank investment firms cannot conduct non-investment commercial activities unless legally permitted.
2. Firms licensed for proprietary trading may offer two-day spot auction sales under Regulation (EU) No. 1031/2010 with SFC authorization.
3. Licensed investment firms can conduct associated foreign exchange transactions.

Section II: Capital Requirements

Article 10:

1. Initial capital requirements vary:
 - General investment firms: €750,000.
 - Firms holding client funds but not trading: €150,000.
 - Non-client-fund firms: €75,000.
2. Capital must align with Regulation (EU) 2019/2033 standards.

Article 11:

1. Firms must maintain sufficient funds per Regulation (EU) 2019/2033.
2. Firms providing certain services must meet liquidity and prudential supervision standards.

Article 12 – Management of the Investment Firm

(3) With the authorisation of the SFC upon the proposal of the Deputy Chairperson:

- **1.** An investment firm not performing any investment services and activities under Article 6, Paragraph 2, items 3 and 6, but executing client orders involving financial instruments, may hold such instruments on its own account.
- **2.** (Supplemented, SG No. 25/2022, effective 29.03.2022) An investment firm under Article 9a, Paragraph 2, may adopt a different ratio of fixed to variable remuneration components than specified in Article 65, Paragraph 3.

(4) (Repealed, SG No. 25/2022, effective 29.03.2022)

(5) (Amended and supplemented, SG No. 25/2022, effective 29.03.2022) The conditions and procedures for granting authorisation under Paragraph 3, as well as for permissions and approvals under Regulation (EU) No. 2019/2033 or Regulation (EU) No. 575/2013, shall be outlined in an ordinance.

(6) An investment firm authorised under Article 9, Paragraph 2 to operate on behalf of clients must always maintain own funds equal to at least the amount specified in Article 10, Paragraph 6.

(7) (Amended, SG No. 25/2022, effective 29.03.2022) Additional requirements related to capital, including maintaining extra own funds, capital adequacy, liquidity, and types of liquidity buffers, as well as terms, procedures for their formation and updates, and exemptions from liquidity requirements, shall be laid down in an ordinance and relevant EU regulations. The ordinance may also specify financial instruments firms may hold when providing services under Article 6, Paragraph 2, item 2.

(8) (New, SG No. 25/2022, effective 29.03.2022) Investment firms under Article 9a, Paragraph 2 must ensure internal capital levels are adequate to cover potential risks and absorb potential stress-test losses.

Article 13 – Requirements for Management and Suitability

(1) (Amended, SG No. 51/2022) Management and supervisory body members of the investment firm must have a good reputation, appropriate knowledge, skills, diverse qualifications, and experience relevant to the firm's activities and associated risks. This requirement extends to Article 14.

(2) Members must possess higher education.

(3) (Amended, SG No. 83/2019, effective 22.10.2019) Professional experience requirements include:

- **1.** Three years in non-banking financial or banking sectors in relevant positions.
- **2.** Three years in public institutions managing or controlling financial assets.
- **3.** Three years in regulatory bodies overseeing financial sectors.
- **4.** Five years in financial management roles in non-financial sectors with managed assets exceeding BGN 1,500,000.
- **5-7.** Combinations of experience as outlined in items above.

(4) Members must meet these conditions:

- **1.** No convictions for premeditated offences, unless rehabilitated.
- **2.** No past roles in bankrupt entities with unresolved creditor issues.
- **3-7.** Other integrity and eligibility criteria outlined in respective subpoints.

(5-7) Additional provisions extend these requirements to representatives of legal entities within management and supervisory roles.