

## Insurance & Reinsurance - Switzerland

### New rules for asset managers of Swiss professional pension insurances

Contributed by **BADERTSCHER Rechtsanwälte AG**

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#### Introduction

An amendment to the Professional Pension Insurance Act came into force on January 1 2014. The revised provisions specify new requirements for the management of Swiss professional pension insurance assets.

The regulatory changes can be summarised as follows:

- The Upper Supervisory Authority for Professional Pension Insurances (OAK BV) (an independent executive body responsible for the supervision of Swiss professional pension insurance managers) can admit Swiss financial service providers to manage Swiss professional pension insurance assets – mainly independent asset managers unsupervised by the Swiss Financial Market Supervisory Authority (FINMA).
- Foreign financial service providers may likewise become entitled to manage Swiss professional pension insurance assets, provided that:
  - they are supervised by a financial supervisory authority in their home jurisdiction and OAK BV recognises such supervision to be adequate; or
  - they are admitted in Switzerland (like the further Swiss financial service providers).

The new law does not provide for ongoing supervision, but only for extensive examination of integrity before admission and periodic admission renewal.

#### Regulatory change

Those affected by the regulatory changes include Swiss professional pension insurance asset managers that are not:

- admitted by FINMA;
- internal;
- mere investment advisers; or
- dealing with only real estate.

The new law affects independent asset managers of Swiss professional pension insurances. They must meet stricter formal criteria and be admitted by OAK BV before July 31 2014 to be allowed to continue managing Swiss professional pension insurance assets thereafter.

In the context of the admission procedure, under Article 48f of the Second Ordinance on Occupational Pension Schemes, OAK BV assesses in particular the integrity and quality of Swiss professional pension insurance asset managers as follows:

- Only legal entities and partnerships (not sole proprietorships of single natural persons) are admissible as asset managers of Swiss professional pension insurance. This aims to avoid a situation where a single proprietor cannot attend to Swiss professional pension insurance assets due to personal incapacity to act.
- Before admission, asset managers of Swiss professional pension insurance must satisfy certain operational and technical requirements and evidence the personal qualifications of their representatives.<sup>(1)</sup>

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- OAK BV admission is valid for three years only and must be renewed on expiry.

Since mid-2013, OAK BV has granted provisional admissions based on self-notifications of Swiss professional pension insurance asset managers. The holders of provisional admissions must now seek formal admission from OAK BV by July 31 2014. With a view to achieving this, a complete dossier must be submitted as soon as possible using the appropriate form and with the further documentation required.

OAK BV reserves the right to request additional documentation and information. Admission can be granted or refused. OAK BV may also subject admission to certain conditions.<sup>(2)</sup>

Only the following Swiss financial service providers to Swiss professional pension insurance are exempt from the OAK BV admission requirements:

- Swiss financial service providers already supervised by FINMA (eg, Swiss banks, securities dealers, insurers and asset managers of collective investment schemes) which can provide asset management services for Swiss professional pension insurance without any further supervision by OAK BV, just as they could before January 1 2014;
- certain other asset managers which are not considered to be external to the Swiss professional pension insurance (eg, its employees);
- mere financial advisers which provide investment advice only, although they cannot decide themselves on investments or divestments for Swiss professional pension insurance; and
- service providers in charge of the operation and maintenance of the real estate property of Swiss professional pension insurance or brokers for real estate purchases and sales for Swiss professional pension insurance.

### Foreign asset managers

Foreign asset managers of Swiss professional pension insurance which are not subject to adequate supervision abroad have the following two alternatives before the July 31 2014 deadline:

- They may prove to OAK BV before the deadline that they are subject to adequate financial supervision abroad by submitting a request for negative clearance from a Swiss admission to OAK BV with all related evidence. For example, foreign asset managers of Swiss professional pension insurance supervised by the US Securities and Exchange Commission or the UK Financial Conduct Authority may obtain negative clearance under Article 48f(2)(h) of the Second Ordinance on Occupational Pension Schemes. Further supervision jurisdictions (eg, within the European Union) can likewise be submitted to OAK BV for negative clearance in each particular case.
- Financial service providers incorporated abroad but without supervision there or with foreign supervision not recognised as adequate by OAK BV must apply as soon as possible for Swiss admission by OAK BV for Swiss financial service providers which do not profit from an exemption.

### Comment

Swiss and foreign asset managers of Swiss professional pension insurances must immediately assess whether further steps are necessary to ensure full compliance with the new law, and take all necessary steps as soon as possible with a view to ensuring that they do not miss the July 31 2014 deadline.

Further, the Swiss Federal Council has already pointed out that ongoing supervision will be introduced by the Swiss Federal Financial Services Act. Thus, the new law is only a transitional step towards an ongoing supervision of asset managers of Swiss professional pension insurance by FINMA. The opportunity for admission by OAK BV will then cease to exist.

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### Endnotes

(1) For details on the requirements see the OAK BV guidelines (February 14 2014) at [www.oak-bv.admin.ch](http://www.oak-bv.admin.ch) (German and French).

(2) A list of admitted asset managers of Swiss professional pension insurances will be published on [www.oak-bv.admin.ch](http://www.oak-bv.admin.ch).

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