

# Guidelines

on submitting applications for authorisation as a **foreign participant** (remote member)

Version of 29 October 2018

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## Purpose

These guidelines seek to assist applicants submitting applications for authorisation as a foreign participant in accordance with the requirements set out in the Financial Market Infrastructure Act (FMIA; SR 958.1). These guidelines are not legally binding (see Art. 40 para. 2 FMIA). They define the details and documentation to be included with the application. This does not exclude, however, that FINMA may request the applicant(s) to submit additional information and documentation. The application must be in one of Switzerland's official languages. In well-founded cases and subject to FINMA's prior approval, applications may also be submitted in English. Where an application is submitted by an applicant's legal representative, a copy of the latter's power of attorney must also be included with the application.

Foreign participants without a registered office in Switzerland require authorisation from FINMA if they intend to operate at a Swiss trading venue (Art. 40 FMIA). A "participant" is defined in Article 2 let. d FMIA as any person making direct use of financial market infrastructure services. Article 34 para. 2 FMIA lists those who can be admitted as participants to a trading venue.

Foreign participants must be authorised by FINMA before they can commence operations. It is a criminal offence to operate as a foreign participant without the required authorisation (Art. 44 FINMASA; SR 956.1).

## I. Applications for authorisation

Applications for authorisation as a foreign participant are submitted to FINMA:

Swiss Financial Market Supervisory Authority FINMA  
Legal Market Infrastructures  
Laupenstrasse 27  
CH-3003 Bern

## 1. Designation of a domicile for service and an invoice address in Switzerland

Applicants for authorisation as a foreign participant must indicate a domicile for service in Switzerland (Art. 11*b* para. 1 of the Administrative Procedure Act [APA; SR 172.021]). A domicile for service is an address in Switzerland to which a Swiss authority may deliver a decree or decision. Domicile for service can be a Swiss law firm or any other person who is authorised to receive deliveries in Switzerland.

For the correct delivery of the invoice, applicants also have to designate both a billing address and a contact person in Switzerland. Applicants can also provide further information for the invoicing (e.g. reference number). Applications for authorisation should demonstrate that all the authorisation requirements laid down in Article 40 FMIA have been met. Applications should include the following information and/or documents:

## 2. Appropriate supervision and regulation

FINMA assesses whether foreign participants are adequately regulated and supervised (Art. 40 para. 1 let. a FMIA).

As set out in Article 40 para. 1 let. b FMIA, an essential part of appropriate regulation is that a foreign participant should be subject to a code of conduct and record-keeping/reporting requirements equivalent to those defined in Swiss regulations. Each applicant must submit a table showing the provisions which apply in its country of domicile<sup>1</sup> (concerning codes of conduct and compliance with record-keeping/reporting requirements) as compared with the relevant FMIA provisions (Arts. 11 and 15 of the Stock Market Act [SESTA; SR 954.1] and/or Art. 38 f. FMIA in conjunction with Art. 36 f. of the Financial Market Infrastructure Ordinance [FMIO; SR 958.11] and Arts. 2–5 of the FINMA Financial Market Infrastructure Ordinance [FMIO-FINMA; SR 958.111]).

## 3. Confirmation from the foreign supervisory authority

Under Article 40 para. 1 let. d FMIA, the foreign supervisory authority must:

- confirm that it does not raise any objections to cross-border activities being conducted by foreign participants, and
- ensure that it will assist FINMA (international cooperation).

If a foreign participant who already participates at one Swiss trading venue wishes to participate at another Swiss trading venue, the foreign supervisory authority

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<sup>1</sup> This may be submitted in English where applicable.

must confirm that it has no objection to the foreign participant expanding its activities in Switzerland (Art. 40 para. 3 FMIA).

#### 4. General information

In addition to the information and confirmation specified in Sections 1–3, the following information and documents must be included with the application for authorisation:

- Information about the applicant's supervisory status (with a link to the participant's registration where applicable) and contact details for the relevant supervisory authority (address, phone number, fax number, email address and website);
- Company name, registered office and address (including phone, email address and website);
- Company purpose, areas of operation and activities (including an extract from the Commercial Register);
- Organisation of the company (and group of companies where applicable), description of the structure (including an organisational chart of the company or group)
- Name and full address of any existing branches and/or group companies in Switzerland;
- Description of the intended activities in Switzerland (in particular, trading activities);
- Information about any intention to engage in a specific activity (e.g. market maker) and the applicant's trading approach;
- Explanation of planned securities transactions and their settlement.

## II. Information and reporting requirements

Where authorisation is granted, foreign participants must comply with the requirements prescribed in the authorisation decree and report in writing to FINMA as specified (see FINMA's address in Section I above or by email to [exchangesupervision@finma.ch](mailto:exchangesupervision@finma.ch)).

Changes in facts and circumstances that are of interest to FINMA, including:

- new contact details;
- changes in the supervisory and/or regulatory status of the authorised foreign participant in its home country;

- restructuring of the foreign participant, e.g. mergers, takeovers and any other significant changes (e.g. change of company name, etc.);

must be reported by the foreign participant to FINMA without delay. In the event of restructuring and/or changes to the foreign participant's supervisory/regulatory status, proof must be provided that the foreign supervisory authority has either approved or has not objected to such changes.