

Guidelines

on meetings (Art. 43 FINMASA)

- between **Swiss supervised institutions**
- and **foreign financial supervisory authorities**
- in **Switzerland**

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Purpose

These guidelines aim at facilitating the exchange of information that is not publicly available between Swiss supervised institutions and foreign financial market supervisory authorities during meetings held in Switzerland. They define the different types of information exchange between Swiss supervised institutions and foreign financial market supervisory authorities on Swiss territory, specify the contents of notifications and requests relating to such meetings and how they should be carried out. These guidelines are not legally binding.

Scope of application

Since 1 January 2016 the exchange of information that is not publicly available between Swiss supervised institutions and foreign financial market supervisory authorities during meetings held in Switzerland has fallen within the scope of Article 43 of the Financial Market Supervisory Act of 22 June 2007 (FINMASA; SR 956.1). This provision enables foreign financial market supervisory authorities to obtain information which they require for their own supervisory purposes from Swiss supervised institutions during cross-border direct audits. For home regulators, the focus here is on the interests of consolidated supervision. In the case of host regulators, there must be a specific connection to an activity which the institution to be audited performs in the territory of the requesting authority.

1 Exchange of information that is publicly available

Information that is publicly available does not fall within the scope of Article 43 FINMASA. Information of this kind can be exchanged informally between Swiss supervised institutions and foreign financial market supervisory authorities during courtesy visits in Switzerland.

2 Exchange of information that is not publicly available

2.1 On-site supervisory reviews without auditing activities

On-site supervisory reviews without auditing activities ("supervisory consultations") are meetings in which a foreign financial market supervisory authority and a supervised institution in Switzerland exchange information that is not publicly available. However, the foreign financial market supervisory authority:

- is not permitted to spend more than one day with the supervised institution;
- is not permitted to conduct formal inquiries;
- is not permitted to gather information either with a view to launching proceedings against the supervised institution or its employees or to use the information obtained as evidence against them;
- is not permitted to send questions in advance;
- may examine business records and internal documents only to the extent that these could be transmitted to the foreign financial market supervisory authority by the supervised institution in accordance with Article 42c para. 1 FINMASA directly and without giving prior notice to FINMA in accordance with Article 42c para. 3 FINMASA.

If any of the above-listed conditions is not met or if there are any doubts in this regard, the meeting is deemed to be an on-site supervisory review with auditing activities (see also Section 2.2 below).

The intention to conduct an on-site supervisory review without auditing activities must be notified to FINMA in advance of the planned meeting by the supervised institution in question. Alternatively, the foreign financial market supervisory authority can submit a request to FINMA, in the same way as for the cases set out in Section 2.2 below. If FINMA is of the opinion that the planned meeting is in fact an on-site supervisory review with auditing activities, it informs the supervised institution and the foreign authority accord-

ingly. FINMA also informs supervised institutions whenever it is not in agreement with an on-site supervisory review without auditing activities or wants to take part in it.

Notifications regarding on-site supervisory reviews without auditing activities must be sent by letter or email to the FINMA Key Account Manager (KAM) responsible for the supervised institution at least two weeks before the planned date. These notifications must contain information about the authority which the supervised institution intends to meet, the topics to be discussed, the agenda for the meeting and the primary contact persons at the supervised institution. In more urgent cases, the supervised institution should contact FINMA immediately.

2.2 On-site supervisory reviews with auditing activities

On-site supervisory reviews with auditing activities refers to all meetings of foreign financial market supervisory authorities with Swiss supervised institutions in Switzerland which do not meet the criteria set out in Section 2.1 above. They can also be conducted by third parties which are appointed by a foreign financial market supervisory authority or which are appointed by the supervised institution at the request of a foreign financial market supervisory authority to investigate a particular issue.

On-site supervisory reviews with auditing activities require FINMA's prior consent. This can be obtained by means of a request from the foreign financial market supervisory authority, with the assistance of the supervised institution where necessary.

Preparing and organising an on-site supervisory review with auditing activities normally takes 4-6 weeks. The supervised institutions are given sufficient time to prepare the on-site supervisory reviews and arrange for documents to be available and, where necessary, redacted. Requests must be submitted in good time by letter or email (cooperation@finma.ch) to:

Swiss Financial Market Supervisory Authority
International Cooperation
Laupenstrasse 27
CH-3003 Bern

and must contain at least the following:

1. information regarding the requesting foreign financial market supervisory authority's competence to conduct the intended on-site supervisory review (home or host regulator, prudential supervision, or conduct authority);
2. scope of the on-site supervisory review (e.g. object of the review, topics to be discussed with the supervised institution, etc.);

3. planned schedule;
4. information about the employees conducting the on-site supervisory review;
5. information as to whether access to client dossiers is required in accordance with Article 43 para. 3^{ter} FINMASA (home regulators);
6. assurance of confidentiality in accordance with Article 42 para. 2 let. b FINMASA;
7. assurance that information made available in the course of the on-site supervisory review will be used exclusively to enforce financial market law (speciality principle as defined in Art. 42 para. 2 let. a FINMASA);
8. assurance that information made available in the course of the on-site supervisory review will be used exclusively for consolidated supervision (home regulator) or for supervision of a specific activity of the supervised institution in question in the territory of the foreign financial market supervisory authority (host regulator) (Art. 43 para. 2 let. a FINMASA);
9. assurance that FINMA will be informed of the results of the on-site supervisory review immediately upon its completion and that any report produced relating to the on-site supervisory review will be provided to FINMA.

FINMA has absolute discretion as to whether permission is granted and reserves the right to call for further information and assurances after a request has been received.

Any random samples in accordance with Article 43 para. 3^{ter} FINMASA for on-site supervisory reviews by home regulators are defined on a case-by-case basis after the request has been received. The individual dossiers to be scrutinised are selected by the foreign financial market supervisory authority. This will be done on the basis of anonymised lists in order to guarantee the randomness required under the law. The foreign financial market supervisory authority is also primarily responsible for defining the criteria used to produce the lists. FINMA monitors the process and ensures that this does not result in the disclosure of client-identifying information before the on-site supervisory review.

At the beginning of an on-site supervisory review, there is generally a bilateral kick-off meeting between FINMA and the foreign financial market supervisory authority and a trilateral meeting involving the supervised institution in question. FINMA reserves the right to take part in the final meeting between the foreign financial market supervisory authority and the supervised institution.

If a bilateral memorandum of understanding between the requesting foreign financial market supervisory authority and FINMA contains provisions relating to on-site supervisory reviews, the modalities set out there apply.

2.3 Documents used in on-site supervisory reviews may not be taken away

On conclusion of an on-site supervisory review by a foreign financial market supervisory authority only personal notes may be taken away. These may not include client names. All documents which are provided by the supervised institution and which contain information that is not publicly available remain with the supervised institution. This also applies to personal notes which have been written directly on such documents.

The transmission of information that is not publicly available to foreign financial market authorities prior or subsequent to an on-site supervisory review is subject to the rules set out in Article 42 ff. FINMASA on international cooperation and/or direct transmission as defined in Article 42c FINMASA with the corresponding rules on the protection of clients and third parties.

3 Summary

Type of meeting	Type of information to FINMA	Applicant
<i>Exchange of information that is <u>not</u> publicly available.</i>		
On-site supervisory review without auditing activities (supervisory consultation)	Notification to the key account manager (KAM) responsible for the supervised institution (in writing by email or letter)	Supervised institution (alternatively, foreign financial market supervisory authority)
On-site supervisory review with auditing activities	Request to International Cooperation unit (in writing by email or letter)	Foreign financial market supervisory authority
<i>Exchange of information that is publicly available.</i>		
Courtesy visit	–	–