



Aufsichtsorganisation Finanzdienstleister  
Organisation de surveillance financière  
[Supervisory Organisation for Financial  
Services]  
Organismo di vigilanza finanziaria

**Agreement governing the examination of the conditions for subjection to supervision**

**between**

**OSFIN Organisation de surveillance financière [OSFIN Supervisory Organisation for Financial Services],**

Rue du Château 23, 2000 Neuchâtel

**hereafter, OSFIN**

**and**

**Name of financial institution:**

\_\_\_\_\_

**Full address:**

\_\_\_\_\_

\_\_\_\_\_

**Represented by:**

\_\_\_\_\_

**Telephone (direct line):**

\_\_\_\_\_

**Email of the representative:**

\_\_\_\_\_

**Number of active staff members:**

\_\_\_\_\_

**hereafter, the Financial Institution**

## **1. Contractual object**

Portfolio managers and trustees are obliged, as Financial Institutions within the meaning of the FinIA [Swiss Federal Act on Financial Institutions], to obtain authorisation from FINMA and to submit to ongoing supervision by a supervisory organisation.

Portfolio managers and trustees must subject themselves to supervision by a supervisory organisation prior to filing the application for authorisation with FINMA; however, ongoing supervision only starts once authorisation has been obtained from FINMA.

This Agreement governs the relationship between OSFIN and the Financial Institution from such time when the application for subjection to supervision is filed until authorisation is granted by FINMA, and specifically the examination of the conditions for subjection to OSFIN supervision and the pre-examination of the conditions for authorisation by FINMA. A subsequent supervisory agreement shall set out the principles governing subjection to supervision and ongoing supervision.

## **2. Legal status of the Agreement**

This Agreement concluded between OSFIN and the operator subject to supervision is governed by private law.

## **3. Conclusion of the Agreement**

This Agreement shall be concluded and any amendment to it shall be adopted in writing.

This Agreement must be validly signed and submitted to OSFIN in two original copies.

It shall be deemed to have been validly concluded upon signature by both parties.

## **4. Application for subjection to supervision**

By this Agreement, the Financial Institution instructs OSFIN to conduct an examination of the conditions for subjection to supervision and a pre-examination of the conditions for authorisation by FINMA.

In order to do so, the Financial Institution undertakes to file all documents required on the platform provided for this purpose by FINMA and to answer all additional requests for information or documents from OSFIN.

The Financial Institution is obliged to grant OSFIN access to the documents that it files on the platform provided by FINMA.

## **5. Examination of the application for subjection to supervision**

OSFIN shall examine the conditions for subjection to supervision as soon as it has gained access to all of the necessary documents.

In signing Annex 1 to this Agreement, the Financial Institution authorises OSFIN to request from and to exchange with the self-regulatory body with which it is affiliated, FINMA or any other supervisory organisation any information or documents that may be necessary in order to examine the application.

## **6. Pre-examination of the conditions for FINMA authorisation**

In parallel with an examination of the conditions for subjection to supervision, OSFIN shall carry out a pre-examination of the conditions for FINMA authorisation and shall prepare the documents required for this purpose.

The Financial Institution shall provide OSFIN with all information necessary for the pre-examination and shall make available all of the documents required.

## **7. Subjection to supervision**

Once the conditions for subjection to supervision have been met in the view of OSFIN, OSFIN shall draft a supervisory agreement with the Financial Institution in duplicate for signature. It shall set out the rights and obligations in relation to subjection to supervision and ongoing supervision.

The Financial Institution shall receive confirmation that the conditions for subjection to supervision have been met upon receipt by OSFIN of the signed supervisory agreement.

## **8. Application for authorisation**

Upon receipt by it of confirmation that the conditions for subjection to supervision by OSFIN have been met, the Institution shall file an application for authorisation with FINMA.

The application must be filed within one month of receipt of confirmation concerning subjection to supervision. In the event of the failure to comply with this one-month deadline, OSFIN shall carry out a review of the conditions for authorisation at the cost of the Financial Institution once the application for authorisation has been submitted to FINMA.

After the application for authorisation has been filed, OSFIN shall submit the documents and information relating to its pre-examination to FINMA.

OSFIN shall not bear any liability for the failure by FINMA to grant authorisation should it consider that the conditions have not been met.

## **9. Exhaustive nature and accuracy of data**

In signing this Agreement, the Financial Institution undertakes to submit OSFIN information that is exhaustive, accurate and authentic and confirms that the documents and information provided in relation to this request for examination are complete, accurate and authentic. Article 45 FINMASA [Swiss Financial Market Supervision Act] shall be applicable in the event of any breach.

## **10. Change in facts**

The Financial Institution undertakes to inform OSFIN in writing immediately, and within no more than 30 days at most, or any alteration or change liable to affect the accuracy and completeness of the data provided in relation to this request or that may occur at any time during subjection to supervision by OSFIN. It shall provide OSFIN without undue delay with documents substantiating any such changes.

## **11. Fees for examining whether the conditions have been met**

The fees for examining whether the conditions for subjection to supervision by OSFIN have been met along with the fees for the pre-examination of the conditions for authorisation shall be invoiced as a lump-sum charge depending upon the size of the Financial Institution.

Financial Institutions are sub-divided into four categories based on the number of active staff members in the area subject to authorisation.

Category	Number of active staff members	Examination and pre-examination fees
1	1-3 staff members	CHF 3,300.00
2	4-8 staff members	CHF 5,300.00
3	9-16 staff members	CHF 7,300.00
4	>17 staff members	at least CHF 9,300.00.

The Management shall establish the amount of the supervisory fees for category 4 depending upon the size of the Financial Institution, having regard to the number of active staff members and the turnover of the Financial Institution. The amounts applicable for category 4 may not be lower than the amounts specified above.

These fees shall be invoiced upon the submission to OSFIN of this Agreement following signature by the Financial Institution; the relevant invoice shall be issued by OSFIN along with a countersigned copy of this Agreement.

No examination of the file shall be carried out until OSFIN has received payment of the fees.

## **12. Transitory provisions**

The supervisory fees stipulated in clause 11 for any Institutions that were already affiliated with a self-regulatory body upon the entry into force of the FinSA [Swiss Federal Act on Financial Services] / FinIA and that benefit from the three-year time limit for subjection to a supervisory organisation shall be subject to a multiplier, which shall change over time:

- In 2020, a multiplier of 0.5;
- In 2021, a multiplier of 1;
- In 2022, a multiplier of 2;
- From 2023, a multiplier of 1.

## **13. Additional fees for file review**

In the event of the failure to comply with the time limit of one month laid down in clause 8 of this Agreement, OSFIN shall charge for file review on the basis of the time worked at the following hourly rates:

- Director CHF 275.00 per hour
- Deputy Director CHF 250.00 per hour
- Specialist Official CHF 250.00 per hour
- Secretariat CHF 120.00 per hour

File review shall entail ensuring that the information relating to the examination of the conditions for subjection to supervision or the pre-examination of the conditions for authorisation are up to date before subjection to supervision is approved or the application for authorisation is submitted to FINMA.

Confirmation of subjection to supervision or the submission to FINMA of the documents and information relating to the pre-examination shall be conditional upon the payment of the fees invoiced.

## **14. VAT**

The costs provided for under this Agreement do not include VAT, which shall be charged at the applicable rate.

## **15. Term of the Agreement**

This Agreement has been concluded on an open-ended basis.

## **16. Automatic expiry**

This Agreement shall expire automatically upon receipt of authorisation by FINMA.

## **17. Ordinary termination by the Financial Institution**

The Agreement may be terminated by the Financial Institution at any time in writing with immediate effect or with reference to a specific date.

In the event of termination by the Financial Institution, there shall be no entitlement to the reimbursement of any fees previously paid and any outstanding invoices shall remain payable.

The results of the pre-examination shall not be transmitted to any Financial Institution that terminates the Agreement before its application for authorisation has been filed.

## **18. Ordinary termination by OSFIN**

OSFIN may terminate this Agreement at any time with immediate effect or with effect from any particular date exclusively for the following reasons:

- the Financial Institution has failed to pay any amounts invoiced by OSFIN notwithstanding two reminders, one of which must have been sent by registered letter and include a threat of termination of the Agreement;
- it is no longer possible to contact the Financial Institution using the contact details most recently provided, or respectively through its representative as indicated in this Agreement;
- the Financial Institution no longer has the necessary bodies and no longer fulfils the conditions for inclusion in the Commercial Register;
- the Financial Institution has been placed into liquidation;
- the Institution no longer fulfils the conditions for the issue of confirmation concerning compliance with the conditions for subjection to supervision;
- the Financial Institution has not completed its application for subjection to supervision within the time limit set;
- the Institution no longer fulfils the conditions for subjection to supervision; or
- the Financial Institution has not filed its application for authorisation with FINMA within six months of confirmation that the conditions were met.

In the event of termination by OSFIN, there shall be no entitlement to the reimbursement of any fees previously paid and any outstanding invoices shall remain payable.

## **19. Applicable law**

This Agreement shall be governed by Swiss law.

Location, date:

Valid signature of the Financial Institution

Signature of OSFIN

**Annex 1:**

**Right of access to information and documents**

The undersigned Financial Institution,

Name of financial  
institution:

\_\_\_\_\_

Full address:

\_\_\_\_\_

\_\_\_\_\_

hereafter, the “Financial Institution”

hereby authorises

OSFIN Organisation de surveillance financière [OSFIN Supervisory Organisation for  
Financial Services],

hereafter “OSFIN”

to obtain directly from FINMA or from the self-regulatory body or the supervisory organisation with which it was affiliated or that has refused a request by it any information and documents necessary in order to examine the application for subjection to supervision and for the pre-examination of the application for authorisation.

Similarly, the Financial Institution authorises FINMA, the self-regulatory body or the supervisory organisation concerned to transmit to OSFIN any information and documents for examination by OSFIN.

Location, date:

Valid signature of the Financial Institution: