FINcontrol Suisse AG

Leaflet minimum content of portfolio management agreement for financial institutions according to Art. 17 FinIA

1. General remarks

A financial institution must use an appropriately structured portfolio management agreement in order to exercise its activity as portfolio manager. Such agreement must at least reflect the legally required obligations and clearly describe the administrative mandate to be entered into.

This leaflet is not exhaustive but intended to provide for an overview of the topics to be discussed and regulated with clients as part of the mandate. As a consequence, below listed points reflect the minimum content to be agreed upon from FINcontrol Suisse Ltd's point of view. On the basis of the client relationship, (foreign) jurisdiction, selected investment strategy or vehicle, further points must be regulated. It may be advisable to conclusively regulate parts of the agreement which need to be renewed regularly in appendices to the agreement and to refer to such appendices in the agreement itself.

FINcontrol Suisse Ltd reviews the agreement on the occasion of the (preliminary) affiliation as well as in the context of the ongoing supervision. The portfolio management agreement also forms a mandatory document for approval by the Swiss Financial Market Supervisory Authority FINMA.

2. Content of the portfolio management agreement

	Subjects to be addressed	Remarks
1.	Mandate and authorization	The agreement must contain basic provisions on the contractual relationship between the client and the financial institution. In addition, the financial institution must be authorized for portfolio management by the client. The authorization must relate to all (custody) accounts which are required and foreseen for the execution of the portfolio management activities or strategy implementation agreed upon.
2.	Client segmentation	All clients shall be assigned to one of the three segments foreseen by the Financial Services Act FinSA (cf. Art. 4 et. seq. FinSA): - Retail clients - Professional clients - Institutional clients The financial institution's obligations towards its clients vary based on the segmentation. In case of professional and especially institutional clients, certain obligations may be waived (cf. Art 8, 9, 12, 15 and 16 FinSA or Art. 6 et. seq. and particularly Art. 22 FinSO). The client segmentation forms the basis for the creation of the client

		profile, including investment strategy, suitability, goals and investment policy (cf. below). *Note: the client segmentation and profile may be issued as appendices to the agreement. As a recommendation: the more clients, the better it may be to arrange for this by means of an appendix.*
3.	Investment strategy	As part of the individual portfolio management agreement, the personal investment strategy must be defined and contractually stipulated for each client. The strategy shall be regularly validated and reagreed with the client. Thereupon, potential adjustments shall be made in each case. *Note: We recommend to regulate the basics (e.g. selection of (pre)defined/set strategies) in the agreement itself and any regularly adjustable specifics in an appendix.*
4.	Suitability, goal as well as investment strategy and policy	A goal must be defined for each management mandate and the expectations of the client mapped accordingly. As part of the portfolio management agreement, it must be ensured that the investment strategy suits the client's profile (specifically with regard to the amount of available assets, the client's existing knowledge concerning investment strategy and instruments, etc.). Such suitability test must be carried out in connection with the investment strategy. The personal investment strategy must be defined and contractually stipulated for each client. The strategy must be regularly validated and reagreed with the client. Thereupon, potential adjustments shall be made in each case. On the occasion of such strategy definition, permitted investments shall be listed but namely non-permitted investments shall be explicitly listed too (in particular upon special request by the client). Ideally, it is also defined whether or not the rights associated with the acquired financial instruments shall be exercised by the financial institution. *Note: the suitability test, which should be updated regularly, may be issued as an appendix to the agreement. The same applies to the investment strategy or policy, provided this is individually regulated and no selection of "standard strategies" used.*
5.	Obligations of the financial institution	It must be specified that the portfolio management mandate is carried out in the best interest of the client and with due care. As a matter of principle, conflicts of interests are to be avoided. If avoidance is not doable, reference is to be made to them. The mandate obliges the portfolio manager to personally perform the obligations towards the client unless reference to any outsourced services is made (see section 11 below). In addition, both parties undertake to stay in regular contact in order to ensure continuance of the investment strategy and policy or potential adjustment thereof in due time.
6.	Risk information	The client must be informed about the risks associated with the strategy and the investments used. Such information must be recorded and accepted by the client in writing.

7.	Exclusion of liability/Responsibility	It is advisable to add a non-liability clause to the portfolio management agreement. On the basis of the respective mandate or client relationship, this may be structured differently – it also depends on risk appetite of the financial institution. As a rule, the client should be informed about no assurance for achievement of investment objectives. A guarantee of success must be excluded.
8.	Confidentiality	Infomation about necessity of personal data disclosure to the financial institution for execution of the portfolio management agreement. At the same time, the financial institution shall undertake to treat such data as confidential. Professional secrecy must be maintained during the mandate and beyond its termination. Exceptions may particularly apply in case of disclosures requested by authorities, provided Swiss law requirements (in particular the Federal Act on Data Protection) are met. Only upon legal or regulatory requirement disclosure may take place.
10.	Costs	Information on fees, remuneration, potential compensation by third parties as well as any other costs must be disclosed transparently. Clients shall be given comprehensive and transparent information in advance and agree to the respective cost factors (cf. Art. 19 and 29 FinSO). The aim is to provide clients with comprehensive disclosure and information on the overall composition of costs arising as a result of mandating the financial institution.
11.	Delegation of tasks	If financial tasks are not performed by the financial institution itself, it must be clarified to whom such tasks are delegated or outsourced (e.g. outsourcing of risk & compliance functions). Clients must be fully informed about any cooperation in the context of the portfolio management mandate.
12.	Reporting	Ideally, communication channels (e.g. via email, letter, telephone, etc.) to be used by and between the financial institution and the client are specified. Reporting frequency shall be determined as well (e.g. each month, quarterly, etc.).
13.	Further information	Information on ombudsman, authorization of the financial institution, etc.
14.	Further provisions	Finally, for the sake of completeness, the agreement should contain further general contractual provisions, such as on the following topics: - Duration and termination - Amendments to the agreement - Severability clause (partial invalidity of the agreement) - Governing law and jurisdiction