

Leaflet minimum content of articles of association for financial institutions according to Art. 17 FinIA

1. General remarks

All financial institutions shall be appropriately organized in accordance with the Federal Act on Financial Institutions (FinIA). For legal entities such as companies limited by shares and/or companies with limited liability, the articles of association form the basic document from which all further organizational, structural and procedural provisions are derived and interpreted. This leaflet focuses on the minimum regulatory content of the articles of association. Any further mandatory provisions under civil and/or company law may not be exhaustively reproduced or recorded herein.

Note for sole proprietorships: these kind of applicants usually have no articles of association as such. By analogy, similar documentation such as a partnership agreement or other organizational document exists which contains the essential rules. In this regard, we particularly refer to the notes of the « Organizational Regulations Leaflet ».

The articles of association as well as any further regulations shall be adapted in accordance with the activity, size as well as organization of the respective financial institution. However, the law provides for certain minimum content which has to be met in any event.

This leaflet is not exhaustive but lists all aspects (in the recommended structure) which usually need to be laid down. FINcontrol Suisse Ltd reviews the articles of association on the occasion of the (preliminary) affiliation as well as in the context of the ongoing supervision (in the event of potential adjustments). The articles of association also form a mandatory document for approval by the Swiss Financial Market Supervisory Authority FINMA.

2. Content of the articles of association

	Subjects to be addressed	Remarks
1.	Business name / Purpose / Basics	<p>The articles of association must include the (business) name and purpose of the financial institution. The financial institution's purpose specifically needs to include the activity in the sense of Art. 17 FinIA (i.e. portfolio management and/or activity as trustee).</p> <p>Attention: In case of start-ups, the Swiss Federal Commercial Registry Office (FCRO) does not accept neither register this purpose before receipt of the respective FINMA approval as financial institution. It is therefore recommended to establish the company (if this happens before the application is submitted) with a more general purpose and to present a mark-up version of the articles of association with the more specific purpose when submitting the application.</p> <p>The mark-up version of the articles of association must be notarized and submitted upon receipt of the relevant approval.</p>

2.	Share capital, shareholder, etc.	<p>Details concerning share or company capital; this must amount to at least CHF 100,000 and must be paid-in in cash. Said requirement must be observed at all times (cf. Art. 22 et seq. FinIA and Art. 27 et seq. FinIO).</p> <p><i>Note on company law provisions: depending on the structure of the company, further information shall be provided concerning type of shares, subscription rights and transferability thereof, etc.</i></p>
3.	Governing bodies of companies	<p>The company must have the necessary governing bodies:</p> <ul style="list-style-type: none"> - General Meeting - Board of directors - Auditor (subject to opting-out)
4.	General Meeting	<p>Below topics are to be regulated in particular:</p> <ul style="list-style-type: none"> - Powers of the General Meeting - Terms of meetings (ordinary or extraordinary) with regard to calling, agenda, chairman, passing of resolutions (quorums), exercise of voting rights, etc. <p><i>Note: if a resolution is to be notarized, the relevant notarial requirements must be met; modifications passed in accordance with the resolutions are usually to be reported to the competent Commercial Registry Office.</i></p>
5.	Board of directors	<p>To be regulated:</p> <ul style="list-style-type: none"> - Any requirements regarding qualifications of board members - Number of board members (minimum and possibly maximum) - List of inalienable duties - Provisions on management and delegation of management (in case of delegation, reference can be made to the organizational regulations for further specifics) <p>Rhythm of meetings, convening, chairmanship, decision-making</p>
6.	Auditor	<p>Preliminary remark: The appointment of an auditor <i>under company law</i> can possibly be dispensed with if the corresponding legal requirements are met. At the same time, <i>supervisory law</i> requires all financial institutions to provide evidence concerning compliance with the requirements for own funds at all times (cf. Art. 23 FinIA and Art. 28 et seq. FinIO). This does not necessarily require audited financial statements; however, experience shows that the evidence can be provided most efficiently and transparently if the figures are based upon audited financial statements. It is therefore advisable to have a limited audit or at least a review of the annual figures carried out.</p> <p>The articles of association must specify whether the auditor is to be dispensed with, or whether a restricted or regular audit is carried out.</p>

7.	Further instructions	<p><i>Note on company law provisions: on top, the articles of association usually contain further provisions such as:</i></p> <ul style="list-style-type: none">- <i>Information concerning financial year</i>- <i>Profit distribution</i>- <i>Publication</i>- <i>Etc.</i> <p>In this respect, we particularly refer to the legal provisions for companies limited by shares (cf. Art. 626 et seq. CO) or companies with limited liability (cf. Art. 776 et. seq. CO)</p>
----	----------------------	---