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## **Circ. ROHMA 2014/1**

# Activities subject to licensing in the area of trade and production

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Legal basis: Commodity Market Supervisory Authority Act (CMSAA)

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## I. Purpose

This circular summarizes in summary form the permissions and mandatory announcements required of commodity trading companies, extractive and production companies, as well as gold refineries and importers. These obligations stem from the Commodity Market Supervisory Authority Act (CMSAA) and the Commodities Act (CA). Unless otherwise specified, ROHMA authorisation is required. Otherwise, the body providing authorization is given in brackets.

The Circular does not purport to be current or complete. It does not replace the relevant underlying legal texts found in the laws and ordinances.

## II. All submitted companies: requirements for authorization and reporting obligations

2.1	<p>Authorization to carry out an activity (arts. 4-6 &amp; 14 CA)</p> <p>Newly established trading companies must request authorization prior to commencing trade. It is granted only to persons whose record is impeccable and where the internal organization of trader is satisfactory, particularly with regard to compliance with anti-commodity laundering requirements and the standards of the branch. Some activities are permitted only if certain prerequisites are met (e.g. human rights impact assessments).</p> <p>Upon application for a license, companies must additionally provide a declaration confirming that neither they nor their employees have engaged in any acts of corruption. These declarations must be repeated on an annual basis.</p>	<p>Prior to commencing an activity</p> <p>Prior to commencing an activity Annually</p>
2.2	<p>Significant expansion of the activities of a submitted company (arts. 6 &amp; 8 CA)</p> <p>Any significant expansion of the activities of a submitted company, any change to a company's structure and any significant change in business partners must be notified immediately to ROHMA, which has 30 days to advise the company whether the changes are compatible with the existing license (with respect to activities) and whether they are acceptable (with respect to changes in the company structure or changes in business partners).</p>	<p>Immediately</p>



2.3	<p>Additional duties in connection with the exercise of the current activity (arts. 7, 9 &amp; 13 CA)</p> <ul style="list-style-type: none"><li>• Nomination of the head of an internal oversight body</li><li>• Opening of a subsidiary, branch or other representative office abroad</li></ul>	<p>Prior to nomination</p> <p>Prior to opening</p>
2.4	<p>Disclosure of shareholdings and beneficial owners (arts. 6 and 11 CA)</p> <p>Upon the commencement of activities, commodities companies should provide all details to the supervisory authority of all beneficial owners. ROHMA is required to publish a list of these. Any changes to this information must be advised to ROHMA within 30 days of such change taking place.</p>	<p>Upon commencement of an activity</p> <p>At all times</p>
2.5	<p>Agreements with foreign companies (art.6 CA)</p> <p>The conclusion of any agreements (e.g. joint venture agreements) with foreign companies is subject to a reporting obligation to ROHMA. ROHMA must also be informed monthly of all transactions under such contracts.</p>	<p>15 days after the conclusion of the agreement</p> <p>At all times / monthly</p>
2.6	<p>Supply chain due diligence (arts. 10 CA and 24 CMSAA)</p> <p>Submitted companies must organise their internal management systems with a view to guaranteeing the exercise of supply chain due diligence, aimed particularly at preventing dirty commodities from entering into the system. This implies the implementation of a control system and of transparency in the supply such that actors at all levels are able to be identified. These systems are to be subject to an external audit once per year. Furthermore, companies must publish a report on their supply chain due diligence practices.</p>	<p>At all times</p> <p>Annually</p> <p>Annually</p>
2.7	<p>Specific duties relating to conflict zones, failed states or occupied territories, or with regard to commodities obtained in violation of international sanctions (arts 4 and 10 CA)</p> <p>Submitted companies are only permitted to carry out activities in the above-mentioned states or areas with explicit authorisation from ROHMA. Such authorizations must be requested as soon as possible. In addition, Swiss commodities companies are required to publish their supply chain audits on an annual basis to certify that all measures possible are taken to prevent them from buying commodities that fund conflict, in accordance with the OECD due diligence procedures (the „five steps“ approach). ROHMA publishes a list of reputed conflict zones.</p>	<p>At all times</p> <p>Annually</p>



2.8	<p>Due diligence aimed at identifying business partners (art. 11 CA)</p> <p>In general, companies active in the commodity sector, must know exactly who their business partners are, and who the beneficial owners are of the companies with which they conduct business, and take all measures necessary to ensure proper business conduct.</p> <p>The moment a submitted company becomes aware that it is entering into business with a politically exposed person, it must, prior to commencing any activity, request authorisation from ROHMA, which will be provided within 30 days.</p>	At all times  At all times
2.9	<p>Transparency of payments (art. 12 CA)</p> <p>Submitted companies are required to publish all payments over CHF 100,000 made to governments via the form TRA. In addition to the amount of the payment, companies must indicate the date of the transaction, the volume and quality of the commodity or product exchanged, and must provide sufficient details to enable the company to be able to identify precisely the beneficiary of the payment (e.g. account number, bank, beneficial owner etc.)</p>	At all times
2.10	<p>Due diligence on human rights and environmental standards (art. 6 CA)</p> <p>Companies subject to ROHMA supervision are required to conduct human rights due diligence for all of their activities, including on all subsidiaries of their groups. They must submit their internal policies on human rights to ROHMA for approval on an annual basis and disclose the results of any internal audits, as well as any measures taken to address any deficiencies. These reports must be published. In addition, companies must have internal control systems to enable them to ensure that their activities comply with the Swiss environmental standards.</p>	At all times  Annually
2.11	<p>Conclusion by a Swiss company with a government of third country of tax agreements or investment agreements containing a clause tax (art. 4 CA)</p> <p>ROHMA must be informed when Swiss companies conclude a tax agreement or an investment agreement with a tax clause with a third country. Such agreements must be provided to ROHMA, which verifies compliance with the tax laws and ensures that the company concerned does not engage in aggressive tax planning.</p>	Upon conclusion of an agreement
2.12	<p>Transactions in financial derivatives (art. 9 CA)</p> <p>Swiss commodity companies are required to audit their transactions in financial derivatives on an annual basis. This audit is intended to ensure that company operations are not intended to go beyond the need to hedge their physical operations. This audit is also transmitted to the FINMA.</p>	Once per year (FINMA)

2.13	<p>Duty to report activities that may represent infractions of the laws of surveillance (art. 17 CA)</p> <p>Where it comes to a company's attention that a third party that should also be subject to the ROHMA regime has breached that regime, that company is required to report the third party's breach to ROHMA.</p>	Immediately
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### III. Traders : issues concerning authorization and reporting duties

3.1	<p>Conclusion of long-term contracts (off-take agreements) and SWAPS (art. 6 CA)</p> <p>The conclusion of long-term contracts (off take agreements) or SWAP agreements between commodities companies and state or state distribution companies (e.g. monopoly on hydrocarbons) is subject to a reporting obligation to ROHMA. ROHMA must also be informed of all monthly transactions under such contracts.</p>	<p>15 days after the conclusion of the agreement</p> <p>At all times / monthly</p>
3.2	<p>State pre-financing (art. 6 &amp; 12 CA)</p> <p>The conclusion of contracts for state pre-financing is subject to a reporting obligation to ROHMA. ROHMA must also be informed monthly of all transactions under such contracts.</p>	<p>15 days after the conclusion of the agreement</p> <p>At all times / monthly</p>
3.3	<p>Due diligence aimed at identifying business partners (arts. 4 &amp; 11 CA)</p> <p>Information concerning all business parties of trading companies must be provided to ROHMA sixty days prior to commencing any activities. ROHMA will either provide or refuse consent within 30 days of receipt.</p>	Monthly

### IV. Extractive companies: issues concerning authorization and reporting duties

4.1	Obtaining an extractive license (arts. 6 & 11 CA)	
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Rohstoffmarktaufsicht Schweiz ROHMA  
Autorité de surveillance des marchés de matières premières ROHMA  
Autorità federale di vigilanza sui mercati di materia prima ROHMA  
Swiss Commodity Market Supervisory Authority ROHMA

	Swiss companies obtaining an extractive license in a third country must reveal the conditions for obtaining this license to ROHMA. The supervisory authority is responsible for publishing it.	As soon as a license is obtained
4.2	Due diligence aimed at identifying business partners (arts. 4 & 11 CA)  Information concerning all business parties of extractive companies must be provided to ROHMA on a monthly basis. ROHMA will either provide or refuse consent.	60 days prior to commencing activities