Limited Qualified Investor Fund (L-QIF)

26.01.2022

The Collective Investment Schemes Act will be extended with a new type of fund, the Limited Qualified Investor Fund (L-QIF)

The National Council and the Council of States both voted to approve the legislative proposal to amend the Collective Investment Schemes Act (CISA), which provides for the creation of a new type of fund that does not require approval by the Financial Market Supervisory Authority FINMA. This decision establishes the legal basis for alternative and innovative Swiss fund products for qualified investors. Provided no referendum is called against the proposal, the provisions could enter into force on 1 January 2023.

Background

Under CISA, all Swiss collective investment schemes, i.e. contractual funds, investment companies with variable capital (SICAV), limited partnerships for collective investment (LP) and investment companies with fixed capital (SICAF), currently require approval by FINMA. Obtaining approval for alternative and innovative funds has so far been time-consuming and costly in Switzerland. Unlike Swiss funds for qualified investors, foreign collective investment schemes are not subject to FINMA approval. Many investors therefore resort to foreign investment opportunities. Swiss fund providers often use the Reserved Alternative Investment Fund (RAIF) from Luxembourg, which can be launched at short notice and at low cost due to the lack of approval requirement.

In order to strengthen Switzerland's competitiveness as a product location for funds, a new fund category has now been created that does not require prior authorisation. Investor protection should be maintained, while the attractiveness of Swiss fund products is to be increased through transparent and liberal investment regulations, which will ultimately keep a larger part of the value chain in Switzerland.

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Key points of the new L-QIF

According to the legal definition (Art. 118a CISA draft), the new L-QIF is a collective investment scheme which is exclusively open to qualified investors. Qualified investors within this meaning are professional clients according to Art. 4 para. 3–5 or to Art. 5 para. 1 and 4 of the Financial Services Act (FinSA). In addition to pension funds or insurance companies, this also includes high net worth private clients and private investment structures established for them, which have declared that they wish to be considered professional clients (opting-out). Further, according to Art. 10 para. 3ter CISA, private clients under a long-term asset management or investment advisory agreement with a prudentially supervised financial intermediary pursuant to Art. 4 para. 3 lit. a and c FinSA are considered as qualified investors, unless they have declared that they do not wish to be considered as such. The L-QIF is managed in accordance with the special regulations on the L-QIF and does not require authorisation or approval from FINMA. Consequently, the L-QIF is not supervised by FINMA either.

Liberal investment rules

The L-QIF should have one of the existing legal forms of Swiss collective investment schemes (excluding the SICAF; Art. 118c CISA draft). Thus, no new category of collective investment scheme is created. This means that the general provisions of CISA, in particular with respect to the equal treatment of investors, remain applicable to the L-QIF. However, the investment rules for supervised collective investment schemes do not apply, as special and liberal investment rules are provided for the L-QIF.

The investment regulations for the L-QIF do not make any provisions with regard to the possible investments or the risk distribution. In accordance with the already established practice for collective investment schemes, which are exclusively aimed at qualified investors, the prospectus requirement is also waived for the L-QIF. In order to protect investors, the permissible investments must be disclosed in the fund contract for the contractual investment fund, in the investment regulations for the SICAV and in the articles of association for the LP. At the same time, special risks associated with alternative investments must be pointed out in the aforementioned documents, in the description and in the advertising. The requirement of liquidity risk management is now explicitly stated. Accordingly, the fund management company must ensure that the relationship between the investments, the investment policy, the risk distribution, the investor base and the redemption frequency on the one hand, and the liquidity on the other hand, is appropriate throughout the entire product life cycle.

Indirect supervision

As already explained, the L-QIF is not subject to any authorisation requirements and therefore also not subject to any (direct) supervision under financial market law. In order to compensate for the omission of the authorisation requirement, the L-QIF can only be managed by specific institutions supervised by FINMA. FINMA will then ensure the presence of appropriate organisation and the necessary expertise and experience to manage an L-QIF in the course of its approval and supervisory activities in relation to those institutions.

For collective investment schemes with the legal form of a contractual investment fund, the omission of the product licence is a smooth process. These are managed by an institution requiring a licence anyway. The institution licence for the fund management and the supervision by FINMA will remain in place, while the product licence for the contractual L-QIF will be eliminated.

In the case of an L-QIF in the legal form of a collective investment scheme organised under company law (SICAV or LP), the product and the fund company requiring authorisation are identical. Although elimination of the licensing requirement for the product reduces the barriers, market entry is nevertheless hindered by the time and costs associated with institutional licensing. The purpose of the L-QIF therefore requires a waiver of the institution licence as well.

To compensate for the omitted authorisation requirements, the administration and investment decisions of the L-QIF in the legal form of a SICAV must be transferred to one and the same fund management company. Consequently, self-administration is not permitted for L-QIFs in the legal form of a SICAV. An L-QIF in the legal form of an LP must transfer the management to a manager of collective assets. Anyone licensed only as an asset manager may not act as a portfolio manager for an L-QIF.

Good to know

Art. 118f CISA draft requires institutions to notify the Federal Department of Finance (FDF) of the take-over of management of an L-QIF. The FDF maintains a publicly accessible list of all L-QIF and the institutions entrusted with their management.

It should also be noted that a collective investment scheme designed as an L-QIF can be approved by FINMA at a later date (“opting-up”). Opting-up is particularly useful in situations where investors want to launch a fund promptly and invest quickly, but at the same time consider opening the established fund to additional investor groups. Once the initial investors have already invested in the fund, there is no time pressure regarding the approval process. In order to obtain product approval, the L-QIF must comply with all regulations for approved collective investment schemes under CISA, including the more restrictive investment regulations.

It is also possible to convert a collective investment scheme that already has FINMA approval into an L-QIF (“opting-down”). Art. 118b CISA draft explicitly provides for this possibility. In addition to complying with the rules on the restricted circle of investors (Art. 118a para. 1 lit. a CISA draft) and the specific administrative rules for the L-QIF (Art. 118a para. 1 lit. b CISA draft), opting-down is only permissible if appropriate measures are taken to ensure that the interests of the existing investors who originally invested in a regulated product are secured.

From a tax law perspective, it may be noted that the new L-QIF will be treated equally as other Swiss collective investment schemes approved by FINMA in terms of tax law.

Outlook

The draft bill does not set any requirements for possible investments. According to the dispatch, all conceivable investments are permitted. Thus, in addition to investments in securities, real estate, derivatives and structured products and commodities, investments in wine, works of art or vintage cars are also possible. Hybrid L-QIFs, i.e. investments in different asset classes, are also permitted. The L-QIF is also particularly suitable for new types of alternative funds. This means that crypto funds, for example, might be considered as the digitalisation drive continues.

The referendum period runs until 7 April 2022. In the meantime, a first draft of the ordinance to the CISA will need to be prepared. The Federal Council is expected to submit the revised ordinance to the CISA, including the explanatory report, for consultation in the first half of 2022. Our team will continue to monitor these developments closely.

Our team has many years of experience in the legal structuring and realisation of innovative financial products and will be pleased to provide you with further information.

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No legal or tax advice

This legal update provides a high-level overview and does not claim to be comprehensive. It does not represent legal or tax advice. If you have any questions relating to this legal update or would like to have advice concerning your particular circumstances, please get in touch with your contact at Pestalozzi Attorneys at Law Ltd. or one of the contact persons mentioned in this legal update.

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