瑞士文斐律师事务所
WENFEI ATTORNEYS-AT-LAW LTD

SWISS INVESTMENT REPORT

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* The Swiss Investment Report is provided by Wenfei Attorneys-at-Law Ltd. ("Wenfei"), a Swiss law firm which has gained extensive experience in providing services in Greater China.

The Swiss Investment Report is especially designed for Chinese Investors, who are intending to extend their business to Switzerland or Europe or are already doing business in Switzerland.

The Swiss Investment Report provides background information on the Swiss investment-related legal framework as well as information on current developments in the Swiss legislation from a foreign investor's perspective.

Limited Qualified Investor Fund - New Opportunities for Investments in Swiss Funds?

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I. Backlog in Product Range Recognized as a Problem

Switzerland is well known as an international financial center. However, Switzerland excels primarily in asset management, rather than as a location for own financial products, meaning that not many funds are actually launched in Switzerland. One reason for this is that in the area of alternative and innovative fund products, the legal framework abroad is often more attractive than in Switzerland.

In view of this circumstance, the Swiss Federal Council noted in its report to parliament of August 19, 2020, that many EU member states have introduced fund types that do not require prior approvals by the supervisory authorities, such as Luxembourg with its Reserved Alternative Investment Fund (RAIF). The Federal Council wrote that such funds can be brought to market quickly and cost-effectively because the requirement for approval for such funds has been waived. In addition, they offer great flexibility in terms of investment regulations and are therefore particularly suitable for alternative investments and innovative strategies. For this reason, the Federal Council proposed to Parliament to amend the Federal Act on Collective Investment Schemes (CISA) and to create the basis for an unregulated fund.In the proposed revision of the law, the main objective was therefore to strengthen the Swiss financial center and to make Swiss fund structures more attractive compared to similar foreign products.

II. The Principle of Dual Supervision

In Switzerland, funds or collective investment schemes, as is the more technical term used by the CISA that governs these financial instruments, are subject to a dual supervision. This means that not only the financial institutions which offer collective investments schemes are subject to the Swiss Financial Market Supervisory Authority FINMA's supervision, but also the collective investment schemes themselves, which are issued and managed by these financial institutions must be approved by FINMA. This so-called "double supervision" naturally means that launching a fund not only takes a lot of time, but is also relatively expensive to set up, as extensive documentation has to be prepared and presented.

The principle of double supervision does not provide for the possibility of exempting collective investment schemes from the authorization and licensing requirement. FINMA may fully or partially exempt collective investment schemes that are exclusively open to qualified investors from the provisions of the CISA or other financial market laws. However, the waiver of the authorization and approval is not possible.

This principle of double supervision will be abandoned with the suggested revision of the CISA. Collective investment schemes that are open exclusively to qualified investors and are managed by institutions supervised by FINMA will be exempt from the authorization and approval requirement. Those funds that do not require authorization and approval will be classified as **Limited Qualified Investor Funds (L-QIF)**. An L-Qif is free to apply for FINMA authorization or approval at a later date. Upon granting the authorization or approval, it becomes a supervised fund and no longer an L-QIF.

Through this change in the law, the Swiss legislator hopes to strengthen Switzerland as a fund center. Funds can be launched more quickly and the financial center will become more competitive internationally. As a further measure, taken in parallel, liberal and transparent investment regulations are rolled out to promote innovative and flexible products.

III. The Key Points of the L-QIF

The many opportunities offered by the L-QIF naturally also entail risks. In order to keep these risks in check while making the best possible use of the opportunities offered by the future instrument, the legislator has imposed a number of restrictions:

Qualified Investors Only: Only qualified investors may invest in the L-QIF. According to its message to parliament, the Federal Council assumes that these are in a position to carry out due diligence and can therefore better assess their risk.

A qualified investor is someone that is defined as a professional investor according to the Federal Act on Financial Services (FinSA). These include financial intermediaries, insurance companies and central banks, but also companies with professional treasury operations, generally large companies or private investment structures with professional treasury operations created for high-net-worth retail clients.

Finally, high net worth individuals and private investment structures set up for them may also be considered "qualified investors" if they make a declaration that they wish to be considered *professional investors*.

Products managed by FINMA-supervised institution: As a key corrective to the waiver of FINMA oversight, the administration of the L-QIF must be carried out by an institution subject to FINMA supervision.FINMA must ensure that these institutions have the appropriate organization and knowledge to manage L-QIFs.

Flexible and innovative products: The investment rules of the L-QIF are designed in a liberal manner with a view to the restricted group of investors and the objective of promoting innovation. The law does not stipulate any requirements with regard to the possible investments or the distribution of risk. However, the L-QIF must disclose this information in the fund documents. Thus, the L-QIF is free to invest not only in traditional investments, but also in more exotic investments such as commodities, infrastructural projects, wine or art. However, the permissible investment techniques and the restrictions will still have to be regulated by the Federal Council.

IV. How to Make Use of the New Opportunity?

Although Swiss withholding tax will have to be paid, which still puts the L-QIF at a certain disadvantage for foreign investors compared to similar vehicles in other European countries, it is likely to become a good alternative to foreign funds.

Especially in products where one is searching the market without a particular target and then has to decide quickly about an investment (for example start-ups), the L-QIF can be a good structure. It can be set up and one can make the investment without having to go through the approval process again. In addition, because of the liberal investment rules, it can be used for investments that would not be possible as a fund, such as cryptocurrencies in particular.

However, the L-QIF can also be converted into a regular fund - this is explicitly stated. So it is also a good structure to set up a fund quickly and provisionally as an L-QIF, with the intention of converting it into a fund later.

V. Outlook

On December 17, 2021, the Swiss Parliament passed an amendment to the Collective Investment Schemes Act. It is expected that the law will be enacted in the course of 2023.

Prior to this, there will be a consultation procedure on the implementing regulations. At that time, it will become clear whether the Federal Council will have the courage to stand by and implement the investment opportunities offered by the L-QIF in the scope that has been announced.

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