Investment funds in Switzerland: regulatory overview

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RETAIL FUNDS

1. What is the structure of the retail funds market? What have been the main trends over the last year?

Open-ended retail funds

Swiss collective investment schemes held net assets of CHF745.2 billion in December 2013 (CHF720.5 billion in 2012). Funds for institutional investors were CHF296.5 billion of this figure (CHF272.0 billion in 2012).

The top five fund categories comprise:

• Equity funds: 37.38%.
• Bond funds: 33.46%.
• Asset allocation funds: 11.23%.
• Money market funds: 9.35%.
• Real estate funds: 4.39%.

At the beginning of 2014 the total figures for funds and schemes to date were as follows:

• 1,454 Swiss collective investment schemes were registered.
• 284 distributors were authorised to market collective investment schemes in Switzerland.
• 6,218 foreign collective investment schemes were approved for distribution in Switzerland.
• 98 representatives for foreign funds were authorised.

Switzerland is not a member of the European Union (EU). However, Directive 2011/61/EU on alternative investment fund managers (AIFM Directive) had a significant impact on the Swiss legal environment. As EU member states had to implement the AIFM Directive into national law by 22 July 2013, EU asset managers could only market collective investment schemes in adequately supervised non-EU jurisdictions. Therefore, it was important for Swiss laws to adapt the AIFM Directive (and Directive 2009/65/EC on undertakings for collective investment in transferable securities (UCITS) (UCITS IV Directive)) to enable Switzerland’s regulation to qualify as equivalent to EU regulatory rules. It was also important to remove potential impediments to Swiss financial players who are active in the EU. Therefore, revisions of the Swiss fund legislation came into force on 1 March 2013. The aim of these revisions is to:

• Improve investor protection.
• Safeguard the quality and competitiveness of the Swiss fund industry.

As a result, Swiss financial service providers and their products have access to the European market. Additionally, under the revisions, foreign market participants who are not subject to any equivalent regulations in their home country can no longer act in the Swiss investment fund market.

The revisions also amended the general obligations of conduct for authorised institutions and third parties who are subject to the Federal Collective Investment Schemes Act (CISA). One of the most crucial parts of the revisions is the new definition of the legal term “distribution”. The new law abandons “public advertising” as a relevant criterion for activities that fall under the scope of the CISA. Now, solicitation of a fund product is qualified as a “distribution”, which is subject to an authorisation from the Financial Market Supervisory Authority (FINMA) (see Question 3). Although certain exemptions apply to persons who distribute foreign funds to qualified investors, the revisions broadened the scope of the CISA by placing certain obligations (for example, on Swiss representatives and paying agents) on such distributors (see Question 5). Qualified investors under the CISA include among others:

• Regulated financial intermediaries.
• Regulated insurance institutions.
• Public entities and retirement benefits institutions with professional treasury and high-net-worth individuals that declare in writing that they wish to be deemed qualified investors.

The revised CISA also sets out new general licensing requirements for asset managers of foreign funds. Exceptions apply to corporate groups or asset managers of funds that are only open to certain qualified investors. A de minimis exception applies to asset managers who manage either:

• Assets of less than CHF100 million, including any assets acquired through the use of leverage.
• Assets that comprise funds that are:
  - unleveraged;
  - closed-ended for a period of five years; and
  - less than CHF500 million.

The new rules include the duty of the fund manager to provide adequate information to the investor and to record that information on a regular basis. Particularly, all authorised institutions subject to the CISA (and their agents that fall within the collective investment scheme) must inform the investors on:

• All funds managed, deposited and distributed.
• All directly or indirectly charged fees and costs, and their specific purpose.

Additionally, the revised CISA includes new recording duties that came into force on 1 January 2014. Under these new duties, the fund manager and the custodian bank are responsible for ensuring that all their distribution and solicitation activities and those of
authorised agents are recorded in written form. The recording must describe the:

- Client's information requests.
- Replies.
- Reasons why a specific collective investment product was purchased.

A copy of the written records must be given to the client on his request.

These revisions to Swiss legislation can lead to higher administrative burdens and increased costs for the parties involved. They also set a higher hurdle for asset managers of foreign funds that exceed the de minimis thresholds (as set out in the CISA) to enter the Swiss fund market. However, the revisions are an important step towards an adjustment to international standards to ensure access for the EU market to the Swiss fund industry. The revisions help maintain the importance of Switzerland as a destination for foreign collective investment schemes.

Closed-ended retail funds

The market for closed-ended retail funds is substantially smaller than the market for open-ended retail funds. Closed-ended retail funds, organised in the form of share companies, are usually listed on the SIX Swiss Exchange. Therefore they are not subject to the supervision of the FINMA and the regulations of the CISA.

At the beginning of 2014, only a total of 16 closed-ended retail funds in the form of limited partnerships (Kommanditgesellschaft für kollektive Kapitalanlagen) (LP) (see Question 8, Closed-ended retail funds) were authorised and supervised by the FINMA.

The changes in Swiss fund legislation (see above) apply to closed-ended funds.

Regulatory framework and bodies

2. What are the key statutes, regulations and rules that govern retail funds? Which regulatory bodies regulate retail funds?

Open-ended retail funds

Regulatory framework. Under Swiss legislation open-ended and closed-ended retail funds are called collective investment schemes. The following are subject to the rules set out in the CISA and its respective ordinances:

- All collective investment schemes distributed in Switzerland.
- All persons responsible for management and distribution of these schemes.

The ordinances include the following:

- Swiss Federal Ordinance of 22 December 2006 of the FINMA on Collective Investment Schemes (CIOS-FINMA).

Additionally, various circulars were issued by the FINMA detailing the obligations and duties of the authorised participant (particularly Circular 2013/9 on the distribution of collective investment schemes (Circ. 2013/9)).

The main goals of the CISA are to:

- Protect investors.
- Ensure transparency and efficiency of the market for collective investment schemes.

A collective investment scheme falls within the scope of the CISA if the following requirements are met:

- Assets are raised from investors for collective investment and managed on the investors' behalf.
- The investment requirements of the investors apply on equal basis.

The CISA provisions distinguish between the following:

- Swiss collective investment schemes established and authorised in Switzerland.
- Foreign collective investment schemes established in a foreign jurisdiction but distributed to investors in Switzerland and/or to foreign investors from Switzerland.

Both are subject to the authorisation/approval of the FINMA.

Regulatory bodies. The supervisory authority for collective investment schemes is the FINMA.

Closed-ended retail funds

Regulatory framework. See above, Open-ended retail funds

Regulatory bodies. See above, Open-ended retail funds.

3. Do retail funds themselves have to be authorised or licensed?

Open-ended retail funds

Swiss law provides two different investment vehicles to structure an open-ended collective investment scheme:

- Contractual funds (fonds commun de placement) (FCP).
- Investment companies with variable capital (SICAV).

In open-ended collective investment schemes the investor can request redemption of his units and their repayment in cash at any time.

The FCP is governed by the collective investment contract between the fund manager and the investors and requires FINMA approval. The constitutional documents of a SICAV (articles of association and investment regulations) are subject to FINMA approval before the shares can be offered to the market.

FCP units and SICAV shares can be split into a variety of classes, which can differ in the cost structure, reference currency, currency hedging, distribution or reinvestment of income, minimum investment or investor eligibility. If the FCP and the SICAV are structured with subfunds (umbrella fund) each subfund constitutes a collective investment scheme in its own right and has its own net asset value. Each subfund and unit/share classes requires individual FINMA approval.

In addition, parties involved in managing local or foreign collective investment schemes, or safekeeping the assets of a local collective investment scheme, must obtain FINMA authorisation for their activities.

These parties include:

- Fund management companies.
- SICAVs.
- LPs.
- Investment companies with fixed capital (SICAF).
- Custodian banks of Swiss collective investment schemes.
- Asset managers of collective investment schemes.

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• Distributors.
• Representatives of foreign collective investment schemes who represent the foreign collective investment scheme in its dealings with investors and the FINMA. These representatives must report, publish and inform, and comply with any codes of conduct imposed by the FINMA.

An authorisation is generally granted if:

• The persons responsible for management and the business operations have a good reputation, guarantee proper management and have the requisite specialist qualifications.
• The significant equity holders have a good reputation and do not exert their influence to the detriment of prudent and sound business practice. Significant equity holders directly or indirectly hold 10% or more of the equity.
• Internal regulations and an appropriate organisational structure assure duties under the CISA are complied with.
• Sufficient financial guarantees are available.
• The additional authorisation conditions listed in the relevant provisions of the CISA and its ordinances are met.

The following can receive certain exemptions from the authorisation requirements:

• Managers of collective investment schemes.
• Distributors and representatives who are already subject to other equivalent official supervisory control.

The FINMA can make its granting of authorisation dependent on compliance with the code of conduct issued by recognised industry associations, such as the Swiss Fund & Asset Management Association (SFAMA). Authorisation holders must notify the FINMA of any relevant change in the circumstances underlying the authorisation. Continuing amended activities is subject to the FINMA’s approval.

Foreign open-ended collective investment schemes are defined by the CISA as either:

• Assets that:
  • were collected on the basis of a fund contract or another agreement with similar effect for the purpose of collective investment;
  • are managed by a fund management company with its registered office and main administrative office abroad.
• Companies and schemes with registered office and main administrative office located abroad whose:
  • purpose is the collective capital investment; and
  • whose investors are entitled to request the fund to redeem their units at net asset value.

An authorisation must be obtained from the FINMA before soliciting and distributing foreign funds in or from Switzerland to non-qualified investors (which are not qualified investors (see Question 3)). FINMA approves the following as part of the authorisation process:

• The relevant fund documentation of the foreign funds, including:
  • sales prospectus;
  • articles of association.
• The fund contract.

Generally, an authorisation is granted if:

• The following are subject to public supervision intended to protect investors:
  • collective investment scheme fund management company;
  • asset manager of the collective investment scheme; and
  • custodian bank.
• The following are subject to regulations that are equivalent to the Swiss regulations:
  • fund's organisation;
  • investor rights and the investment policy;
  • fund management company;
  • custodian bank.
• The designation "collective investment scheme" does not provide grounds for confusion or deception.
• A representative and a paying agent are appointed for the distribution of units in Switzerland.
• An agreement on the co-operation and the exchange of information between the FINMA and the relevant foreign supervisory authorities for distribution exists (which is the case for most of the countries of which funds are registered for distribution in Switzerland).

Foreign collective investment schemes that are only distributed to qualified investors do not require approval. However, they must:

• Meet the requirements regarding the designation “collective investment scheme” (see above).
• Appoint a representative and paying agent for the distribution of units in Switzerland.

Therefore, even if no formal approval is required, the obligation to fulfil these conditions can be considered as a “quasi-duty” to obtain approval.

The FINMA considers that foreign collective investment schemes organised in accordance with the UCITS Directive comply with the requirements on supervision and investors’ rights (see above). Therefore, applications for foreign UCITS funds benefit from a simplified and more time efficient approval procedure.

**Closed-ended retail funds**

Under Swiss law, the closed-ended collective investment schemes can be organised as an LP or as a SICAF. However, SICAFs do not fall within the scope of the CISA if either:

• Their shares are listed on a Swiss stock exchange.
• Only qualified investors can hold such shares.

Investors in closed-ended funds do not have a direct or an indirect legal right to redeem their units or shares at the expense of the collective assets.

Foreign closed-end collective investment schemes are defined by the CISA as companies and schemes with their registered office and main administrative office located outside Switzerland whose:

• Purpose is collective capital investment.
• Investors have no legal right to redeem their investment.

The same rules apply for authorisation and approval requirements as apply to open-ended retail funds (see above, *Open-ended retail funds*).
Marketing

4. Who can market retail funds?

Open-ended retail funds
Any person planning to offer or distribute units of domestic or foreign investment funds in or from Switzerland must obtain prior authorisation as distributor from the FINMA (see Question 3). Swiss banks, securities dealers and insurance institutions do not require an additional authorisation for marketing investment funds.

In practice, it can often be difficult to assess whether an authorisation of the FINMA is required for certain activities. As a general rule, any solicitation, advertisement or offering of a collective investment scheme that is not exclusively directed to supervised financial intermediaries and supervised insurance institutions needs an authorisation. The CISA provides a non-exhaustive list of activities that do not qualify as distribution and can be exercised without authorisation, as follows:

- Delivering of any information and subscription of collective investment schemes instigated by or at the investors' own initiative, especially in the context of investment advisory agreements or for execution-only transactions.
- Delivering information and subscription of collective investment schemes based on a written discretionary management agreement with financial intermediaries and supervised insurance institutions.
- Delivering information and subscription of collective investment schemes based on a written discretionary management agreement with an independent asset manager that either:
  - acts in its capacity as a financial intermediary according to the Swiss anti-money laundering legislation;
  - is governed by the code of conduct issued by a recognised industry association; or
  - is based on a discretionary management agreement that complies with the standards of a specific industry body (in practice, FINMA acknowledges such standards as minimum standards).
- Publication of prices, net asset values and tax data by regulated financial intermediaries.
- Offering stock option schemes in the form of collective investment schemes to employees.

Closed-ended retail funds
See above, Open-ended retail funds.

5. To whom can retail funds be marketed?

Open-ended retail funds
Swiss open-ended funds can be marketed to any type of investor if the collective investment scheme is authorised by the FINMA. As a general rule, any solicitation, advertisement or offering of a collective investment scheme that is not exclusively directed to supervised financial intermediaries and supervised insurance institutions needs an authorisation.

Different requirements for an authorisation apply to the foreign funds. Distribution of foreign collective investment schemes to non-qualified investors requires an authorisation by the FINMA. This authorisation approves the investment fund and permits distribution and marketing of the fund in Switzerland. However, the revised rules also require that the distributed fund's:

- Service providers are subject to public supervision by the FINMA.
- Custodian bank is subject to equivalent regulations in its home jurisdiction.

Since its revision (see Question 1), the CISA applies also to the following:

- Distribution of foreign collective investment to Swiss public-law bodies.
- Occupational pension institutions and companies with professional treasury.
- Wealthy individuals who:
  - have explicitly declared in writing that they want to be treated as qualified investors;
  - can prove substantial assets;
  - can prove experience in the financial sector.

Provided that such a foreign fund is exclusively open for distribution to these types of investors, the fund does not need an authorisation from the FINMA if:

- The distributing financial intermediary is adequately supervised in Switzerland or in its home jurisdiction.
- A licensed representative and a paying agent in Switzerland are appointed.
- The name of the collective investment scheme does not lead to any deception or confusion.

However, the distributed funds themselves do not need to be authorised by the FINMA.

Closed-ended retail funds
See above, Open-ended retail funds.

Managers and operators

6. What are the key requirements that apply to managers or operators of retail funds?

The revisions to the Swiss fund legislation introduced a new general licensing requirement for asset managers of foreign funds. Swiss asset managers of (Swiss or foreign) collective investment schemes must seek authorisation from the FINMA.

Open-ended retail funds
Asset managers of Swiss collective investment schemes with their registered office in Switzerland can be any of the following:

- Legal persons in the form of companies limited by shares, partnerships limited by shares or limited liability companies.
- General and limited partnerships.
- Swiss branches of a foreign asset manager of collective investment schemes, provided that:
  - the asset manager is subject to an appropriate supervisory control at its registered office;
  - the asset manager is adequately organised and has sufficient financial resources and qualified personnel to operate a branch in Switzerland; and
  - an agreement exists on the co-operation and exchange of information between the FINMA and the relevant foreign supervisory authorities.

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The asset manager ensures the proper conduct of portfolio and risk management for one or more collective investment schemes. He can additionally perform ancillary services, such as:

- Discretionary management of individual portfolios.
- Investment advisory services.
- Distribution of collective investment schemes.
- Representation of foreign collective investment schemes.

A delegation of the asset managers’ duties to a third party is allowed within the requirements set out in the CISA.

A Swiss asset manager can also manage foreign collective investment schemes, provided there is an agreement between the FINMA and the relevant foreign supervisory authorities in relation to the fund business.

**Closed-ended retail funds**

See above, *Open-ended retail funds*.

**Assets portfolio**

### 7. Who holds the portfolio of assets? What regulations are in place for its protection?

**Open-ended retail funds**

The assets of an open-ended fund must be deposited with a Swiss custodian bank that holds a banking licence in compliance with the Swiss Federal Act on Banks and Savings Institutions. In addition, the custodian bank must be authorised by the FINMA to act as custodian for open-ended funds under the CISA and is responsible for:

- Safekeeping the investment fund’s assets.
- Issuing and redemption of units.
- Payments on behalf of the fund.

The custodian bank also ensures that the fund management company of a FCP or a SICAV complies with its obligations set out under the CISA. The custodian bank can delegate the safekeeping responsibilities to third-party custodians and collective securities depositories in Switzerland or outside Switzerland, provided that delegating is in the interest of efficient safekeeping.

If the custodian bank becomes bankrupt, the assets held by it in custody are not included in the custodian bank’s liquidation estate. The assets are separated from the custodian bank’s liquidation estate in favour of the FCP or the SICAV subject to any claims by the custodian bank against the depositor. Similarly, the fund’s assets are separated in the fund management company’s liquidation estate in favour of the investors if the FCP’s fund management company becomes bankrupt.

**Closed-ended retail funds**

The mandatory obligation to deposit a fund’s assets with a custodian bank or any other institution does not apply to closed-ended funds. No preferred rights in favour of the fund management company or the investors apply to reclaim the assets from the estate of the bankrupt company holding the fund’s assets unless the fund’s securities are deposited with a Swiss bank. If the assets of a closed-ended fund are held with a Swiss bank, the Swiss Federal Act on Banks and Saving Institutions provides for segregation of the depositor’s securities (but not its cash) deposited with the bankrupt bank.

**Legal fund vehicles**

### 8. What are the main legal vehicles used to set up a retail fund and what are the key advantages and disadvantages of using these structures?

**Open-ended retail funds**

**Legal vehicles.** The legal vehicles used are FCPs and SICAVs.

FCPs are based on a collective investment agreement (fund contract) between the investor, the fund management company and the custodian bank. The fund management company draws up the fund contract and, with the consent of the custodian bank, submits it to the FINMA for approval. The fund contract sets out the rights and duties of the investors, the fund management company and the custodian bank. Particularly, the fund contract contains the following, among other things:

- Investor eligibility.
- Investment policy, investment techniques, risk diversification and the risks associated with the investment.
- The subdivision into subfunds.
- The unit classes.
- Investors’ right to cancel.
- The calculation of:
  - net asset value; and
  - the issue and redemption prices.
- Type, amount and calculation of:
  - all fees; and
  - the issue and redemption commission.

SICAVs are companies limited by shares:

- With capital and number of shares not specified in advance.
- With capital divided into company shares and investor shares.
- With only the company’s assets liable for its liabilities.
- With collective capital investment as their sole objective.

In principle, the provisions on the incorporation of a company limited by shares set out in the Swiss Code of Obligations (which, among other things, sets out the rules applicable to corporations and partnerships) apply to the formation of a SICAV, that is, for example:

- The share capital paid in by the company shareholders must be at least CHF500,000.
- There is no minimum requirement for the share capital paid in by the investor shareholders.
- Investor shareholders can redeem their shares at any time.

Additionally, the SICAV can issue new investor shares at any time at the shares’ net asset value. In principle, both share types (investor shareholders and new investor shares) have the same rights and obligations, such as, for example:

- The same voting power.
- No nominal value.
- Their issue price must be fully paid up in cash.

**Advantages.** Most of the Swiss retail funds are organised as FCPs. Its organisation is rather flexible. For example, the management company can also provide asset management and investment...
advisory services to third parties as well as technical administration services to other collective investment schemes.

**Disadvantages.** SICAVs are often only used for private, high net-worth individuals’ needs. The SICAV allows unregulated independent asset managers to exercise a direct influence on the collective investment scheme by sitting on the board. All administrative tasks can also be delegated to service providers, who are not liable for any actions of the SICAV’s board.

**Closed-ended retail funds**

**Legal vehicles.** The legal vehicles used are LPs and SICAFs.

In LPs:
- At least one member bears unlimited liability (general partner), while the other members (limited partners) are liable to pay only the contributions committed by them.
- General partners must be companies limited by shares with the registered office in Switzerland. Their business activities must be restricted to act as a general partner in (only) one LP.
- The general partner’s contribution must be at least CHF100,000. If the LP has more than one general partner, the total contribution must be at least CHF100,000.
- The LP can invest in the risk capital of companies and projects and can determine their strategic direction. To achieve this objective and safeguard the interests of the limited partners, the LP can take control of voting rights in companies or sit on the governing body responsible for ultimate management, supervision and control of these companies.

SICAFs are companies limited by shares organised under the Swiss Code of Obligations. Companies with the following main characteristics are considered as SICAFs and therefore also fall under the CISA regulations:
- Corporate purpose is limited to the collective capital investment.
- Company is open to qualified and retail investors.
- Company shares are not listed on a Swiss stock exchange.

An SICAF’s primary purpose is to generate income and/or capital gains. However, it does not pursue true entrepreneurial activities but manages its own assets. It can delegate investment decisions as well as specific tasks to a third party advisor, provided that delegation is in the interests of efficient management. The minimum share capital of a SICAF is CHF500,000, which must be:
- Fully paid up in cash when the SICAF is formed.
- Maintained at all times.

**Investment and borrowing restrictions**

9. What are the investment and borrowing restrictions on retail funds?

**Open-ended retail funds**

The CISA regulations on investment and borrowing restrictions apply to both FCPs and SICAVs, and depend primarily on whether the fund is:
- A securities fund.
- A real estate fund.
- Another fund for traditional and alternative investments (which are all open-ended collective funds that are neither securities funds nor real estate funds).

In addition to the regulatory restrictions set out in the CISO and the CISO-FINMA, the fund’s contract or the fund’s articles of association can provide for more restrictive investment and borrowing restrictions.

These three types of funds are differentiated by their investment policy. Securities funds can invest in transferable (certified or non-certified) securities issued on a large scale, which are:
- Traded on a stock exchange or another regulated market that is open to the public.
- Money market instruments.
- Sight or time deposits with a term to maturity not exceeding twelve months held with banks domiciled in Switzerland or in another country with equal supervision.

The fund management company can also hold a limited volume of other securities and rights, as well as adequate liquidity. Subject to certain restrictions, securities funds can also:
- Enter into securities lending and repurchase agreements.
- Borrow funds.
- Provide collateral.
- Invest in derivatives.

Real estate funds can invest their assets in:
- Real property (including fixtures and fittings).
- Real estate companies whose sole objective is to purchase and sell and/or rent or lease their own property, provided that at least two thirds of their capital and voting rights are incorporated in the investment fund.
- Units in other real estate investment funds and listed real estate investment companies of no more than 25% of the fund’s total assets.
- Foreign real estate securities that can be adequately valued. Co-ownership of property is permitted if the fund management company or the SICAV can exercise a dominant influence (that is, a majority of the co-ownership shares and votes) in the co-property.

Other funds for traditional and alternative investments are open-ended collective investment schemes that are not securities funds or real estate funds. They can invest their assets in:
- Securities.
- Precious metals.
- Real estate.
- Commodities.
- Derivatives.
- Units of other collective investment schemes.
- Other assets and rights.

These funds can invest in products:
- With only limited marketability.
- Subject to strong price fluctuations.
- That are difficult to value.
- Whose investment policy allows a limited risk diversification.

Various investment restrictions for funds for alternative investments are substantially more flexible than for traditional funds, such as the restrictions relating to granting loans and collaterals as well as the overall exposure of the fund’s net assets.

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Closed-ended retail funds
LPs invest in risk capital that is generally used for direct or indirect financing of companies and projects to generate above-average added value with above-average probability of making a loss.

The CISO explicitly permits investment in construction, real estate and infrastructure projects as well as in alternative investments. The details of the investment policy are set out in the partnership agreement between the investors and general partner.

SICAFs can invest in the same assets as open-ended retail funds (see above). However, the investment and borrowing restrictions of SICAFs must be determined in the articles of association and investment regulations. If the risk profile of a SICAF is typical of a certain type of open-ended retail fund, the respective provisions on that fund may apply also to the closed-ended retail fund.

10. Can the manager or operator place any restrictions on the issue and redemption of interests in retail funds?

Open-ended retail funds
Unless the law or the collective investment scheme's constitutional documents provide otherwise, an open-ended retail fund at any time:

- Can issue new shares at the net asset value.
- Must, if requested by a shareholder, redeem issued shares at the net asset value.

The regulations of FCPs or SICAVs can provide that redemptions can only be requested on specific dates if:

- The investments are difficult to value or are of limited marketability.
- Redemptions can be requested at least four times per year.
- The restricted right of redemption is explicitly disclosed in the regulations, prospectus and simplified prospectus.

Additionally, the FINMA can restrict investors' right to redeem their shares or units on a justified request by the fund management. This restriction can be granted to investment funds if their investments either:

- Are not listed and not traded on another regulated market open to the public.
- Are made to a large extent in mortgages or private equity investments.

If redemptions are deferred due to these circumstances, the FCP or SICAV must inform its auditors and the FINMA without delay and communicate this decision to its investors.

Closed-ended retail funds
Investors cannot request redemption of participation rights in LPs or SICAFs.

11. Are there any restrictions on the rights of participants in retail funds to transfer or assign their interests to third parties?

Open-ended retail funds
There are no restrictions for FCPs on transferring interests, unless otherwise set out in the fund contract.

The shares in a retail SICAV are freely transferable. The articles of association may restrict investor eligibility to qualified investors if the shares of the SICAV are not listed on an exchange. If the SICAV

withholds its consent to transfer the shares, the investor can enforce redemption of the shares to the SICAV.

Closed-ended retail funds
Depending on the partnership agreement, the participation rights of LPs can be transferred under certain restrictions.

The shares of an SICAF can be freely transferred provided that any restrictions contained in the SICAF's articles of association are complied with. If these restrictions apply and management does not allow a transfer, the SICAF must take over the shares at the real value (that is, the intrinsic value that needs to be assessed) at the time of the request for the following:

- Its own account.
- The account of other shareholders.
- Third parties.

Reporting requirements

12. What are the general periodic reporting requirements for retail funds?

Open-ended retail funds
Investors. The management of open-ended retail funds must inform investors of domestic and foreign collective investment schemes by way of publication about all facts in accordance with the applicable disclosure requirements. In particular, any change in a fund's organisation or investment policies that can be objected to by investors must follow a detailed publication process. The prospectus of the investment fund specifies one or more publication media, which can be print or an electronic platform (such as www.swissfunddata.ch or www.fundinfo.com) that is publicly accessible and recognised by the FINMA.

The issue and redemption price, or net asset value, are published in the publication media each time units are issued and redeemed. Prices for securities funds and other funds are published at least twice a month. Prices of real estate funds and collective investment schemes for which the right to redeem at any time is restricted must be published at least once a month.

Regulators. The fund management company, the SIGAV and the Swiss representatives of foreign collective investment schemes must notify the FINMA in the following cases:

- Change in the management and the business operations.
- Change of significant equity holders, except for company shareholders in a SICAV.
- Change of the executive persons entrusted with the performance of the custodian bank's duties.
- Insufficiency of financial guarantees, in particular if the minimum requirements are no longer met.
- Amendments of the prospectus, the key investor information document (KIID) and the articles of association or the fund contract or other relevant documentation.

If any change is relevant for the continued authorisation of the respective collective investment scheme, the fund must submit that change for FINMA approval (and not only for notification).

Closed-ended retail funds
Investors. See above, Open-ended retail funds.

Regulators. See above, Open-ended retail funds.
13. What is the tax treatment for retail funds?

Open-ended retail funds

Funds. The distinction between open-ended retail funds (FCP, SICAV) and closed-ended retail funds (LP, SICAF) is not strictly reflected in Swiss tax laws.

Open-ended retail funds and LPs are generally tax-transparent and therefore not subject to corporate income tax. Instead, the investors in the fund are taxed on their share of the fund’s income. However, real estate funds that hold real estate directly are subject to income tax for their income derived from the real estate; this income is not taxed at the investor’s level. SICAFs are generally subject to corporate income tax.

The distribution of profits of FCPs, SICAVs, LPs and SICAFs is subject to a 35% withholding tax, which can be reclaimed by Swiss investors. Foreign investors can reclaim withholding tax under the applicable double taxation treaty between Switzerland and the country of the foreign investor’s residence. However, distribution of profits of real estate funds holding real estate directly are not subject to the withholding tax.

An issue stamp duty of 1% on the total equity contribution applies to the issuance of shares in a SICAF exceeding CHF1 million. FCPs, SICAVs and LPs are exempt from issue stamp duty. Shares or interests issued in foreign collective investment vehicles is subject to a 0.3% transfer stamp duty if a Swiss security dealer is involved in the transaction either as a party or intermediary.

Resident investors. Generally, investors who hold participation rights in a collective investment scheme as part of their private assets are subject to income tax at the time of distribution or reinvestment of the fund’s profits. Capital gains realised on privately held assets are tax exempt in Switzerland. Therefore, distribution or reinvestment of these capital gains is tax free, provided that they are reported separately in the fund’s annual financial statements. Capital gains realised on the sale of privately held participation rights in a collective investment scheme are not subject to income tax. However, the sale of shares or other interests (secondary market transaction) is subject to a 0.15% transfer stamp duty if a Swiss securities dealer is involved.

Non-resident investors. A non-resident investor is not subject to Swiss income tax if he invests in a Swiss collective investment scheme. The 35% withholding tax that is levied on distributions of profits (see above) can be reclaimed by foreign investors in accordance with the applicable double taxation treaty between Switzerland and the country of the foreign investor’s residence. A non-resident investor can generally reclaim the withholding tax in full if at least 80% of the fund’s earnings are foreign-sourced. Distribution of profits of real estate funds that hold real estate directly are not subject to the withholding tax.

Closed-ended retail funds

Funds. See above, Open-ended retail funds.

Resident investors. See above, Open-ended retail funds.

Non-resident investors. See above, Open-ended retail funds.

Quasi-retail funds

14. Is there a market for quasi-retail funds in your jurisdiction?

There is no market for quasi-retail funds in Switzerland.

15. What proposals (if any) are there for the reform of retail fund regulation?

After the major revision of the Swiss investment fund regulations over the last two years no imminent revision is planned (see Question 4). However, the supervisory authorities and recognised business associations constantly monitor EU developments of the fund industry and adapt the Swiss regulations to EU industry practice. For example, the revised Directive 2004/39/EC on markets in financial instruments (MiFID) in the form of a revised Directive and a new Regulation (together MiFID II), which was not directly adopted into Swiss law; however, some of its regulations will be incorporated in a next revision of the Swiss fund legislation.

HEDGE FUNDS

16. What is the structure of the hedge funds market? What have been the main trends over the last year?

See Question 6.

Regulatory framework and bodies

17. What are the key statutes and regulations that govern hedge funds in your jurisdiction? Which regulatory bodies regulate hedge funds?

Regulatory framework

The legislation applicable to domestic and foreign hedge funds is integrated in the legislation on collective investment schemes governed by the CISA. Therefore, the legislation is basically the same as for retail funds. Most hedge funds are structured as an open-ended fund for alternative investments (see Questions 2 and 9).

Regulatory bodies

Local hedge funds are subject to authorisation and supervision by the FINMA.

18. How are hedge funds regulated (if at all) to ensure compliance with general international standards of good practice?

The considerations for retail funds on the risk, investment restrictions, public authorities, transparency also apply to hedge funds (see Questions 2 and 3).

Marketing

19. Who can market hedge funds?

See Question 4.

20. To whom can hedge funds be marketed?

See Question 5.
**Investment restrictions**

21. Are there any restrictions on local investors investing in a hedge fund?

See Question 5.

**Assets portfolio**

22. Who holds the portfolio of assets? What regulations are in place for its protection?

See Question 7.

**Requirements**

23. What are the key disclosure or filing requirements (if any) that must be completed by the hedge fund?

See Question 12.

24. What are the key requirements that apply to managers or operators of hedge funds?

See Question 6.

**Legal fund vehicles and structures**

25. What are the main legal vehicles used to set up a hedge fund and what are the key advantages and disadvantages of using these structures?

Swiss law does not provide for any additional hedge fund vehicles.

**Tax treatment**

26. What is the tax treatment for hedge funds?

Funds

See Question 13.

Resident investors

See Question 13.

Non-resident investors

See Question 13.

**Restrictions**

27. Can participants redeem their interest? Are there any restrictions on the right of participants to transfer their interests to third parties?

Redemption of interest

See Question 10.

Transfer to third parties

See Question 10.

**Reform**

28. What (if any) proposals are there for the reform of hedge fund regulation?

See Question 15.

**ONLINE RESOURCES**

Swiss Financial Market Supervisory Authority (FINMA)

[www.finma.ch/e/beaufsichtigte/kollektivekapitalanlagen/Pages/default.aspx](http://www.finma.ch/e/beaufsichtigte/kollektivekapitalanlagen/Pages/default.aspx)

*Description.* This is the official website of the FINMA.

The Federal Authorities of the Swiss Confederation


*Description.* This is the official website of Switzerland's Federal authorities, which contains Federal Swiss law.
**Country Q&A**

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