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The L-QIF - New opportunity

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Key Take-aways

- 1.** The Limited Qualified Investor Fund (L-QIF) was introduced on 1 March 2024 following the amendment of the Collective Investment Schemes Act (CISA) and its Implementing Ordinance (CISO).
- 2.** The L-QIF is a new type of open or closed-ended collective investment scheme intended solely for qualified investors within the meaning of the CISA, which is neither approved nor supervised by FINMA.
- 3.** A collective investment scheme that has been authorized or approved by FINMA may change its status to L-QIF by relinquishing its authorization/approval, subject to certain conditions.

1 Introduction

The **Limited Qualified Investor Fund (L-QIF)** has been introduced as part of the amendments to the Collective Investment Schemes Act (**CISA**) and its Implementing Ordinance (**CISO**). This is a new type of open or close-ended collective investment scheme intended solely for qualified investors within the meaning of the CISA, which is neither approved nor supervised by FINMA.

2 Definition of a collective investment scheme

The **concept of collective investment schemes** is defined in art. 7 CISA and art. 5 CISO. The latter applies both to collective investment schemes approved and supervised by FINMA as well as to L-QIFs. Additionally, it is essential in the structuring of L-QIFs that the elements constituting a collective investment are fulfilled. Under art. 7 CISA, a collective investment scheme exists when the following criteria are cumulatively met: a) contributions made by investors; b) collectivity; c) management of assets by third parties; and d) equal treatment of investors, regardless of the timing of their entry or exit.

Collectivity and management by third parties are straightforward essential elements that have been extensively discussed during the consultation procedure of the CISO. While the Federal Council initially proposed a de facto ban on family funds under Swiss law, the final version of the CISO provides for the same notion of collectivity as in the past, with details clarified in the explanatory report.

Collectivity also exists when two investors are legally and economically independent. Only pension funds, insurance companies and public law institutions may be single investors in funds governed by Swiss law. The concept of independence is central in the context of collectivity, and the issue of independence must be raised in certain cases of inheritance or in cases involving joint property between spouses. Additionally, the distribution among investors has also been discussed and FINMA's long-standing practice whereby a fund with an investor holding more than 95% of the AuM must automatically be converted into a single-investor fund was overturned, provided that equal treatment among investors is guaranteed.

Management by third parties is also a central aspect, and any direct or indirect decision-making by investors is excluded. The delegation of investment management to insurance companies or pension funds, where these entities are the sole investors, is permitted, but only in the case of regulated funds and not for L-QIFs.

3 Concept and form of the L-QIF

An **L-QIF** is a collective investment scheme that cumulatively: a) is exclusively open to qualified investors; b) if it directly invests its assets in real estate, is exclusively open to investors who are considered per se professional clients (art. 4 para. 3 let. a to h FinSA); c) is managed in accordance with the provisions of art. 118g and 118h CISA, and; d) is not authorized

or approved by FINMA nor is it subject to FINMA supervision.

It can take the **form** of a contractual investment fund, an investment company with variable capital (SICAV), or a limited partnership for collective investment (LLP).

An L-QIF cannot be labelled as a securities fund, other fund for traditional or alternative investments, or as a real estate fund, even though investments may be made in real estate. An L-QIF is thus a distinct category of fund.

Furthermore, the investment regulations set forth in art. 53 to 71 and 103 CISA, as well as the provisions granting FINMA decision-making or supervisory powers, do not apply to L-QIFs.

Neither the CISA nor the CISO impose restrictions on authorized investments

4 Investors

L-QIFs are only accessible to **qualified investors** within the meaning of the CISA. It is worth noting that the notion of qualified investors under the CISA is broader than that of professional investors under the FinSA.

According to the CISA, private clients are also considered **qualified investors** if they are provided asset management or investment advisory services in the context of long-term asset management or investment advisory relationships by: 1) a financial intermediary as defined under art. 4 para. 3 let. a FinSA; 2) a foreign financial intermediary subject to prudential supervision similar to that of the financial intermediary referred to in point 1; 3) an insurance company as defined under the Insurance Oversight Act of 17 December 2004 (IOA).

It is worth highlighting that for L-QIFs that can invest directly in real estate, the circle of qualified investors must be restricted and must exclude high net worth individuals, whether directly, through investment structures, or through asset management or advisory mandates.

5 Authorized investments

For an L-QIF structured as a contractual investment fund, the authorized investments are specified in the investment fund contract.

For a SICAV, authorized investments are governed by the investment regulations.

Lastly, for an L-QIF in the form of an LLP, the authorized investments are outlined in the partnership agreement.

If the L-QIF invests in **alternative investments**, the specific risks associated with these investments must be clearly indicated in the fund's name, in the aforementioned documents, and in any advertising materials.

Neither the CISA nor the CISO restricts the investments authorized within an L-QIF. However, the issue of authorized investments in the structuring of an L-QIF must be considered in relation to the liquidity of the collective

investment. It is important to note that, in accordance with CISA, an open-ended fund structured as an L-QIF must maintain liquidity to allow investors to redeem within a maximum period of 5 years. Also, depending on the authorized investments, an L-QIF in the form of an LLP may be more suitable than an open-ended L-QIF, i.e. a fund where investors can request redemption at NAV.

To qualify for L-QIF status, the institution responsible for managing the L-QIF must notify the Federal Department of Finance (FDF) of the management of an L-QIF

6 Risk diversification and investment techniques

There is no prescribed risk diversification for an L-QIF that may have only one investment within the fund, subject of course to the requirements for liquidity and the potential right to redemption as specified in the L-QIF documentation. However, the risk diversification provided for the L-QIF, or its absence, must be detailed in the L-QIF documentation. For an L-QIF structured as a contractual investment fund, risk diversification is defined in the investment fund contract; for a SICAV, it is outlined in the investment regulations; and for an L-QIF in the form of an LLP, it is specified in the partnership agreement.

All **investment techniques** (such as credit, derivatives, securities lending, repo, reverse repo) are permitted but must meet the conditions set out in the CISO-FINMA. These are, however, subject to limitations, such as a maximum leverage ratio that must not exceed 600%.

7 Change of status and restructuring

7.1. Change of status

To proceed with the change of status to an L-QIF, a collective investment scheme that has been authorized or approved by FINMA can **relinquish** its authorization or approval when the conditions defining an L-QIF are met (see section 3, paragraph 1) and the interests of the investors are preserved.

Furthermore, the fund contract, the investment regulations or the partnership agreement must allow for the possibility of a change of status, and this change must not incur any costs for either the collective investment or the investors.

In the case of a contractual investment fund, the

custodian bank must have approved the change of status, and only investors who have explicitly approved the change can remain in the collective investment scheme.

For a SICAV, the custodian bank must have approved the change of status, the entrepreneur shareholders representing at least two-thirds of the issued shares must have approved the change of status, and only investors who have expressly approved the change of status can remain in the collective investment scheme.

For contractual funds and SICAVs, investors must, additionally, have the option to redeem their shares within 30 days if they do not wish to remain in the L-QIF.

In the case of a LLP, all investors must have approved the change of status to L-QIF. The general partner must inform the limited partners, prior to the decision to change status, of the implications this change has on the approval and authorization status of the LLP, in particular its exemption from FINMA supervision.

For contractual investment funds and SICAVs, the decision to change status must be **published** in the official publication mean of the fund, which must especially a) outline the implications of the change on the approval or authorization status of the collective investment scheme, and the exemption from FINMA supervision ; b) inform investors that within 30 days following the publication, they can either remain in the collective investment scheme if they expressly approve the change of status or redeem their shares according to the contractual or regulatory deadlines; c) specify that investors who do not exercise their option under let. b) are deemed to have redeemed their units/shares on the 30th day following publication.

There is no prescribed risk diversification

A request for approval, or authorization, must be submitted to FINMA, after which a decision will be made authorizing the change of status and setting the date from which the collective investment scheme is exempted from supervision. In this context, FINMA also requires confirmation from the audit firm, which must certify that all investors have given their consent and that the custodian bank has given its approval.

The procedure for amending the L-QIF documentation in the context of the change of status must be carried out concurrently with the change of status from a regulated fund to an L-QIF, applying the amendment procedure for an L-QIF. Modifications to meet the conditions of an L-QIF must follow the procedure set out under art. 27 CISA. FINMA will therefore be responsible for amendments related to art. 27 CISA and the change of status, but not for amendments to change the fund contract to an L-QIF fund contract. These three procedures can therefore occur simultaneously and be subject to a single publication with the three procedures clearly described. The first two are within FINMA's competence and the third within the fund management company's competence.

7.2. Restructuring

An L-QIF cannot be restructured with collective investment schemes subject to supervision or by transforming it into such investments. However, restructurings among L-QIFs are possible and authorized.

8 Notification to the Federal Department of Finance

To qualify for L-QIF status, the institution responsible for managing the L-QIF must notify the Federal Department of Finance (FDF) within 14 days following the signing of the (new or amended) fund contract, the (new or amended) partnership agreement, the adoption of the (new or amended) articles of association, or the completion of the L-QIF's liquidation. Failure to make this notification renders the L-QIF null and void and is subject to administrative criminal proceedings.



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