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The International Comparative Legal Guide to:

# Alternative Investment Funds 2019

**7th Edition**

A practical cross-border insight into Alternative Investment Funds work

Published by Global Legal Group, with contributions from:

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London SE1 3PL, UK
Tel: +44 20 7367 0720
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Email: info@glgroup.co.uk
URL: www.glgroup.co.uk

**GLG Cover Design**
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**Printed by**
Stephens & George Print Group
August 2019



**ISBN** 978-1-912509-91-1
**ISSN** 2051-9613

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## General Chapters:



## Country Question and Answer Chapters:

# Switzerland

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## 1 Regulatory Framework

### 1.1 What legislation governs the establishment and operation of Alternative Investment Funds?

The establishment and operation of Alternative Investment Funds ("**AIFs**") (and their managers) is governed by the Federal Act on Collective Investment Schemes of 23 June 2006 ("**CISA**", SR 951.31) and its implementing ordinances, Ordinance on Collective Investment Schemes of 22 November 2006 (CISO, SR 951.311), the Ordinance of the Swiss Financial Market Supervisory Authority on Collective Investment Schemes of 27 August 2014 ("**CISO-FINMA**", SR 951.312) and the Ordinance of the Swiss Financial Market Supervisory Authority on Collective Investment Schemes of 6 December 2012 ("**CISIO-FINMA**", SR 951.315.2). In addition, the Swiss Financial Market Supervisory Authority ("**FINMA**") has published a number of circulars addressing specific areas of collective investment schemes law (such as the distribution of collective investment schemes). Finally, a number of guidelines of the Swiss Funds / Asset Management Association ("**SFAMA**") have been recognised as a minimum standard by FINMA and apply to all institutions regardless of SFAMA membership.

Investment companies that are incorporated as a Swiss corporation and that are either listed on a Swiss stock exchange or restricted to qualified investors (within the meaning of the CISA) do not fall within the scope of the CISA. Accordingly, the establishment and the operation of investment companies are governed by Swiss corporate law and, in the case of a listed company, the listing rules and any additional regulations of the stock exchange.

### 1.2 Are managers or advisers to Alternative Investment Funds required to be licensed, authorised or regulated by a regulatory body?

Subject to limited *de minimis* exemptions provided in the CISA for asset manager of foreign collective investment schemes, asset managers to AIFs have to obtain a licence from FINMA prior to engaging in asset management activities for AIFs. The licensing requirement applies to asset managers of Swiss and foreign collective investment schemes. The licence is subject to specific licence requirements that include, *inter alia*, minimum capital requirements and rules regarding the organisation and the operation of the asset manager.

Investment advisors of AIFs which provide only advisory activities, without any authority to execute orders, do not need a licence from FINMA.

### 1.3 Are Alternative Investment Funds themselves required to be licensed, authorised or regulated by a regulatory body?

As a matter of principle, four types of vehicles are available to set up an alternative investment fund in Switzerland: (i) a contractual collective investment scheme; (ii) a corporate collective investment scheme with a variable capital (SICAV); (iii) a limited partnership for collective investments; and (iv) an investment company.

As a matter of principle, all Swiss AIFs require a licence from FINMA irrespective or their organisational structure (whether established contractually or as a company) and the type of investors. CISA provides that investment companies organised as a company limited by shares are out of the scope of the act, provided that (a) all their shareholders are qualified investors, or (b) they are listed on a Swiss stock exchange.

AIFs organised under a foreign law are subject to a licensing requirement only if they are distributed to non-qualified investors. By contrast, there are no licensing requirements for foreign AIFs that are exclusively distributed to qualified investors. However, Swiss rules on distribution apply (see below section 3).

### 1.4 Does the regulatory regime distinguish between open-ended and closed-ended Alternative Investment Funds (or otherwise differentiate between different types of funds or strategies (e.g. private equity v hedge)) and, if so, how?

The CISA provides four different investment vehicles for structuring Swiss collective investment schemes. The four structures are divided into open-end and closed-end collective investment schemes. Open-end collective investment schemes entitle investors to request the fund or a related party to redeem of their units at their net asset value at regular intervals. Closed-end investment schemes exclude this right. The CISA provides for two types of open-end collective investment schemes: the contractual investment fund; and the investment company with variable capital (*Société d'investissement à capital variable*; "**SICAV**"). The contractual investment fund and the SICAV constitute two open-ended investment vehicles and are largely interchangeable. They allow for a broad category of structures, ranging from securities funds which are based on the EU-UCITS standard, to real estate funds, so-called other funds for traditional investments and so-called other funds for alternative investments.

Closed-end investment schemes include limited partnerships for collective investments ("**LPCI**") and investment companies with fixed capital (*Société d'investissement à capital fixe*; "**SICAF**"). The SICAF and the LPCI do not share many commonalties other than being closed-end structures: the SICAF is an investment company organised as a company limited by shares which is open to retail investors, whereas the LPCI is a special form of limited partnership reserved to qualified investors.

The contractual investment fund, the SICAV and the SICAF can be used for any generally permissible investment strategy. Typically, open-ended AIFs will be set up as "other funds for alternative investments" which provide the broadest flexibility in terms of permitted investments. However, depending on the strategy an investment fund or a SICAV can be set up as another fund for traditional investments or even a securities funds, if it can meet the demanding restriction applicable to UCITS.

By contrast, the LPCI is conceived primarily as a vehicle for investments in venture capital, private equity and construction, real estate and infrastructure as well as alternative investments.

### 1.5 What does the authorisation process involve and how long does the process typically take?

The authorisation process for Swiss AIFs, fund management companies or asset managers of collective investment schemes usually starts with a preliminary discussion with FINMA. Based on the outcome of such discussion a licence application will be prepared and filed. The applicant has to demonstrate that it complies with the regulatory requirements and explain its business model and investment strategy.

When seeking the licence for a fund management company, the applicant will need to appoint a regulatory auditor to reviews its application and provide an assessment to FINMA. Later the applicant has to appoint another recognised audit firm as its regulatory auditor.

The duration of the authorisation process may vary and will depend on the complexity and the scope of the application, the applicable investment strategies and also on the organisation of the applicant. FINMA seeks to approve AIFs that are open to all investors within a deadline of eight weeks and AIFs that are only open to qualified investors within a deadline of four weeks. These deadlines start once FINMA receives a complete filing and are merely indicative. No deadlines exist to authorise fund management companies or asset managers. However, FINMA will usually take three to six months to process an application.

Foreign AIFs are not subject to a licensing process. However, if they are distributed to non-qualified investors, FINMA must authorise their distribution: FINMA will grant the authorisation if the following conditions are satisfied: (i) the collective investment scheme, the fund management company or the fund company, the asset manager as well as the custodian, are subject to public supervision intended to protect investors; (ii) the regulatory framework regarding the organisation of the fund management company, the fund company and the custodian, the rights granted to investors and investment policy are equivalent to the framework set forth by the CISA; (iii) the designation of the collective investment scheme does not give reason for deception and confusion; (iv) the fund appointed a Swiss representative and Swiss paying agent; and (v) FINMA and the foreign supervisory authorities have entered into an agreement on the co-operation and exchange of information regarding the distribution of the fund. As a practical matter, FINMA has only authorised UCITS for the distribution in Switzerland. Existing foreign AIFs maintained their authorisation and can continue to be distributed to the public. However, no new foreign AIF was authorised for distribution to all investors

By contrast, there are no licensing requirements for foreign AIFs that are exclusively distributed to qualified investors. However, Swiss rules on distribution apply (see below section 3).

### 1.6 Are there local residence or other local qualification requirements?

Swiss AIFs must be administered in Switzerland. Consequently, the ultimate supervision of the AIF must be carried out in Switzerland. However, the investment decisions may be delegated to third parties domiciled outside of Switzerland. Such persons need to be supervised by recognised supervisory authority, which entered into a co-operation agreement with FINMA, whenever such jurisdictions condition the delegation to managers in third countries on the existence co-operation agreements. This is typically the case for EU Member States under the Directive on Alternative Investment Fund Managers ("**AIFMD**").

The members of the executive board of Swiss fund management companies or Swiss asset managers of collective investment schemes must reside in a place which allows them to ensure the proper management of the business operations. Practically speaking, this means that they must reside in Switzerland or in the neighbouring areas.

Furthermore, the members of the board of directors and senior management must meet the fit and proper requirements and possess adequate professional qualifications. These requirements are construed broadly and will generally be examined on a case-by-case basis.

### 1.7 What service providers are required?

Fund management companies, SICAVs, SICAF and LPCI must appoint a regulatory auditor, which acts as an extension of FINMA and carries out most on-site audits and reports to FINMA.

Open-ended Swiss AIFs are required to appoint a custodian. The custodian must be a Swiss bank. AIFs may, subject to the approval of FINMA, also appoint a prime broker. If the prime broker is a licensed Swiss securities dealer or a Swiss bank, a separate custodian is not required.

Foreign AIFs that are distributed in Switzerland are required to appoint a Swiss representative and a Swiss paying agent, unless the distribution is strictly limited to (i) supervised financial intermediaries (e.g. banks, securities dealers and insurance companies), or (ii) investors that entered into a written discretionary asset management agreement with a supervised financial intermediary and provided the marketing activities are made through such supervised financial intermediary.

Marketing foreign AIFs to supervised investors (such as banks, securities dealers, insurance companies or Swiss-licensed fund management companies or asset managers of collective investment schemes) as well as to clients who entered into an asset management agreement falls short of distribution is not deemed distribution und thus does not fall with the scope of the respective rules. Consequently, there are no requirements to appoint a Swiss representative and a Swiss paying agent.

The regime for the distribution collective investment schemes in Switzerland will fundamentally change with the expected entry into force of the Financial Services Act and the Financial Institutions Act on 1 January 2020 (see question 7.1 for further details regarding the changes and questions 3.2 to 3.5 regarding the current regime).

### 1.8 What rules apply to foreign managers or advisers wishing to manage, advise, or otherwise operate funds domiciled in your jurisdiction?

Foreign managers or advisers cannot act as fund managers of Swiss funds or Swiss AIFs. However, a Swiss fund management company, a SICAV, a Swiss asset manager of collective investment schemes and a Swiss representative of foreign collective investment schemes may, however, delegate certain fund administration activities and the asset management to foreign asset managers who are supervised by a recognised supervisory authority.

The tasks delegated to third parties must be set out in written agreements, which will describe precisely the delegated tasks, the powers and responsibilities, the authority to further delegation any tasks, reporting duties and inspection rights. The delegation should not prevent the audit company to audit or FINMA to supervise the activities of the AIF or the AIFM. In particular, where tasks are delegated to foreign managers, the licensee must be able to demonstrate that, the regulatory audit company, FINMA and itself are able to exercise their inspection rights and enforce them under the law. The regulatory audit company must review the documentation before outsourcing takes place.

### 1.9 What co-operation or information sharing agreements have been entered into with other governments or regulators?

In December 2012, FINMA entered into a co-operation arrangement with the EU securities regulators (represented by the European regulator ESMA) for the supervision of Alternative Investment Funds, including hedge funds, private equity and real estate funds. The co-operation arrangements include the exchange of information, cross-border on-site visits and mutual assistance in the enforcement of the respective supervisory laws. Such co-operation arrangement applies to Swiss AIFMs that manage or market Alternative Investment Funds in the EU and to EU AIFMs that manage or market AIFs in Switzerland. The agreement also covers cooperation in the cross-border supervision of depositaries and delegates of AIFMs.

In addition, with respect to the distribution of foreign collective investment schemes to non-qualified investors, FINMA has entered into various agreements regarding co-operation and the exchange of information. As of 5 July 2019, FINMA had entered into such agreements with the supervisory authorities of Austria, Belgium, Denmark, Estonia, France, Germany, Guernsey, Hong Kong, Ireland, Jersey, Liechtenstein, Luxembourg, Malta, the Netherlands, Norway, Sweden and the United Kingdom.

## 2 Fund Structures

### 2.1 What are the principal legal structures used for Alternative Investment Funds?

As mentioned above, Swiss AIFs can be set up as: open-ended funds, such as a contractual fund managed by a fund managed company or a SICAV; or closed-ended funds, such as a SICAF or a LPCI.

In terms of investment strategy, Swiss law does not distinguish between funds and SICAVs. Typically, open-ended AIFs will be set up as "other funds for alternative investments" which provide the broadest flexibility in terms of permitted investments. However, depending on the strategy an investment fund or a SICAV can be set up as an "other fund for traditional investments" or even a securities funds, if it can meet the demanding restriction applicable to UCITS.

By contrast, the LPCI is conceived primarily as a vehicle for investments in venture capital, private equity and construction, real estate and infrastructure as well as alternative investments. LPCIs have been mainly used for private equity investments or investments in real estate projects.

### 2.2 Please describe the limited liability of investors.

Investors are only liable for their investment in a Swiss AIF. Funds and SICAV can be set up as an umbrella fund and have various sub-funds. In such a case, investors are only entitled to the income and assets of the sub-fund in which they invested and each sub-fund is only liable for its own liabilities.

### 2.3 What are the principal legal structures used for managers and advisers of Alternative Investment Funds?

Under the CISA, a fund management company must be organised as a company limited by shares. By contrast, an asset manager for collective investment schemes can be organised as a company limited by shares, a partnership limited by shares, a limited liability company, a general partnership or a limited partnership. In practice, however, they tend to be organised either as companies limited by shares or limited liability companies.

Foreign asset managers of collective investment schemes may, subject to certain additional requirements, open a branch in Switzerland.

### 2.4 Are there any limits on the manager's ability to restrict redemptions in open-ended funds or transfers in open-ended or closed-ended funds?

Investors in open-ended funds are, in principle, entitled to request the redemption of their units and payment of the redemption amount in cash at any time. This right to redeem at any time may only be restricted in the case of collective investment schemes whose value is difficult to ascertain, or which have limited marketability (e.g. investments which are not listed or traded on another regulated market open to the public; mortgages; or private equity investment). In any event, the right to redeem at any time may only be suspended for a maximum period of five years and such restrictions must be stated explicitly in the fund's regulations and in the prospectus.

Closed-ended funds cannot, by definition, be redeemed. However, an LPCI may have a limited duration, after which the LPCI will be wound up.

### 2.5 Are there any legislative restrictions on transfers of investors' interests in Alternative Investment Funds?

The transferability of investors' interests in an AIF depends on the fund's legal structure. Generally speaking, there are no statutory restrictions on transfers of investors' interests in open-ended AIFs. However, the fund's regulations may provide for such restrictions. This is typically the case if the AIF is restricted to qualified investors.

Further, the Swiss LPCI is, by design, a legal structure that is only available to qualified investors. Consequently, interests in an LPCI may only be transferred to other qualified investors. Furthermore, the partnership may also subject the transfer of a partnership interest to the consent of the general partner.

Typically, open-ended Swiss collective investment schemes and LPCI, including AIFs, provide for a compulsory redemption in their fund documentation in case an investor no longer meets the eligibility requirements to invest in the fund or if their investment in the fund could jeopardise the interests of all the other investors.

Finally, investment companies that do not fall within the scope of a CISA (see question 1.1) are required to provide for transfer restrictions in their articles of association to ensure that their shareholders are exclusively qualified investors.

### 2.6 Are there any other limitations on a manager's ability to manage its funds (e.g. diversification requirements, asset stripping rules)?

There are no other limitations on a manager's ability to manage its own funds provided it satisfies the capital maintenance requirements.

Subject to the terms of the partnership agreement, general partners of LPCI are allowed, without the consent of the limited partners, to conduct other business transactions for their own account and on behalf of third parties and participate in other companies, provided this is disclosed and the interests of the limited partnership for collective investment are not impaired as a consequence.

Finally, restrictions generally apply to related party transactions in connection with real estate, construction and infrastructure projects.

## 3 Marketing

### 3.1 What legislation governs the production and offering of marketing materials?

The production and offering of marketing materials for Swiss and foreign AIFSs distributed in Switzerland are governed by the CISA and its implementing ordinances.

Investment companies that are not subject to the CISA are, consequently, not subject to these rules and must only comply with the general requirements of Swiss corporate law and, in the case of a listed investments company, the listing rules of the respective stock exchange.

Finally, the Swiss legislation against unfair competition provides for a number of prohibited marketing practices with respect to marketing activities in Switzerland.

### 3.2 Is the concept of "pre-marketing" (or equivalent) recognised in your jurisdiction? If so, how has it been defined (by law and/or practice)?

Switzerland does not have a legally defined concept of "pre-marketing", meaning general information that falls short of marketing a specific collective investment scheme, as in the European Union. However, "distribution" is defined under Swiss law as any effort aiming at the sale of a specific collective investment scheme. If advertising does not have sufficient content to be suited to influence the behaviour of the investors, it will fall short of distribution.

Similarly, for an activity to be aimed at achieving the acquisition of units in a collective investment scheme and therefore qualify as distribution under the CISA, the collective investment scheme in question must exist or its key terms should be defined. This is the case if it is either already established or, at the latest, the key characteristics (e.g. name of collective investment scheme, main parties, investment policy, fees, issuing and redemption terms) that will enable investors to make a decisions to buy have already been definitely determined.

On this basis, exploratory discussions with investors on their general interest to invest in a new fund that is in still in the early stage of its inception or abstract discussions with potential investors not relating to a specific product are not deemed to have the nature of distribution. This is the case, for example, if information is provided on certain strategies or composites without reference being made to an actual specific product.

### 3.3 What are the key content requirements for marketing materials, whether due to legal requirements or customary practice?

The prospectus of a Swiss AIF must contain, *inter alia*, information on: (i) the AIF; (ii) the types of shares it issued and the rights they carry, including the terms and conditions for the redemption of shares; (iii) the investment policy and investment restrictions; (iv) the fees payable to the fund management company, the custodian and any other third party; (v) other fees and costs, such as performance fees, commissions, retrocessions and other financial benefits and rebates; (vi) the information on taxes (including any withholding taxes); (vii) the fund management company and the custodian; and (viii) third parties that carry out delegated tasks.

In addition, the fund's regulations, the prospectus and any other marketing material distributed to non-qualified investors in Switzerland must contain a notice regarding the special risks involved in alternative investments. The wording of such warning clause must be approved by FINMA and must be placed on the first page of the fund's regulations and the prospectus.

Unlike traditional investment funds, AIFs are not required to prepare a simplified prospectus or a key investor information document.

The prospectus for foreign collective investment schemes that are distributed in Switzerland must include a "Swiss wrapper", containing specific Swiss information, including the name of the Swiss representative and of the paying agent, the place where the prospectuses, the last annual and semi-annual reports as well as the articles of association can be obtained without costs. This information must also be included on all marketing material used in connection with the distribution in Switzerland.

### 3.4 Do the marketing or legal documents need to be registered with or approved by the local regulator?

Swiss AIFs must file their prospectus and any amendment thereto with FINMA. Other marketing material does not need to be filed or approved by FINMA.

The prospectus of foreign AIFs that are distributed to non-qualified investors in Switzerland must be approved by FINMA. By contrast, no such requirement applies if the distribution is limited to qualified investor or if there is no distribution, because the AIF is placed with supervised institutions or placed under the umbrella of a discretionary asset management agreement.

### 3.5 What restrictions are there on marketing Alternative Investment Funds?

Marketing of AIFs is not subject to specific restrictions. However, reference to the special risks involved in alternative investments must be made in the fund's name, prospectus and other marketing

materials (see also question 3.3). Depending on the type of AIF, there may be restriction on marketing an AIF to non-qualified investors (see also question 3.6).

AIFs organised under a foreign law are subject to a licensing requirement only if they are distributed to non-qualified investors. By contrast, there are no licensing requirements for foreign AIFs that are exclusively distributed to qualified investors. However, Swiss rules on distribution apply. Foreign AIFs that are distributed in Switzerland are required to appoint a Swiss representative and a Swiss paying agent, unless the distribution is strictly limited to (i) supervised financial intermediaries (e.g. banks, securities dealers and insurance companies), or (ii) investors that entered into a written discretionary asset management agreement with a supervised financial intermediary and provided the marketing activities are made through such supervised financial intermediary.

Marketing foreign AIFs to supervised investors (such as banks, securities dealers, insurance companies or Swiss-licensed fund management companies or asset managers of collective investment schemes) as well as to clients who entered into an asset management agreement falls short of distribution is not deemed distribution und thus does not fall with the scope of the respective rules.

The regime for the distribution collective investment schemes in Switzerland will fundamentally change with the expected entry into force of the Financial Services Act and the Financial Institutions Act on 1 January 2020 (see question 7.1 for further details regarding the changes.

### 3.6 Can Alternative Investment Funds be marketed to retail investors?

Open-ended Swiss AIFs can be marketed to all investors. However, they may, in particular if they seek exemptions from certain provision of CISA, limit themselves to qualified investors. Similarly, limited partnerships for collective investments can only be subscribed by qualified investors.

Foreign collective investment schemes can be distributed to retail investors, only if they were authorised for distribution in Switzerland by FINMA. Foreign collective investors that were not authorised for distribution can only be distributed to qualified investors or placed with supervised financial investors or under the umbrella of an asset management agreement.

### 3.7 What qualification requirements must be carried out in relation to prospective investors?

If a foreign AIF has not been approved for distribution to retail clients in Switzerland, the fund's manager and any third-party distributor must ensure that the fund is only distributed to qualified investors. According to the CISA, the following investors are considered as qualified investors: (i) supervised financial intermediaries (i.e. banks, securities dealers, insurance companies, fund management companies, asset managers of collective investment schemes and central banks); (ii) public bodies and pension funds with professional treasury management; (iii) corporations with professional treasury management; (iv) investors that have entered into a written discretionary asset management agreement with a supervised financial intermediary or an independent asset manager, provided such investors have not opted out of their qualified investor status; (v) independent asset managers (if the relevant independent asset manager meets the requirements of the CISA and undertakes in writing to exclusively use the fund-related information for clients who are themselves qualified investors); and (vi) high-net-worth individuals, provided they have declared that they want to be treated as qualified investors.

### 3.8 Are there additional restrictions on marketing to public bodies such as government pension funds?

There are no restrictions on marketing to public bodies and government pension funds specifically. Public bodies such as government pension funds are considered qualified investors provided that their assets are managed on a "professional basis". However, they do not qualify as supervised entities.

No special licence is required to market AIFs to Swiss government pension funds. However, the AIF will need to appoint a Swiss representative and a Swiss paying agent and distribution agreements have to be entered into between the relevant Swiss representative and the persons distributing the AIF in Switzerland before a foreign AIF can be distributed to qualified investors. Furthermore, the distributor may need to be licensed in Switzerland or in its home jurisdiction (see question 3.9).

In addition, pension funds are subject to certain investment restrictions (see question 3.10).

### 3.9 Are there any restrictions on the use of intermediaries to assist in the fundraising process?

The fundraising process is considered a part of the distribution of collective investment schemes. Consequently, any third parties that assist in the fundraising process, such as placement agents or other intermediaries, are considered distributors of collective investment schemes. Swiss distributors of collective investment schemes are required to obtain a licence from FINMA.

Foreign distributors may only engage in distribution activities in Switzerland if (i) the fund is exclusively distributed to qualified investors, (ii) the foreign distributor is subject to adequate supervision in its home country, and (iii) the distributor entered into a distribution agreement with the Swiss representative.

### 3.10 Are there any restrictions on the participation in Alternative Investment Funds by particular types of investors, such as financial institutions (whether as sponsors or investors)?

There are no restrictions *per se*. However, certain financial institutions and other qualified investors, such as pension funds and insurance companies, are only allowed to invest a certain amount of their net assets in AIFs. In particular, pension funds are allowed to invest directly in AIFs only if this possibility is specifically covered by its investment regulations and it complies with the general principles for safe and diversified asset management.

## 4 Investments

### 4.1 Are there any restrictions on the types of activities that can be performed by Alternative Investment Funds?

As mentioned above, the investments depend on the specific type of collective investment scheme. Among open-ended collective investment schemes, open-ended collective investment schemes for alternative investments offer the broadest range of possible investments and strategies. They are specifically designed to carry out investments that (i) have only limited marketability, (ii) are subject to strong price fluctuations, (iii) exhibit limited risk diversification, or (iv) are difficult to value. They may engage in short selling and borrow funds.

In particular, they may invest in: (i) securities; (ii) units in collective investment schemes; (iii) money market instruments; (iv) sight and time deposits with a maturity of up to 12 months; (v) precious metals; (vi) derivative financial instruments whose underlyings are securities, collective investment schemes, money market instruments, derivative financial instruments, indices, interest rates, exchange rates, loans, currencies, precious metals, commodities or similar instruments; and (vii) structured products. In addition, FINMA may authorise other investments such as commodities and commodity certificates. In the latter case, the investment regulations must explicitly mention this fact.

Open-ended collective investment schemes for alternative investments may (i) raise loans for an amount of up to 50 per cent of the fund's assets, (ii) may pledge or cede as collateral no more than 100 per cent of the fund's net assets, (iii) commit to an overall exposure of up to 600 per cent of the fund's net assets, and (iv) engage in short selling. The fund's regulations must explicitly set out those investment restrictions.

Furthermore, FINMA may grant exemptions from these principles on a case-by-case basis, in particular when the AIF is limited to qualified investors.

LPCI can invest in risk capital, including private equity, debt, and hybrid forms. They can also engage in construction, real estate and infrastructure projects, as well as alternative investments generally speaking. They can take control of companies and sit on the board of target companies in order to safeguard the interests of limited partners.

### 4.2 Are there any limitations on the types of investments that can be included in an Alternative Investment Fund's portfolio whether for diversification reasons or otherwise?

Open-ended collective investment schemes for alternative investments may (i) raise loans for an amount of up to 50 per cent of the fund's assets, (ii) may pledge or cede as collateral no more than 100 per cent of the fund's net assets, and (iii) commit to an overall exposure of up to 600 per cent of the fund's net assets.

LPCI are not subject to particular restrictions on their investments.

Generally speaking, there are prohibitions on self-dealing and dealing with related parties in connection with construction, real estate and infrastructure projects.

### 4.3 Are there any restrictions on borrowing by the Alternative Investment Fund?

Open-ended collective investment schemes for alternative investments may raise loans for an amount of up to 50 per cent of the fund's assets and may pledge or cede as collateral no more than 100 per cent of the fund's net assets.

LPCI are not subject to particular restrictions on borrowing.

## 5 Disclosure of Information

### 5.1 What public disclosure must the Alternative Investment Fund or its manager make?

Open-ended AIFs or their manager must disclose information on the investment policy, the investment techniques (whether the fund uses leverage or engages in short-selling) and information on the maximum level of management fees in its prospectus. The prospectus will include the fund regulations. Furthermore, the AIF or its manager must publish an annual and semi-annual financial reports.

On request, Open-ended AIFs or their manager must provide information concerning information on the basis of the calculation of the net asset value per unit. Furthermore, investors may require further information on a specific transaction, including the exercise of voting rights, creditors' rights or risk management.

These obligations do not extend to LPCI. Limited partners are, however, entitled to inspect the business accounts of the partnership and to obtain information about the performance of the LPCI at least once every quarter.

### 5.2 Are there any requirements to provide details of participants (whether owners, controllers or investors) in Alternative Investment Funds or managers established in your jurisdiction (including details of investors) to any local regulator or record-keeping agency, for example for the purposes of a public (or non-public) register of beneficial owners?

As part of the authorisation process FINMA ascertains that significant equity holders of AIFs, fund management companies, asset managers, and LPCI have a good reputation and do not exert their influence to the detriment of a prudent and sound business practice. A person is deemed to hold a significant stake in equity, if they control directly or indirectly at least 10 per cent of the capital or votes or can materially influence the business activities in another way. Consequently, any change of participants needs to be approved by FINMA.

Furthermore, SICAVs are required to maintain a register of shares, and a register of the beneficial owners of the shares held by company shareholders who hold, directly or in concert with third parties, more than 25 per cent of the capital or shares of the SICAV. These registers are not public but may be made available to law enforcement agencies in accordance with applicable rules of procedure.

Investment companies that are not subject to the CISA are also required to maintain a register of shares and, if they are not listed on a stock exchange, a register of beneficial owners. Unlike the SICAV, these obligations apply to all shareholders and not only the company shareholders.

### 5.3 What are the reporting requirements in relation to Alternative Investment Funds or their managers?

Open-ended collective investment schemes and LPCI are required to maintain accounts and publish an annual report and semi-annual reports.

The annual report must be audited and published within four months of the end of the financial year. The annual report includes financial statements, information on the number of shares/units issued and redeemed during the financial year as well the total number of shares/units outstanding, the inventory of the fund's assets at market value, valuation principles, a break-down of buy and sell transactions, the performance of the open-ended collective investment scheme, possibly benchmarking it with comparable investments, information on matters of particular economic or legal importance (amendments to the regulations, changes of manager, custodian bank, change of directors or officers, and legal disputes).

In addition, the semi-annual report has to be published within two months of the end of the first half of the financial year. It must include, *among others*, an unaudited financial statements, information on shares issued and redeemed during that period and the number of shares outstanding, the inventory of the fund's asset at market value and a break-down of buy and sell transactions.

Further, fund management companies and SICAVs must publish the net asset value of their funds at regular intervals.

Investment companies that are not subject to the CISO are subject to the general rules on financial reporting, which vary depending on whether the company is listed or not.

### 5.4 Is the use of side letters restricted?

The use of side letters is not specifically restricted by Swiss law. However, they must comply with the general rules of conduct. In this backdrop, AIFs and their managers should ensure that they comply with their duty of loyalty and their duty to treat investors equally when they enter into side letters.

As a practical matter, side letters can therefore only be used if they serve an objective purpose, such as facilitating the commitment of anchor investors, and do not breach these principles. In this context, commitments to provide detailed information does not raise any particular issue as long as all investors benefit from the additional transparency. By contrast, it would typically not be permissible to reduce fees for the exclusive benefit of one investor or to promise preferred liquidity under a side letter.

## 6 Taxation

### 6.1 What is the tax treatment of the principal forms of Alternative Investment Funds identified in question 2.1?

Swiss collective investment schemes (i.e. contractual fund, SICAVs and LPCIs) are viewed in a transparent manner from a Swiss corporate income tax perspective. They are thus not subject to Swiss corporate income taxes on their income or gains (except if they directly hold real estate situated in Switzerland. A collective investment scheme directly holding real estate situated in Switzerland may nevertheless be tax-exempt for the purposes of corporate income tax if its investors consist exclusively of tax-exempt occupational pension institutions).

Distributions made by Swiss collective investment schemes are subject to withholding tax at a 35 per cent rate, unless they correspond to distributions of capital gains or income realised from real estate held directly by the fund. Swiss investors may claim the refund of withholding tax if they declare the income in their tax return or account for it in their financial statements. Foreign investors may qualify for an exemption from Swiss withholding tax under the so-called affidavit procedure (exemption provided for by Swiss internal law irrespective of the applicability of a treaty). This requires that more than 80 per cent of the Swiss collective investment scheme's assets are from a non-Swiss source and that the investors demonstrate (typically via their bank) that they are not Swiss residents. Foreign-resident investors may further qualify for a partial or total exemption from Swiss withholding tax under a double taxation treaty existing between their country of residence and Switzerland. The relief is typically granted by way of reimbursement rather than by way of exemption.

SICAF and investment companies that are incorporated as a Swiss corporation not regulated under the CISA (see question 1.1) are taxed as corporate entities and hence subject to corporate income tax and tax on net equity. In addition, their distributions are subject to withholding tax at a 35 per cent rate.

### 6.2 What is the tax treatment of the principal forms of investment manager / adviser identified in question 2.3?

Swiss investment managers/advisers are subject to corporate income tax at federal, cantonal and communal levels on their net profit as accounted for in the statutory financial statements and, as the case may be, adjusted for tax purposes. They may also be subject to tax on their net equity at cantonal and communal levels. There is no special tax status available for investment managers/advisers.

### 6.3 Are there any establishment or transfer taxes levied in connection with an investor's participation in an Alternative Investment Fund or the transfer of the investor's interest?

Liability for issuance stamp duty does not generally arise on the issuance and redemption of Swiss collective investment scheme shares/units. However, the issuance of shares of a SICAF or any other investment company in the form of a Swiss corporation (see question 1.1) is subject to the Swiss issuance stamp duty. The discussion of the Swiss parliament on the proposal to abolish the issuance stamp duty has been suspended.

Further, the transfer of shares/units in a Swiss collective investment scheme (irrespective of its legal form) is subject to a 0.15 per cent transfer stamp duty if a Swiss securities dealer (e.g. Swiss bank, Swiss broker-dealer, etc.) is involved in the transaction as a party or an intermediary.

### 6.4 What is the tax treatment of (a) resident, (b) non-resident, and (c) pension fund investors in Alternative Investment Funds?

Non-resident investors financially suffer the withholding tax paid by the fund, whereby such withholding tax may be recovered in full or partially, depending on the terms of the applicable double taxation treaty, if any (see question 6.1). There is, in general, no special tax regime for pension fund investors in AIFs. A number of double taxation treaties do, however, allow for a full withholding tax refund for taxes paid on dividends to a pension fund. Furthermore, a collective investment scheme whose investors consist exclusively of tax-exempt domestic occupational pension institutions may apply for the declaration procedure for the purposes of the withholding tax. Certain foreign occupational pension institutions are considered tax-exempt investors for transfer stamp duty purposes.

### 6.5 Is it necessary or advisable to obtain a tax ruling from the tax or regulatory authorities prior to establishing an Alternative Investment Fund?

The laws and regulations applicable to Swiss collective investment schemes are clear. Thus, it is generally not necessary to obtain a tax ruling as regards the AIF itself. This being said, when an entire structure is set up, including an asset manager in Switzerland with an AIF located offshore, then it is market practice to require rulings from the competent local tax authorities in respect mainly, but not exclusively, to the allocation of profits between the different entities of the structure (i.e. asset manager in Switzerland, manager offshore, and investment funds). Furthermore, when dealing with private equity or hedge funds, tax rulings may be necessary to confirm the tax treatment of the carried interest or performance fees. In this respect, the practice of the tax authorities may vary widely from one Swiss canton to another.

In light of developments regarding the spontaneous exchange of information in tax matters, such a ruling may be subject to a spontaneous exchange of information with the tax authorities of countries of residence of entities involved in the structure and the country of residence of the ultimate shareholder of the structure.

**6.6 What steps have been or are being taken to implement the US Foreign Account and Tax Compliance Act 2010 (FATCA) and other similar information reporting regimes such as the Common Reporting Standard?**

Switzerland has entered into a FATCA inter-governmental agreement ("**IGA**"). This Swiss IGA follows the Model 2 IGA. Accordingly, a Swiss Financial Institution (as such term is defined in the Swiss IGA) is required to register with the US Internal Revenue Service ("**IRS**") and enter into a Foreign Financial Institution ("**FFI**") agreement. Under the Swiss IGA, the Reporting Swiss Financial Institution will report its US-related accounts directly to the IRS. Further, it should be noted that the Swiss IGA provides for certain exemptions with respect to Swiss collective investment schemes. The Swiss IGA, as well as the Swiss Federal Act on the Implementation of the FATCA Agreement with the United States of America, entered into force on 30 June 2014 and non-compliance with the provision of the Act or the Swiss IGA may be sanctioned by a fine of up to CHF 250,000. Unlike most jurisdictions, which have entered into a Model 1 type IGA, Switzerland has not issued any official guidance notes regarding the implementation of the Swiss IGA. However, a committee known as the FATCA Qualification Committee, headed by the State Secretariat for International Financial Matters ("**SIF**") and consisting of representatives of the major financial industry associations including SFAMA, publishes a Q&A section in order to provide some assistance regarding questions arising from the implementation of the Swiss IGA.

Switzerland has also created the necessary legal basis for the implementation of CRS. The national legislation entered into force and data is being collected as of 1 January 2017.

Certain collective investment schemes may qualify as non-reporting financial institutions. Additionally, for an automatic exchange of information to actually take place, an international agreement between the respective countries is needed. Switzerland has entered into such agreements with various countries (i.e. the EU Member States, Japan, Canada and Australia).

**6.7 What steps are being taken to implement the OECD's Action Plan on Base Erosion and Profit-Shifting (BEPS), in particular Actions 6 and 7, insofar as they affect Alternative Investment Funds' operations?**

Switzerland, as a member of the OECD, has actively participated in the base erosion and profit-shifting ("**BEPS**") project. The Federal Council has instructed the Federal Department of Finance ("**FDF**") to offer analysis and proposals in order to implement the outcomes.

Currently, Switzerland is undergoing a third series of corporate tax reforms. These reforms address certain BEPS outcomes. In particular, a patent (or royalty) box that complies with internationally accepted standards is to be introduced and internationally criticised tax regimes are to be abolished. However, the Swiss voters rejected the proposal in February 2017. The Federal Council charged the FDF to draw up the substantive parameters from a new tax proposal including the abolishment of special tax arrangements for status companies. The foreseen exchange of information on tax rulings requires a legal basis in Swiss law. Switzerland has ratified the multilateral administrative assistance convention of the organisation for Economic Cooperation and Development ("**OECD**") / Council of Europe and put in place national legislation on this matter. Additionally, the total revision of the Tax Administrative Assistance Ordinance ("**TAAO**") entered into force on 1 January 2017. The new ordinance defines the framework and the procedures required for the spontaneous exchange of information. The implementation of country-by-country reports is also in need of legal foundation. To this effect, the Federal Council adopted the dispatch on the multilateral agreement on the exchange of Country-by-country reports and the federal act required for its implementation. Treaty abuse is combatted through the respective anti-abuse clause in double taxation treaties. Switzerland will, in light of the OECD's work, make the necessary adjustments either multilaterally or bilaterally where the new standard does not already apply.

Regarding the other recommendations not part of the minimum standards, the Federal Council has charged the FDF to collaborate with the cantons and business circles to conduct further analysis on the amendment of Swiss corporate tax law in accordance with international developments.

**6.8 Are there any tax-advantaged asset classes or structures available? How widely are they deployed?**

This is not applicable.

**6.9 Are there any other material tax issues for investors, managers, advisers or AIFs?**

This is not applicable.

**6.10 Are there any meaningful tax changes anticipated in the coming 12 months?**

This is not applicable, besides the changes mentioned under question 6.7 above.

## 7 Reforms

**7.1 What reforms (if any) are proposed?**

On 15 June 2018, the Swiss Federal Assembly passed a Federal Act on Financial Services ("**FinSA**") and a Federal Act on Financial Institutions ("**FinIA**"). The new Acts will entail far reaching changes to offering of financial products, including AIFs, to clients in Switzerland. The FinSA will harmonise the rules of conduct that apply in connection with the offering of financial products. More importantly, the regime regarding the marketing of foreign collective investment schemes will change fundamentally: the requirement to appoint a Swiss representative and Swiss paying agent will be abolished for funds offered exclusively to qualified investors other than high-net-worth individuals. Moreover, the distributors of collective investment schemes will no longer be subject to a licensing requirement. However, client advisors who provide financial services including investment advice will need to be registered in a register of client advisors, unless they work for a supervised financial institution. This requirement will also apply to foreign client advisors who provide financial services to clients in Switzerland. This requirement will also apply to foreign client advisors who work for entities that are subject to prudential supervision in their home country. Although the Federal Council would have the authority to waive this requirement

for foreign client advisors of supervised entities subject to an equivalent prudential supervision that provide their services exclusively to professional clients, the drafts of the implementing ordinance that were circulated in the consultation proceedings suggest that this waiver will only benefit client advisors that work for institutions that are part of financial group that is subject to consolidated supervision by FINMA.

In June 2019, the Federal Department of Finance initiated a consultation process regarding a new type of funds or more specifically a new regime for funds that limited to qualified investors: under this regime, fund management companies and SICAVs will have the possibility to create new funds that are limited to qualified investors without seeking the prior approval of FINMA. This should lower the costs to set-up such funds and shorten the time to market.

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In addition, he advises clients regarding the development of products and services in the Fintech space.

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