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Practical cross-border insights into alternative investment funds work

Alternative Investment Funds 2023

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Contributing Editors:
Jeremy Elmore & Emily Clark
Travers Smith LLP

ICLG.com

Industry Chapter

Expert Analysis Chapters

Q&A Chapters

Switzerland

Daniel Flühmann

Peter Ch. Hsu

Bär & Karrer Ltd.

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, the Ordinance on Collective Investment Schemes of 22 November 2006 ("**CISO**", SR 951.311) and the Ordinance of the Swiss Financial Market Supervisory Authority on Collective Investment Schemes of 27 August 2014 ("**CISO-FINMA**", SR 951.312). In addition, the Federal Act on Financial Institutions of 15 June 2018 ("**FinIA**", SR 954.1) and its implementing ordinances, the Ordinance on Financial Institutions of 6 November 2019 ("**FinIO**", SR 954.11) and the Ordinance of the Swiss Financial Market Supervisory Authority on Financial Institutions of 4 November 2020 ("**FinIO-FINMA**", SR 954.111) set out the legal framework for financial institutions acting as fund management companies and investment managers of AIFs and their assets. Finally, the Federal Act on Financial Services of 15 June 2018 ("**FinSA**", SR 950.1) governs, among other aspects, the sale of financial instruments (such as units in AIFs) to clients in Switzerland.

In addition, a number of guidelines of the Asset Management Association Switzerland ("**AMAS**") have been recognised as a minimum standard by the Swiss Financial Market Supervisory Authority ("**FINMA**"). The AMAS self-regulation, which includes a code of conduct, guidelines for real estate funds and several technical guidelines, as well as certain template documents prepared by the association, were substantially revised in line with the FinIA and FinSA and entered into force on 1 January 2022, seamlessly replacing the regulations of AMAS' predecessor organisation SFAMA.

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 such investment companies are governed by Swiss corporate law and, in the case of listed companies, the listing rules and any additional regulations of the relevant 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 set out in the FinIA for asset managers of collective investment schemes up to a certain level of assets under management, asset managers to AIFs have to obtain a licence as a manager of collective assets 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. Asset managers who fall within the *de minimis* exemptions, however, require a licence as portfolio manager and are subject to the ongoing supervision of a FINMA-approved supervisory organisation.

Investment advisors of AIFs that provide only advisory activities, without any formal or *de facto* 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 AIF in Switzerland: (i) a contractual collective investment scheme; (ii) a corporate collective investment scheme with variable capital (SICAV – see question 1.4 below); (iii) a limited partnership for collective investments ("**LPCI**"); and (iv) an investment company.

Swiss AIFs require a licence by FINMA, in principle irrespective of their organisational structure (whether established contractually or as a company). That said, the 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. Further, a revision of the CISA is expected to enter into force in 2024, introducing the so-called Limited Qualified Investor Fund ("**L-QIF**"). The L-QIF is a new, "unregulated" fund type, meaning that it is exempted from the licensing requirement and supervision by FINMA (see also question 7.2 below). The L-QIF must be reserved to qualified investors and must be managed by institutions supervised by FINMA. The implementing ordinance regarding the L-QIF has not yet been passed, so certain details of the new regime remain open at the time of writing.

AIFs organised under a foreign law are subject to a licensing requirement only if they are offered in Switzerland to non-qualified investors. By contrast, there are no licensing requirements for foreign AIFs that are exclusively offered to qualified investors. However, Swiss rules on offering and marketing of AIFs 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 *vs* hedge)) and, if so, how?

The CISA distinguishes four different vehicles for structuring Swiss collective investment schemes. These are divided into open-ended and closed-ended variants. Open-ended collective investment schemes entitle investors to request the fund or a related party to redeem their units at their net asset value at regular intervals. Closed-ended investment schemes exclude this right. The CISA provides for two types of open-ended 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 variations of open-ended funds and are largely interchangeable. They allow for a broad category of structures, ranging from securities funds that 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-ended investment schemes include LPCIs and investment companies with fixed capital (*société d'investissement à capital fixe*; "**SICAFs**"). The SICAF and the LPCI do not share many commonalties other than being closed-ended structures: the SICAF is an investment company organised as a company limited by shares that 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 fund if it can meet the demanding restrictions 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.

Most of the Swiss fund types will be eligible to be structured as an L-QIF, with the exception of SICAFs (this is because closed-ended investment companies for qualified investors are exempt from the CISA altogether; see also questions 1.1 and 1.3 above).

1.5 What does the authorisation process involve for managers and, if applicable, Alternative Investment Funds, and how long does the process typically take?

The authorisation process for Swiss AIFs, fund management companies or managers of collective assets 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 a licence as a fund management company or manager of collective assets, the applicant will need to appoint a regulatory auditor to review 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 varies and depends 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 managers of collective assets. However, FINMA will usually take four to six months to process an application based on a complete submission (including the report of the licence application auditor).

Foreign AIFs are not subject to a licensing process. However, if they are offered to non-qualified investors, FINMA must authorise them: 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 has 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 offering of the fund.

As a practical matter, over the last decade, FINMA has only authorised the offering to non-qualified investors in Switzerland of UCITS-type foreign funds. A very limited number of non-UCITS AIFs are authorised for offering to non-qualified investors at this point, mostly as a result of a previously granted authorisation that continues to be grandfathered.

There are no licensing requirements for foreign AIFs that are exclusively offered to qualified investors. However, Swiss rules on offering and marketing apply (see section 3 below).

1.6 Are there local residence or other local qualification or substance requirements for managers and/or Alternative Investment Funds?

Swiss AIFs must be administered, i.e. have their place of effective management, 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, including those domiciled outside of Switzerland. Such persons need to be supervised by a 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 of 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 managers of collective assets must reside in a place that 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 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, SICAFs and LPCIs must appoint a regulatory auditor, which acts as an extension of FINMA by carrying out most on-site audits and reporting on a recurring basis 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 firm or a Swiss bank, a separate custodian is not required.

Foreign AIFs that are offered or, more broadly, marketed in Switzerland, are required to appoint a Swiss representative and a Swiss paying agent, unless the offering or marketing is strictly limited to qualified investors who are not high-net-worth individuals or private investment structures set up for them who opted to be treated as professional clients under the FinSA (i.e. only to "*per se*" qualified investors and not "elective" qualified investors).

Marketing foreign AIFs to *per se* professional investors (such as banks, securities firms, insurance companies or Swiss-licensed fund management companies or managers of collective assets, pension funds with a professional treasury, undertakings with a professional treasury) as well as to retail clients who have entered into a long-term investment advisory or asset management agreement with a regulated financial intermediary in Switzerland, or a foreign financial intermediary subject to equivalent prudential supervision, would not trigger the requirement to appoint a Swiss representative and a Swiss paying agent.

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, Swiss fund management companies, SICAVs, Swiss managers of collective assets or Swiss representatives of foreign collective investment schemes may delegate certain fund administration activities and the asset management function 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 have to precisely describe the delegated tasks, powers and responsibilities, authority to further delegate any tasks, reporting duties and inspection rights. The delegation should not prevent the audit company from auditing or FINMA from supervising the activities of the AIF or the AIFM. In particular, where tasks are delegated to foreign managers, the Swiss regulated entity must be able to demonstrate that the regulatory auditors, FINMA and itself are able to exercise their inspection rights and enforce them if necessary. The regulatory auditors must review the documentation before outsourcing takes place.

1.9 What relevant 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 AIFs, 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. This co-operation arrangement applies to Swiss AIFMs that manage or market AIFs in the EU and to EU AIFMs that manage or market AIFs in Switzerland. The agreement also covers co-operation in the cross-border supervision of depositaries and delegates of AIFMs.

In addition, with respect to the offering 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 13 March 2023, 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 (including reference where relevant to local asset holding companies)?

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

In terms of investment strategy, Swiss law does not distinguish between contractual 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 restrictions 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 Do any of the legal structures operate as an umbrella structure with several sub-funds, and if yes, is segregation of assets between the sub-funds a legally recognised feature of the structure?

The SICAV, as well as a contractual fund, can operate as an umbrella structure with several sub-funds. Each sub-fund requires a separate approval from FINMA. Under the CISA, each sub-fund constitutes a collective investment scheme on its own and has its own net asset value. Because sub-funds are treated as separate funds, the segregation of assets between sub-funds and corresponding limitation of liability is legally recognised. Correspondingly, investors are only entitled to the income and assets of the relevant sub-fund in which they are participating.

2.3 Please describe the limited liability of investors in respect of different legal structures and fund types (e.g. PE funds and LPACs).

Investors are only liable for their investment in a Swiss AIF. Contractual funds and SICAVs can be set up as umbrella funds 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.

2.4 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, a manager for collective assets 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.

2.5 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 that 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.

2.6 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. Specifically, funds that will be established as an L-QIF must provide for transfer restrictions in the fund documentation that prevent a transfer to non-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 LPCIs, 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 the 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.

2.7 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 LPCIs 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 LPCI are not impaired as a consequence.

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

2.8 Does the fund remunerate investment managers through management/performance fees or by a combination of management fee and carried interest? In the case of carried interest, how is this typically structured?

The nature and scale of all relevant fees (i.e. management and/or performance fees) and other pecuniary benefits through which investment managers of Swiss collective investment schemes are remunerated have to be disclosed. Management and performance fees are foreseen in the law as allowable types of remuneration for investment managers. The type, amount and calculation of all such fees forms part of the minimum content of Swiss law fund contracts.

3 Marketing

3.1 What legislation governs the production and use of marketing materials?

The production and offering of marketing materials for Swiss and foreign AIFs offered in Switzerland are governed by the CISA and FinSA and their 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 investment company, the listing rules of the relevant stock exchange.

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

3.2 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 units it issued and the rights they carry, including the terms and conditions for the redemption of units; (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, the key information document and any other marketing material made available 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, the prospectus and the key information document. In addition, marketing materials for AIFs must be clearly labelled as such and must include a reference to the prospectus and the key information document and must include information on where they can be obtained.

The prospectus for foreign collective investment schemes that are offered to non-qualified investors or high-net-worth individuals or private investment structures set up for them who opted to be treated as professional clients under the FinSA 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 materials used in connection with the offering in Switzerland.

Once the L-QIF regime enters into force, the advertising materials and fund documentation of an L-QIF will have to be labelled with the term "Limited Qualified Investor Fund" or "L-QIF" and will have to include a notice that the L-QIF is neither licensed nor supervised by FINMA. It is not required to prepare a prospectus for L-QIFs.

3.3 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 offered to non-qualified investors in Switzerland must be approved by FINMA. By contrast, no such requirement applies if the offering is limited to qualified investors.

3.4 What restrictions (and, if applicable, ongoing regulatory requirements) are there on marketing Alternative Investment Funds?

Marketing of AIFs to investors in Switzerland does not require a licence from FINMA but may qualify as a financial service under the FinSA and, consequently, trigger the Swiss rules for the provision of financial services that include, *inter alia*, rules of conduct at the point of sale, organisational measures, a duty to register client advisors in a newly established register of advisers and a requirement for financial services provider to affiliate to an ombudsman's office. 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 restrictions on marketing an AIF to non-qualified investors (see also question 3.6).

AIFs organised under a foreign law are subject to an approval requirement only if they are offered to non-qualified investors. By contrast, there are no approval requirements for foreign AIFs that are exclusively offered to qualified investors. However, Swiss rules on offering and marketing of AIFs apply. Foreign AIFs that are offered to qualified investors in Switzerland who are high-net-worth individuals or private investment structures set up for them who opted to be treated as professional clients under the FinSA ("elective" qualified investors) are required to appoint a Swiss representative and a Swiss paying agent.

Marketing foreign AIFs to *per se* qualified investors (such as banks, securities firms, insurance companies or Swiss-licensed fund management companies managers of collective assets, pension funds with a professional treasury, or undertakings with a professional treasury) as well as to retail clients who entered into an investment advisory or an asset management agreement with a regulated financial intermediary in Switzerland or a foreign financial intermediary subject to equivalent prudential supervision would not trigger the requirement to appoint a Swiss representative and a Swiss paying agent.

3.5 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. In general, any activity addressed directly at certain clients that is specifically aimed at the acquisition or disposal of units in a collective investment scheme qualifies as a financial service triggering the respective requirements under the FinSA (see question 3.4). Separately, marketing activities may constitute an offering for the purposes of the CISA, but even mere advertising below such threshold may already trigger certain requirements thereunder.

While pre-marketing is not an activity defined by law, for a sales activity to be considered a financial service pursuant to the FinSA, the collective investment scheme in question must in principle exist or its key terms should at least be defined. This is the case if it is either already established or, at the latest, if 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 decision 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 still in the early stage of its inception or abstract discussions with potential investors not relating to a specific product are not deemed to constitute a financial service or an offer/advertising for a fund. This is the case, for example, if information is provided on certain strategies or composites without reference being made to an actual specific product.

3.6 Can Alternative Investment Funds be marketed to retail investors (including any specific treatment for high-net-worth individuals or semi-professional or similar categories)?

Open-ended Swiss AIFs can be marketed to all investors. However, they may, in particular if they seek exemptions from certain provisions of the CISA, limit themselves to qualified investors. Similarly, LPCIs and the new L-QIF (once the relevant revision of the CISA enters into force) can only be subscribed by qualified investors (see question 3.7 for more detail on the definition of qualified investors).

Foreign collective investment schemes can be offered to retail investors in Switzerland only if they were approved for offering by FINMA. Foreign collective investment schemes that were not approved for offering to non-qualified investors can only be offered to qualified investors, including clients who entered into an investment advisory or an asset management agreement with a regulated financial intermediary in Switzerland or a foreign financial intermediary subject to equivalent prudential supervision.

3.7 What qualification requirements must be met in relation to prospective investors?

If a foreign AIF has not been approved for offering to retail clients in Switzerland, the fund's manager and any third party involved in the offering must ensure that the fund is only offered to qualified investors. According to the CISA, the following investors are considered as qualified investors: (i) supervised Swiss and foreign financial intermediaries (including

banks, securities firms, insurance companies, fund management companies and managers of collective assets); (ii) central banks; (iii) public bodies and pension funds or institutions that have the purpose of providing occupational pension plans with professional treasury management; (iv) large corporations; (v) corporations and private investment structures set up for high-net-worth individuals with professional treasury management; (vi) national and supranational institutions with professional treasury management; (vii) investors who entered into an investment advisory or an asset management agreement with regulated financial intermediary in Switzerland or a foreign financial intermediary subject to equivalent prudential supervision or, pending a revision of the CISA, with a Swiss regulated insurance undertaking; and (viii) high-net-worth individuals or private investment structures set up for them, provided they have opted to be treated as professional clients under the FinSA.

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 they have professional treasury management. No special licence is required to market AIFs to Swiss government pension funds. However, the marketing activity may qualify as a financial service triggering the respective requirements under the FinSA (see question 3.4).

In addition, pension funds are subject to certain investment restrictions (see question 3.9).

3.9 Are there any restrictions on the participation in Alternative Investment Funds by particular types of investors (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.

Moreover, persons entrusted with the management of a general partner of an LPCI may only invest themselves in the LPCI if: (i) the partnership agreement provides for it; (ii) the participation is funded from private assets; and (iii) the subscription is made at the inception of the LPCI.

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

The fundraising process may fall within the scope of the FinSA. Consequently, any Swiss and foreign persons assisting in the fundraising process, such as placement agents or other intermediaries, as a matter of principle, have to comply with the requirements of the FinSA if they target investors in Switzerland.

Foreign intermediaries qualifying as client advisors, however, are exempted from the duty to register themselves in the register of advisors if they work for an entity that is subject to prudential supervision in its home country and who provides financial services to professional or institutional clients only.

4 Investments

4.1 Are there any restrictions on the types of investment 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, funds 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. Such funds may engage in short-selling and borrow funds.

In particular, funds for alternative investments 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.

LPCIs 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?

See question 4.1. 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 local regulatory requirements that apply to investing in particular investments (e.g. derivatives or loans)?

Swiss AIFs have to comply with the general investment restrictions set out for the respective type of collective investment scheme. Entering into derivative transactions is generally permissible provided that the economic effects of using derivatives do not lead to a breach of the investment objectives stated in the fund regulations and the prospectus. Exotic derivatives such as, e.g., path-dependent options may, however, only be used if the minimum and maximum delta can be calculated over

the entire price spectrum of the underlying assets and its effect and the factors determining its value are known. OTC derivatives must be entered into based on a standardised master agreement complying with international standards.

Further, restrictions apply to investments in certain assets and undertakings, e.g. residential real estate in Switzerland, banks, financial institutions and other industries. Such restrictions are driven by regulatory concerns related to the assets rather than to fund laws or regulations.

4.4 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.

LPCIs are not subject to particular restrictions on borrowing.

4.5 Are there are any restrictions on who holds the Alternative Investment Fund's assets?

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 firm or a Swiss bank, a separate custodian is not required.

5 Disclosure of Information

5.1 What disclosure must the Alternative Investment Fund or its manager make to prospective investors, investors, regulators or other parties, including on environmental, social and/or governance factors?

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 annual and semi-annual financial reports.

On request, open-ended AIFs or their manager must provide 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 LPCIs. 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 LPCIs 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 to investors or regulators in relation to Alternative Investment Funds or their managers, including on environmental, social and/or governance factors?

Open-ended collective investment schemes and LPCIs 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, and 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 other elements, 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 CISA are subject to the general rules on financial reporting, which vary depending on whether or not the company is listed.

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. Against 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 do 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 and local asset holding companies identified in question 2.1?

Swiss collective investment schemes (i.e. contractual funds, SICAVs, L-QIFs 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 tax 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.

SICAFs, as well as investment companies that are incorporated as a Swiss corporation and are 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 2.4?

Swiss investment managers/advisers organised in corporate form, as well as Swiss branches of foreign managers (whether organised in corporate form or as a partnership) 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 are also subject to tax on their net equity at cantonal and communal levels. There is no special tax status available for investment managers/advisers. Managers/advisers organised in the form of a Swiss partnership are not subject to corporate tax; instead, the partners are subject to individual income and wealth tax in respect of their share in the partnership's income and net assets.

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?

In general, the issuance and redemption of Swiss collective investment scheme shares/units does not trigger any Swiss issuance stamp duty or securities transfer tax. An exception applies in respect of the issuance of shares in a SICAF or an investment company in the form of a Swiss corporation (see question 1.1), which are subject to Swiss issuance stamp duty.

Further, the transfer of shares/units in a Swiss collective investment scheme (irrespective of its legal form) is subject to transfer stamp duty if a Swiss securities dealer (e.g. Swiss bank, Swiss broker-dealer, Swiss investment manager, or Swiss holding company) is involved in the transaction as a party or an intermediary and no specific exemption applies.

6.4 What is the local tax treatment of (a) resident, (b) non-resident, and (c) pension fund investors (or any other common investor type) in Alternative Investment Funds?

Broadly speaking, resident investors are taxable on the income (whether accrued or distributed) from AIFs; individual investors holding the AIF as part of their private wealth are not taxed on income generated by the AIF from capital gains or direct real estate holdings. Non-resident investors are not subject to income tax in Switzerland for the sole reason of investing in a Swiss AIF; however, they financially suffer the withholding tax paid by the fund, whereby such withholding tax may be recovered in full or partially, based on domestic law or depending on the terms of the applicable double taxation treaty, if any (see question 6.1). Tax-exempt domestic pension fund investors are exempt from tax on their income from AIFs and are fully entitled to a refund of withholding tax deducted by the AIF. Furthermore, an AIF whose investors consist exclusively of tax-exempt domestic pension fund institutions may apply for the declaration procedure for the purposes of the withholding tax. In respect of foreign pension funds, a number of Swiss double taxation treaties do allow for a full withholding tax refund on distributions from AIFs. In addition, certain foreign occupational pension institutions are considered tax-exempt investors for securities transfer tax 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 or local asset holding company?

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 of, e.g., the allocation of profits between the different entities of the structure (i.e. an asset advisor in Switzerland, a 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. Finally, the contribution/transfer of assets into the AIF and the application of tax-exempt reorganisation provisions may require the filing of an upfront tax ruling request.

6.6 What steps have been or are being taken to implement the US Foreign Account Tax Compliance Act 2010 (FATCA) and other similar information reporting regimes such as the OECD's 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 the 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 (e.g. the EU Member States, Japan, Canada and Australia).

6.7 What steps have been or are being taken to implement the OECD's Action Plan on Base Erosion and Profit Shifting (BEPS), in particular Actions 2 (hybrids/reverse hybrids/shell entities) (for example, ATAD I, II and III), 6 (prevention of treaty abuse) (for example, the MLI), and 7 (permanent establishments), insofar as they affect Alternative Investment Funds' and local asset holding companies' 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.

Switzerland has ratified the multilateral administrative assistance convention of the organisation for Economic Cooperation and Development/Council of Europe and put in place national legislation on this matter. Additionally, Switzerland has adopted a framework and procedures for the spontaneous exchange of information. Switzerland has also implemented country-by-country reports for multinational groups exceeding a certain size.

Treaty abuse is combatted through anti-abuse clauses in double taxation treaties, which Switzerland amends with the consent of its treaty counterparties based on the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting ("**MLI**"), to which Switzerland is a signatory state.

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

Capital gains from the disposal of movable property are tax exempt for individual investors holding the investment as part of their private wealth. This allows investment funds generating return mostly from capital gains (including certain hedge funds and private equity funds) to achieve an interesting after-tax return for their Swiss resident private investors. Private investors therefore often seek to make investments in capital gain-oriented funds.

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 other than as set out at question 6.6 above?

This is not applicable.

7 Trends and Reforms

7.1 What have been the main trends in the Alternative Investment Funds space in the last 12 months?

After a strong growth of the Swiss fund market in 2021, the investment in funds declined by 13.7 per cent compared to the previous year. The investment year was marked by the war in Ukraine, inflation, and interest rate turnaround. According to Swiss Fund Data, the decline of the Swiss fund market volume was primarily a result of performance losses while the net money outflow remained within narrow limits.

The Swiss financial industry welcomes the introduction of the new fund category L-QIF and the associated possibility of creating a more flexible investment universe.

Switzerland is positioning itself as a leading hub for sustainable investments. According to the AMAS Annual Report 2021, referencing a study of the University of Lucerne, the volume of sustainable investments in the form of Swiss investment funds available to retail investors has doubled to CHF 775 billion. This development is also reflected in the Federal Council's strategic positioning for transparency in sustainable finance and the regulatory initiative to combat greenwashing. In this context, AMAS published a principle-based self-regulation for sustainable asset management.

7.2 What reforms (if any) in the Alternative Investment Funds space are proposed?

On 15 June 2018, the Swiss Federal Assembly passed the FinSA and FinIA. The FinSA and FinIA, which entered into force on 1 January 2020, entail far-reaching changes to the offering of financial products, including AIFs, to clients in Switzerland. The FinSA harmonises 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 has changed fundamentally (see question 3.3 for further details). 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. An exemption applies for foreign client advisors who work for entities that are subject to prudential supervision in their home country and who provide financial services to professional or institutional clients only.

In August 2020, the Federal Council amended the CISA to introduce a new type of fund or, more specifically, a new regime for funds that are limited to qualified investors, so-called L-QIFs (see also question 1.3). L-QIFs will be exempt from the requirement to obtain authorisation and approval from FINMA, on the conditions that they are offered exclusively to qualified investors and that their asset manager or fund management company is an institution supervised by FINMA. As they do not require any authorisation, the costs to set up such funds will be lower and the time to market will be substantially shorter. In addition, L-QIFs will in principle not be subject to restrictions regarding possible investments or the distribution of risk, making the concept more flexible and suited for alternative investments. The revision is expected to enter into force in 2024.

Daniel Flühmann's practice focuses on banking, insurance and financial market laws as well as collective investment schemes.
He assists Swiss and foreign banks, investment managers, securities firms as well as insurance companies and other financial services providers in regulatory and contract law matters and in the context of licence application and enforcement proceedings before the Swiss Financial Market Supervisory Authority, FINMA.
A special focus of Daniel Flühmann's work lies in fintech, advising both financial innovators and established market participants. Furthermore, he advises clients on general corporate and commercial matters as well as on M&A transactions.

Bär & Karrer Ltd.
Brandschenkestrasse 90
CH-8002 Zurich
Switzerland

Tel: +41 58 261 56 08
Email: daniel.fluehmann@baerkarrer.ch
URL: www.baerkarrer.ch/en

Peter Ch. Hsu is a key contact for the practice area of Banking, Insurance & Finance and heads the insurance team of Bär & Karrer. His practice focuses on banking, insurance and financial market laws as well collective investment schemes.
He advises Swiss and foreign banks, securities firms, investment managers and other financial intermediaries as well as fintech businesses with regard to a wide range of regulatory, contract law and corporate law matters. Moreover, he advises clients on M&A transactions.
Peter Hsu is ranked as a leading individual in the practice area of Banking & Finance (*Who's Who Legal*). *The Legal 500* refers to him as "an outstanding source of advice in banking matters with great experience in the banking and insurance sector" (2020). Furthermore, a source in *The Legal 500* 2020 describes him as the "most user-friendly lawyer – down-to-earth, ready to roll up his sleeves, but also experienced and sage in his advice".

Bär & Karrer Ltd.
Brandschenkestrasse 90
CH-8002 Zurich
Switzerland

Tel: +41 58 261 53 94
Email: peter.hsu@baerkarrer.ch
URL: www.baerkarrer.ch/en

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