



# ICLG

## The International Comparative Legal Guide to: **Public Investment Funds 2019**

**2nd Edition**

A practical cross-border insight into public investment funds

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## EDITORIAL

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Welcome to the second edition of *The International Comparative Legal Guide to: Public Investment Funds*.

This guide provides corporate counsel and international practitioners with a comprehensive worldwide legal analysis of the laws and regulations of public investment funds.

It is divided into two main sections:

Four general chapters. These chapters are designed to provide readers with an overview of key issues affecting public investment funds, particularly from the perspective of a multi-jurisdictional transaction.

Country question and answer chapters. These provide a broad overview of common issues in public investment funds laws and regulations in 17 jurisdictions. All chapters are written by leading public investment funds lawyers and industry specialists and we are extremely grateful for their excellent contributions.

Special thanks are reserved for the contributing editors Gregory S. Rowland and Sarah E. Kim of Davis Polk & Wardwell LLP for their invaluable assistance.

Global Legal Group hopes that you find this guide practical and interesting.

The *International Comparative Legal Guide* series is also available online at [www.iclg.com](http://www.iclg.com).

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## PREFACE

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Davis Polk & Wardwell LLP is honoured to serve as Contributing Editor for the second edition of *The International Comparative Legal Guide to: Public Investment Funds*, and it is my pleasure to have been invited to write this preface.

Publicly offered investment funds are subject to regulatory frameworks that, depending on the jurisdiction, impose comprehensive restrictions on how a fund is operated. The regulatory framework in the U.S., for example, imposes strict requirements on, among other things, a public investment fund's corporate governance, capital structure, portfolio investments, affiliated transactions, reporting and recordkeeping. The degree of regulation and the specifics of the requirements in each jurisdiction vary significantly, which is why a guide such as this is essential.

The second edition provides broad overviews of the general regulatory framework for public investment funds in 17 jurisdictions, as well as four general chapters on topics of particular interest.

As the regulations in the financial services industry continue to evolve in response to new developments and obstacles in financial systems globally, it will be important for legal professionals and industry participants to have up-to-date resources such as this guide for practical insight relating to different jurisdictions.

We hope that you find this guide useful in your practice, and we look forward to future editions of the guide going forward.

Gregory S. Rowland  
Partner  
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# Switzerland

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## 1 Registration

### 1.1 Are funds that are offered to the public required to be registered under the securities laws of your jurisdiction? If so, what are the factors and criteria that determine whether a fund is required to be registered?

Under Swiss law, both Swiss and non-Swiss funds and collective investment schemes (together, CISs) distributed in Switzerland are subject to licensing requirements (e.g., authorisation or registration) as per the Collective Investment Schemes Act (CISA) and its implementing ordinances, the CISO and the FINMA-CISO.

The type of licensing requirement a CIS is subject to mainly depends on (i) its place of incorporation, and (ii) the category of its targeted investors.

#### Swiss CISs

The CISA provides for the following four different types of Swiss CISs:

- 1) the contractual investment fund;
- 2) the Swiss investment company with variable capital (SICAV);
- 3) the Swiss investment company with fixed capital (SICAF); and
- 4) the Swiss limited partnership (LP).

All Swiss CISs and the products they issue or manage are supervised by the Swiss Financial Market Supervisory Authority (FINMA), irrespective of the category of the targeted investors. As opposed to contractual investment funds, CISs established under corporate law have a dual role in this context: one as a product, in the form of a company; and one as an institution benefitting from a licence. One of the common requirements of those entities is to have substance in Switzerland.

#### Non-Swiss CISs

The CISA defines non-Swiss CISs as comprising all forms of CISs, regardless of their legal form and structure (e.g., open- or closed-ended, corporate or contractual), which are established and managed from outside Switzerland.

Non-Swiss CISs which are distributed in Switzerland are to be registered with FINMA in the event that they target non-qualified investors (as defined under question 3.1). By contrast, foreign CISs which target unregulated qualified investors are subject to certain limited requirements, but no regulatory approval of the CIS is required (see question 1.4).

Finally, non-Swiss CISs exclusively targeting regulated qualified investors fall outside the ambit of the CISA and are therefore not subject to any licensing requirement.

### 1.2 What does the fund registration process involve, e.g., what documents are required to be filed?

#### Swiss CISs

Swiss CISs are to be authorised by FINMA prior to performing any activity. In practice, both the Swiss CIS and its manager are authorised through a single regulatory process. In a nutshell, the general requirements to obtain FINMA's authorisation are the following:

- the persons in charge of the management and the business operations of the applicant have a good reputation, offer all the guarantees of proper management and have appropriate professional qualifications;
- qualified shareholders in the applicant (i.e., individual or legal entity which directly or indirectly owns at least 10% of the capital or voting rights or which may have a material influence in another way) must have a good reputation and must not exercise their influence to the detriment of a cautious and sound management;
- internal regulations and a proper organisation are in place in order to ensure compliance with the obligations provided for in the Swiss fund regulations;
- sufficient financial guarantees are available; and
- any further requirements specific to the applicant listed in the CISA are met.

The application is to be reviewed by an audit firm recognised by the Federal Audit Oversight Authority (FAOA). It is worth noting that the auditor in charge of the review of the application is barred from acting as the auditor of the Swiss CIS.

In addition to the above, the Swiss CIS must submit for FINMA's approval the fund documentation (e.g., the collective investment contract, the articles of association and investment regulations, the partnership agreement), including the fund prospectus. In this respect, the Swiss Funds and Asset Management Association (SFAMA) has developed model agreements and prospectuses which have been recognised by FINMA for the purposes of the authorisation applications.

#### Non-Swiss CISs

The registration process with respect to non-Swiss CISs distributed to non-qualified investors implies that FINMA approves the fund documentation (see also question 1.4). The following documents are to be submitted in such context:

- the prospectus;
- the simplified prospectus or key investors information document;
- the collective investment agreement with respect to contractual funds, the articles of association and the investment regulations or the partnership agreement with respect to CISs organised under company law; and
- any other documents that would be necessary for approval under applicable foreign laws and those for Swiss CISs.

The above authorisation and approval requirements must be complied with at all times. Any change having an impact on the requirements underlying the obtained authorisation or approval must be notified in advance for FINMA's approval (see also question 2.1 (vi)). From a practical point of view, FINMA provides on its websites a series of templates to simplify the authorisation, registration and notification of the changes process.

### 1.3 What are the consequences for failing to register a fund that is required to be registered in your jurisdiction?

Under the CISA, the constitution of a CIS without authorisation or the unauthorised distribution of CISs (e.g., distribution of non-registered foreign CISs to non-qualified investors) may be punished by a fine of up to a maximum of CHF 540,000 or by imprisonment of up to three years. A negligent violation is punishable by a fine of up to a maximum of CHF 250,000.

Further, activities carried out in breach of the CISA requirements may trigger regulatory sanctions from FINMA, which may range from a warning to licence withdrawal and liquidation of the entity in question. As the case may be, violations of those requirements may also give rise to tort liability.

### 1.4 Are there local residency or other local qualification requirements that a fund must meet in order to register in your jurisdiction? Or are foreign funds permitted to register in your jurisdiction?

As indicated above, foreign CISs targeting non-qualified investors are to be registered with FINMA prior to being distributed in or from Switzerland.

In addition to the fund documentation approval by FINMA, the following material conditions are to be met for the purposes of the registration:

- the CIS, the fund manager and the custodian bank (if any) are subject to public supervision, with a focus on investor protection;
- the above are subject to equivalent regulations in terms of organisation, investor rights and investment policy;
- the CIS is not presented in such a way so as to deceive or confuse (namely, as regards its investment policy);
- a representative and paying agent have been appointed with respect to units distributed in Switzerland; and
- there is a cooperation and information exchange agreement between FINMA and the relevant foreign supervisory authorities.

In practice, FINMA almost exclusively registers funds which are organised as Undertakings for Collective Investments in Transferable Securities (UCITS).

## 2 Regulatory Framework

### 2.1 What are the main regulatory restrictions and requirements that a public fund must comply with in the following areas, if any? Are there other main areas of regulation that are imposed on public funds?

#### i. Governance

The persons in charge of the management and business operations of a Swiss CIS and its fund manager are subject to a "fit and proper test" in order to ensure that they do not exercise any adverse influence on the CIS. Both CIS and managers are to further ensure that they have proper and appropriate risk management, an internal control system and compliance covering their entire business activities. In this context, risk management functions, the internal control system and compliance must be separated in functional and hierarchical terms from the investment decision function.

#### ii. Selection of investment adviser, and review and approval of investment advisory agreement

Swiss CISs usually appoint their investment advisers on the basis of a written asset management or advisory agreement setting out the terms of their relationship or directly, as the case may be, in the partnership agreement.

Swiss fund asset managers may delegate certain tasks to other advisors to the extent that such delegation is in the best interest of the CIS. The asset management function (e.g., investment decision) may, however, only be delegated to asset managers of CISs which are subject to recognised supervision (see question 2.2). Such delegation shall, in addition, not give rise to conflicts of interests with respect to the investors and asset managers themselves.

#### iii. Capital structure

The minimum required capital structure and net assets depend upon the type of the Swiss CIS:

- contractual funds, sub-fund of an umbrella fund and SICAVs must have net assets of at least CHF 5 million at the latest one year following their launch;
- SICAFs must have shares amounting to at least CHF 500,000 fully paid-up in cash at the time of formation. Such minimum investment amount must be maintained at all times; and
- the Swiss LP is not subject to any capital requirements (while the minimum share capital of the general partner must amount to CHF 100,000 and be fully paid-in).

#### iv. Limits on portfolio investments

Generally speaking, Swiss CISs and their agents must pursue the investment policy corresponding to the investment characteristics of the CIS, as set out in the relevant fund documentation.

As regards open-ended funds and SICAFs, depending on whether the fund qualifies as a securities fund, a real estate fund, or other fund for traditional and alternative investments, the following restrictions to investments apply:

- securities funds are allowed to invest in securities, derivative financial instruments, units of CISs, money maker instruments and sight or time deposits with a term to maturity not exceeding 12 months. On the other hand, they are not allowed to invest in precious metals and commodities or to engage in short-selling;
- real estate funds may invest in real estate, real estate companies, units in real estate funds and foreign real estate assets. Real estate funds must spread their investments over at least 10 properties and the market value of a single property may not exceed 25% of the fund's assets; and

- other funds for traditional and alternative investments are allowed to make the same investments as securities funds, and, in addition, they may invest in precious metals and structured products.

Finally, Swiss LPs are specifically authorised to invest in construction, real estate, infrastructure projects and alternative investments.

#### v. Conflicts of interest

In order to protect the interests of the investors, Swiss CISs must implement effective organisational and administrative measures to identify, prevent, settle and monitor conflicts of interests. In the event that a conflict of interest cannot be avoided, the same shall be disclosed to the investors.

The SFAMA Code of Conduct specifies that CISA-authorized institutions must implement the above measures in accordance with their size and structure. They must also apply an appropriate wage and remuneration policy that protects the investors' interests, as well as adopting written regulations on the receipt and granting of rebates and other benefits by employees and prohibit churning (i.e., shifts in clients' portfolios without any economic reason).

#### vi. Reporting and recordkeeping

Swiss CISs are required to publish an annual report within four months after the closing of the financial year. In addition, a semi-annual report must be issued within two months after the end of the first half of the financial year.

Furthermore, Swiss CISs, as well as third parties involved in the distribution of units, are required to record in writing the client's needs and document their recommendations made in view of the subscription to a CIS. This written record must be handed over to the client.

Finally, as indicated above (see question 1.2), any change in the circumstances underlying the authorisation or approval must be reported to FINMA.

#### vii. Other

For the time being, there are no other main regulatory restrictions and requirements to be aware of.

## 2.2 Are investment advisers that advise public funds required to be registered and/or regulated in your jurisdiction? If so, what does the registration process involve?

Under the CISA, asset managers of both Swiss and non-Swiss CISs must obtain a licence from FINMA. To this end, in addition to the general requirements (see question 1.2), asset managers of CISs must:

- be organised as a legal entity in the form of a limited company (necessary for Swiss LPs), a partnership limited by shares or a limited liability company under Swiss law, as a general or limited partnership, or as a Swiss branch of a foreign asset manager of CISs;
- have an appropriate organisation;
- have the required equity capital and financial guarantees;
- ensure that the articles of association, partnership agreement or organisational rules include a factually and geographically accurate description of its proposed operations; and
- manage at least one CIS.

The CISA, however, contains a *de minimis* rule, according to which asset managers of non-Swiss CISs whose investors are qualified

investors (as defined under question 3.1) are not regulated if they satisfy one of the following requirements:

- the assets under management, including those resulting from the use of leverage, are below the threshold of CHF 100 million;
- the assets under management do not exceed CHF 500 million, and the CISs are unleveraged and closed-ended for a five-year period; or
- the investors are exclusively group companies.

The asset manager of a non-Swiss CIS that is exempt under the *de minimis* rule may, however, opt in and apply for a FINMA licence, provided that its registered office is in Switzerland, and Swiss law or the applicable foreign law requires such regulated status for the management of the CIS.

Non-Swiss managers of both Swiss and non-Swiss CISs with a branch in Switzerland are also required to register with FINMA.

The European Commission, Parliament and Council are currently reviewing the potential extension of the marketing passport under the EU Alternative Investment Fund Managers Directive (AIFMD) to Switzerland, as a third country. For the time being, Swiss-based alternative investment fund managers are to rely on the national private placements regimes in each EU country for the purposes of their marketing activities.

For the rest, it is worth noting that since 2 December 2016, in accordance with the cooperation agreement entered into between FINMA and the Securities and Futures Commission of Hong Kong, regulated Swiss CIS managers may manage CISs distributed to public investors (i.e., retail clients) in Hong Kong, while fund managers in Hong Kong are granted reciprocal rights in Switzerland.

## 2.3 In addition to the requirements above, are there additional regulatory restrictions and requirements imposed on investment advisers that advise public funds?

### *FINMA Circular 2009/1 on Guidelines on Asset Management*

Asset managers of CISs are required to comply with the requirements set out in FINMA Circular 2009/01 which provides for the minimum standards applicable for asset management. Among other things, the Circular imposes certain duties of care, loyalty and information, namely with respect to third-party inducements (retrocessions).

### *Swiss Pension Fund Asset Managers*

In Switzerland, the management of pension funds is subject to a specific regime. Only financial intermediaries subject to official supervision in Switzerland or abroad (e.g., regulated fund asset managers) are allowed to manage such funds without the need to obtain a specific licence from the Swiss Supervisory Commission for Pension Funds.

### *Swiss Anti-Money Laundering Regulations*

Under the Swiss Anti-Money Laundering Act (AMLA), Swiss fund asset managers are generally treated as financial intermediaries and, as such, are subject to the Swiss regulations against money laundering. In particular, they are to comply with know-your-customer rules and procedures, as well as certain organisational requirements (e.g., internal controls, documentation and continuing education). They are subject to the direct supervision of FINMA in this context.

## 2.4 Are there any requirements or restrictions in your jurisdiction for public funds investing in digital currencies?

On 7 December 2018, the Swiss Federal Council adopted a report on the legal framework for blockchain and distributed ledger technology in the financial sector. According to this report, the current state of Swiss legislation does not provide for material restrictions as regards funds investing in digital currencies or crypto-currencies (or crypto-funds).

With respect to open-ended CISs, the Swiss Federal Council has confirmed that only the category “other funds for alternative assets” (see question 2.1 (iv) above) may invest in crypto-currencies. The risk profile of those funds is typically in line with such alternative investments (whether in terms of structure, investment techniques and restrictions). By contrast, as regards closed-ended CISs, both SICAFs and LPs may invest in such alternative products. In any event, managers of CIS invested in crypto-currencies and their custodian banks are to take organisational measures for appropriate risk management in such context.

It worth noting that the Swiss Federal Council further confirmed that the regime applicable to the distribution of foreign CISs in Switzerland applies without restriction to CISs investing in crypto-currencies. FINMA has not approved any foreign crypto-funds for distribution in Switzerland yet. That being said, such funds are generally targeting exclusively qualified investors and are not subject to any approval (see question 1.2. above).

In 2018, FINMA issued distributor authorisation to an institution with its registered office in Switzerland to distribute a crypto-fund in a foreign jurisdiction to qualified investors. A few months before, FINMA also granted the same institution with a fund manager authorisation allowing it to manage crypto-funds.

## 3 Marketing of Public Funds

### 3.1 What regulatory frameworks apply to the marketing of public funds?

#### Concept of Distribution

Any offer or advertisement for a CIS that is not exclusively directed towards regulated qualified investors (as defined below) is construed as distribution which is subject to specific CISA requirements both for the CIS and the distributor. Indirect distribution is also subject to the same requirements (e.g., offering managed accounts in CIS or fund-linked notes, depending on the specific facts).

It is worth noting that the concept of offering will replace the concept of distribution in January 2020, upon the entry into force of the new Financial Services Act (FinSA) and the Financial Institutions Act (FinIA). The concept of offering will be defined more narrowly than distribution. It is therefore expected that the new regime will be more liberal.

The CISA excludes the four situations outlined below from the definition of distribution. The provision of information and/or the offer of CISs are therefore deemed not to constitute a form of distribution if they take place:

- at the instigation of or at the own initiative of investors in relation to a specific investment (reverse solicitation);
- at the investor’s request within the context of a long-term and remunerated advisory agreement or an execution-only

relationship with a regulated financial intermediary or with an independent asset manager (subject to certain conditions);

- within the context of a written discretionary management agreement entered into by the investor with a regulated financial intermediary or an independent asset manager (subject to additional conditions); and
- the publication of prices, net asset values and tax data by regulated financial intermediaries.

#### Concept of Qualified Investors

The concept of qualified investor is another important regulatory concept in the context of the distribution of CISs. The concept of qualified investors under the CISA comprises:

- Regulated qualified investors:
  - Regulated financial intermediaries, including banks, securities dealers, fund administration companies and managers of CISs, as well as central banks.
  - Regulated insurance companies.
- Unregulated qualified investors:
  - Public entities, retirement benefit institutions (pension funds) and companies with professional treasury management.
  - Companies with professional treasury management.
  - Investors who have concluded a written discretionary asset management agreement, provided they do not exercise their right to “opt-out” of the “qualified investors” status and the agreement is entered into with a regulated Swiss financial intermediary or with an independent asset manager (subject to certain conditions).
  - High-net-worth individuals (HNWI) and private investment structures created for HNWI that have requested, in writing, to be considered as “qualified investors” (opt-in declaration), provided they meet certain financial and technical requirements.

Investors who do not fall into one of the above categories are non-qualified investors. The characterisation of an investor as being qualified has a bearing on the regulatory restrictions applicable to the distribution of interests in CISs (please see below).

#### Distribution of Foreign CISs to Non-Qualified Investors

As indicated above, the distribution of non-Swiss CIS to non-qualified investors presupposes a prior registration of the CIS with FINMA, as well as, *inter alia*, the appointment of a Swiss representative and paying agent (see question 1.4).

#### Distribution of Foreign CISs to Qualified Investors

Non-Swiss CISs offered to unregulated qualified investors are not required to be registered with FINMA. That being said, they must:

- appoint a Swiss representative, as well as a paying agent (usually Swiss banking institutions may act in both capacities); and
- not have a misleading name for the investors, in particular in view of their investment policy.

In addition, any foreign distributors of the non-Swiss CIS are to be subject to appropriate supervision in their jurisdiction. This presupposes that their foreign regulatory status allows them to distribute CISs in their own country.

In both situations (distribution to non-qualified and qualified investors), all distributors involved in the distribution of the CIS must enter into a written, Swiss law-governed distribution agreement with the Swiss representative, based on the requirements of the SFAMA Guidelines on distribution of CISs and its template distribution agreement.

**3.2 Is licensure with a regulatory authority required of persons (whether entities or natural persons) engaged in marketing activities? If so: (i) are there commonly available exceptions that may be relied on?; and (ii) describe the level of substantive regulation applied to licensed persons.**

Anyone who distributes CISs to non-qualified investors in Switzerland or foreign CISs to qualified investors in Switzerland is deemed to be a distributor and must be authorised by FINMA. Authorisation can be issued to natural persons, legal entities and incorporated partnerships. It should be noted that this licensing requirement will, however, be abolished upon the entry into force of the FinSA and FinIA.

To obtain authorisation from FINMA, a distributor, must meet the general requirements under the CISA (see question 1.2), as well as have:

- appropriate professional indemnity insurance;
- acceptable distribution modalities and practices; and
- concluded a written distribution agreement with a fund manager, SICAV, limited partnership, SICAF or representative of a foreign CIS which should include a prohibition to accept payments to acquire units.

Certain regulated institutions are exempt from obtaining an authorisation from FINMA to conduct distribution activities; namely, fund management companies, asset managers of CISs, representatives of foreign CISs, banks, securities dealers and insurance companies.

**3.3 What are the main regulatory restrictions and requirements in the following areas, if any, that must be complied with by entities that are involved in marketing public funds?**

**i. Distribution fees or other charges**

The SFAMA Guidelines on the charging and use of fees and costs (Transparency Guidelines) which, in accordance with FINMA Circular 2008/10 were recognised as the minimum standard, impose certain information duties on distributors and Swiss representatives of CISs. In a nutshell, investors are to be informed on fees, costs, rebates and retrocessions paid or received in relation to the CIS. This information shall be disclosed in the fund documentation. Furthermore, with respect to retrocessions, their recipients are to spontaneously inform the investor of the amounts received by giving the calculation parameters or the spread of those inducements. Upon the investor's request, the recipients are to further disclose the amount actually received. Finally, the recipient is to indicate the existence and nature of any conflicts of interest that are or may be triggered by the payment of retrocessions.

**ii. Advertising**

According to FINMA Circular 2013/9 on the distribution of CISs, the concept of distribution covers any concrete offer to enter into a contract and any advertising (i.e., use of any form of advertisement made in view of the subscription of units in CISs) in relation thereto. The nature and the means used to this end are irrelevant and may take any form.

In terms of content, it should be noted that under the CISA, foreign fund documentation, marketing materials and any other publications or websites must disclose the identity of the Swiss representative and paying agent, the home jurisdiction of the CIS, the place where the relevant fund documents are available, as well as the place of

performance and jurisdiction at the registered office of the Swiss representative. In practice, a specific language to the attention of Swiss investors is added to those materials.

**iii. Investor suitability**

From a regulatory perspective, there is no particular requirement with respect to investor suitability for the time being (subject to Swiss civil law requirements which are not covered here and the entry into force of the new FinSA). That being said, the Distribution Guidelines issued by the SFAMA which apply, *inter alia*, to fund distributors include, with respect to the distribution to non-qualified investors, the obligation to provide them with objective information on the investment character, opportunities and risks associated with the relevant CIS, by taking into account their experience and knowledge and the complexity of the CIS.

For the rest, in accordance with FINMA Circular 2009/1, asset managers subject to the CISA are, among other things, to establish a risk profile to cover the client's experience and knowledge in the financial field, risk appetite and risk capacity, and set out in their asset management mandate the investment objectives of the client reflecting this risk profile.

**iv. Custody of investor funds or securities**

Unlike Swiss LPs, fund management companies, SICAVs and SICAFs must designate a custodian bank with respect to their CISs. Custodian banks are to be authorised by FINMA.

The custodian banks' role comprises the holding of fund assets on deposit, the handling of payments processing and the issuance and the redemption of units. Safe-keeping tasks may be delegated to third-party or collective depositories in Switzerland or abroad, provided this appears appropriate. In that event, investors are to be informed of the risks associated with such a delegation in the fund prospectus.

**3.4 Are there restrictions on to whom public funds may be marketed or sold?**

Please refer to question 3.1 as regards the different types of investors.

**3.5 Are there other main areas of regulation that are imposed with respect to the marketing of public funds?**

In addition to the above requirements, in accordance with the Swiss Code of obligations, a prospectus must be prepared in the event newly issued equity securities are to be offered to the public in Switzerland, unless (i) the offer of the specific series of security is made to a limited circle of offerees (as a rule of thumb this is construed as meaning less than 20 offerees in Switzerland, irrespective of their residence), and (ii) no public press announcement or similar publicity is made in Switzerland. As a general rule, any publication of advertising materials for newly issued shares also triggers a prospectus requirement. In the absence of court precedent in this respect, it is not clear whether the prospectus requirement also applies to non-Swiss issuers.

Further, it should be noted that any marketing activities in Switzerland are subject to the Swiss Unfair Competition Act (UCA) which addresses commercial communication with customers and prohibits unfair business practices. Under the UCA, any behaviour or business practice that is deceptive or that infringes the principle of good faith with the result of affecting the relationship between suppliers and customers is deemed unfair and unlawful.

## 4 Tax Treatment

### 4.1 What are the types of entities that can be public funds in your jurisdiction?

Please refer to question 1.1.

### 4.2 What is the tax treatment of each such entity (both entity-level tax and taxation of investors in respect of allocations of income or distributions, as the case may be)?

As a matter of principle, Swiss CISs are not liable to income and capital taxes. Taxation does not take place at the level of the CIS, but usually directly targets investors, provided the CIS is deemed transparent for tax purposes. The taxation regime largely depends upon the legal structure under the CISA.

#### *Swiss CISs*

Open-ended CISs, such as the contractual investment fund and the SICAV, are not considered to be entities subject to Swiss corporate income tax. Taxation is applied directly to investors according to their country of tax residence. The same regime is applicable to the Swiss LP. That being said, there are two exceptions to these general taxation principles:

- a SICAF is subject to Swiss corporate income tax, as it is treated as a separate taxpayer under Swiss tax law; and
- CISs owning real estate are taxed as corporations on the portion of their income that is directly derived from real estate.

All income that is distributed by these CISs is subject to a withholding tax of 35%, which is entirely or partially recoverable by the investor (as regards investors based outside of Switzerland, the reimbursement of the withholding tax depends upon the provisions of the applicable double tax treaty). Exceptions to this general principle are possible. For example, a distribution of net capital gains realised by a CIS is exempted to the extent that these capital gains are clearly separated from the income.

#### *Fund Administration Companies*

Fund administration companies are considered as taxpayers in their own right as they are incorporated as a corporation. As any other legal entity, they are subject to corporate income tax. Management and distribution services provided by such companies to Swiss and non-Swiss CISs remain generally exempt from Swiss value-added tax.

#### *Investors*

Swiss-resident investors of CISs that are transparent for tax purposes are taxed on their share of fund income. This taxation principle depends upon the structure of the fund (i.e., distributing or growth) and the income received (i.e., capital gains or other ordinary income realised by the CIS). Capital gains attributable to private investors are normally exempted to the extent that they are distributed with a separate coupon or they are separately booked in the accounts of the CIS.

### 4.3 If a public fund, or a type of entity that may be a public fund, qualifies for a special tax regime, what are the requirements necessary to permit the entity to qualify for this special tax regime?

This is not applicable in our jurisdiction.



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