

Fund Management 2021

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Oliver Rochman

Morgan, Lewis & Bockius LLP

Lexology Getting The Deal Through is delighted to publish the seventh edition of *Fund Management*, which is available in print and online at www.lexology.com/gtdt.

Lexology Getting The Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique Lexology Getting The Deal Through format, the same key questions are answered by leading practitioners in each of the jurisdictions featured.

Lexology Getting The Deal Through titles are published annually in print. Please ensure you are referring to the latest edition or to the online version at www.lexology.com/gtdt.

Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Lexology Getting The Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editor, Oliver Rochman of Morgan, Lewis & Bockius LLP, and to Michelle Moran of K&L Gates LLP for her assistance with previous editions.



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FUND MANAGEMENT REGULATION

Regulatory framework and authorities

- 1 | How is fund management regulated in your jurisdiction?
Which authorities have primary responsibility for regulating funds, fund managers and those marketing funds?

Investment fund business in Switzerland is governed by:

- the Collective Investment Schemes Act (CISA);
- the Collective Investment Schemes Ordinance (CISO);
- the FINMA Collective Investment Schemes Ordinance (CISO-FINMA);
- the FINMA Collective Investment Schemes Bankruptcy Ordinance (CISBO-FINMA);
- the Financial Institutions Act (FinIA);
- the Financial Institutions Ordinance (FinIO);
- the FINMA Financial Institutions Ordinance (FinIO-FINMA);
- the Financial Services Act (FinSA); and
- the Financial Services Ordinance (FinSO).

In addition, the Swiss Financial Market Supervisory Authority FINMA (FINMA), as the competent regulatory body and supervisory authority, has published circulars addressing specific areas of collective investment schemes law.

Market participants must also comply with self-regulation of industry organisations recognised by FINMA as a minimum standard, namely the code of conduct and various guidelines of the Asset Management Association Switzerland (formerly Swiss Funds & Asset Management Association (SFAMA)) and the guidelines of the Swiss Bankers Association.

The CISA contains product-specific rules for domestic and foreign funds and, as a framework law, leaves many matters to be regulated in detail to the implementing ordinances.

The licensing and supervision of fund management companies, managers of collective assets (including domestic and foreign funds as well as pension schemes), portfolio managers of individual assets and trustees are governed by FinIA and its implementing ordinances.

The FinSA and its implementing ordinance are applicable across sectors and provide for a set of conduct rules at the point of sale covering all financial instruments and services, including funds and certain fund-related financial services. FinSA also governs the prospectus and basic information sheet (KID) requirements for funds.

Some of the provisions in the CISA, FinIA and FinSA are still subject to a transitional regime.

FINMA approves funds as products (in particular, contractual funds (FCP)) and is also responsible for the authorisation and supervision of the following institutions responsible for the management and safe-keeping of assets of funds in Switzerland:

- fund management companies;
- investment companies with variable capital (SICAV);

- partnerships for collective investment (LP);
- investment companies with fixed capital (SICAF);
- custodian banks of domestic funds;
- managers of collective assets;
- portfolio managers; and
- representatives of foreign funds.

The day-to-day supervision of portfolio managers is conferred to supervisory organisations authorised by FINMA. Portfolio managers may be entrusted only with the asset management of domestic or foreign qualified investor funds below a defined *de minimis* threshold.

SICAVs, LPs and SICAFs require a twofold FINMA authorisation of a fund product (in the form of a company) as well as an institution (in the form of a licence holder).

Further, a 'dual supervisory regime' applies, which requires regulated entities to appoint a FINMA-recognised auditor to verify whether they comply with all applicable legal requirements.

Fund administration

- 2 | Is fund administration regulated in your jurisdiction?

Fund administration forms part of the main duties of a fund management company of an FCP or an externally managed SICAV, of a self-managed SICAV, of an LP or of a SICAF and is generally regulated and supervised as part of these licences.

The delegation of fund administration tasks to unregulated third-party providers is also permitted, provided that the delegation is in the interest of efficient management and that those persons appointed are properly qualified to execute the tasks. Furthermore, instruction, monitoring and control of the agent must be ensured. The management of a fund and the related tasks, such as the valuation of investments or the decision on the issue of units, may not be outsourced.

The delegation of fund administration is subject to the prior authorisation of FINMA. For a delegation abroad, specific requirements apply.

Authorisation

- 3 | What is the authorisation or licensing process for funds?
What are the key requirements that apply to managers and operators of investment funds in your jurisdiction?

Switzerland is a niche production market but ranks among the top distribution markets in Europe. As at February 2021, 9,944 funds were registered in Switzerland, of which only 1,790 were domiciled in Switzerland. The majority of the fund assets under management in Switzerland are invested in funds for qualified investors.

The timing and process for approval and authorisation depend on whether a fund is organised under Swiss or foreign law.

Domestic funds

The CISA distinguishes between open-ended and closed-ended funds.

Open-ended funds may be structured in the form of an FCP or a SICAV. Investors have a direct or an indirect legal entitlement to redeem their units at the net asset value.

In the case of an FCP, the fund management company and the custodian must be authorised by FINMA and the fund contract, with the consent of the custodian, must be submitted to FINMA for approval. The FCP is the predominant legal form of collective investment scheme organised under Swiss law.

FINMA must authorise all SICAVs and approve their articles of association and investment regulations.

The timing and process of FINMA authorisation and approval largely depend on the complexity of the fund (investment policy, investment techniques, etc).

In closed-ended funds (LPs or SICAFs), investors have neither a direct nor an indirect legal entitlement to redeem their units at the net asset value.

Both the LP and the SICAF require authorisation by FINMA and their limited partnership agreement (for LPs) and the articles of association and investment regulations (for SICAFs) require FINMA's approval.

Foreign funds

The majority of foreign funds approved for offer to non-qualified investors in Switzerland are undertakings for collective investment in transferable securities (UCITS). FINMA has standardised the approval process for UCITS over a number of years. The application is to be filed electronically by the Swiss representative together with the relevant fund documents for Switzerland.

As one of the very few non-UCITS funds, the first Hong Kong-based fund was approved for offer to non-qualified investors in Switzerland in 2017.

Managers and operators

Anyone applying for FINMA authorisation to operate as a financial institution must meet the following minimum authorisation requirements:

- persons responsible for the management and business operations must have a good reputation, guarantee proper management and possess the requisite specialist qualifications;
- significant equity holders must have a good reputation and not exert their influence to the detriment of prudent and sound business practice;
- compliance with the duties stemming from FinIA and CISA must be assured by internal regulations and an appropriate organisation;
- sufficient financial guarantees must be available; and
- any additional authorisation conditions set forth in FinIA and its implementing ordinances are met.

Territorial scope of regulation

4 What is the territorial scope of fund regulation? Can an overseas manager perform management activities or provide services to clients in your jurisdiction without authorisation?

Swiss legislation governing fund management has an extraterritorial scope and captures the following fund business activities.

The CISA concerns:

- domestic funds and persons responsible for the safekeeping of assets; and
- foreign funds offered or advertised in Switzerland and persons representing foreign funds in Switzerland.

FinIA concerns:

- Persons managing domestic and foreign funds in or from Switzerland (fund management companies, managers of collective assets, portfolio managers).

FinSA concerns:

- persons providing the following financial services in Switzerland or to clients in Switzerland:
 - sale or purchase of financial instruments (including interests in funds);
 - receipt and transmission of orders of financial instruments;
 - management of financial instruments (portfolio management);
 - personal recommendations relating to transactions on financial instruments (investment advice); and
 - granting of loans to finance transactions with respect to financial instruments.

(i) Financial services rendered by a foreign financial service provider within an existing client relationship which was requested by the explicit initiative of a client or (ii) individual financial services which were requested by the explicit initiative of clients from a foreign financial service provider are considered not performed in Switzerland and, therefore, are not captured by the FinSA.

All legal or natural persons carrying on an activity regulated under CISA or FinIA in Switzerland require authorisation from FINMA. The rendering of financial services in Switzerland or to clients in Switzerland governed by FinSA does not trigger a licensing requirement by FINMA but requires the financial service provider and client adviser to comply with certain duties and requirements.

A foreign fund management company cannot act as a fund management company for domestic funds. However, a Swiss fund management company may delegate specific tasks to a foreign fund management company provided this is in the interest of efficient management and the head office and main administration remain in Switzerland.

The asset management of a domestic fund may be delegated to overseas managers who are subject to a licensing and supervisory regime equivalent to that applicable to a Swiss manager of collective assets. Where foreign law requires an agreement on cooperation and the exchange of information with foreign regulators, a delegation to an overseas manager may only take place where such agreement exists between FINMA and the competent foreign regulator.

If the overseas manager is managed in Switzerland or conducts its business largely or exclusively in or from Switzerland, it must be organised in accordance with Swiss law. FINMA authorisation is required when an overseas manager employs persons in Switzerland who conduct, on a permanent commercial basis in or from Switzerland, asset management and certain other activities on its behalf (branch office) or forward client orders or represent the manager for marketing or other purposes (representative office). Branch and representative offices of foreign fund management companies are prohibited.

Acquisitions

5 Is the acquisition of a controlling or non-controlling stake in a fund manager in your jurisdiction subject to prior authorisation by the regulator?

The direct or indirect holding and acquisition of a qualified holding in a fund management company or a manager of collective assets or any change thereof requires the prior authorisation of FINMA. However, there is no such requirement for a qualified holding in a portfolio manager or a trustee. A qualified holding is given, if a person holds

directly or indirectly at least 10 per cent of the share capital or votes or if a person can significantly influence the business activity of the financial institution in another manner.

All qualified equity holders (including qualified equity holders in a portfolio manager or a trustee) must provide proof that they have a good reputation and do not exert their influence to the detriment of prudent and sound business practice.

Restrictions on compensation and profit sharing

6 | Are there any regulatory restrictions on the structuring of the fund manager's compensation and profit-sharing arrangements?

The only fees and incidental costs chargeable to a Swiss fund are those set out in the relevant fund regulations in accordance with the statutory provisions of the CISA and CISO. These include the management fee as well as any performance fee. The intended use of the management fee must be disclosed, as detailed in the SFAMA Transparency Guidelines recognised by FINMA as the minimum standard.

FINMA Circular 2010/1 sets out minimum standards for salary and remuneration policies of financial institutions that generally apply to licensees under the CISA and fund management companies, managers of collective assets and portfolio managers under FinIA only on a voluntary basis.

FUND MARKETING

Authorisation

7 | Does the marketing of investment funds in your jurisdiction require authorisation?

Foreign funds

The marketing of foreign funds falling under the definition of 'offer' or 'advertising' may trigger authorisation requirements for the fund itself. The degree of regulatory requirements depends on the category of investors targeted. Foreign funds offered or advertised to non-qualified investors require the foreign fund to be approved by the Swiss Financial Market Supervisory Authority FINMA (FINMA). Various registration requirements apply (eg, the appointment of a Swiss representative and paying agent). Relevant fund documents to be approved by FINMA can be in English or a Swiss official language. Foreign funds offered or advertised to qualified investors do not require an approval by FINMA and no Swiss representative or paying agent is required. However, offers and advertising of foreign funds to high-net-worth individuals and private investment structures established for them, even if they have declared that they wish to be treated as professional clients under Finsa (opting out) and, therefore, are deemed to be qualified investors under the Collective Investment Schemes Act (CISA), does not require FINMA approval but does still require the appointment of a Swiss representative and paying agent.

Domestic funds

The approval requirement for domestic funds applies irrespective of any marketing activity in Switzerland for such funds.

Marketing entity

Marketing of foreign and domestic funds does not trigger an authorisation requirement for the marketing entity but requires compliance with certain rules of conduct and organisational requirements if a particular marketing activity qualifies as a financial service under the Financial Services Act (FinSA) that is performed in Switzerland or to clients in Switzerland. The duties stipulated in FinSA include requirements for registration of client advisers and for affiliation with an ombudsman's

office. FinSA duties to be complied with by financial service providers and client advisers include client segmentation, rules of conduct (information and documentation duties, appropriateness and suitability, accountability, transparency and diligence requirements) as well as organisational requirements, which are subject to a two-year transition period until 31 December 2021. Financial service providers that wish to benefit from the transitional period to implement the FinSA rules have to adhere to the rules of conduct and organisational rules set out in the former regime, which will remain in force until the new FinSA requirements are fulfilled. In the area of fund marketing, continued compliance with the old CISA and Collective Investment Schemes Ordinance (CISO) provisions governing fund 'distribution' is required, in addition to the corresponding FINMA regulation and Asset Management Association Switzerland (formerly Swiss Funds & Asset Management Association (SFAMA)) self-regulations recognised by FINMA as a minimum standard. Financial service providers required to undergo a prudential audit in Switzerland that intend to comply with the new FinSA rules before expiry of the transition period must irrevocably inform their auditors of their compliance with all new duties in writing, indicating the chosen point in time for full compliance. From a foreign fund perspective, the old requirements for the appointment of a representative and paying agent in Switzerland for an offer to all types of qualified investors will need to be complied with as long as any of the financial service providers involved in the marketing of the foreign fund in Switzerland have not implemented the new FinSA regime.

8 | What marketing activities require authorisation?

Marketing activities are potentially regulated if they fall under the definition of 'offer', 'advertising' or 'financial service' under FinSA and the Financial Services Ordinance (FinSO).

Offer

FinSA and FinSO define an offer as any invitation to acquire a financial instrument that contains sufficient information on the terms of the offer and the financial instrument itself (ie, a communication of any kind that normally aims to draw attention to a financial instrument to sell it). The following is explicitly not deemed an offer:

- provision of information upon request or own initiative of the client (reverse solicitation) that has not been preceded by any advertising within the meaning of FinSA of the specific financial instrument by the financial service provider or someone appointed by the financial service provider;
- naming financial instruments without or in connection with factual, general information (eg, ISIN, NAVs, prices, risk information, price development and tax figures);
- mere provision of factual information; and
- preparation, provision, forwarding and publication of information and documents regarding financial instruments, which are required by law or agreement, to existing clients or financial intermediaries (eg, information on corporate actions, invitations to AGMs, EGMs and related instructions).

As a general rule, an offer (which allows an investor to accept such offer) or an invitation for an offer as outlined in the Swiss Code of Obligations is required.

A pre-sounding, testing-the-water or similar clarification of the fundamental interest of investors, made prior to an offer or other general communications is not an offer. Generally, no offer takes place if the key characteristics of a not yet established fund, in particular the investment policy, fees, subscription and redemption terms and the name of the fund as well as the relevant parties (eg, fund management company, investment manager, administrator and custodian), have not yet been definitively determined to allow a purchase decision by an investor.

Advertising

Advertising is defined in FinSA and FinSO as any communication directed to investors that is aimed at drawing attention to particular financial instruments. The following is explicitly not considered as advertising information:

- naming financial instruments without or in connection with the publication of prices, net asset values, price lists or developments and tax figures;
- reports on issuers or transactions, in particular where these are required by law or regulations by supervisory authorities or trading venues;
- making available or transmitting notices by an issuer to existing clients through financial service providers; and
- reports in the trade press.

Advertising information, ultimately, must serve the offer of certain financial instruments.

Financial service

Fund marketing may occur in the context of transaction-related advice (ie, investment advice without taking account of the entire client portfolio) or portfolio-related investment advice. However, if no personal recommendation is given to a potential investor, no investment advice is rendered to such investor. Mere marketing activities may also fall under the definition of 'sale and purchase of a financial instrument', which shall contain any activity undertaken directly towards a particular (end) client specifically aiming to purchase or sell a financial instrument. However, the offering of a fund itself does not constitute a financial service for a client. In particular, the purchase or sale of a fund interest between regulated financial intermediaries shall not be considered as a financial service.

Territorial scope and restrictions

9 | What is the territorial scope of your regulation? May an overseas entity perform fund marketing activities in your jurisdiction without authorisation?

Swiss legislation governing fund marketing has an extraterritorial scope.

Marketing of foreign funds falling under the definition of 'offer' and/or 'advertising' may trigger an approval requirement for the fund itself and/or a requirement to appoint a Swiss representative and paying agent for the fund.

Marketing of funds by an overseas entity does not trigger an authorisation requirement for the marketing entity but requires compliance with certain rules of conduct and organisational requirements if a particular marketing activity performed in Switzerland qualifies as a financial service under FinSA. However, neither financial services rendered by an overseas entity within an existing client relationship which was requested by the explicit initiative of a client nor individual financial services which were requested by the explicit initiative of clients from a foreign financial service provider shall be considered as performed in Switzerland and, therefore, are not captured by the FinSA.

10 | If a local entity must be involved in the fund marketing process, how is this rule satisfied in practice?

The offering or advertising of foreign funds in Switzerland to non-qualified investors and qualified investors including opted-out high-net-worth individuals and their private investment structures, inter alia, requires the prior appointment of a Swiss representative and paying agent.

Commission payments

11 | What restrictions are there on intermediaries earning commission payments in relation to their marketing activities in your jurisdiction?

Swiss law generally does not prohibit intermediaries from accepting and keeping commission payments in relation to their marketing activities, provided that certain transparency and consent requirements are met.

Licensees under the CISA and their agents are under a regulatory duty of disclosure regarding compensation for distribution. This encompasses the nature and scale of all fees and other pecuniary benefits through which the activities of the distributor are to be compensated. According to the SFAMA Transparency Guidelines, licensees that pay such compensation have to comply with their duty to inform by disclosing in the fund documents that 'retrocessions' may be paid and the services for which they are payable. The recipients of the retrocessions must inform investors, unsolicited and free of charge, of the amount of the compensation they may receive for distribution and, upon request, of the amounts actually received. The SFAMA Transparency Guidelines extend the applicability of the respective duties to foreign intermediaries and foreign funds and their managers. In practice, the distribution agreements for Switzerland usually include a respective contractual undertaking.

In relation to the provision of a financial service subject to FinSA, a compensation from third parties may be accepted and retained only if the financial service provider has expressly informed the client in advance and the client has waived its right to receive such compensation.

Moreover, intermediaries must comply with any corresponding obligations in relation to their clients under applicable Swiss civil law. In a series of leading decisions beginning in 2006, the Swiss Supreme Court held that distribution fees paid to an intermediary acting as agent in connection with clients' assets were subject to a statutory restitution duty and therefore must be passed on to the client unless otherwise foreseen by (written) agreement in which the client waives the right to receive the distribution fee and other benefits on the basis of sufficient disclosure of conflicts of interest and information about the amounts actually paid to the intermediary or, at least, the range of fees and their calculation.

Swiss pension fund legislation provides for a mandatory duty of restitution of all pecuniary benefits that cannot be waived by a Swiss pension institution.

RETAIL FUNDS

Available vehicles

12 | What are the main legal vehicles used to set up a retail fund? How are they formed?

Open-ended retail funds may be set up as contractual funds (FCPs) or as investment companies with variable capital (SICAVs).

FCPs are based on a tripartite fund contract between investors, the fund management company and the custodian bank. Under the fund contract, the fund management company commits itself to involving investors in accordance with the number and type of units they have acquired in the fund and to managing the fund's assets in accordance with the provisions of the fund contract at its own discretion and for its own account. The custodian bank is a party to the contract in accordance with the tasks conferred on it by the Collective Investment Schemes Act (CISA) and by the fund contract. The fund management company draws up the fund contract and, with the consent of the custodian bank, submits it to the Financial Market Supervisory Authority FINMA (FINMA) for approval. Any amendment to the fund contract requires the consent of the custodian bank and prior FINMA approval.

SICAVs must be authorised by FINMA as institutions, and their articles of association and investment regulations require FINMA approval. A SICAV is a company whose capital and number of shares are not specified in advance, whose capital is divided into company and investor shares, for whose liabilities only the company's assets are liable and whose sole object is collective capital investment. It is important to distinguish between self-managed SICAVs, which perform their own administration, and externally managed SICAVs, which delegate the administration to an authorised fund management company. The formation of a SICAV is largely based on the provisions of the Swiss Code of Obligations regarding the formation of companies limited by shares.

If closed-ended share companies in the form of a Swiss stock company are listed on a Swiss stock exchange, they do not fall under the CISA. However, if they are not listed on a Swiss stock exchange, they qualify as investment companies with fixed capital (SICAF) and are subject to authorisation and supervision by FINMA, unless only qualified investors participate and the shares are registered shares. Since the introduction of SICAFs in 2007, none have been authorised in Switzerland, mainly owing to the unfavourable tax treatment that leads to taxation at both the company and the investor level.

Laws and regulations

13 | What are the key laws and other sets of rules that govern retail funds?

The investment fund business in Switzerland is governed by:

- the Collective Investment Schemes Act (CISA);
- the Collective Investment Schemes Ordinance (CISO);
- the FINMA Collective Investment Schemes Ordinance (CISO-FINMA);
- the FINMA Collective Investment Schemes Bankruptcy Ordinance (CISBO-FINMA);
- the Financial Institutions Act (FinIA);
- the Financial Institutions Ordinance (FinIO);
- the FINMA Financial Institutions Ordinance (FinIO-FINMA);
- the Financial Services Act (FinSA); and
- the Financial Services Ordinance (FinSO).

In addition, FINMA, as the competent regulatory body and supervisory authority, has published circulars addressing specific areas of collective investment schemes law.

Market participants must also comply with self-regulation of industry organisations recognised by FINMA as a minimum standard, namely the code of conduct and various guidelines of the Asset Management Association Switzerland (formerly Swiss Funds & Asset Management Association (SFAMA)) and the guidelines of the Swiss Bankers Association.

Authorisation

14 | Must retail funds be authorised or licensed to be established or marketed in your jurisdiction?

All domestic funds require authorisation or approval by FINMA.

Furthermore, all foreign funds offered or advertised to non-qualified investors in Switzerland require FINMA approval.

Marketing

15 | Who can market retail funds? To whom can they be marketed?

Marketing of foreign and domestic retail funds does not trigger an authorisation requirement for the marketing entity but requires compliance with certain rules of conduct and organisational requirements if a particular marketing activity qualifies as a financial service under FinSA and is considered as performed in Switzerland.

Retail funds may be marketed to non-qualified and qualified investors.

Managers and operators

16 | Are there any special requirements that apply to managers or operators of retail funds?

There are no special requirements for managers or operators of retail funds. The general authorisation requirements for managers and operators of funds apply. Overseas managers may be entrusted with the portfolio management of domestic retail funds on the basis of an equivalent home country authorisation and supervision, provided their licence includes managing of retail funds.

Investment and borrowing restrictions

17 | What are the investment and borrowing restrictions on retail funds?

The CISA distinguishes four types of open-ended funds based on the type of investment: securities funds, real estate funds, other funds for traditional investments and other funds for alternative investments. Each type of fund follows a different set of rules regarding permitted investments, investment restrictions and investment techniques.

Additional restrictions may be determined in the fund regulations.

Securities funds

Securities funds may invest in transferable securities issued on a large scale and in non-securities rights with the same function (uncertified securities), and that are traded on a stock exchange or another regulated market that is open to the public, in addition to other liquid financial assets.

The following investments are permitted:

- securities;
- derivatives;
- units in funds;
- money market instruments; and
- short-term deposits.

The following are not permitted: investments in precious metals or precious metal certificates, or commodities or commodity certificates, as well as short-selling of investments.

The following investment techniques may be employed:

- securities lending;
- repurchase agreements;
- borrowing of funds of up to 10 per cent of the fund's net assets; and
- pledging or transferring as collateral up to 25 per cent of the fund's net assets.

Real estate funds

Real estate funds may invest their assets in:

- property;
- real estate companies;
- units in other real estate funds and listed real estate investment companies; and
- foreign real estate securities.

The use of derivatives is permitted for hedging purposes.

Other funds for traditional and other funds for alternative investments

Other funds for traditional and alternative investments are open-ended funds that neither qualify as securities funds nor as real estate funds. Permitted investments for both types of funds include, in particular:

- securities;
- precious metals;
- real estate;
- commodities;
- derivatives;
- units of other funds; and
- other assets and rights.

Investments may be of limited marketability, subject to strong price fluctuations, and may be difficult to value. Often these types of funds exhibit limited risk diversification.

The risk profile of these types of funds differs in terms of their investments, investment techniques and investment restrictions, in particular with regard to the following:

	Other funds for traditional investments	Other funds for alternative investments
Borrowing	Up to 25 per cent of the fund's net assets	Up to 50 per cent of the fund's net assets
Pledge or transfer as collateral	Up to 60 per cent of the fund's net assets	Up to 100 per cent of the fund's net assets
Overall exposure	Up to 225 per cent of the fund's net assets	Up to 600 per cent of the fund's net assets
Engagement in short-selling	Permitted	Permitted

Specific investment restrictions and techniques must be laid down in the fund regulations.

FINMA may grant derogations from the statutory provisions in the individual case.

For SICAFs, the provisions concerning permitted investments for other funds for traditional and alternative investments apply accordingly.

Tax treatment

18 | What is the tax treatment of retail funds? Are exemptions available?

Swiss tax law does not generally differentiate between domestic retail funds and non-retail funds. Taxation depends on the type of legal structure of the fund. The various types of domestic fund can be classified into two groups: FCPs, SICAVs and partnerships for collective investment (LPs); and SICAFs.

The first group is viewed in a transparent manner from a Swiss corporate income tax perspective. These types of funds are not subject to Swiss corporate income taxes on their income or gains. The fund's income is taxed in the hands of the investors. An exception applies to income derived from directly owned real estate that is subject to corporate income tax at the fund level. A domestic fund holding real estate situated in Switzerland may, nevertheless, be tax exempt for the purpose of corporate income tax if its investors consist exclusively of tax-exempt pension schemes or social security institutions and compensation funds.

Profit distribution or accumulated profits from non-distributing (annual deemed distribution) FCPs, SICAVs and LPs are subject to a withholding tax at 35 per cent. If such distributions or accumulated profits derive from real estate or capital gains, no withholding tax is due, provided that they are reported separately. The withholding tax on the distribution or accumulated profits can be reclaimed by Swiss investors if they declare the income in their tax return or account for it in their financial statements.

Non-resident investors may qualify for an exemption from Swiss withholding tax under the affidavit procedure or may reclaim the withholding tax in full, if at least 80 per cent of the fund's earnings are foreign-sourced. If foreign-sourced earnings amount to less than 80 per

cent, a non-resident investor can reclaim Swiss withholding tax based on an applicable double taxation treaty between Switzerland and its country of residence.

The second group is treated identically to any other corporation in Switzerland and, therefore, is not tax transparent for any type of tax. SICAFs are subject to corporate income tax and tax on net equity, and their distributions (but not accumulated profits) to shareholders are subject to withholding tax at 35 per cent.

In principle, regarding capital and income taxes, Swiss legislation does not distinguish between investments in a domestic or a foreign fund. In both cases, investments are subject to capital tax, distributed or accumulated income is subject to income tax, while capital gains are tax-free for investors holding their assets for private investment purposes.

Asset protection

19 | Must the portfolio of assets of a retail fund be held by a separate local custodian? What regulations are in place to protect the fund's assets?

Fund management companies of FCPs, SICAVs and SICAFs must entrust the safekeeping of assets to a custodian bank. Custodian banks must be authorised banks according to the Swiss Banking Act and have an appropriate organisational structure to act as custodian banks for funds. Unlike depositories and paying agents, custodian banks must, in addition to their banking licence, be authorised as such by FINMA.

The role of a custodian bank includes holding fund assets on deposit, issuing and redeeming units, and handling payments processing and ensuring that the fund management company or SICAV comply with the regulations.

A custodian bank may delegate the safekeeping of fund assets to regulated third-party custodians and collective securities depositories in Switzerland or abroad, provided this is in the interest of efficient safekeeping and is appropriate. Any change of custodian bank requires prior FINMA authorisation.

If a custodian bank becomes bankrupt, the assets held by it in custody are not included in the bank's bankruptcy estate. Instead, the assets (except cash) are segregated from the bank's bankruptcy estate in favour of the fund management company of an FCP or of a SICAV, subject to any claims by the custodian bank against the respective depositor.

In the case of bankruptcy of a fund management company of an FCP, assets and rights belonging to the fund will be segregated in favour of the investors. Debts of the fund management company that do not arise under the fund contract may not be set off against claims of the investment fund.

Governance

20 | What are the main governance requirements for a retail fund formed in your jurisdiction?

Any party responsible for the management of funds and the safekeeping of assets held in it must obtain authorisation from FINMA.

If there is a change in the circumstances underlying the authorisation, FINMA's authorisation must be sought prior to the continuation of activity. The following must be reported to FINMA without delay:

- changes to organisational and corporate documents;
- changes in the persons responsible for the management and business operations and of significant equity holders;
- facts that might call into question the good reputation or the guaranteeing of proper management by the persons responsible for the management and business operations (eg, criminal proceedings);
- facts that might call into question the good reputation of significant equity holders or the prudent and sound business practice of the licensee owing to the influence of significant equity holders;

- change of executive persons entrusted with the performance of the custodian bank's duties; and
- any change regarding minimum capital, capital adequacy and financial guarantees.

Persons managing, representing or safekeeping assets of funds and their agents must fulfil the following statutory conduct rules:

- duty of loyalty: they must act independently and exclusively in the interest of the investors;
- due diligence: they must implement organisational measures that are necessary for proper management; and
- duty to provide information:
- they must ensure the provision of transparent financial statements and provide appropriate information about the funds that they manage and distribute and the assets that they hold in safekeeping;
- they must disclose all charges and fees incurred directly or indirectly by the investors and their appropriation; and
- they must notify investors of compensation for the distribution of funds in the form of commission, brokerage fees and other soft commissions in a full, truthful and comprehensive manner.

Persons providing a financial service within the meaning of FinSA related to funds must comply with the rules of conduct and organisational requirements under FinSA.

The statutory conduct rules are complemented by self-regulation of industry organisations that FINMA has recognised as minimum standards, particularly the Code of Conduct of the Asset Management Association Switzerland (formerly Swiss Funds & Asset Management Association SFAMA), as well as several guidelines.

Reporting

21 | What are the periodic reporting requirements for retail funds?

Domestic funds

Open-ended funds must keep separate accounts and publish an audited annual report within four months of the end of the fund's financial year and an unaudited semi-annual report within two months of the end of the first half of the fund's financial year.

The fund management company of an FCP or a SICAV must publish the prices at regular intervals in the designated publication instrument as indicated in the prospectus.

Changes to the fund regulations of FCPs, SICAVs or SICAFs must be communicated to investors by way of publication and require prior approval or authorisation by FINMA. In the case of material changes, investors have a right to lodge objections. Changes to the prospectus, simplified prospectus and key investor information documents must only be notified to FINMA.

Foreign funds

Foreign retail funds approved for offer must also publish an annual report within four months of the end of the fund's financial year and a semi-annual report within two months of the fund's first half of the financial year.

In addition, they must publish prices at regular intervals in the designated Swiss publication instrument as indicated in the prospectus.

Moreover, investors must be notified by way of publication about amendments to the fund documents, change of legal form, mergers, liquidations, changes of Swiss representative or paying agent and measures taken by foreign regulators, and if 'gating' is imposed for a foreign fund having the ability to gate. The amended fund documents require (post-effective) FINMA approval.

Proposed changes of the Swiss representative or paying agent, as well as the termination of representative agreements, require prior FINMA approval.

Issue, transfer and redemption of interests

22 | Can the manager or operator place any restrictions on the issue, transfer and redemption of interests in retail funds?

The fund management company of an FCP or the SICAV may temporarily or fully suspend the issue of units at any time and may reject individual applications to subscribe for, or switch, units without assigning any reason therefor.

There are no statutory restrictions on the transfer of units in open-ended retail funds.

The fund regulations of open-ended retail funds, however, may further restrict the issue and transfer of units.

Investors of open-ended retail funds are, in principle, entitled to request the redemption of their units and payment of the redemption amount in cash. The fund regulations of open-ended retail funds whose value is difficult to ascertain, or that have limited marketability, however, may provide for notice to be served only on specific dates, subject to a minimum of four times per year.

FINMA may, in the event of a justified request, restrict the right to redeem at any time depending on the investments and investment policy. This can apply specifically in the case of investments that are not listed and not traded on another regulated market open to the public, mortgages and private equity investments. The right to redeem at any time may be suspended for a maximum of five years and this restriction on redemption must explicitly be disclosed in the fund regulations.

The fund regulations may provide for repayment to be deferred temporarily in certain circumstances (eg, market closures, trading restrictions or suspensions, emergencies, restrictions on asset transfers or large-scale withdrawals of units) or for a 'gating' procedure taking into account the interests of the remaining investors.

The auditor and FINMA must be informed immediately of any decision to defer redemptions or apply gating as well as of any lifting of such measures. Respective decision must also be communicated to the investors in a suitable manner.

The transferability of shares in SICAFs is regulated by the Swiss Code of Obligations. The SICAF's articles of association can set out certain transfer restrictions. If there are no restrictions, the shares are freely transferable.

In the case of closed-ended retail funds, investors have neither a direct nor an indirect legal entitlement to request redemptions.

NON-RETAIL POOLED FUNDS

Available vehicles

23 | What are the main legal vehicles used to set up a non-retail fund? How are they formed?

Open-ended non-retail funds may be set up as contractual funds (FCPs) or as investment companies with variable capital (SICAVs). Closed-ended non-retail funds may be set up as investment companies with fixed capital (SICAFs) or as partnerships for collective investment (LPs).

An LP is a partnership whose sole objective is collective investment. At least one member bears unlimited liability (general partner), while other members (limited partners) are liable only up to a specified amount (limited partner's contribution). General partners must be companies limited by shares with their registered office in Switzerland. Limited partners must be qualified investors according to the Collective Investment Schemes Act (CISA). An LP may only manage its own investments. An LP conducts investments in risk capital. The investments in

companies or projects can take the form of equity capital, lending or mezzanine financing. Other permitted investments generally include construction, real estate and infrastructure projects as well as alternative investments.

Laws and regulations

24 | What are the key laws and other sets of rules that govern non-retail funds?

Investment fund business in Switzerland is governed by:

- the Collective Investment Schemes Act (CISA);
- the Collective Investment Schemes Ordinance (CISO);
- the FINMA Collective Investment Schemes Ordinance (CISO-FINMA);
- the FINMA Collective Investment Schemes Bankruptcy Ordinance (CISBO-FINMA);
- the Financial Institutions Act (FinIA);
- the Financial Institutions Ordinance (FinIO);
- the FINMA Financial Institutions Ordinance (FinIO-FINMA);
- the Financial Services Act (FinSA); and
- the Financial Services Ordinance (FinSO).

In addition, the Swiss Financial Market Supervisory Authority FINMA (FINMA), as the competent regulatory body and supervisory authority, has published circulars addressing specific areas of collective investment schemes law.

Market participants must also comply with self-regulation of industry organisations recognised by FINMA as a minimum standard, namely the code of conduct and various guidelines of the Asset Management Association Switzerland (formerly Swiss Funds & Asset Management Association (SFAMA)) and the guidelines of the Swiss Bankers Association.

Authorisation

25 | Must non-retail funds be authorised or licensed to be established or marketed in your jurisdiction?

All domestic non-retail funds must be approved or authorised by FINMA. Foreign non-retail funds may not be approved for offer to non-qualified investors.

Marketing

26 | Who can market non-retail funds? To whom can they be marketed?

Marketing of foreign and domestic non-retail funds does not trigger an authorisation requirement for the marketing entity but requires compliance with certain rules of conduct and organisational requirements if a particular marketing activity qualifies as a financial service under FinSA and is considered as performed in Switzerland.

Non-retail funds may exclusively be marketed to qualified investors.

Ownership restrictions

27 | Do investor-protection rules restrict ownership in non-retail funds to certain classes of investor?

The circle of investors of non-retail funds is limited to the following qualified investors according to the CISA and CISO:

(1) professional clients within the meaning of FinSA, namely:

- financial intermediaries as defined in the Banking Act, the FinIA and the CISA (eg, banks, securities firms, fund management companies, managers of collective assets, portfolio managers and trustees);
- regulated insurance companies as defined in the Insurance Supervision Act;

- foreign financial intermediaries and insurance companies subject to prudential supervision as institutions listed above;
- central banks;
- public entities with professional treasury operations;
- pension funds with professional treasury operations and other occupational pension institutions providing professional treasury operations;
- companies with professional treasury operations;
- large companies that reach at least two of the following thresholds: a balance sheet of 20 million Swiss francs, turnover of 40 million Swiss francs or equity of 2 million Swiss francs, regardless of whether they have professional treasury operations; and
- private investment structures established for high-net-worth individuals with professional treasury operations.

(2) high-net-worth individuals and their investment structures without professional treasury operations who have confirmed in writing that they have at least 2 million Swiss francs of eligible financial assets, or confirmed that they have at least 500,000 Swiss francs in eligible financial assets and demonstrates that their knowledge is sufficient to understand the risks of the investments due to their education and work experience or a similar experience in the financial sector; and who have declared that they wish to be treated as professional clients under the FinSA (opting out); and

(3) private clients to whom a regulated financial intermediary as defined above or a foreign financial intermediary subject to equivalent prudential supervision renders discretionary portfolio management services or advisory services in the context of long-term relationships.

The professional treasury operations requirements are fulfilled if at least one internal or external qualified person with experience in financial matters is entrusted with managing the liquid financial assets within the framework of a professional cash or treasury management on a permanent basis.

Any investor that is not a qualified investor is a 'non-qualified investor'.

Professional clients that opt in to private client status remain qualified investors for the purpose of the CISA.

The specific fund regulations may provide for additional restrictions in individual cases (eg, for tax exemption reasons).

Managers and operators

28 | Are there any special requirements that apply to managers or operators of non-retail funds?

The requirements that apply to managers or operators of non-retail funds are essentially the same as for retail funds. The general authorisation requirements for managers and operators of funds apply.

In the case of single investor funds (for regulated insurance companies, public entities with professional treasury operations or pension schemes with professional treasury operations and other occupational pension institutions providing professional treasury operations), the fund management company of an FCP or SICAV may delegate the investment decisions to the single investor. FINMA may exempt them from the duty to subject themselves to supervision for managers of collective assets.

Tax treatment

29 | What is the tax treatment of non-retail funds? Are any exemptions available?

Swiss tax law does not generally differentiate between domestic retail funds and non-retail funds. Taxation depends on the type of legal structure of the fund. The various types of domestic fund can be classified into two groups: FCPs, SICAVs and LPs; and SICAFs.

The first group is viewed in a transparent manner from a Swiss corporate income tax perspective. These types of funds are not subject to Swiss corporate income taxes on their income or gains. The fund's income is taxed in the hands of the investors. An exception applies to income derived from directly owned real estate that is subject to corporate income tax at the fund level. A domestic fund holding real estate situated in Switzerland may, nevertheless, be tax exempt for the purpose of corporate income tax if its investors consist exclusively of tax-exempt pension schemes or social security institutions and compensation funds.

Profit distribution or accumulated profits from non-distributing (annual deemed distribution) FCPs, SICAVs and LPs are subject to a withholding tax at 35 per cent. If such distributions or accumulated profits derive from real estate or capital gains, no withholding tax is due, provided that they are reported separately. The withholding tax on the distribution or accumulated profits can be reclaimed by Swiss investors if they declare the income in their tax return or account for it in their financial statements.

Non-resident investors may qualify for an exemption from Swiss withholding tax under the affidavit procedure or may reclaim the withholding tax in full, if at least 80 per cent of the fund's earnings are foreign-sourced. If foreign-sourced earnings amount to less than 80 per cent, a non-resident investor can reclaim Swiss withholding tax based on an applicable double taxation treaty between Switzerland and its country of residence.

The second group is treated identically to any other corporation in Switzerland and, therefore, is not tax transparent for any type of tax. SICAFs are subject to corporate income tax and tax on net equity, and their distributions (but not accumulated profits) to shareholders are subject to withholding tax at 35 per cent.

In principle, regarding capital and income taxes, Swiss legislation does not distinguish between investments in a domestic or a foreign fund. In both cases, investments are subject to capital tax, distributed or accumulated income is subject to income tax, while capital gains are tax-free for investors holding their assets for private investment purposes.

Asset protection

30 | Must the portfolio of assets of a non-retail fund be held by a separate local custodian? What regulations are in place to protect the fund's assets?

Fund management companies of FCPs, SICAVs and SICAFs must entrust the safekeeping of assets to a custodian bank. Custodian banks must be authorised banks according to the Swiss Banking Act and have an appropriate organisational structure to act as custodian banks for funds. Unlike depositories and paying agents, custodian banks must, in addition to their banking licence, be authorised as such by FINMA.

In the case of a SICAV that is exclusively open to qualified investors, FINMA may, under certain conditions, grant exemptions to appoint a custodian bank.

The role of a custodian bank includes holding fund assets on deposit, issuing and redeeming units, and handling payments processing and ensuring that the fund management company or SICAV comply with the regulations.

A custodian bank may delegate the safekeeping of fund assets to regulated third-party custodians and collective securities depositories in Switzerland or abroad, provided this is in the interest of efficient safekeeping and is appropriate. Any change of custodian bank requires prior FINMA authorisation.

If a custodian bank becomes bankrupt, the assets held by it in custody are not included in the bank's bankruptcy estate. Instead, the assets (except cash) are segregated from the bank's bankruptcy estate in favour of the fund management company of an FCP or of a SICAV, subject to any claims by the custodian bank against the respective depositor.

In the case of bankruptcy of a fund management company of an FCP, assets and rights belonging to the fund will be segregated in favour of the investors. Debts of the fund management company that do not arise under the fund contract may not be set off against claims of the investment fund.

LPs do not have to deposit the fund's assets with a Swiss custodian bank or any other regulated institution. Therefore, the assets are generally not subject to special treatment in the event of the fund's bankruptcy. However, if the assets are held with a Swiss bank within the meaning of the BA, the assets deposited with that bank are, in the case of the bank's bankruptcy, subject to the same rules as open-ended funds.

Governance

31 | What are the main governance requirements for a non-retail fund formed in your jurisdiction?

Any party responsible for the management of funds and the safekeeping of assets held in it must obtain authorisation from FINMA.

If there is a change in the circumstances underlying the authorisation, FINMA's authorisation must be sought prior to the continuation of activity. The following must be reported to FINMA without delay:

- changes to organisational and corporate documents;
- changes in the persons responsible for the management and business operations and of significant equity holders;
- facts that might call into question the good reputation or the guaranteeing of proper management by the persons responsible for the management and business operations (eg, criminal proceedings);
- facts that might call into question the good reputation of significant equity holders or the prudent and sound business practice of the licensee owing to the influence of significant equity holders;
- change of executive persons entrusted with the performance of the custodian bank's duties; and
- any change regarding minimum capital, capital adequacy and financial guarantees.

Persons managing, representing or safekeeping assets of funds and their agents must fulfil the following statutory conduct rules:

- duty of loyalty: they must act independently and exclusively in the interest of the investors;
- due diligence: they must implement organisational measures that are necessary for proper management; and
- duty to provide information:
 - they must ensure the provision of transparent financial statements and provide appropriate information about the funds that they manage and distribute and the assets that they hold in safekeeping;
 - they must disclose all charges and fees incurred directly or indirectly by the investors and their appropriation; and
 - they must notify investors of compensation for the distribution of funds in the form of commission, brokerage fees and other soft commissions in a full, truthful and comprehensive manner.

Persons providing a financial service within the meaning of FinSA related to funds must comply with the rules of conduct and organisational requirements under FinSA.

The statutory conduct rules are complemented by self-regulation of industry organisations that FINMA has recognised as minimum standards, particularly the Code of Conduct of the Asset Management Association Switzerland (formerly Swiss Funds & Asset Management Association (SFAMA)), as well as several guidelines.

Reporting

32 | What are the periodic reporting requirements for non-retail funds?

Generally, the same rules apply as for retail funds.

FINMA may, upon request, fully or partially exempt non-retail funds from certain reporting requirements under the CISA (eg, the duty to publish a semi-annual report or to publish prices). Exemptions must be established in the fund regulations.

SEPARATELY MANAGED ACCOUNTS

Structure

33 | How are separately managed accounts typically structured in your jurisdiction?

Managed accounts are usually structured by arranging for the mainly professional client to appoint a (Swiss) bank or securities firm for the purpose of holding the client's assets in an account. In addition, the respective bank or securities firm, or an outside asset manager, is given discretionary investment management authority to acquire and dispose of assets in the account. Operational duties in areas such as investment compliance, risk management, reporting and accounting can be delegated to a fund management company.

Key legal issues

34 | What are the key legal issues to be determined when structuring a separately managed account?

The standard of care owed to the client, any limitation of liability, fee structure, transparency and reporting requirements and applicable investment limitations are often among the most important terms for a separately managed account.

The discretionary investment management mandate given by the client to the investment manager as well as the account relationship with the bank or securities dealer are typically governed by the statutory provisions set out in the Swiss Code of Obligations and by the relevant agreements between the parties. As a financial service provider subject to the Financial Services Act (FinSA), the investment manager has to comply with the regulatory duties towards its clients set out in FinSA. Furthermore, accepted minimum standards for investment management mandates are defined in the guidelines and codes of conduct regarding investment management issued by the Swiss Financial Market Supervisory Authority FINMA and industry organisations – in particular, the Swiss Bankers Association and Asset Management Association Switzerland (formerly Swiss Funds & Asset Management Association (SFAMA)).

Regulation

35 | Is the management or marketing of separately managed accounts regulated in your jurisdiction?

The management or marketing of separately managed accounts by overseas managers is not subject to an authorisation requirement in Switzerland, provided that no personnel are permanently and on a professional basis employed in Switzerland or fully integrated into the organisation (or both) and, accordingly, no branch or representative office within the meaning of FinIA is maintained. However, foreign financial service providers and their client advisers, respectively, who service clients in Switzerland, are required to affiliate with an ombudsman's office and to register with the client adviser register under FinSA, except if they are subject to prudential supervision in their home country and if exclusively institutional and professional clients are targeted in

Switzerland. A registration/affiliation exemption does not relieve foreign financial service providers from compliance with the applicable rules of conduct and the organisational requirements imposed by FinSA.

Domestic banks, securities firms, managers of collective assets and, subject to applicable transitional provisions, portfolio managers providing portfolio management services for separately managed accounts in accordance with a discretionary mandate given by a client are supervised by FINMA or the competent supervisory organisation also with regard to the provision of this (additional) service.

The rules on offering and advertising funds must be considered if investment funds are used in separately managed accounts.

GENERAL

Proposed reforms

36 | Are there proposals for further regulation of funds, fund managers or marketers of funds in your jurisdiction?

The revised Collective Investment Schemes Act (CISA), the new Financial Institutions Act (FinIA) and Financial Services Act (FinSA) and the implementing ordinances came into effect on 1 January 2020, with transitional periods for compliance with some of the new rules. A set of revised and new implementing regulations by the Swiss Financial Market Supervisory Authority FINMA (FINMA) (including the new FINMA Financial Institutions Ordinance (FinIO-FINMA)), which are mainly technical in nature, entered into force on 1 January 2021, subject to certain transitional provisions. The revision of relevant self-regulation by the Asset Management Association Switzerland (formerly Swiss Funds & Asset Management Association (SFAMA)) is still pending. Therefore, at this stage of the implementation of the new regime, some questions still remain open.

It is expected that certain proposed changes to the Financial Institutions Ordinance (FinIO) and the Financial Services Ordinance (FinSO), including a revised supervisory regime for representative offices of foreign asset managers, will enter into force on 1 August 2021.

Public listing

37 | Outline any specific requirements for stock-exchange listing of retail and non-retail funds.

The listing of domestic and foreign funds on a Swiss stock exchange is governed by the Federal Act on Financial Market Infrastructures and Market Conduct in Securities and Derivatives Trading, and the applicable self-regulation of the respective stock exchange.

The listing rules of the main Swiss stock market, the SIX Swiss Exchange, contain specific requirements for the listing and the maintenance of the listing of different types of collective investment schemes, namely investment funds, exchange-traded structured funds and – in practice, most relevant – real estate funds and actively or passively managed exchange-traded funds (ETFs). In particular, minimum capitalisation and free-float requirements apply if no market-maker is appointed for the fund units. Implementing trading provisions contain further conditions for the market making of ETFs. Furthermore, it is a listing requirement that domestic and foreign funds be approved or authorised by FINMA. On the other hand, FINMA will not approve, for offer to non-qualified investors, a foreign fund that is an ETF or has the term 'ETF' in its name unless share classes actually offered to non-qualified investors in Switzerland are listed on a recognised Swiss stock exchange. It is worth noting that under its current practice, FINMA does not approve 'blended' funds including (listed) ETF and non-ETF share classes. The prospectus submitted to FINMA for approval serves as the listing prospectus. FINMA requires the fund regulations of an ETF to include specific information (eg, applicable replication method and market making).

Overseas vehicles

38 | Is it possible to redomicile an overseas vehicle in your jurisdiction?

There is neither a general regulatory system nor any general FINMA guidance on the redomiciliation of overseas vehicles to Switzerland.

FINMA may, in an individual case, accept two forms of repatriation of an overseas vehicle to Switzerland:

- transfer of assets of an overseas vehicle into a newly created domestic fund by exchange of units of the overseas vehicle or by redemption of units in kind to the investors of the overseas vehicle and following contribution in kind as new investors of the domestic fund on the same day. The then empty overseas vehicle will be liquidated; and
- transfer of domicile of the overseas vehicle to Switzerland, whereby the overseas vehicle needs to be transformed into a domestic fund, complying with all applicable Swiss laws and regulations.

Foreign investment

39 | Are there any special rules relating to the ability of foreign investors to invest in funds established or managed in your jurisdiction or domestic investors to invest in funds established or managed abroad?

Other than the applicable marketing restrictions, there are no special statutory restrictions in this regard.

However, the ability of foreign investors to invest in domestic funds may be limited by the applicable fund regulations.

Certain domestic investors, such as Swiss pension schemes, may be restricted to a certain extent by law to invest in funds established or managed abroad.

Funds investing in derivatives

40 | Are there any special requirements in your jurisdiction relating to funds investing in derivatives?

Derivatives may be used not only for hedging purposes but also as part of the active investment strategy of funds. However, for real estate funds, the use of derivatives is only permitted for hedging purposes. The derivatives used must correspond to the investment strategy of the fund and their underlying assets must also be permissible as investments. Risks must be measured using either the commitment approach or the model approach depending on the complexity of the use of the derivatives. The derivatives used in an investment fund must also be fully taken into account when complying with the various legal limits (risk distribution limits, minimum and maximum limits of the investment policy, etc) as well as the requirements for counterparty risk. In addition, fund management companies, managers of collective assets and collective investment schemes must comply with the requirements of the market conduct rules of the Federal Act on Financial Market Infrastructures and Market Conduct in Securities and Derivatives Trading (FMIA) when trading derivatives. In particular, settlement, reporting, risk mitigation and platform trading obligations stemming from the FMIA must be complied with.

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UPDATE AND TRENDS

Recent developments

- 41 | Are there any other current developments or emerging trends in your jurisdiction that should be noted? Please include reference to world-wide regulatory concerns, such as restrictions on foreign ownership in strategic industries, high-frequency trading, commodity position limits, capital adequacy for investment firms and 'shadow banking'.

There are none at this time.

Coronavirus

- 42 | What emergency legislation, relief programmes and other initiatives specific to your practice area has your state implemented to address the pandemic? Have any existing government programmes, laws or regulations been amended to address these concerns? What best practices are advisable for clients?

The Asset Management Association Switzerland (formerly Swiss Funds & Asset Management Association (SFAMA)) issued three circulars in April 2020 intended to provide clarity and direction to its members and other market participants regarding the impact on their fund management activities from covid-19. The circulars include recommendations and address issues such as redemption pressure, liquidity problems and valuation challenges.

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