Spotlight 02/22

LIMITED QUALIFIED INVESTOR FUND (L-QIF)

Launch of New Unregulated Swiss Fund Expected for 2023

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The L-QIF, a new type of unregulated Swiss investment fund is expected to be launched in 2023. For the first time, Swiss law will allow for an unregulated fund limited to qualified investors that does not require a license or an approval from FINMA and can therefore be launched quickly and without high costs. The liberal investment guidelines make the L-QIF an ideal candidate for alternative investments and innovative fund strategies.

On 17 December 2021, the Swiss Parliament passed an amendment of the Collective Investment Schemes Act («**CISA**») to introduce the Limited Qualified Investor Fund («**L-QIF**»). This new category of collective investment schemes does not require a license or an approval from the Swiss Financial Market Supervisory Authority («**FINMA**») if offered exclusively to qualified investors. The L-QIF can therefore be launched much faster than existing types of funds reducing the time to market significantly and, since it is unregulated, the setup is also expected to be less costly. Moreover, liberal investment guidelines for the L-QIF allow for additional flexibility and innovation.

The main goal of the legislator was to strengthen the competitiveness of the Swiss financial market and to increase the attractiveness of Swiss funds structures compared to similar foreign products such as e.g., Luxembourg›s Reserved Alternative Investment Fund (RAIF) that served as a model for this new fund category in Switzerland.

The L-QIF entails an appropriate deregulation for qualified investors who are able to carry out their own due diligence with respect to the fund structure and were already able to invest in similar unregulated foreign funds without compromising protection for retail investors.

L-QIF: A new Type of Collective Investment Scheme

The L-QIF is a new type of collective investment scheme which is open exclusively to qualified investors, does not hold a license or approval from FINMA and is managed directly or indirectly by a licensed financial institution supervised by FINMA. L-QIFs in the form of contractual investment funds or organized as SICAV must appoint a fund management company for the administration of the fund and, in the case of the SICAV, the investment management. L-QIFs organized as limited partnerships for collective investments must delegate the management to a licensed manager for collective assets. By contrast, self-managed SICAVs will not be permitted. These requirements regarding the management of the L-QIF established an «indirect» supervision by FINMA, which has to ensure that the involved regulated entities have the required knowledge and experience to compensate for dispensing with the licensing requirement of the fund.

Also, the investment decision can only be delegated to managers of collective assets or foreign investment managers subject to adequate regulations and supervision abroad but not to Swiss portfolio managers who are not licensed to manage the assets of collective investment schemes. The latter limitation was justified in the legislative process on the grounds that portfolio managers are not supervised by FINMA on a day-to-day basis but by a supervisory organization that is otherwise not involved in the supervision of collective investment schemes.

«THE L-QIF ENTAILS A LIBERALIZATION FOR QUALIFIED INVESTORS AND INCREASES THE ATTRACTIVENESS OF SWISS FUNDS STRUCTURES»

The L-QIF must be structured as one of the existing forms for Swiss collective investment schemes – except for a SICAF, which is not permitted as a basis for an L-QIF – and does not constitute a new type of legal entity. Consequently, the L-QIF will be subject to the rules of the CISA unless specific exemptions apply. Special rules exist in particular with respect to investment guidelines, risk diversification rules, the duty to publish a prospectus and the possibility to temporarily suspend redemption rights of investors for open-ended L-QIFs. To further shorten the time to market, the L-QIF will not be subject to the Anti-Money Laundering Act (AMLA) if the financial intermediary that is responsible for the management of the L-QIF ensures compliance with the AML regulations.

«NO SPECIFIC INVESTMENT GUIDELINES AND RISK DIVERSIFICATION RULES EXIST FOR L-QIFS, BECAUSE ONLY QUALIFIED INVESTORS ARE ALLOWED TO INVEST IN AN L-QIF.»

Liberal Investment Guidelines for L-QIFs

No specific investment guidelines and risk diversification rules exist for L-QIFs, because only qualified investors are allowed to invest in an L-QIF. The CISA does not impose restrictions for permissible investments and, therefore, allows investments in traditional asset classes such as e.g., securities, money market instruments and real estate as well as in more exotic asset classes including commodities, crypto assets, art, wine or antique cars. Furthermore, since no risk diversification rules apply either, an L-QIF may invest all its funds in a single asset or a single type of assets (e.g., shares of a single company). The respective investment strategy must be disclosed to the investors in the fund documents. Like other collective investment schemes, an L-QIF may invest in assets whose market liquidity is limited or valuation may be difficult.

Although the CISA delegates defining investment restrictions to the Federal Council, they are not expected to be stricter than the existing restrictions for funds for alternative investments.

Use Cases

Although the L-QIF has limited possibilities for use with foreign investors and the Swiss withholding tax disadvantages remain, the L-QIF is expected to establish itself as an alternative to foreign funds for investors with strong Swiss ties.

For example, an L-QIF is an attractive structure for investments in startup companies. Structuring the investment as an investment fund allows, for example, Swiss pension funds or insurance companies to pool their funds in order to quickly make an investment once a suitable company has been identified. Since no approval from FINMA is required for setting up the L-QIF, the fund can be established within days instead of several months as is the case for regulated investment funds.

Moreover, an L-QIF can also be used to launch a fund quickly and get initial investors onboard so that the fund can be converted to a regulated fund without time pressure.

Lastly, because of its liberal investment guidelines, an L-QIF could also be a suitable investment vehicle for launching a Swiss fund investing in crypto assets or a real estate fund focusing on sustainability. In this context, the revised CISA, however, sets out additional restrictions for L-QIFs investing in real estate and excludes high-net-worth individuals and private investment structures created for them who opted to be treated as qualified investors from investing in an L-QIF investing in real estate mainly for tax reasons.

Conversion of L-QIFs into Regulated Funds and Vice Versa

Setting up an investment fund as L-QIF is not a one-way street. If an L-QIF wants to allow non-qualified investors at a later stage, the fund can apply for a FINMA license, provided that the fund complies with all regulatory requirements including the more restrictive investment guidelines of a regulated investment fund. This process further allows to quickly launch an investment fund in Switzerland, and, then, after having established a track record, convert it into a fully regulated fund.

Alternatively, a FINMA licensed investment fund may opt-down and become an L-QIF provided that the interests of the existing investors are safeguarded.

Outlook

With the introduction of the new L-QIF, a Swiss fund limited to qualified investors can be launched much faster and less costly than before providing investors with strong Swiss ties with an attractive alternative to similar foreign funds. By providing a high level of flexibility with respect to applicable investment guidelines and risk diversification rules, the L-QIF is also attractive to promotors of funds looking for a Swiss structure for non-traditional asset classes such as commodities or crypto assets.

Prior to the amended CISA entering into force, which is expected for Q2 2023 provided that no referendum will be taken until the deadline expires on 7 April 2022, the Federal Council will launch a consultation process on the proposed amendments to the implementing ordinance in summer 2022. For the L-QIF to become a success story, it will be important that these rules do not unnecessarily limit the flexibility foreseen introduced for this fund type.

Keyfacts

01 The L-QIF is a new type of collective investment scheme in Switzerland which is open exclusively to qualified investors and does not require a license or an approval from FINMA.

02 The liberal investment guidelines for an L-QIF allow investments in traditional asset classes such as e. g., securities, money market instruments and real estate as well as in more exotic asset classes including commodities and crypto assets.

03 The launch of the L-QIF is expected for Q2 2023, after a consultation on the implementing provisions will take place in summer 2022.

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