Limited qualified investor fund

Kontakte

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The Swiss legislator is currently working on the introduction of a new type of investment fund: the limited qualified investor fund (L-QIF). The fund will not need to be approved by the regulator (FINMA) and is not subject to direct prudential supervision, making setting up an L-QIF faster and cheaper than setting up currently available Swiss fund structures. It will be available only to qualified investors and can only be managed by a regulated asset manager or a fund management company. The L-QIF is expected to be available from the beginning of 2022.

All currently available Swiss fund structures require authorisation by the Swiss Financial Market Supervisory Authority (FINMA). FINMA must also be notified of and approve any changes in fund documentation. Although this process offers a high degree of protection for investors, it comes with certain costs – in terms of both money and time.

Certain types of investor are well informed and sophisticated and therefore depend less on the regulator's protection. Such investors tend to be more interested in cost-efficient, fast and agile fund structures. As a result, a lot of fund managers and qualified investors have chosen to set up fund structures outside Switzerland, for example reserved alternative investment funds (RAIFs) in Luxembourg or offshore fund structures.

As a result, the introduction of L-QIF was suggested– a new fund structure, reserved only for qualified investors and which does not require a FINMA license. L-QIF will offer qualified investors a Swiss alternative to similar foreign fund structures, and is most comparable to Luxembourg's RAIF.

The idea of the new fund structure was very well received by all sides in Switzerland. The goal of introducing L-QIF is to increase Switzerland's innovation ability and competitiveness as a fund location. In particular, on the investor side, pension funds and insurance companies have expressed their interest in the new structure.

What concrete requirements are included in the current legislative bill?

L-QIF will be open exclusively to qualified investors. The launch of the new fund structure will not include the introduction of a new legal structure. Instead, it will be possible to launch an L-QIF in the form of an existing Swiss fund structure, namely a contractual fund, an investment company with variable capital (SICAV) or a limited partnership for collective investment (LPCI or KmGK).

The current bill does not contain any restrictions on possible investments or on risk diversification, thus offering financial market participants maximum freedom in this regard.

Only financial institutions supervised by FINMA can manage an L-QIF.

An **L-QIF in the form of a contractual fund** can therefore only be managed by a fund management company, which can in turn delegate investment decisions to a manager of collective assets.

An **L-QIF in the form of a SICAV** has to delegate both administrative and investment decisions to the same fund management company. Administration of a SICAV includes mainly the executive management and the tasks pursuant to Article 716a of the Code of Obligations (specifically the overall management and determination of how the company is organised, the determination of the principles of the investment policy and the designation of the depositary bank). In addition, the administrative tasks include risk management, the set-up of an internal control system and compliance, marketing of the fund and valuation of the fund's investments. The fund management company can sub-delegate the portfolio management to a manager of collective assets.

An **L-QIF in the form of a LPCI** has to delegate its executive management, including investment decisions, to a manager of collective assets. Delegating to a manager of collective assets and not to a fund management company is possible due to the close-ended fund structure of the LPCI. Delegation is not necessary at all if the general partner of the LPCI is a bank, an insurance company, a securities firm, a fund management company or a manager of collective assets.

Within the framework of the authorisation chain as per Article 6 of the Financial Institutions Act ("FinIA"), management of the L-QIF can also be delegated to financial institutions that are subject to stricter regulation, such as a bank or an insurance company.

Possibility to convert an L-QIF into a regulated fund structure

As with Luxembourg's RAIF, it will be possible to convert the L-QIF into a fund structure regulated and supervised by FINMA at a later point in time. It will therefore be possible for market participants to quickly and cost efficiently set up fund structures in the form of an L-QIF and, where required, convert them into regulated fund structures.

Reporting requirements and statistics

For transparency reasons, all L-QIFs will be obliged to report their management and statistical data to the Federal Department of Finance (FDF). The FDF will publish a register of all L-QIFs. Similarly, RAIFs in Luxembourg have to be registered in a specific register. It is foreseen, that the violation of the registration obligation will be punished with a fine of up to CHF 500,000.

Prospectus and key information document

In line with the requirements for other Swiss funds that are only offered to qualified investors, L-QIFs will not be required to prepare a prospectus.

Generally, a key information document will also not be required for L-QIFs. However, it may potentially be required for retail clients for whom a financial intermediary provides investment advice within the scope of a permanent investment advice relationship, as those private clients do not fall under the exception of Article 58 para. 2 of the Financial Services Act (FinSA).

Anti-money laundering (AML)

L-QIFs in the form of a contractual fund are not subject to the Anti-Money Laundering Act (AMLA) as the managing fund management company will be responsible in that respect. Likewise, L-QIFs in the form of a SICAV or a LPCI will not be responsible for AML duties if the managing financial institution takes on this responsibility.

Audit

As is the case with RAIFs, an L-QIF is subject to an annual financial audit. The audit will also cover the L-QIF's compliance with the legal requirements. The concrete audit framework will be determined by the Federal Council at a later point in time.

Costs

The set-up and running costs for an L-QIF cannot be precisely calculated, but the industry estimates that the potential savings will be a one-off saving on FINMA registration costs upon set-up of between CHF 50,000 and 150,000 and then annual savings of between CHF 20,000 and 40,000 for ongoing FINMA supervision. However, those potential savings may vary from case to case.

Internal supervision costs will definitely remain. There will also be external costs for audits and depositary bank.

Taxation

From a tax point of view, the current bill does not stipulate any changes to the current tax treatment of L-QIFs compared with other Swiss funds, although the dispatch from the Federal Council mentions a possible change in the future. That means that a withholding tax of 35% is due on distributions and on reinvestments of capital gains by Swiss funds. By comparison, Luxembourg's RAIF has an annual subscription tax of 0.01%, whereas distributions are free from withholding taxes.

Responsibility

Even though L-QIFs will not be supervised by FINMA, the managing fund management company or manager of collective assets will be responsible for the L-QIF's regulatory and legal compliance. In case of breaches, consequences will be imposed, up to withdrawal of the managing financial institution's regulatory license.

Outlook

A lot of financial market participants are awaiting the launch of the L-QIF. Some financial institutions and investors are even evaluating whether to repatriate their offshore funds back to Switzerland, while others plan to launch new L-QIFs instead of offshore funds and/or Luxembourg RAIFs in the future. Besides the "Swiss-ness" of a financial product as a valuable quality label another reason has become even more evident with the COVID-19 crisis. The entailed costs of external directors, foreign legal counsel and tax advisors that offshore structures involve, make those are not as attractive as it might seem, even less so in a world where free travel cannot be guaranteed.

Although the limited partnership structure is very popular for funds in other jurisdictions, they are not yet particularly common in Switzerland. With the L-QIF, the LPCI may become more attractive in Switzerland as well.