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## **Ordinance on Collective Investment Schemes (Collective Investment Schemes Ordinance, CISO)**

of 22 November 2006 (Status as of 1 January 2020)

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*The Swiss Federal Council,*

based on the Federal Act of 23 June 2006<sup>1</sup> on Collective Investment Schemes (CISA; referred to below as: the Act),

*decrees:*

### **Title 1        General Provisions Chapter 1    Object and Scope**

#### **Art. 1<sup>2</sup>**

**Art. 1a<sup>3</sup>**        Investment club  
(Art. 2 para. 2 let. f CISA)

Irrespective of its legal status, an investment club must meet the following requirements:

- a. The membership rights are set out in the relevant constitutive document for its chosen legal status.
- b. The members or a section of the members take the investment decisions.
- c. The members are informed about the status of the investments on a regular basis.
- d. The number of members does not exceed twenty.

AS 2006 5787

<sup>1</sup> SR 951.31

<sup>2</sup> Inserted by No I of the Ordinance of 13 Feb. 2013 (AS 2013 607). Repealed by Annex 1 No II 9 of the Financial Institutions Ordinance of 6 Nov. 2019, in force since 1. Jan. 2020 (AS 2019 4633).

<sup>3</sup> Originally Art. 1

**Art. 1b<sup>4</sup>** Operating companies

(Art. 2 para. 2 let. d CISA)

<sup>1</sup> For the purpose of applying the Act and irrespective of their legal status, operating companies which are engaged in entrepreneurial activities are companies:

- a. which have either their registered office as defined by their articles of association or their actual registered office in Switzerland or which are established in Switzerland if their registered office as defined by their articles of association is located in another state;
- b. which pursue their activities on a commercial basis or on a scale which requires commercially organised business operations; and
- c. whose main purpose is the management of a services, production or trading business.

<sup>2</sup> Operating companies are in particular companies which:

- a. develop or construct real estate;
- b. produce, buy, sell or exchange goods and commodities;
- c. offer other services outside the financial sector.

<sup>3</sup> Operating companies are also companies which in the course of their operating activities avail themselves of the services of external service providers or of companies within their group, provided entrepreneurial decisions in day-to-day business operations remain at all times with the company itself by virtue of the express agreement of rights to influence legal relationships, to exert control and to issue directives.

<sup>4</sup> Companies in accordance with Article 13 paragraph 2 letters c and d of the Act which assume control of the voting rights in companies or sit on the body responsible for the governance, supervision and control of their participations are not deemed to be operating companies.

<sup>5</sup> In addition to their entrepreneurial activities, operating companies may also engage in investments. These may, however, merely represent a subordinate or accessory activity with respect to the main purpose.

**Art. 1c<sup>5</sup>**

<sup>4</sup> Inserted by No I of the Ordinance of 13 Feb. 2013 (AS **2013** 607). Amended by Annex 1 No II 9 of the Financial Institutions Ordinance of 6 Nov. 2019, in force since 1 Jan. 2020 (AS **2019** 4633).

<sup>5</sup> Inserted by No I of the Ordinance of 13 Feb. 2013 (AS **2013** 607). Repealed by Annex 1 No II 9 of the Financial Institutions Ordinance of 6 Nov. 2019, with effect from 1 Jan. 2020 (AS **2019** 4633).

**Art. 2** Investment company

(Art. 2 para. 3 CISA)

Newly established investment companies whose issue prospectus provides for a listing on a Swiss stock exchange are treated as equivalent to listed companies provided listing is completed within one year.

**Art. 3 and 4**<sup>6</sup>**Chapter 2 Collective Investment Schemes****Art. 5**<sup>7</sup> Definition of collective investment scheme

(Art. 7 para. 3 and 4 CISA)

<sup>1</sup> Irrespective of legal status, collective investment schemes are assets provided by at least two mutually independent investors for the purpose of collective investment and which are managed externally.

<sup>2</sup> Investors are mutually independent when they provide assets that are mutually independent in legal and de facto terms.

<sup>3</sup> For group companies in the same group of companies pursuant to Article 3 of the Financial Institutions Ordinance of 6 November 2019<sup>8</sup> (FinIO), the requirement for the assets to be independent pursuant to paragraph 2 does not apply.<sup>9</sup>

<sup>4</sup> The assets of a collective investment scheme may be provided by a single investor (single investor fund) where such investor is an investor pursuant to Article 4 paragraph 3 letter b, e or f of the Financial Services Act of 15 June 2018<sup>10</sup> (FinSA).<sup>11</sup>

<sup>5</sup> The restriction of investor eligibility to investors as defined in paragraph 4 must be disclosed in the relevant documents pursuant to Article 15 paragraph 1 of the Act.

<sup>6</sup> Repealed by Annex 11 No 1 of the Financial Services Ordinance of 6 Nov. 2019, with effect from 1 Jan. 2020 (AS 2019 4459).

<sup>7</sup> Amended by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS 2013 607).

<sup>8</sup> RS 954.11

<sup>9</sup> Amended by Annex 11 No 1 of the Financial Services Ordinance of 6 Nov. 2019, in force since 1 Jan. 2020 (AS 2019 4459).

<sup>10</sup> RS 950.1

<sup>11</sup> Amended by Annex 11 No 1 of the Financial Services Ordinance of 6 Nov. 2019, in force since 1 Jan. 2020 (AS 2019 4459).

**Art. 6**<sup>12</sup>**Art. 6a**<sup>13</sup> Investors  
(Art. 10 para. 3<sup>ter</sup> CISA)

The financial intermediary:

- a. shall, within the meaning of Article 10 paragraph 3<sup>ter</sup> of the Act, inform investors that they are deemed qualified investors;
- b. shall explain the risks that this entails; and
- c. shall inform them that they have the option of declaring in writing or in another form demonstrable via text that they do not wish to be deemed qualified investors.

**Chapter 3 Authorisation and Approval****Section 1 General****Art. 7** Authorisation documentation  
(Art. 13 and 14 CISA)

Any party applying for authorisation under Article 13 of the Act must submit the following documents to FINMA:

- a.<sup>14</sup> the articles of association and the organisational regulations in the case of a SICAV and a SICAF;
- b. the company agreement in the case of a limited partnership for collective investment;
- c.<sup>15</sup> the relevant organisational documents in the case of the representative of foreign collective investment schemes.

**Art. 8**<sup>16</sup> Exemption from the authorisation requirement  
(Art. 13 para. 3 CISA)

Any party authorised as a fund management company is exempted from the duty to obtain authorisation for representatives of foreign collective investment schemes.

<sup>12</sup> Repealed by Annex 11 No 1 of the Financial Services Ordinance of 6 Nov. 2019, with effect from 1 Jan. 2020 (AS 2019 4459).

<sup>13</sup> Inserted by No I of the Ordinance of 13 Feb. 2013 (AS 2013 607). Amended by Annex 11 No 1 of the Financial Services Ordinance of 6 Nov. 2019, in force since 1 Jan. 2020 (AS 2019 4459).

<sup>14</sup> Amended by Annex 1 No II 9 of the Financial Institutions Ordinance of 6 Nov. 2019, in force since 1 Jan. 2020 (AS 2019 4633).

<sup>15</sup> Amended by Annex 1 No II 9 of the Financial Institutions Ordinance of 6 Nov. 2019, in force since 1 Jan. 2020 (AS 2019 4633).

<sup>16</sup> Amended by Annex 1 No II 9 of the Financial Institutions Ordinance of 6 Nov. 2019, in force since 1 Jan. 2020 (AS 2019 4633).

**Art. 9**<sup>17</sup>**Art. 10**<sup>18</sup> Good reputation, guarantees and specialist qualifications

(Art. 14 para. 1 let. a, a<sup>bis</sup> and b CISA)

<sup>1</sup> The persons responsible for the administration and the management shall be suitably qualified for the envisaged activity on the basis of their education and training, experience and career history.

<sup>2</sup> The envisaged activity at the authorised party as well as the nature of the intended investments must also be taken into account when assessing the requirements.

**Art. 11**<sup>19</sup>**Art. 12** Organisational structure

(Art. 14 para. 1 let. c CISA)

<sup>1</sup> The executive board must comprise at least two persons. These persons must have their place of residence at a location which is suitable for the proper management of the business operations.

<sup>2</sup> The authorised signatories of the licensee must sign jointly.

<sup>3</sup> The licensee must define its organisational structure in a set of organisational regulations.<sup>20</sup>

<sup>4</sup> It must employ personnel who are properly and suitably qualified for its activity.

<sup>5</sup> FINMA may require that an internal audit be performed if required by the scope and nature of the activity.

<sup>6</sup> In justified instances, it may grant derogations from these requirements.

**Art. 12a**<sup>21</sup> Risk management, internal control system and compliance

(Art. 14 para. 1<sup>ter</sup> CISA)

<sup>1</sup> The licensee must ensure it has proper and appropriate risk management, an internal control system (ICS) and compliance covering its entire business activities.

<sup>2</sup> Risk management must be organised so that all material risks can be adequately identified, assessed, controlled and monitored.

<sup>17</sup> Repealed by No I of the Ordinance of 13. Febr. 2013, with effect from 1 March 2013 (AS 2013 607).

<sup>18</sup> Amended by Annex 1 No II 9 of the Financial Institutions Ordinance of 6 Nov. 2019, in force since 1 Jan. 2020 (AS 2019 4633).

<sup>19</sup> Repealed by Annex 1 No II 9 of the Financial Institutions Ordinance of 6 Nov. 2019, with effect from 1 Jan. 2020 (AS 2019 4633).

<sup>20</sup> Amended by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS 2013 607).

<sup>21</sup> Inserted by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS 2013 607).

<sup>3</sup> The licensee shall separate the functions of risk management, the internal control system and compliance in functional and hierarchical terms from the operating units, in particular from the investment decisions function (portfolio management).

<sup>4</sup> FINMA may grant derogations from these requirements in justified instances.

**Art. 12b<sup>22</sup>** Delegation of tasks

(Art. 14 para. 1<sup>ter</sup> CISA)

<sup>1</sup> Tasks are deemed to be delegated if the SICAV and the representatives of foreign collective investment schemes appoint a service provider to independently and permanently perform in full or in part a material task, thereby changing the circumstances underlying the authorisation.

<sup>2</sup> Material tasks are deemed to be:

- a. for a SICAV: tasks in accordance with Article 26 CISA;
- b. for a representative of foreign collective investment schemes: tasks in accordance with Article 124 CISA.

**Art. 12c<sup>23</sup>** Delegable tasks

(Art. 14 para. 1<sup>ter</sup> CISA)

<sup>1</sup> The SICAVs and the representatives of foreign collective investment schemes may delegate to third parties only those tasks which do not need to be within the decision-making remit of the body responsible for management or for governance, supervision and control.

<sup>2</sup> Delegation must not impair the appropriateness of the operational organisation.

<sup>3</sup> The operational organisation is no longer deemed to be appropriate if the SICAV or the representative of foreign collective investment schemes:

- a. does not have the necessary personnel resources and specialist knowledge to select, instruct and monitor the third party and manage the associated risks;  
or
- b. does not have the necessary rights to issue instructions to or control the third party.

**Art. 12d<sup>24</sup>** Delegation of tasks: responsibility and procedures

(Art. 14 para. 1<sup>ter</sup> CISA)

<sup>1</sup> The SICAV or the representative of foreign collective investment schemes remains responsible for the fulfilment of supervisory duties and when delegating tasks shall safeguard clients' interests.

<sup>22</sup> Inserted by Annex 1 No II 9 of the Financial Institutions Ordinance of 6 Nov. 2019, in force since 1 Jan. 2020 (AS 2019 4633).

<sup>23</sup> Inserted by Annex 1 No II 9 of the Financial Institutions Ordinance of 6 Nov. 2019, in force since 1 Jan. 2020 (AS 2019 4633).

<sup>24</sup> Inserted by Annex 1 No II 9 of the Financial Institutions Ordinance of 6 Nov. 2019, in force since 1 Jan. 2020 (AS 2019 4633).

<sup>2</sup> They shall agree with the third party in writing or in another form demonstrable via text which tasks are to be delegated. The following in particular are to be laid down in the agreement:

- a. the authorities and responsibilities;
- b. any powers of subdelegation;
- c. the third party's duty to render account;
- d. the rights to control of the SICAV and the representative of foreign collective investment schemes.

<sup>3</sup> The SICAVs and the representatives of foreign collective investment schemes shall lay down in their organisational principles the tasks delegated as well as details of the possibility of subdelegation.

<sup>4</sup> Delegation is to be organised so that the SICAV or the representative of foreign collective investment schemes, its internal auditors, the audit firm and FINMA can inspect and review the delegated task.

**Art. 13** Financial guarantees

(Art. 14 para. 1 let. d CISA)

The licensee has sufficient financial guarantees if it meets the relevant provisions regarding the minimum capital or minimum investment amount.

**Art. 13a<sup>25</sup>** Documents of foreign collective investment schemes

(Art. 15 para. 1 let. e CISA)

For foreign collective investment schemes, the following documents must be submitted to FINMA for approval:

- a. the prospectus;
- b.<sup>26</sup> the key information document in accordance with Articles 58–63 and 66 FinSA<sup>27</sup>;
- c. the collective investment agreement for the contractual collective investment schemes;
- d. the articles of association and the investment regulations or the company agreement of collective investment schemes organised under company law;
- e. other documents that would be necessary for approval under applicable foreign laws and those for Swiss collective investment schemes in accordance with Article 15 paragraph 1 of the Act.

<sup>25</sup> Inserted by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS 2013 607).

<sup>26</sup> Amended by Annex 11 No 1 of the Financial Services Ordinance of 6 Nov. 2019, in force since 1 Jan. 2020 (AS 2019 4459).

<sup>27</sup> SR 950.1

**Art. 14** Change of organisational structure and documents

(Art. 16 CISA)

<sup>1</sup> In the event of changes to the organisational structure, authorisation must be obtained from FINMA. The documents defined in Article 7 must be submitted to FINMA.

<sup>2</sup> Changes to documents in accordance with Article 15 of the Act must be submitted to FINMA, with the exception of:

- a. the relevant documents of foreign collective investment schemes;
- b. any change in the total limited partners' contributions in the company agreement of the limited partnership for collective investment;
- c.<sup>28</sup> changes to documents requiring approval in the case of a domestic collective investment scheme where such documents relate exclusively to provisions on sales and distribution restrictions and are required in the context of foreign laws, international treaties, bilateral or supervisory arrangements, etc.

**Art. 15** Duty to report

(Art. 16 CISA)

<sup>1</sup> The licensees, with the exception of the custodian bank, shall report:

- a. any change in the persons responsible for the administration and the management;
- b. facts which might call into question the good reputation or the guarantee of irreproachable business conduct by the persons responsible for the administration and the management, specifically the instigation of criminal proceedings against them;
- c. any change in significant equity holders, except for company shareholders in a SICAV and limited partners in a limited partnership for collective investment;
- d. facts which might call into question the good reputation of significant equity holders, specifically the instigation of criminal proceedings against them;
- e. facts which call into question the prudent and sound business practice of the licensees owing to the influence of the significant equity holders;
- f. any change with respect to the financial guarantees (Art. 13), in particular if the minimum requirements are no longer met.

<sup>2</sup> The custodian bank shall report any change of executive persons entrusted with the performance of the custodian bank's duties (Art. 72 para. 2 CISA).

<sup>28</sup> Inserted by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS 2013 607).



<sup>3</sup> Furthermore, changes to the prospectus as well as to the key information document must also be reported in accordance with Articles 58–63 and 66 FinSA<sup>29,30</sup>

<sup>4</sup> The representatives of foreign collective investment schemes that are not offered exclusively to qualified investors must report:<sup>31</sup>

- a.<sup>32</sup> measures taken by a foreign supervisory authority against the collective investment scheme, specifically its withdrawal of approval;
- b.<sup>33</sup> changes to the documents for foreign collective investment schemes in accordance with Article 13a;
- c.<sup>34</sup> ...

<sup>5</sup> The report must be made immediately to FINMA, which shall establish whether the reported facts comply with the Act.

#### **Art. 16** Requirements for the simplified approval procedure

(Art. 17 CISA)

<sup>1</sup> The simplified approval procedure may only be adopted where the fund regulations:

- a. comply with a format which FINMA has recognised as being the minimum standard, such as model regulations and prospectuses of a specific industry body; or
- b. comply with a set of standards which FINMA has recognised as binding in relation to the relevant licensee.

<sup>2</sup> FINMA shall give the applicant confirmation of its receipt of the application.

<sup>3</sup> Where additional information is required for the purpose of assessing the application, FINMA may instruct the applicant to submit such information at a subsequent time.

#### **Art. 17** Time limits for the simplified approval procedure

(Art. 17 CISA)

<sup>1</sup> Open-ended collective investment schemes for qualified investors are deemed to have been approved on expiry of the following time limits:

- a. securities funds, real estate funds and other funds for traditional investments: following receipt of the application;

<sup>29</sup> SR 950.1

<sup>30</sup> Amended by Annex 11 No 1 of the Financial Services Ordinance of 6 Nov. 2019, in force since 1 Jan. 2020 (AS 2019 4459).

<sup>31</sup> Amended by Annex 1 No II 9 of the Financial Institutions Ordinance of 6 Nov. 2019, in force since 1 Jan. 2020 (AS 2019 4633).

<sup>32</sup> Amended by Annex No 6 of the Financial Market Audit Act of 15 Oct. 2008, in force since 1 Jan. 2009 (AS 2008 5363).

<sup>33</sup> Amended by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS 2013 607).

<sup>34</sup> Repealed by No I of the Ordinance of 13 Feb. 2013, with effect from 1. March 2013 (AS 2013 607).

- b. other funds for alternative investments: four weeks following receipt of the application.

<sup>2</sup> FINMA shall approve open-ended collective investment schemes which are directed towards the public at the latest within the following time limits:

- a. securities funds: four weeks following receipt of the application;
- b. real estate funds and other funds for traditional investments: six weeks following receipt of the application;
- c. other funds for alternative investments: eight weeks following receipt of the application.

<sup>3</sup> The period begins one day following receipt of the application.

<sup>4</sup> Where FINMA requires further information, the commencement of the period must be postponed from the time the request is made until such time as the information is received by FINMA.

#### **Art. 18** Subsequent amendment of documents

(Art. 17 CISA)

<sup>1</sup> FINMA may demand that a subsequent amendment be made to the documents for collective investment schemes for qualified investors for a period of up to three months following simplified approval.

<sup>2</sup> The investors must:

- a. be made aware of the possibility of an amendment in advance;
- b. be informed of subsequent amendments in the media of publication.

## **Section 2** ...<sup>35</sup>

### **Art. 19**<sup>36</sup>

#### **Art. 20** Components of capital

(Art. 14 para. 1 let. d CISA)<sup>37</sup>

<sup>1</sup> In the case of a company limited by shares and a partnership limited by shares, the capital is the share and participation capital, and in the case of a limited liability company it is the issued capital.

<sup>2</sup> In the case of partnerships, the capital is:<sup>38</sup>

<sup>35</sup> Repealed by Annex 1 No II 9 of the Financial Institutions Ordinance of 6 Nov. 2019, with effect from 1. Jan. 2020 (AS 2019 4633).

<sup>36</sup> Repealed by Annex 1 No II 9 of the Financial Institutions Ordinance of 6 Nov. 2019, with effect from 1. Jan. 2020 (AS 2019 4633).

<sup>37</sup> Amended by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS 2013 607).

<sup>38</sup> Amended by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS 2013 607).

- a. the capital accounts;
- b. the partnership contributions; and
- c. the assets of the partners with unlimited liability.

<sup>3</sup> The capital accounts and assets of the partners with unlimited liability may only be counted towards the capital if a declaration is provided to the effect that:<sup>39</sup>

- a. in the event of liquidation, bankruptcy or administration proceedings such assets shall be subordinate to the claims of all other creditors; and
- b. an obligation exists:<sup>40</sup>
  1. not to net such assets with its own claims nor secure them from its own assets,
  2. not to reduce any of the components of the capital as defined in paragraph 2 letters a and c to the extent that the minimum capital is no longer maintained without the prior consent of the audit company.

<sup>4</sup> The declaration in accordance with paragraph 3 is irrevocable. It must be made in writing or in another form demonstrable via text and filed with a licensed audit firm.<sup>41</sup>

#### **Art. 21<sup>42</sup>**

#### **Art. 22**           Qualifying capital

(Art. 14 para. 1 let. d CISA)

<sup>1</sup> Legal entities may include the following in qualifying capital:

- a. the paid-up share and participation capital in the case of a company limited by shares and partnership limited by shares, and the issued capital in the case of a limited liability company;
- b. the general statutory reserve and other reserves;
- c. retained earnings;
- d. the net profit for the current financial year after deducting the estimated earnings distribution, provided an audited interim financial statement including full income statement is available;

<sup>39</sup> Amended by Annex 1 No II 9 of the Financial Institutions Ordinance of 6 Nov. 2019, in force since 1 Jan. 2020 (AS **2019** 4633).

<sup>40</sup> Amended by Annex 1 No II 9 of the Financial Institutions Ordinance of 6 Nov. 2019, in force since 1 Jan. 2020 (AS **2019** 4633).

<sup>41</sup> Inserted by Annex 1 No II 9 of the Financial Institutions Ordinance of 6 Nov. 2019, in force since 1 Jan. 2020 (AS **2019** 4633).

<sup>42</sup> Repealed by Annex 1 No II 9 of the Financial Institutions Ordinance of 6 Nov. 2019, with effect from 1. Jan. 2020 (AS **2019** 4633).

- e. hidden reserves, provided they are assigned to a separate account and designated as own funds. Their allowability must be confirmed in the audit report<sup>43</sup>.

<sup>2</sup> Partnerships may include the following in qualifying capital:<sup>44</sup>

- a. the capital accounts;
- b. the partnership contributions;
- c.<sup>45</sup> ...
- d. the funds of the partners with unlimited liability, provided the conditions stated in Article 20 paragraph 3 are met.

<sup>3</sup> ...<sup>46</sup>

<sup>4</sup> The qualifying capital as defined in paragraphs 1 and 2 letters a–d must account for at least 50 percent of the total required.

### **Art. 23** Deductions in relation to the calculation of qualifying capital

(Art. 14 para. 1 let. d CISA)

The following shall be deducted when calculating capital adequacy:

- a. the loss carried forward and the loss for the current financial year;
- b. any unsecured allowance and provision for the current financial year;
- c.<sup>47</sup> ...
- d. intangible assets (including start-up and organisational costs as well as goodwill) with the exception of software;
- e. in the case of a company limited by shares and partnership limited by shares, the shares which they hold in the company at their own risk;
- f. in the case of a limited liability company, the capital contribution which it holds in the company at its own risk; g. the carrying amount of investments, unless a consolidation is performed in accordance with Article 29;
- g.<sup>48</sup> the carrying amount of participations.

<sup>43</sup> Expression in accordance with No 6 of the Financial Market Audit Act of 15 Oct. 2008, in force since 1 Jan. 2009 (AS **2008** 5363).

<sup>44</sup> Amended by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS **2013** 607).

<sup>45</sup> Repealed by Annex 1 No II 9 of the Financial Institutions Ordinance of 6 Nov. 2019, with effect from 1. Jan. 2020 (AS **2019** 4633).

<sup>46</sup> Repealed by Annex 1 No II 9 of the Financial Institutions Ordinance of 6 Nov. 2019, with effect from 1. Jan. 2020 (AS **2019** 4633).

<sup>47</sup> Repealed by Annex 1 No II 9 of the Financial Institutions Ordinance of 6 Nov. 2019, with effect from 1. Jan. 2020 (AS **2019** 4633).

<sup>48</sup> Amended by Annex 1 No II 9 of the Financial Institutions Ordinance of 6 Nov. 2019, in force since 1 Jan. 2020 (AS **2019** 4633).

**Art. 24**<sup>49</sup>

**Art. 24a**<sup>50</sup>

**Art. 25–28**<sup>51</sup>

**Art. 29**<sup>52</sup>

**Art. 29a–29f**<sup>53</sup>

**Art. 30**<sup>54</sup>

**Art. 30a**<sup>55</sup>

## **Chapter 4 Protection of Investors' Interests**<sup>56</sup>

**Art. 31** Duty of loyalty  
(Art. 20 para. 1 let. a CISA)

<sup>1</sup> Persons who manage or represent collective investment schemes or hold the assets of these schemes in safekeeping, or their agents, may only purchase investments from collective investment schemes for their own account at the market price and may only sell such investments from their own portfolios at the market price.<sup>57</sup>

<sup>2</sup> In relation to services delegated to third parties they shall waive the compensation owed to them in accordance with the fund regulations, company agreement, invest-

<sup>49</sup> Repealed by Annex 1 No II 9 of the Financial Institutions Ordinance of 6 Nov. 2019, with effect from 1. Jan. 2020 (AS **2019** 4633).

<sup>50</sup> Inserted by No I of the Ordinance of 13 Feb. 2013 (AS **2013** 607). Repealed by Annex 1 No II 9 of the Financial Institutions Ordinance of 6 Nov. 2019, with effect from 1. Jan. 2020 (AS **2019** 4633).

<sup>51</sup> Repealed by Annex 1 No II 9 of the Financial Institutions Ordinance of 6 Nov. 2019, with effect from 1. Jan. 2020 (AS **2019** 4633).

<sup>52</sup> Repealed by No I of the Ordinance of 13 Feb. 2013, with effect from 1. March 2013 (AS **2013** 607).

<sup>53</sup> Inserted by No I of the Ordinance of 13 Feb. 2013 (AS **2013** 607). Repealed by Annex 1 No II 9 of the Financial Institutions Ordinance of 6 Nov. 2019, with effect from 1. Jan. 2020 (AS **2019** 4633).

<sup>54</sup> Repealed by Annex 1 No II 9 of the Financial Institutions Ordinance of 6 Nov. 2019, with effect from 1. Jan. 2020 (AS **2019** 4633).

<sup>55</sup> Inserted by No I of the Ordinance of 13 Feb. 2013 (AS **2013** 607). Repealed by Annex 1 No II 9 of the Financial Institutions Ordinance of 6 Nov. 2019, with effect from 1. Jan. 2020 (AS **2019** 4633).

<sup>56</sup> Amended by Annex 11 No 1 of the Financial Services Ordinance of 6 Nov. 2019, in force since 1 Jan. 2020 (AS **2019** 4459).

<sup>57</sup> Amended by Annex 11 No 1 of the Financial Services Ordinance of 6 Nov. 2019, in force since 1 Jan. 2020 (AS **2019** 4459).

ment regulations or discretionary management agreement where such compensation is not used for payment of the services rendered by such third parties.

<sup>3</sup> Where investments of a collective investment scheme are transferred to another scheme of the same licensee or a scheme belonging to a related licensee, no costs may be levied.

<sup>4</sup> Persons who manage or represent collective investment schemes or hold the assets of these schemes in safekeeping, or their agents, may not levy any issue or redemption fees if they purchase target funds which:<sup>58</sup>

- a. they manage themselves either directly or indirectly; or
- b. are managed by a company to which they are related by virtue of:
  1. common management,
  2. control, or
  3. a significant direct or indirect interest.<sup>59</sup>

<sup>5</sup> When a management fee is levied on investments in target funds pursuant to paragraph 4, Article 73 paragraph 4 applies accordingly.<sup>60</sup>

<sup>6</sup> FINMA regulates the details. It may declare that paragraph 4 and 5 also applies to other products.<sup>61</sup>

### **Art. 32** Special duty of loyalty in relation to real estate investments

(Art. 20 para. 1 let. a, 21 para. 3 and 63 CISA)

<sup>1</sup> Persons who manage or represent collective investment schemes or hold the assets of these schemes in safekeeping, or their agents, shall calculate the fees payable to closely related natural or legal persons that participate in the planning, construction, purchasing or sale of a building for the account of the collective investment scheme; the fees shall be based exclusively on the normal prices prevailing in the sector.<sup>62</sup>

<sup>2</sup> The valuation expert shall check the fee invoice prior to settlement thereof and if necessary furnish the licensee and the audit company with a report.

<sup>3</sup> Where real estate investments of a collective investment scheme are transferred to another scheme of the same licensee or a related licensee, no compensation may be levied for buying and selling work undertaken.

<sup>4</sup> Payments by real estate companies to the members of their administration, to their management and to their personnel shall be included in the compensation to which

<sup>58</sup> Amended by Annex 11 No 1 of the Financial Services Ordinance of 6 Nov. 2019, in force since 1 Jan. 2020 (AS 2019 4459).

<sup>59</sup> Amended by No I of the Ordinance of 28 Jan. 2009, in force since 1 March 2009 (AS 2009 719).

<sup>60</sup> Amended by No I of the Ordinance of 28 Jan. 2009, in force since 1 March 2009 (AS 2009 719).

<sup>61</sup> Inserted by No I of the Ordinance of 28 Jan. 2009, in force since 1 March 2009 (AS 2009 719).

<sup>62</sup> Amended by Annex 11 No 1 of the Financial Services Ordinance of 6 Nov. 2019, in force since 1 Jan. 2020 (AS 2019 4459).

the fund management company and the SICAV are entitled in accordance with the fund regulations.

**Art. 32a<sup>63</sup>** Exceptions to the ban on transactions with closely connected persons  
(Art. 63 para. 3 and 4 CISA)

<sup>1</sup> Pursuant to Article 63 paragraph 4 of the Act, FINMA may in justified individual cases grant an exemption from the ban on transactions with closely related persons pursuant to Article 63 paragraphs 2 and 3 of the Act if:

- a. the relevant documents of the collective investment scheme provide for such a possibility;
- b. the exemption is in the interests of the investors;
- c. in addition to the valuation by the regular valuation experts for the real estate fund, a valuation expert who is independent of such experts or their employer and of the fund management company or SICAV as well as the custodian bank of the real estate fund pursuant to Article 64 paragraph 1 of the Act confirms the market conformity of the purchase and sale price for the property and of the transaction costs.

<sup>2</sup> Following conclusion of the transaction, the fund management company or SICAV prepares a report containing the following:

- a. information on the individual properties acquired or transferred and their value on the date of acquisition or transfer;
- b. the valuation reports by the regular valuation experts;
- c. the report on the market conformity of the purchase or sales price by the valuation experts pursuant to paragraph 1 lit. c.

<sup>3</sup> As part of its audit of the fund management company or SICAV, the audit company confirms adherence to the special duty of loyalty in relation to real estate investments.

<sup>4</sup> The approved transactions with closely related persons are mentioned in the annual report of the collective investment scheme.

<sup>5</sup> In the case of properties where the fund management company, SICAV or persons closely related thereto have construction projects carried out, FINMA may not grant any exemptions from the prohibition of transactions with closely related persons.<sup>64</sup>

<sup>63</sup> Inserted by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS 2013 607).

<sup>64</sup> Amended by Annex 11 No 1 of the Financial Services Ordinance of 6 Nov. 2019, in force since 1 Jan. 2020 (AS 2019 4459).

**Art. 32<sup>b65</sup>** Conflicts of interest

(Art. 20 para. 1 let. a CISA)

Persons who manage or represent collective investment schemes or hold the assets of these schemes in safekeeping, or their agents, must take effective organisational and administrative measures to identify, prevent, settle and monitor conflicts of interest in order to prevent the latter from harming the interests of the investors. Where conflicts of interest cannot be avoided, they shall be disclosed to the investors.

**Art. 33** Due diligence

(Art. 20 para. 1 let. b CISA)

<sup>1</sup> Persons who manage or represent collective investment schemes or hold the assets of these schemes in safekeeping, or their agents, shall ensure the effective separation of the activities of decision-making (asset management), implementation (trading and settlement) and administration.<sup>66</sup>

<sup>2</sup> FINMA may in justified individual instances permit exemptions or order the separation of additional functions.

**Art. 34<sup>67</sup>** Duty of disclosure

(Art. 20 para. 1 let. c and 23 CISA)

<sup>1</sup> Persons who manage or represent collective investment schemes or hold the assets of these schemes in safekeeping, or their agents, shall draw investors' attention to the risks associated with a specific type of investing in particular.

<sup>2</sup> They shall disclose all costs incurred on the issue and redemption of units and in the administration of the collective investment scheme. In addition, they shall disclose the manner in which the management fee is used and the levying of any performance fee.

<sup>3</sup> The duty of disclosure with regard to compensation for distribution of collective investment schemes encompasses the nature and scale of all fees and other pecuniary benefits through which the activities of the distributor are to be compensated.

<sup>4</sup> Persons who manage or represent collective investment schemes or hold the assets of these schemes in safekeeping, or their agents, shall ensure a degree of transparency in the exercising of membership and creditors' rights such that investors are in a position to comprehend the manner in which such rights are exercised.

<sup>65</sup> Inserted by No 1 of the Ordinance of 13 Feb. 2013 (AS **2013** 607). Amended by Annex 11 No 1 of the Financial Services Ordinance of 6 Nov. 2019, in force since 1 Jan. 2020 (AS **2019** 4459).

<sup>66</sup> Amended by Annex 11 No 1 of the Financial Services Ordinance of 6 Nov. 2019, in force since 1 Jan. 2020 (AS **2019** 4459).

<sup>67</sup> Amended by Annex 11 No 1 of the Financial Services Ordinance of 6 Nov. 2019, in force since 1 Jan. 2020 (AS **2019** 4459).



**Art. 34<sup>a68</sup>****Title 2      Open-Ended Collective Investment Schemes****Chapter 1    Contractual Fund****Section 1    Minimum Assets**

(Art. 25 para. 3 CISA)

**Art. 35**

<sup>1</sup> investment fund or the subfund of an umbrella fund must be issued for subscription (launch) within one year of approval by FINMA.

<sup>2</sup> The investment fund or subfund of an umbrella fund must have net assets of at least 5 million Swiss francs at the latest one year following its launch.

<sup>3</sup> FINMA may extend the time limits for a corresponding application.

<sup>4</sup> Following expiry of the time period as defined in paragraphs 2 and 3, the fund management company shall notify FINMA of any shortfall forthwith.

**Section 2    Fund Contract****Art. 35<sup>a69</sup>**      Minimum content of the fund contract

(Art. 26 para. 3 CISA)

<sup>1</sup> In particular, the fund contract contains the following information:

- a. the name of the investment fund, together with the name and registered office of the fund management company, the custodian bank and the manager of collective assets;
- b. investor eligibility;
- c. the investment policy, investment techniques, risk diversification and the risks associated with the investment;
- d. the subdivision into subfunds;
- e. the unit classes;
- f. investors' right to cancel;
- g. the accounting year;
- h. the calculation of the net asset value and of the issue and redemption prices;

<sup>68</sup> Inserted by No I of the Ordinance of 13 Feb. 2013 (AS 2013 607). Amended by Annex 11 No 1 of the Financial Services Ordinance of 6 Nov. 2019, in force since 1 Jan. 2020 (AS 2019 4459).

<sup>69</sup> Inserted by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS 2013 607).

- i. the appropriation of net income and capital gains from the sale of assets and rights;
- j. the type, amount and calculation of all fees, the issue and redemption commission together with the incidental costs for the purchase and sale of the investments (brokerage fees, charges, duties) that may be charged to the fund's assets or to the investors;
- k. the duration of the contract and the conditions of dissolution;
- l. the media of publication;
- m. the conditions for the deferment of redemption and compulsory redemption;
- n.<sup>70</sup> the place at which the fund contract, prospectus and the key information document in accordance with Articles 58–63 and 66 FinSA<sup>71</sup>, together with the annual and semi-annual reports, may be obtained free of charge;
- o. the unit of account;
- p. the restructuring.

<sup>2</sup> When approving the fund contract, FINMA shall only verify the provisions pursuant to paragraph 1 lit. a–g and ensure their compliance with the Act.

<sup>3</sup> When approving a contractual fund, FINMA, at the fund management company's request, shall verify all provisions of the fund contract and ensure their compliance with the Act where the fund is to be offered abroad and such action is required under foreign law.<sup>72</sup>

<sup>4</sup> FINMA may formalise the content of the fund contract in accordance with international developments.

### **Art. 36** Investment policy guidelines

(Art. 26 para. 3 let. b CISA)

<sup>1</sup> The fund contract sets out the permitted investments:

- a. by type (equity securities, debt securities, derivative instruments, residential property, commercial properties; precious metals; commodities, etc.);
- b. by country, geographical region, sector or currency.

<sup>2</sup> For other funds as defined in Article 68 et seq. of the Act, it also sets out information on the special features and risks of the individual investments in terms of their characteristics and valuation.

<sup>3</sup> The fund contract sets out the permitted investment techniques and instruments.

<sup>70</sup> Amended by Annex 11 No 1 of the Financial Services Ordinance of 6 Nov. 2019, in force since 1 Jan. 2020 (AS 2019 4459).

<sup>71</sup> SR 950.1

<sup>72</sup> Amended by Annex 11 No 1 of the Financial Services Ordinance of 6 Nov. 2019, in force since 1 Jan. 2020 (AS 2019 4459).

**Art. 37<sup>73</sup>** Fees and incidental costs

(Art. 26 para. 3 CISA)

- <sup>1</sup> The following may be charged to the assets of the fund or any subfunds:
- a. a management fee for remunerating the activities of the fund management company;
  - b. custody fees and other costs for the remuneration of the custodian bank's activity, including the costs for the safekeeping of the fund's assets by third-party custodians or collective securities depositories;
  - c. a management fee and any performance fees for the remuneration of the manager of collective assets;
  - d.<sup>74</sup> any distribution fees in remuneration of distribution activities;
  - e.<sup>75</sup> all the incidental costs listed in paragraphs 2 and 2<sup>bis</sup>;
  - f.<sup>76</sup> commission in accordance with paragraph 2<sup>ter</sup>.
- <sup>2</sup> Where explicitly provided by the fund contract, the following incidental costs may be charged to the assets of the fund or the subfunds:
- a. costs for the purchase and sale of the investments, specifically standard brokerage fees, commission, taxes and duties, as well as costs for the verification and maintenance of quality standards in the case of physical investments;
  - b.<sup>77</sup> ...
  - c. the supervisory authority's fees in relation to the establishment, amendment, liquidation or merger of the fund or any subfunds;
  - d. the supervisory authority's annual fees;
  - e. the audit company's fees for annual auditing as well as certification in the case of establishments, amendments, liquidation or merger of the fund or any subfunds;
  - f. fees for legal and tax advisors in connection with the establishment, modification, liquidation or merger of funds or any subfunds, as well as generally upholding the interests of the fund and its investors;
  - g. notary and commercial register expenses for registration in the Commercial Register of licensees under the collective investment schemes legislation;

<sup>73</sup> Amended by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS **2013** 607).

<sup>74</sup> Amended by Annex 11 No 1 of the Financial Services Ordinance of 6 Nov. 2019, in force since 1 Jan. 2020 (AS **2019** 4459).

<sup>75</sup> Amended by Annex 11 No 1 of the Financial Services Ordinance of 6 Nov. 2019, in force since 1 Jan. 2020 (AS **2019** 4459).

<sup>76</sup> Inserted by Annex 11 No 1 of the Financial Services Ordinance of 6 Nov. 2019, in force since 1 Jan. 2020 (AS **2019** 4459).

<sup>77</sup> Repealed by Annex 11 No 1 of the Financial Services Ordinance of 6 Nov. 2019, with effect from 1 Jan. 2020 (AS **2019** 4459).

- h. the cost of publishing the net asset value of the fund or its subfunds, together with all the costs of providing notices to investors, including translation costs, provided such costs cannot be ascribed to any failure on the part of the fund management company;
- i. the cost of printing legal documents as well as the fund's annual and semi-annual reports;
- j. the cost of any registration of the fund with a foreign supervisory authority, and specifically the commission levied by the foreign supervisory authority, translation costs and remuneration for the representative or paying agent abroad;
- k. costs relating to the exercising of voting rights or creditors' rights by the fund, including the cost of fees paid to external advisors;
- l. costs and fees relating to intellectual property registered in the name of the fund or with rights of use for the fund;
- m. fees paid to the members of the board of directors of the SICAV and the cost of liability insurance;
- n. all costs incurred though any extraordinary steps taken to safeguard the interests of investors by the fund management company, manager of collective assets or custodian bank.

<sup>2bis</sup> In the case of real estate funds, where explicitly provided by the fund contract, the following incidental costs may additionally be charged to the assets of the fund or the subfunds:

- a. costs for the purchase and sale of real estate investments, specifically standard brokerage fees, consultants' and lawyers' fees, notary and other charges, as well as taxes;
- b. standard brokerage fees paid in connection with first lettings of real estate;
- c. standard costs for the management of properties by third parties;
- d. property expenses, in particular maintenance and operating costs, including insurance costs, public charges and the costs of general and infrastructure services, provided these are standard expenses and not borne by third parties;
- e. fees of independent valuation experts and other experts for clarifications serving the interests of investors;
- f. consultation fees and procedural costs in connection with the general safeguarding of the interests of the real estate fund and its investors.<sup>78</sup>

<sup>2ter</sup> Where explicitly provided by the fund contract and where the activity is not performed by third parties, the management company of a real estate fund may levy a fee for its own efforts in connection with the following activities:

- a. purchase and sale of real estate on the basis of the purchase or selling price;

<sup>78</sup> Inserted by Annex 11 No 1 of the Financial Services Ordinance of 6 Nov. 2019, in force since 1 Jan. 2020 (AS 2019 4459).

- b. construction of buildings, with construction costs serving as the basis in the case of renovations and alterations;
- c. management of properties on the basis of annual gross rental income.<sup>79</sup>

<sup>3</sup> The fund contract sets out the fees and incidental costs in a single, comprehensive overview, providing a breakdown by type, maximum amount and calculation.

<sup>4</sup> Use of the term «all-in fee» is only permissible if it includes all fees with the exception of issue and redemption fees but including incidental costs. If the term «flat fee» is used, specific information must be provided indicating which fees and incidental costs it does not include.

<sup>5</sup> The fund management company, manager of collective assets and custodian bank may pay commissions only as reimbursement for the fund's distribution activities and only if this specifically provided for in the fund contract.

**Art. 38<sup>80</sup>** Issue and redemption price; supplementary charges and deductions  
(Art. 26 para. 3 CISA)

<sup>1</sup> The investors may be charged for the following:

- a. all-in incidental costs incurred by the issue, redemption or conversion of units for the purchase and sale of investments;
- b. a fee for subscriptions, conversions or redemptions to the distributor to cover the costs associated with distribution.

<sup>2</sup> The fund contract describes in a comprehensible, transparent manner the fees that may be charged to the investors, as well as their scale and the method of calculation.

**Art. 39** Media of publication  
(Art. 26 para. 3 CISA)<sup>81</sup>

<sup>1</sup> The prospectus for the investment fund must specify one or more media of publication in which the information required by the Act and the Ordinance shall be made available to investors. The media of publication may be print media or electronic platforms that are publicly accessible and recognized by FINMA.<sup>82</sup>

<sup>2</sup> All facts which are subject to the disclosure requirement, and in relation to which investors are entitled to lodge objections with FINMA, in addition to the dissolution of an investment fund, must be published in the media of publication intended for such purpose.

<sup>79</sup> Inserted by Annex 11 No 1 of the Financial Services Ordinance of 6 Nov. 2019, in force since 1 Jan. 2020 (AS 2019 4459).

<sup>80</sup> Amended by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS 2013 607).

<sup>81</sup> Amended by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS 2013 607).

<sup>82</sup> Amended by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS 2013 607).

**Art. 40** Unit classes

(Art. 26 para. 3 let. k and 78 para. 3 CISA)

<sup>1</sup> The fund management company may create, liquidate or merge unit classes subject to the consent of the custodian bank and the approval of FINMA. In doing so it shall address the following specific criteria: cost structure, reference currency, currency hedging, distribution or reinvestment of income, minimum investment or investor eligibility.

<sup>2</sup> The procedural details are set out in the prospectus. The risk that a class may be liable for another class must be specifically disclosed in the prospectus.

<sup>3</sup> The fund management company announces the creation, dissolution or merging of unit classes in the media of publication. Only a merger is deemed to be an amendment to the fund contract, and is governed by Article 27 of the Act.

<sup>4</sup> Article 112 paragraph 3a-c applies accordingly.

<sup>5</sup> The units or unit classes of a domestic exchange-traded fund (ETF) must be permanently listed on an authorised Swiss stock exchange. Where a foreign collective investment scheme approved for offer to non-qualified investors in Switzerland is an ETF, as a minimum those units or unit classes offered in Switzerland to non-qualified investors must be permanently listed on an authorised Swiss stock exchange.<sup>83</sup>

**Art. 41** Amendments to the fund contract; duty to publish, time limit for lodging objections, entry into force and cash repayments

(Art. 27 para. 2 and 3 CISA)

<sup>1</sup> The fund management company shall publish any amendment to the fund contract in the media of publication of the relevant fund in the form specified by the Act. In this publication, the fund management company shall inform investors in a clear, comprehensible manner about which amendments to the fund contract are covered by FINMA's verification and ascertainment of compliance with the Act.<sup>84</sup>

<sup>1bis</sup> Amendments that are required by law, provided such amendments do not affect the rights of investors or are of an exclusively formal nature, may be exempted by FINMA from the duty to publish.<sup>85</sup>

<sup>2</sup> The period in which objections to the amendment of the fund contract may be lodged commences on the day following announcement in the media of publication.

<sup>2bis</sup> When approving the amendment to the fund contract, FINMA shall only verify the amendments to the provisions pursuant to Article 35a paragraph 1 lit. a–g and ensure their compliance with the Act.<sup>86</sup>

<sup>83</sup> Inserted by Annex 1 No II 9 of the Financial Institutions Ordinance of 6 Nov. 2019, in force since 1 Jan. 2020 (AS 2019 4633).

<sup>84</sup> Amended by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS 2013 607).

<sup>85</sup> Inserted by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS 2013 607).

<sup>86</sup> Inserted by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS 2013 607).

<sup>2ter</sup> Where in relation to the approval of a fund contract pursuant to Article 35a paragraph 3 FINMA has verified all provisions and ensured their compliance with the Act, it shall also in relation to the amendment to such fund contract verify all provisions and ensure their compliance with the Act if the investment fund is to be offered abroad and such action is required under foreign law.<sup>87</sup>

<sup>3</sup> In its decision FINMA specifies the date on which the amendment to the fund contract enters into force.

## Art. 42–50<sup>88</sup>

## Chapter 2 Investment Company with Variable Capital

### Section 1 General Provisions

**Art. 51<sup>89</sup>** Self and externally managed SICAVs  
(Art. 36 para. 3 CISA)

<sup>1</sup> The self-managed SICAV performs its own administration. It may only delegate portfolio management in accordance with Article 36 paragraph 3 of the Act to a manager of collective assets that is subject to a recognised supervisory body.

<sup>2</sup> The externally managed SICAV delegates administration to an authorised fund management company. Administration also includes distribution of the SICAV. In addition, the externally managed SICAV delegates portfolio management to the same fund management company or to a manager of collective assets that is subject to a recognised supervisory body.

<sup>3</sup> The provisions of Article 64 are reserved.

**Art. 52<sup>90</sup>** Object  
(Art. 36 para. 1 let. d CISA)

A SICAV may only manage its own assets or those of its subfunds. It is specifically prohibited from rendering services pursuant to Article 26 and 34 of the Financial Institutions Act of 15 June 2018<sup>91</sup> (FinIA) on behalf of third parties.

<sup>87</sup> Inserted by No I of the Ordinance of 13 Feb. 2013 (AS 2013 607). Amended by Annex 11 No I of the Financial Services Ordinance of 6 Nov. 2019, in force since 1 Jan. 2020 (AS 2019 4459).

<sup>88</sup> Repealed by Annex 1 No II 9 of the Financial Institutions Ordinance of 6 Nov. 2019, with effect from 1. Jan. 2020 (AS 2019 4633).

<sup>89</sup> Amended by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS 2013 607).

<sup>90</sup> Amended by Annex 1 No II 9 of the Financial Institutions Ordinance of 6 Nov. 2019, in force since 1 Jan. 2020 (AS 2019 4633).

<sup>91</sup> SR 954.1

**Art. 53** Minimum assets  
(Art. 36 para. 2 CISA)

In relation to the minimum assets of a SICAV, Article 35 applies accordingly.

**Art. 54**<sup>92</sup> Minimum investment amount

<sup>1</sup> In respect of a self-managed SICAV and an externally managed SICAV that delegates administration to an authorised fund management company and portfolio management to another manager of collective assets, company shareholders must provide a minimum investment amount of 500,000 Swiss francs at the time of formation.

<sup>2</sup> Where the externally managed SICAV delegates administration and portfolio management to the same authorised fund management company, company shareholders must provide a minimum investment amount of 250,000 Swiss francs at the time of formation.

<sup>3</sup> The minimum investment amount must be maintained at all times.

<sup>4</sup> A SICAV shall notify FINMA of any shortfall immediately.

**Art. 55** Definition and level of capital adequacy  
(Art. 39 CISA)

<sup>1</sup> The holdings provided by the company shareholders are included in the capital.

<sup>2</sup> The following must be deducted from the capital:

- a. any balance sheet loss attributable to the company shareholders;
- b. any allowances and provisions attributable to the company shareholders;
- c. intangible assets (including start-up and organisational costs as well as goodwill) with the exception of software.

<sup>3</sup> The self-managed SICAV calculates the required level of capital adequacy in accordance with Article 59 of the Financial Institutions Ordinance of 6 November 2019<sup>93</sup> (FinIO).<sup>94</sup>

<sup>3bis</sup> An externally managed SICAV that delegates administration to an authorised fund management company and portfolio management to a manager of collective assets calculates the required level of capital adequacy in accordance with Article 59 FinIO. It may deduct 20 percent from this amount.<sup>95</sup>

<sup>92</sup> Amended by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS 2013 607).

<sup>93</sup> SR 954.11

<sup>94</sup> Amended by Annex 1 No II 9 of the Financial Institutions Ordinance of 6 Nov. 2019, in force since 1 Jan. 2020 (AS 2019 4633).

<sup>95</sup> Inserted by No I of the Ordinance of 13 Feb. 2013 (AS 2013 607). Amended by Annex 1 No II 9 of the Financial Institutions Ordinance of 6 Nov. 2019, in force since 1 Jan. 2020 (AS 2019 4633).



<sup>3ter</sup> An externally managed SICAV that delegates portfolio management to a bank pursuant to the Federal Banking Act of 8 November 1934<sup>96</sup> or to a securities firm pursuant to the FinIA<sup>97</sup> with its registered office in Switzerland may be exempted by FINMA from the duty to include its own resources in the assets.<sup>98</sup>

<sup>4</sup> Where an externally managed SICAV delegates administration and portfolio management to the same authorised fund management company, it is not required to include its own resources in the assets (Art. 59 para. 4 FinIO).<sup>99</sup>

<sup>5</sup> The prescribed ratio between the equity and total assets of a self-managed SICAV as well as an externally managed SICAV that delegates administration to an authorised fund management company and portfolio management to a manager of collective assets shall be maintained at all times.<sup>100</sup>

<sup>6</sup> A SICAV notifies FINMA of capital inadequacy immediately.

<sup>7</sup> FINMA regulates the details.

**Art. 56** Net issue price at time of initial issue

(Art. 40 para. 4 CISA)

All shares have the same net issue price at the time of initial issue of their category, irrespective of whether they belong to different categories. This represents the issue price payable by the investors at the time of issue less any fees and incidental costs.

**Art. 57**<sup>101</sup>

**Art. 58** Issue and redemption of shares

(Art. 42 para. 1 and 3 CISA)

<sup>1</sup> Articles 37 and 38 apply accordingly.

<sup>2</sup> Company shareholders may redeem their shares if:

- a. the appropriate ratio between holdings of the company shareholders and total assets of the SICAV is maintained even after redemption; and
- b. the minimum investment amount is maintained.

<sup>96</sup> SR **952.0**

<sup>97</sup> SR **954.1**

<sup>98</sup> Inserted by No I of the Ordinance of 13 Feb. 2013 (AS **2013** 607). Amended by Annex 1 No II 9 of the Financial Institutions Ordinance of 6 Nov. 2019, in force since 1 Jan. 2020 (AS **2019** 4633).

<sup>99</sup> Amended by Annex 1 No II 9 of the Financial Institutions Ordinance of 6 Nov. 2019, in force since 1 Jan. 2020 (AS **2019** 4633).

<sup>100</sup> Amended by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS **2013** 607).

<sup>101</sup> Repealed by No I of the Ordinance of 13 Feb. 2013, with effect from 1. March 2013 (AS **2013** 607).

**Art. 59** Investment in treasury shares

(Art. 42 para. 2 and 94 CISA)

Investments by a subfund in other subfunds of the same SICAV do not constitute an investment in treasury shares.

**Art. 60** Media of publication

(Art. 43 para. 1 let. f CISA)

Article 39 applies accordingly.

**Art. 61** SICAV with share classes

(Art. 40 para. 4 and 78 para. 3 CISA)

<sup>1</sup> Where provided by the articles of association, a SICAV may create, dissolve or merge share classes with the approval of FINMA.

<sup>2</sup> Article 40 applies accordingly. The merger requires the approval of the general meeting of shareholders.

<sup>3</sup> The risk that a class of shares may be liable for another class must be disclosed in the prospectus.

**Art. 62** Voting rights

(Art. 40 para. 4, 47 and 94 CISA)

<sup>1</sup> Shareholders have the right to vote on:

- a. the subfund in which they are invested;
- b. the company if the decision affects the SICAV as a whole.

<sup>2</sup> If the share of voting rights assigned to a subfund differs significantly from the share of assets assigned to the subfund, the shareholders may at the general meeting resolve to split or merge the shares of a share category in accordance with paragraph 1 letter b. FINMA must give its consent for such decision to be valid.

<sup>3</sup> FINMA may order the splitting or merging of shares in a share class.

**Art. 62a**<sup>102</sup> Custodian bank

(Art. 44a CISA)

In relation to the custodian bank, Article 15 paragraph 2 of the present Ordinance and Article 53 FinIO<sup>103</sup> apply accordingly.

<sup>102</sup> Inserted by No I of the Ordinance of 13 Feb. 2013 (AS **2013** 607). Amended by Annex 1 No II 9 of the Financial Institutions Ordinance of 6 Nov. 2019, in force since 1 Jan. 2020 (AS **2019** 4633).

<sup>103</sup> SR **954.11**

**Art. 62b**<sup>104</sup> Content of investment regulations

(Art. 43 and 44 CISA)

<sup>1</sup> The content and approval of the investment regulations are based on the provisions on the fund contract, unless the law or articles of association provide otherwise.

<sup>2</sup> When convening the general meeting, the SICAV informs shareholders in the form prescribed in the articles of association about:<sup>105</sup>

- a. which changes to the investment regulations FINMA has verified; and
- b. which of these changes FINMA has established as being in compliance with the Act.

<sup>3</sup> Paragraphs 1 and 2 apply to the articles of association accordingly, provided the latter regulate the contents of the investment regulations.

**Section 2 Organisation****Art. 63** General meeting

(Art. 50 and 94 CISA)

<sup>1</sup> The articles of association may provide for general meetings in respect of individual subfunds where decisions are involved which affect only such subfunds.

<sup>2</sup> Shareholders which together hold at least 10 percent of the votes of all or some subfunds may request that items be included on the agenda for discussion at the general meeting of the SICAV or subfund.

<sup>3</sup> The general meeting of the SICAV or subfunds is responsible for amending the investment regulations provided such amendment:

- a. is not required by law;
- b.<sup>106</sup> affects the rights of shareholders; or
- c. is not of an exclusively formal nature.

<sup>4</sup> In the media of publication, the SICAV publishes the material amendments to the fund regulations resolved by the general meeting and approved by FINMA, indicating the offices from which the amended wording may be obtained free of charge.

<sup>5</sup> The provision regarding important resolutions passed by the general meeting of a company limited by shares (Art. 704 CO<sup>107</sup>) does not apply.<sup>108</sup>

<sup>104</sup> Inserted by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS **2013** 607).

<sup>105</sup> Amended by Annex 1 No II 9 of the Financial Institutions Ordinance of 6 Nov. 2019, in force since 1 Jan. 2020 (AS **2019** 4633).

<sup>106</sup> Amended by No I of the Ordinance of 13. Feb. 2008, in force since 1 March 2008 (AS **2008** 571).

<sup>107</sup> SR **220**

<sup>108</sup> Inserted by Annex No 6 of the Financial Market Audit Act of 15 Oct. 2008, in force since 1 Jan. 2009 (AS **2008** 5363).

**Art. 64** Board of directors

(Art. 51 CISA)

- <sup>1</sup> The board of directors has the following tasks:
- a. performing the duties required under Article 716a of the Swiss Code of Obligations<sup>109</sup>;
  - b. determining the principles of the investment policy;
  - c.<sup>110</sup> appointing the custodian bank or an institution in accordance with Article 44a paragraph 2 of the Act;
  - d. creating new subfunds, where provided by the articles of association;
  - e.<sup>111</sup> drawing up the prospectus and the key information document;
  - f. administration.

<sup>2</sup> The tasks laid down in paragraph 1a–c may not be delegated.

<sup>3</sup> In a self-managed SICAV, the tasks defined in paragraph 1 letters d and e, in addition to the administrative sub-tasks defined in paragraph 1 letter f, specifically risk management, the structuring of the internal control system (ICS) and compliance, may only be delegated to the executive board.

<sup>4</sup> In relation to the organisational structure of a self-managed SICAV, Article 51 paragraph 1, Article 52 paragraph 1 and Article 53 FinIO<sup>112</sup> apply accordingly.<sup>113</sup>

**Art. 65**<sup>114</sup> Delegation of tasks

(Art. 36 para. 3 and 51 para. 5 CISA)

Articles 32 and 35 FinIA<sup>115</sup> apply accordingly to the delegation of tasks.

**Art. 66**<sup>116</sup>

<sup>109</sup> SR 220

<sup>110</sup> Amended by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS 2013 607).

<sup>111</sup> Amended by Annex 11 No I of the Financial Services Ordinance of 6 Nov. 2019, in force since 1 Jan. 2020 (AS 2019 4459).

<sup>112</sup> SR 954.11

<sup>113</sup> Amended by Annex 1 No II 9 of the Financial Institutions Ordinance of 6 Nov. 2019, in force since 1 Jan. 2020 (AS 2019 4633).

<sup>114</sup> Amended by Annex 1 No II 9 of the Financial Institutions Ordinance of 6 Nov. 2019, in force since 1 Jan. 2020 (AS 2019 4633).

<sup>115</sup> SR 954.1

<sup>116</sup> Repealed by No I of the Ordinance of 13 Feb. 2013, with effect from 1. March 2013 (AS 2013 607).

## Chapter 3 Types of Open-Ended Collective Investment Schemes and Investment Regulations

### Section 1 General Provisions

**Art. 67** Compliance with investment regulations  
(Art. 53 ff. CISA)

<sup>1</sup> Unless specified otherwise, the percentage restrictions given in this chapter relate to the fund assets at market values; they must be maintained at all times.

<sup>2</sup> If the limits are exceeded as a result of market changes, the investments must be restored to the permitted level within a reasonable period, taking due account of the investors' interests.

<sup>3</sup> Securities funds and other funds must comply with the investment restrictions within six months of launch.

<sup>4</sup> Real estate funds must comply with the investment restrictions within two years of launch.

<sup>5</sup> FINMA may extend the time limits specified in paragraphs 3 and 4 at the request of the fund management company and the SICAV.

**Art. 68** Subsidiary companies and permitted investments  
(Art. 53 ff. CISA)

<sup>1</sup> With regard to the administration of collective investment schemes, the fund management company and the SICAV may deploy subsidiaries whose sole object is the holding of assets for collective investment. FINMA regulates the details.

<sup>2</sup> A SICAV may acquire movable and non-movable assets which are essential for the direct performance of its operations. FINMA regulates the details.

**Art. 69** Umbrella funds  
(Art. 92 ff. CISA)

<sup>1</sup> Umbrella funds may only comprise subfunds of the same type.

<sup>2</sup> The following types of fund qualify:

- a. securities funds;
- b. real estate funds;
- c. other funds for traditional investments;
- d. other funds for alternative investments..

<sup>3</sup> In the case of collective investment schemes which include subfunds, the investment restrictions and techniques for each individual subfund apply.

## Section 2 Securities Funds

### Art. 70 Permitted investments

(Art. 54 para. 1 and 2 CISA)

- <sup>1</sup> The following investments are permitted:
- a. securities in accordance with Article 71;
  - b. derivative financial instruments in accordance with Article 72;
  - c. units in collective investment schemes which comply with the requirements specified in Article 73;
  - d. money market instruments as specified in Article 74;
  - e. sight or time deposits with a term to maturity not exceeding twelve months held with banks domiciled in Switzerland or in a member state of the European Union or in another country provided that the bank is subject to supervision in that country which is equivalent to the standard of supervision in Switzerland.
- <sup>2</sup> The following are not permitted:
- a. investments in precious metals or precious metals certificates, commodities or commodity certificates;
  - b. short-selling of investments in accordance with paragraph 1 letters a, b, c and d.

<sup>3</sup> Investments in assets other than those named in paragraph 1 may not exceed 10 percent of the fund's total assets.

<sup>4</sup> ...<sup>117</sup>

### Art. 71 Securities

(Art. 54 CISA)

<sup>1</sup> Securities are deemed to be equity or debt securities pursuant to Article 54 paragraph 1 of the Act which embody a participation right or claim or the right to acquire such securities and rights by way of subscription or exchange, specifically warrants.

<sup>2</sup> Investments in securities from new issues are permitted only if the terms of issue provide for their admission to a stock exchange or other regulated market which is open to the public. If one year following purchase they are not yet admitted on the stock exchange or other market open to the public, such securities must be sold within one month.

<sup>3</sup> FINMA may formalise the permitted investments for a securities fund in accordance with the laws currently in force in the European Communities.<sup>118</sup>

<sup>117</sup> Amended by Annex 1 No II 9 of the Financial Institutions Ordinance of 6 Nov. 2019, in force since 1 Jan. 2020 (AS 2019 4633).

<sup>118</sup> Inserted by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS 2013 607).

**Art. 72** Derivative financial instruments

(Art. 54 and 56 CISA)

- <sup>1</sup> Derivative financial instruments are permitted if:
- a. their underlyings are instruments as defined in Article 70 paragraph 1 letters a-d, financial indices, interest rates, exchange rates, loans or currencies;
  - b. the underlyings are instruments permitted by the fund regulations; and
  - c. they are traded on a stock exchange or other regulated market open to the public.
- <sup>2</sup> In the case of transactions involving OTC derivatives, the following conditions shall be complied with in addition:
- a. The counterparty is a regulated financial intermediary specializing in such transactions.
  - b. The OTC derivatives are traded daily or may be returned to the issuer at any time. In addition, it is possible for them to be valued in a reliable and transparent manner.
- <sup>3</sup> A securities fund's overall exposure associated with derivative financial instruments may not exceed 100 percent of the net assets. The overall exposure may not exceed 200 percent of the fund's total net assets. When taking account of the possibility of temporary borrowing amounting to no more than 10 percent of the net assets (Art. 77 para 2), the overall exposure may not exceed 210 percent of the fund's total net assets.
- <sup>4</sup> Warrants must be treated in the same manner as financial instruments.

**Art. 73** Investments in other collective investment schemes (target funds)

(Art. 54 and 57 para. 1 CISA)

- <sup>1</sup> The fund management company and the SICAV may only invest in target funds if:
- a. their documents restrict investments in other target funds for their part to a total of 10 percent;
  - b. these funds are subject to provisions equivalent to those pertaining to securities funds in respect of the object, organisation, investment policy, investor protection, risk diversification, asset segregation, borrowing, lending, short-selling of securities and money market instruments, issue and redemption of units and content of the semi-annual and annual reports;
  - c. the target funds are admitted as collective investment schemes in the country of domicile, where they are subject to investor protection which is equivalent to that in Switzerland, and international legal assistance is ensured.
- <sup>2</sup> They may invest a maximum of:
- a. 20 percent of the fund's assets in units of the same target fund; and

b.<sup>119</sup> 30 percent of the fund's assets in units of target funds that do not meet the relevant directives of the European Union (undertakings for collective investment in transferable securities, UCITS) but are equivalent to these or Swiss securities funds pursuant to Article 53 of the Act.

<sup>3</sup> In relation to investments in target funds, Articles 78-84 do not apply.

<sup>4</sup> If, in accordance with the fund regulations, a significant portion of the fund assets may be invested in target funds:

- a.<sup>120</sup> the fund regulations and the prospectus must contain information about the maximum level of management fees to be borne by the investing collective investment scheme itself as well as by the target funds;
- b. the annual report must specify the maximum portion of management fees that the investing collective investment scheme and the target funds may each bear.

**Art. 73a**<sup>121</sup> Master feeder-structures

(Art. 54 and 57 para. 1 CISA)

<sup>1</sup> A feeder fund is a collective investment scheme that by way of derogation from Article 73 paragraph 2 letter a invests at least 85 percent of the fund's assets in units of the same target fund (master fund).

<sup>2</sup> The master fund is a Swiss collective investment scheme of the same type as the feeder fund but is not itself a feeder fund and does not hold any units in such a fund.

<sup>3</sup> A feeder fund may invest up to 15 percent of its fund assets in liquid assets (Art. 75) or derivative financial instruments (Art. 72). The derivative financial instruments may only be used for hedging purposes.

<sup>4</sup> FINMA regulates the details.

**Art. 74** Money market instruments

(Art. 54 para. 1 CISA)

<sup>1</sup> The fund management company and the SICAV may acquire money market instruments if these are liquid and can be valued and are traded on a stock exchange or other regulated market that is open to the public.

<sup>2</sup> Money market instruments that are not traded on a stock exchange or other regulated market that is open to the public may only be acquired if the issue or the issuer is subject to provisions regarding creditor or investor protection and if the money market instruments are issued or guaranteed by:

- a. the Swiss National Bank;

<sup>119</sup> Amended by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS 2013 607).

<sup>120</sup> Amended by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS 2013 607).

<sup>121</sup> Inserted by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS 2013 607).



- b. the central bank of a member state of the European Union;
- c. the European Central Bank;
- d. the European Union;
- e. the European Investment Bank;
- f. the Organisation for Economic Cooperation and Development (OECD);
- g. another state including its constituent parts;
- h. a public international body of which Switzerland or at least one member state of the European Union is a member;
- i. a public body;
- j. a company whose securities are traded on a stock exchange or other regulated market open to the public;
- k.<sup>122</sup> a bank, securities firm or other institution that is subject to supervision equivalent to that in Switzerland.

**Art. 75**            Liquid assets  
(Art. 54 para. 2 CISA)

Liquid assets comprise bank credit balances and claims arising from repurchase agreements at sight or on demand with maturities of up to twelve months.

**Art. 76**            Securities lending and repurchase agreements (repo, reverse repo)  
(Art. 55 para. 1 let. a and b CISA)

<sup>1</sup> Securities lending and repurchase agreements may only be used for the efficient management of the fund's assets. The custodian bank is liable for the proper, efficient settlement of securities lending and repurchase transactions.

<sup>2</sup> Banks, brokers, insurance institutions and securities clearing organisations may be used as borrowers in the context of securities lending provided they specialise in securities lending and furnish collateral which corresponds to the scope and risk of the proposed transactions. Repurchase transactions may be conducted under the same conditions with the institutions mentioned.

<sup>3</sup> Securities lending and repurchase transactions are governed by a standardised framework agreement.

**Art. 77**            Raising and granting of loans; encumbrance of the fund's assets  
(Art. 55 para. 1 let. c and d and para. 2 CISA)

<sup>1</sup> At the expense of a securities fund:

- a. no loans may be granted, nor may any guarantees be concluded;

<sup>122</sup> Amended by Annex 1 No II 9 of the Financial Institutions Ordinance of 6 Nov. 2019, in force since 1 Jan. 2020 (AS 2019 4633).

- b. no more than 25 percent of the fund's net assets may be pledged or ownership thereof be transferred as collateral.
- <sup>2</sup> Securities funds may borrow the equivalent of up to 10 percent of the net assets on a temporary basis.
- <sup>3</sup> Securities lending and repurchase agreements in the form of reverse repos are not deemed to be lending pursuant to paragraph 1a.
- <sup>4</sup> Repurchase agreements in the form of repos pursuant to paragraph 2 are deemed to be borrowing unless the funds obtained are used as part of an arbitrage transaction for the acquisition of securities of a similar type in connection with a reverse repo.

**Art. 78** Risk diversification in relation to securities and money market instruments  
(Art. 57 CISA)

<sup>1</sup> Including the derivative financial instruments, the fund management company and the SICAV may invest up to 10 percent of the fund's assets in securities or money market instruments of the same issuer.

<sup>2</sup> The total value of the securities and money market instruments of the issuers in which more than 5 percent of the fund's assets are invested may not exceed 40 percent of the fund's assets. This limit does not apply to sight or time deposits as defined in Article 79 or to transactions in OTC derivatives as defined in Article 80, to which the counterparty is a bank as defined in Article 70 paragraph 1e.

**Art. 79** Risk diversification in relation to sight and time deposits  
(Art. 57 CISA)

The fund management company and the SICAV may invest up to 20 percent of the fund's assets in sight and time deposits held with the same bank. Investments in bank deposits (Art. 70 para. 1 let. e) in addition to liquid assets (Art. 75) are both subject to this limit.

**Art. 80** Risk diversification in relation to OTC transactions and derivatives  
(Art. 57 CISA)

<sup>1</sup> The fund management company and the SICAV may invest up to 5 percent of the fund's assets in OTC transactions with the same counterparty.

<sup>2</sup> Where the counterparty is a bank as defined in Article 70 paragraph 1e, this limit is raised to 10 percent of the fund's assets.

<sup>3</sup> The derivative financial instruments and claims against counterparties arising from OTC transactions are subject to the regulations on risk diversification as defined in Articles 73 and 78-84. This does not apply to derivatives on indices which comply with the conditions defined in Article 82 paragraph 1 letter b.

<sup>4</sup> Where the claims arising from OTC transactions are hedged using collateral in the form of liquid assets such claims are not included in the calculation of counterparty

risk. FINMA regulates the details of the collateral requirements. In doing so, it shall take account of international standards.<sup>123</sup>

**Art. 81** Overall limits

(Art. 57 CISA)

<sup>1</sup> Investments, deposits and claims in accordance with Articles 78–80 from the same issuer may not exceed 20 percent of the fund's overall assets.

<sup>2</sup> Investments and money market instruments in accordance with Article 78 from the same group of companies may not exceed 20 percent of the fund's overall assets.

<sup>3</sup> The limits defined in Articles 78–80 and 83 paragraph 1 may not be accumulated.

<sup>4</sup> In the case of umbrella funds, these limits apply to each individual subfund.

<sup>5</sup> Companies which form a group in accordance with international accounting regulations are deemed to be a single issuer.

**Art. 82** Exceptions for index funds

(Art. 57 CISA)

<sup>1</sup> The fund management company and the SICAV may invest a maximum of 20 percent of the fund's assets in securities or money market instruments from the same issuer if:

- a. the fund regulations provide for the tracking of an index of equity or debt securities which is recognized by FINMA (index funds); and
- b. the index is sufficiently diversified, representative of the market to which it relates, and is published in an appropriate manner.

<sup>2</sup> The limit is increased to 35 percent for any securities or money market instruments from the same issuer where such instruments strongly dominate regulated markets. This exemption only applies in relation to a single issuer.

<sup>3</sup> The investments defined in this article are not considered when observing the limit of 40 percent defined in Article 78 paragraph 2.

**Art. 83** Exemptions for publicly guaranteed or issued investments

(Art. 57 para. 1 CISA)

<sup>1</sup> The fund management company and the SICAV may invest up to 35 percent of the fund's assets in securities or money market instruments of the same issuer provided such instruments are issued or guaranteed by:

- a. an OECD member country;
- b. a public body from the OECD;
- c. a public international body of which Switzerland or a member state of the European Union is a member.

<sup>123</sup> Inserted by No I of the Ordinance of 13 Feb. 2013 (AS 2013 607). Amended by Annex 4 No 1 of the Ordinance of 25 June 2014, in force since 1 Jan. 2015 (AS 2014 2321).

<sup>2</sup> Subject to the approval of FINMA, they may invest up to 100 percent of the fund's assets in securities or money market instruments of the same issuer. In such event the following rules must be observed:

- a. the investments are spread across securities or money market instruments from at least six different issues;
- b. up to 30 percent of the fund's assets are invested in securities and money market instruments of the same issue;
- c. reference is made in the prospectus and in the advertising material to the specific approval of FINMA; the issuers in which more than 35 percent of the fund's assets are invested are also listed therein;
- d. the fund regulations include a listing of the issuers in which more than 35 percent of the fund's assets may be invested, together with the corresponding guarantors.

<sup>3</sup> Provided the protection of investors is not endangered, FINMA grants authorisation.

<sup>4</sup> The investments defined in this article are not considered when observing the limit of 40 percent defined in Article 78 paragraph 2.

**Art. 84**            Limit to the equity interest in a single issuer

(Art. 57 para. 2 CISA)

<sup>1</sup> Neither the fund management company nor the SICAV may acquire equity securities representing more than 10 percent of the overall voting rights in a company or which would enable it to exert a material influence on the management of an issuing company.

<sup>2</sup> FINMA may grant an exception provided the fund management company or the SICAV provides evidence that it does not exert a material influence.

<sup>3</sup> The fund management company and the SICAV may acquire the following on behalf of the fund assets:

- a. up to 10 percent of the non-voting equity paper, debt instruments or money market instruments of the same issuer;
- b. up to 25 percent of the units in other collective investment schemes which meets the requirements specified in Article 73.

<sup>4</sup> The limit defined in paragraph 3 does not apply if, at the time of acquisition, the gross amount of the debt instruments, the money market instruments or the units in other collective investment schemes cannot be calculated.

<sup>5</sup> The limits defined in paragraphs 1 and 3 do not apply to securities and money market instruments which are issued or guaranteed by a country or public body belonging to the OECD or by international public bodies of which Switzerland or a member state of the European Union is a member.

**Art. 85** Specific obligation to inform in the prospectus  
(Art. 75 CISA)

<sup>1</sup> The prospectus must provide information about the categories of investment instruments in which the fund is invested and whether transactions involving derivative financial instruments are conducted. Where transactions involving derivative financial instruments are conducted, an explanation must be given as to whether such transactions are conducted as part of the investment strategy or for the hedging of investment positions, and how the use of such instruments affects the risk profile of the securities fund.

<sup>2</sup> Where the fund management company or the SICAV are permitted to invest the fund's assets primarily in investments other than those defined in Article 70 paragraph 1 letters a and e, or where they constitute an index fund (Art. 82), specific reference must be made to this fact in the prospectus and in the advertising material.

<sup>3</sup> Where the net assets of a securities fund exhibit high volatility or a high leverage effect owing to the composition of the investments or the investment techniques applied, specific reference must be made to this fact in the prospectus and in the advertising material.

### Section 3 Real Estate Funds

**Art. 86** Permitted investments  
(Art. 59 para. 1 and 62 CISA)

<sup>1</sup> The investments of real estate funds or real estate SICAVs must be specifically named in the fund regulations.<sup>124</sup>

<sup>2</sup> The following real estate, which is entered on the basis of the registration of the fund management company, SICAV or fund management company appointed by the SICAV pursuant to paragraph 2<sup>bis</sup>, is deemed to be real estate pursuant to Article 59 paragraph 1 letter a of the Act:<sup>125</sup>

- a. residential buildings;
- b. properties which are used exclusively or mainly for commercial purposes; mainly means where the income from the commercial element accounts for at least 60 percent of the total income from real estate (commercially used properties);
- c. mixed-use buildings used for residential as well as commercial purposes; mixed means where the income from the commercial element accounts for more than 20 percent but less than 60 percent of the income from real estate;
- d. condominiums;

<sup>124</sup> Amended by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS 2013 607).

<sup>125</sup> Amended by Annex 1 No II 9 of the Financial Institutions Ordinance of 6 Nov. 2019, in force since 1 Jan. 2020 (AS 2019 4633).

- e. building land (including properties for demolition) and buildings under construction;
- f. leasehold land.

<sup>2bis</sup> The real estate must be entered in the Land Register under the name of the fund management company or SICAV with a remark to the effect that it belongs to the real estate fund. Where the real estate fund or SICAV under whose name the real estate is registered has subfunds, the subfund to which the real estate belongs must be specified.<sup>126</sup>

<sup>3</sup> The following investments are also permitted:

- a. mortgage notes or other contractual charges on property;
- b. participations in and claims against real estate companies as defined in Article 59 paragraph 1 letter b of the Act;
- c. units in other real estate funds (including real estate investment trusts or REITs) and real estate investment companies and certificates which are traded on a stock exchange or other regulated market which is open to the public, as defined in Article 59 paragraph 1 letter c of the Act;
- d. foreign real estate securities as defined in Article 59 paragraph 1 letter d of the Act.

<sup>4</sup> Undeveloped plots of land belonging to a real estate fund must be connected to the infrastructure network and suitable for immediate development and must also possess legally effective planning permission for their development. Construction work must commence prior to the expiry of the period for which the relevant planning permission is valid.<sup>127</sup>

#### **Art. 87** Risk diversification and limits

(Art. 62 CISA)

<sup>1</sup> Real estate funds must spread their investments over at least ten properties. Residential estates which have been built using the same principles of construction and neighbouring plots of land are deemed to be a single property.

<sup>2</sup> The market value of a single property may not exceed 25 percent of the fund's assets.

<sup>3</sup> The following limits expressed as a percentage of the fund's assets apply to the investments defined in a–d:

- a. up to 30 percent of the fund's assets may be invested in building land, including properties for demolition, and buildings under construction;
- b.<sup>128</sup> up to 30 percent of the fund's assets may be invested in leasehold land;

<sup>126</sup> Inserted by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS 2013 607).

<sup>127</sup> Amended by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS 2013 607).

<sup>128</sup> Amended by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS 2013 607).

- c. up to 10 percent of the fund's assets may be invested in mortgage notes and other rights of lien on real estate;
- d. up to 25 percent of the fund's assets may be invested in other real estate funds and real estate investment companies as defined in Article 86 paragraph 3 letter c.

<sup>4</sup> The investments defined in paragraph 3 letters a and b may together account for up to 40 percent of the fund's assets.<sup>129</sup>

<sup>5</sup> FINMA may grant exemptions in justified individual instances.

**Art. 88** Dominant influence of the fund management company and the SICAV in the case of ordinary co-ownership  
(Art. 59 para. 2 CISA)

<sup>1</sup> The fund management company and the SICAV are deemed to exert a dominant influence if they have a majority of the co-ownership shares and votes.

<sup>2</sup> In a set of rules governing use and administration as defined in Article 647 paragraph of the Swiss Civil Code (CC)<sup>130</sup> they shall retain all rights, measures and actions provided for in Articles 647a–651 CC.

<sup>3</sup> The right of pre-emption pursuant to Article 682 CC may not be suspended under contract.

<sup>4</sup> Co-ownership of common facilities associated with properties held by the collective investment scheme which are part of a more extensive development must not grant a controlling influence. In such cases, the right of pre-emption pursuant to paragraph 3 may be suspended under contract.

**Art. 89** Liabilities; short-term fixed interest securities and funds available at short notice  
(Art. 60 CISA)

<sup>1</sup> Liabilities are deemed to be borrowings, obligations from business activities, in addition to all claims arising from units on which notice has been given.

<sup>2</sup> Short-term fixed interest securities are deemed to be debt securities with a term or residual term to maturity of up to twelve months.

<sup>3</sup> Funds available at short notice are deemed to be cash on hand, postal check<sup>131</sup> and bank account deposits at sight and on demand with maturities of up to twelve months, as well as guaranteed credit facilities with a bank for up to 10 percent of the fund's net assets. The credit facilities must be included in the maximum level of pledging permitted pursuant to Article 96 paragraph 1.

<sup>129</sup> Amended by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS 2013 607).

<sup>130</sup> SR 210

<sup>131</sup> Following the FCD of 7 June 2013, which converted SwissPost into Swiss Post Ltd under special legislation and spun off Post Finance as a private company limited by shares, the reference to postal check deposits has been irrelevant since 26 June 2013.

**Art. 90** Collateral for construction projects  
(Art. 65 CISA)

Fixed-income securities with a term or residual term to maturity of up to 24 months may be held as collateral for impending construction projects.

**Art. 91**<sup>132</sup> Derivative financial instruments  
(Art. 61 CISA)

Derivative financial instruments are permitted for the hedging of interest rate, currency, credit and market risk. The provisions applicable to securities funds (Art. 72) apply accordingly.

**Art. 91a**<sup>133</sup> Closely related persons  
(Art. 63 para. 2 and 3 CISA)

<sup>1</sup> In particular, closely related persons include:

- a. the fund management company, SICAV, custodian bank and their agents, specifically architects and building contractors commissioned by them;
- b. the members of the board of directors and employees of the fund management company or SICAV;
- c. the board of directors and members of the executive board as well as employees of the custodian bank appointed to monitor the real estate funds;
- d. the audit company and the employees entrusted with the auditing of the real estate funds;
- e. the valuation experts;
- f. the real estate companies not belonging 100 percent to the real estate fund and members of the board of directors and employees of such real estate companies;
- g. the property management businesses entrusted with the management of the real estate and members of the board of directors and employees of such property management businesses;
- h. the significant equity holders pursuant to Article 14 paragraph 3 of the Act of the companies mentioned in letters a–g above.

<sup>2</sup> Agents pursuant to paragraph 1 letter a are not deemed to be closely related persons if evidence can be provided that they neither exert nor have exerted direct or direct influence on the fund management company or the SICAV and the fund management company or SICAV are not biased in the matter in any other way.

<sup>132</sup> Amended by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS 2013 607).

<sup>133</sup> Inserted by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS 2013 607).



**Art. 92** Valuation of real estate upon purchase or sale

(Art. 64 CISA)

<sup>1</sup> Real estate which the fund management company or SICAV wish to purchase must be valued in advance.<sup>134</sup>

<sup>2</sup> The valuation expert shall physically inspect the property when performing the valuation.

<sup>3</sup> In the event of a sale, a new valuation may be waived if:

- a. the existing valuation is no older than three months; and
- b. there has not been any material change in the situation.<sup>135</sup>

<sup>4</sup> The fund management company and the SICAV must explain to the audit company for the reason for any sale price which is below the estimated valuation or purchase price which is above such valuation.

**Art. 93** Valuation of properties belonging to the collective investment scheme(Art. 64 CISA)<sup>136</sup>

<sup>1</sup> The market value of the properties belonging to the real estate fund must be reappraised by the valuation experts at the end of each accounting year.

<sup>2</sup> The properties must be physically inspected by the valuation experts at least every three years.

<sup>3</sup> The valuation experts must provide the audit company with justification for their method of valuation.

<sup>4</sup> Where the fund management company and the SICAV do not adopt the revised valuation figure in their accounts, they must explain this to the audit company.

**Art. 94** Assessment and valuation in relation to construction projects(Art. 64 and 65 CISA)<sup>137</sup>

<sup>1</sup> In relation to construction projects, the fund management company and the SICAV shall instruct at least one valuation expert to examine whether or not the probable costs are reasonable and in accordance with the prevailing market situation.

<sup>2</sup> Following the completion of the building, the fund management company and the SICAV shall instruct at least one valuation expert to assess the market value.

<sup>134</sup> Amended by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS 2013 607).

<sup>135</sup> Amended by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS 2013 607).

<sup>136</sup> Inserted by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS 2013 607).

<sup>137</sup> Inserted by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS 2013 607).

**Art. 95** Duty to publish  
(Art. 67 CISA)<sup>138</sup>

<sup>1</sup> The fund management company and the SICAV shall publish in the media of publication the market value of the fund's assets and resulting net asset value of the fund units simultaneously with the announcement to the bank or securities firm entrusted with the regular on and off-exchange trading of the units of the real estate fund.<sup>139</sup>

<sup>2</sup> In relation to real estate funds which are traded on a stock exchange or other regulated market open to the public, the relevant regulations governing stock trading must also be observed.

**Art. 96** Special powers  
(Art. 65 CISA)

<sup>1</sup> In relation to pledging land and ceding the rights of lien as collateral pursuant to Article 65 paragraph 2 of the Act, the encumbrance may not exceed on average one third of the market value of all real estate assets.<sup>140</sup>

<sup>1bis</sup> To safeguard liquidity, the charge may be temporarily and exceptionally increased to half the market value where:

- a. provision is made in the fund regulations; and
- b. the interests of the investors are safeguarded.<sup>141</sup>

<sup>1ter</sup> As part of its audit of the real estate fund, the audit company expresses its opinion on the conditions pursuant to paragraph 1<sup>bis</sup>.<sup>142</sup>

<sup>2</sup> Where the fund management company and the SICAV commission the construction of buildings or carry out the refurbishment of buildings, they may during the period of preparation, construction or refurbishment credit the income statement of the real estate fund for building land and buildings under construction at the prevailing market rate, provided the costs do not exceed the estimated market value as a result.

**Art. 97** Issuing of units in real estate funds  
(Art. 66 CISA)

<sup>1</sup> Units may be issued at any time. This may only be effected in tranches.

<sup>2</sup> The fund management company and SICAV shall specify at least:

<sup>138</sup> Inserted by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS 2013 607).

<sup>139</sup> Amended by Annex 1 No II 9 of the Financial Institutions Ordinance of 6 Nov. 2019, in force since 1 Jan. 2020 (AS 2019 4633).

<sup>140</sup> Amended by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS 2013 607).

<sup>141</sup> Inserted by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS 2013 607).

<sup>142</sup> Inserted by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS 2013 607).

- a. the planned number of new units to be issued;
- b. the planned subscription ratio for the existing investors;
- c. the issuing method for the subscription rights.

<sup>3</sup> The valuation experts shall review the market value of each property in order to calculate the net asset value and determine the issue price.

**Art. 98** Early redemption of units in real estate funds  
(Art. 66 CISA)

Units on which notice has been given in the course of an accounting year may be redeemed early by the fund management company and the SICAV at the close of said accounting year, providing:

- a.<sup>143</sup> the investor has stated this wish in writing or in another form demonstrable via text at the time of serving notice;
- b. the wishes of all investors who have requested early redemption can be met.

#### **Section 4 Other Funds for Traditional and Alternative Investments**

**Art. 99** Permitted investments  
(Art. 69 CISA)

<sup>1</sup> The following investments are specifically admitted for other funds:

- a. securities;
- b. units in collective investment schemes;
- c. money market instruments;
- d. sight and time deposits with a term of up to twelve months;
- e. precious metals;
- f. derivative financial instruments whose underlyings are securities, collective investment schemes, money market instruments, derivative financial instruments, indices, interest rates, exchange rates, loans, currencies, precious metals, commodities or similar instruments;
- g. structured products relating to securities, collective investment schemes, money market instruments, derivative financial instruments, indices, interest rates, exchange rates, currencies, precious metals, commodities or similar instruments.

<sup>2</sup> In the case of other funds for alternative investments, FINMA may admit other investments such as commodities and the corresponding commodity certificates.<sup>144</sup>

<sup>143</sup> Amended by Annex 1 No II 9 of the Financial Institutions Ordinance of 6 Nov. 2019, in force since 1 Jan. 2020 (AS 2019 4633).

<sup>144</sup> Amended by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS 2013 607).

<sup>3</sup> Investments as defined in Article 69 paragraph 2 of the Act must be explicitly named in the fund regulations.

<sup>4</sup> In the case of investments in units of collective investment schemes, Article 73 paragraph 4 applies accordingly.

**Art. 100** Investment techniques and restrictions

(Art. 70 para. 2 and 71 para. 2 CISA)

<sup>1</sup> Other funds for traditional investments may:

- a. raise loans for an amount not exceeding 25 percent of the fund's net assets;
- b.<sup>145</sup> pledge or cede as collateral no more than 60 percent of the fund's net assets;
- c. commit to an overall exposure of up to 225 percent of the fund's net assets;
- d. engage in short-selling.

<sup>2</sup> Other funds for alternative investments may:

- a. raise loans for an amount not exceeding 50 percent of the fund's net assets;
- b.<sup>146</sup> pledge or cede as collateral no more than 100 percent of the fund's net assets;
- c. commit to an overall exposure of up to 600 percent of the fund's net assets;
- d. engage in short-selling.

<sup>3</sup> The investment restrictions shall be set out explicitly in the fund regulations. Such regulations shall also govern the nature and scale of short-selling permitted.

**Art. 101** Derogations

(Art. 69–71 CISA)

FINMA may in individual cases grant a derogation from the regulations pertaining to:

- a. the permitted investments;
- b. the investment techniques;
- c. the restrictions;
- d. the risk diversification.

**Art. 102** Risk notice

(Art. 71 para. 3 CISA)

<sup>1</sup> The notice regarding special risks (warning clause) requires the approval of FINMA.

<sup>145</sup> Amended by No I of the Ordinance of 13 Feb. 2008, in force since 1 March 2008 (AS 2008 571).

<sup>146</sup> Amended by No I of the Ordinance of 13 Feb. 2008, in force since 1 March 2008 (AS 2008 571).

<sup>2</sup> The warning clause must be placed on the first page of the fund regulations, the prospectus and the key information document in accordance with Articles 58–63 and 66 FinSA<sup>147</sup>, and in all cases in the form in which it was approved by FINMA.<sup>148</sup>

## **Chapter 4    General Provisions**

### **Section 1    Custodian Bank**

**Art. 102a**<sup>149</sup>    Organisational structure  
(Art. 72 CISA)

<sup>1</sup> The custodian bank must have an organisational structure that is appropriate to its tasks and employ personnel who possess suitable, relevant qualifications for their activity.

<sup>2</sup> For the fulfilment of its activities as custodian bank, it has at least three full-time employees with signatory powers.

**Art. 103**            Duty of disclosure  
(Art. 72 para. 2 CISA)

The custodian bank shall notify the audit company of the executive persons entrusted with the tasks of custodian bank activity.

**Art. 104**            Duties  
(Art. 73 CISA)

<sup>1</sup> The custodian bank has the following tasks:

- a. It is responsible for account and safekeeping account management on behalf of the collective investment schemes, but does not have independent access to their assets.
- b. It ensures that in the case of transactions relating to the assets of the collective investment scheme the counter-value is transferred thereto within the usual time limit.
- c. It notifies the fund management company or collective investment scheme if the counter-value is not refunded within the usual time limit and where possible requests reimbursement for the asset item concerned from the counterparty.
- d. It keeps the required records and accounts in such manner that it is at all times able to distinguish between the assets held in safe custody of the individual collective investment schemes.

<sup>147</sup> SR 950.1

<sup>148</sup> Amended by Annex 11 No 1 of the Financial Services Ordinance of 6 Nov. 2019, in force since 1 Jan. 2020 (AS 2019 4459).

<sup>149</sup> Inserted by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS 2013 607).

- e. In relation to assets that cannot be placed in safe custody, it verifies ownership of the fund management company or collective investment scheme and keeps a record thereof.<sup>150</sup>

<sup>2</sup> In the case of real estate funds, it shall be responsible for the safekeeping of mortgage notes against which no loans have been raised, in addition to the shares in real estate companies. It may hold accounts with third parties for the purpose of the ongoing management of real estate assets.

<sup>3</sup> In the case of collective investment schemes comprising subfunds, all duties shall be performed by the same custodian bank.

**Art. 105** Change of custodian bank, time limit for lodging objections, entry into force and cash payments  
(Art. 74 CISA)

<sup>1</sup> Article 41 applies accordingly to the change in custodian bank of a contractual fund.

<sup>2</sup> The decision to change custodian bank shall be published immediately in the media of publication of the SICAV.

**Art. 105a**<sup>151</sup> Duties in relation to the delegation of safekeeping  
(Art. 73 para. 2 and 2<sup>bis</sup> CISA)

Where the custodian bank transfers safekeeping of the fund's assets to a third-party custodian or central securities depository in Switzerland or abroad, it shall verify and monitor whether the latter:<sup>152</sup>

- a. possesses an appropriate organisational structure, financial guarantees and the specialist qualifications required given the nature and complexity of the assets entrusted to it;
- b. is subject to regular external audits, thereby ensuring that it possesses the financial instruments;
- c. the assets received from the custodian bank are kept in safe custody in such a manner that by means of regular portfolio comparisons they can at all times be clearly identified as belonging to the fund's assets;
- d. complies with the provisions applicable to the custodian bank with respect to the performance of the tasks delegated to it and the avoidance of conflicts of interest.

<sup>150</sup> Amended by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS 2013 607).

<sup>151</sup> Inserted by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS 2013 607).

<sup>152</sup> Amended by Annex 1 No II 9 of the Financial Institutions Ordinance of 6 Nov. 2019, in force since 1 Jan. 2020 (AS 2019 4633).

**Section 2** ...**Art. 106** and **107**<sup>153</sup>**Art. 107a**<sup>154</sup>**Art. 107b–107e**<sup>155</sup>**Section 3** **Position of Investors**<sup>156</sup>**Art. 108** Payment; certification of units  
(Art. 78 para. 1 and 2 CISA)

<sup>1</sup> The paying agent shall be a bank under the Federal Act on Banks and Savings Banks of 8 November 1934<sup>157, 158</sup>

<sup>2</sup> Where the fund regulations provide for the delivery of unit certificates, the custodian bank, at the investor's request, certifies his or her rights in securities (Art. 965 CO<sup>159</sup>) without par value, in registered form and structured as order instruments (Art. 967 and 1145 CO).<sup>160</sup>

<sup>3</sup> Unit certificates may only be issued after payment of the issue price.

<sup>4</sup> The issuing of fractions of units shall only be permitted in the case of investment funds.

**Art. 109** Exceptions from the right to redeem at any time  
(Art. 79 CISA)

<sup>1</sup> The regulations of a collective investment scheme whose value is difficult to ascertain, or which has limited marketability, may provide for notice to be served only on specific dates, subject to a minimum of four times per year.

<sup>153</sup> Repealed by Annex 11 No 1 of the Financial Services Ordinance of 6 Nov. 2019, with effect from 1. Jan. 2020 (AS 2019 4459).

<sup>154</sup> Inserted by No I of the Ordinance of 29 June 2011 (AS 2011 3177). Repealed by Annex 11 No 1 of the Financial Services Ordinance of 6 Nov. 2019, with effect from 1 Jan. 2020 (AS 2019 4459).

<sup>155</sup> Inserted by No I of the Ordinance of 13 Feb. 2013 (AS 2013 607). Repealed by Annex 11 No 1 of the Financial Services Ordinance of 6 Nov. 2019, with effect from 1 Jan. 2020 (AS 2019 4459).

<sup>156</sup> Amended by Annex 11 No 1 of the Financial Services Ordinance of 6 Nov. 2019, in force since 1 Jan. 2020 (AS 2019 4459).

<sup>157</sup> SR 952.0

<sup>158</sup> Amended by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS 2013 607).

<sup>159</sup> SR 220

<sup>160</sup> Amended by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS 2013 607).

<sup>2</sup> 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 shall apply specifically in the case of:

- a. investments which are not listed and not traded on another regulated market open to the public;
- b. mortgages;
- c. private equity investments.

<sup>3</sup> Where the right to redeem at any time is restricted, such fact must be stated explicitly in the fund regulations, in the prospectus and in the key information document.<sup>161</sup>

<sup>4</sup> The right to redeem at any time may be suspended for a maximum of five years.

<sup>5</sup> The fund management company and the SICAV may permit a pro rata cutting off of redemption applications on reaching a specific percentage or threshold on a specific trading day in exceptional circumstances if this is in the interests of the remaining investors (gating). The remaining portion of redemption applications shall be considered submitted for the subsequent valuation day. Details must be disclosed in the fund regulations. FINMA approves the inclusion of gating in the fund regulations.<sup>162</sup>

<sup>6</sup> The audit company and FINMA must be informed immediately of any decision on deferral or gating as well as any lifting of such. Investors must also be notified in a suitable manner.<sup>163</sup>

**Art. 110**      Deferred repayment  
(Art. 81 CISA)

<sup>1</sup> The fund regulations may provide for repayment to be deferred temporarily in the following exceptional cases:

- a. where a market which serves as the basis for the valuation of a significant proportion of the fund's assets is closed, or if trading on such market is restricted or suspended;
- b. in the event of political, economic, military, monetary or other emergencies;
- c. if, owing to exchange controls or restrictions on other asset transfers, the collective investment scheme can no longer transact its business;
- d. in the event of large-scale withdrawals of units which may significantly endanger the interests of the other investors.

<sup>161</sup> Amended by Annex 11 No 1 of the Financial Services Ordinance of 6 Nov. 2019, in force since 1 Jan. 2020 (AS 2019 4459).

<sup>162</sup> Inserted by Annex 11 No 1 of the Financial Services Ordinance of 6 Nov. 2019, in force since 1 Jan. 2020 (AS 2019 4459).

<sup>163</sup> Inserted by Annex 11 No 1 of the Financial Services Ordinance of 6 Nov. 2019, in force since 1 Jan. 2020 (AS 2019 4459).



<sup>2</sup> The audit company and FINMA must be informed immediately of any decision to defer redemptions. The decision must also be communicated to the investors in a suitable manner.

**Art. 111**            Enforced redemption  
(Art. 82 CISA)

<sup>1</sup> Enforced redemption pursuant to Article 82 of the Act is permitted only in exceptional circumstances.

<sup>2</sup> The reasons for enforced redemption must be set out in the fund regulations.

## **Section 4**

### **Open-Ended Collective Investment Schemes with Subfunds**

**Art. 112**            Subfunds  
(Art. 92–94 CISA)

<sup>1</sup> The fund management company and the SICAV shall prepare a single set of fund regulations for a collective investment scheme. Such regulations shall include the designation of the scheme and the additional designations of the individual subfunds.

<sup>2</sup> Where the fund management company or the SICAV has the right to create additional subfunds, or dissolve or merge existing subfunds, specific reference must be made thereto in the fund regulations.

<sup>3</sup> The fund management company and the SICAV shall also set out in the fund regulations that:

- a. fees may be debited only to that subfund for which a specific service is rendered;
- b. costs which cannot be clearly assigned to a particular subfund are charged to the individual subfunds in proportion to their assets;
- c. investors are only entitled to the assets and income of the particular subfund in which they are invested or whose shares they hold;
- d. only the subfund concerned is liable for the liabilities of that individual subfund.

<sup>4</sup> The fees charged when investors convert from one subfund to another are cited explicitly in the fund regulations.

<sup>5</sup> In relation to the merging of subfunds, Article 115 applies accordingly.

**Art. 113**<sup>164</sup>**Section 5 Restructuring and Dissolution****Art. 114** Conditions relating to restructurings

(Art. 92 and 95 para. 1 CISA)

<sup>1</sup> Investment funds or subfunds may be merged by the fund management company if:

- a. provision therefore is made in the relevant fund contracts;
- b. they are managed by the same fund management company;
- c.<sup>165</sup> the relevant fund contracts are generally identical in their requirements on the following:
  1. investment policy, investment techniques, risk diversification as well as the risks associated with the investment policy,
  2. appropriation of net income and capital gains from the disposal of assets and rights,
  3. nature, amount and calculation of all remuneration, the issue and redemption fees as well as the incidental costs for the purchase and sale of investments, such as brokerage fees, other fees, levies, which may be charged to the fund assets or to investors,
  4. term of the contract and the conditions for termination;
- d. the assets of the funds concerned are valued, the exchange ratio is calculated, and the assets and liabilities are acquired on the same day;
- e. no costs arise as a result for either the investment fund or subfunds, or the investors.

<sup>2</sup> ...<sup>166</sup>

<sup>3</sup> FINMA may make the merging of investment funds and the transfer of assets of a SICAV dependent on additional conditions, especially in the case of real estate funds.

**Art. 115** Procedure for the merging of collective investment schemes

(Art. 95 para. 1 let. a and b CISA)

<sup>1</sup> In the case of the merging of two investment funds, the investors of the fund being transferred receive an equivalent number of units in the acquiring fund. The fund being transferred is terminated without liquidation.

<sup>164</sup> Repealed by Annex 1 No II 9 of the Financial Institutions Ordinance of 6 Nov. 2019, with effect from 1 Jan. 2020 (AS **2019** 4633).

<sup>165</sup> Amended by Annex 11 No 1 of the Financial Services Ordinance of 6 Nov. 2019, in force since 1 Jan. 2020 (AS **2019** 4459).

<sup>166</sup> Repealed by Annex 11 No 1 of the Financial Services Ordinance of 6 Nov. 2019, with effect from 1 Jan. 2020 (AS **2019** 4459).

<sup>2</sup> The fund contract governs the merging procedure. In particular, it contains provisions regarding:

- a. the information to be given to the investors;
- b. the audit company's duty to inspect the accounts at the time of the merger.

<sup>3</sup> FINMA may grant limited deferment of repayment if the merger is likely to take more than one day.

<sup>4</sup> The fund management company shall notify FINMA that the merger has been completed.

<sup>5</sup> ...<sup>167</sup>

**Art. 115a**<sup>168</sup> Transfer of assets, conversion and division

In the case of the transfer of assets of a SICAV, as well as the division and the conversion of an open-ended collective investment scheme, Articles 114 and 115 apply accordingly.

**Art. 116** Dissolution of a collective investment scheme  
(Art. 96 and 97 CISA)

<sup>1</sup> The collective investment scheme shall be dissolved and may be liquidated immediately provided:

- a. the fund management company or the custodian bank has served notice;
- b. the shareholders of a SICAV have resolved the dissolution.

<sup>2</sup> Where FINMA orders the dissolution of the collective investment scheme, such scheme shall be liquidated immediately.

<sup>3</sup> Prior to the final payment, the fund management company or the SICAV shall obtain authorisation from FINMA.

<sup>4</sup> The trading of units on the exchange ceases at the time of dissolution.

<sup>5</sup> The termination of the custodian bank agreement between the SICAV and the custodian bank shall be notified to FINMA and the audit company immediately.

<sup>167</sup> Repealed by Annex 11 No 1 of the Financial Services Ordinance of 6 Nov. 2019, with effect from 1 Jan. 2020 (AS 2019 4459).

<sup>168</sup> Inserted by Annex 11 No 1 of the Financial Services Ordinance of 6 Nov. 2019, in force since 1 Jan. 2020 (AS 2019 4459).

## **Title 3      Closed-Ended Collective Investment Schemes**

### **Chapter 1    Limited Partnership for Collective Investment**

#### **Art. 117<sup>169</sup>    Object** (Art. 98 para. 1 CISA)

<sup>1</sup> The limited partnership for collective investment may only manage its own investments. It is specifically prohibited from rendering services pursuant to Article 26 and 34 FinIA<sup>170</sup> t on behalf of third parties or taking up entrepreneurial activities for the pursuit of commercial purposes.<sup>171</sup>

<sup>2</sup> It invests in risk capital of companies and projects and can determine their strategic direction. It can also invest in instruments pursuant to Article 121.

<sup>3</sup> To achieve this object, it may:

- a. take control of voting rights in companies;
- b. sit on the body responsible for the governance, supervision and control of its participations, in order to safeguard the interests of the limited partners.

#### **Art. 118      General partners** (Art. 98 para. 2 CISA)

<sup>1</sup> ...<sup>172</sup>

<sup>2</sup> Where the company has a general partner, the general partner must have a minimum paid-up share capital of 100,000 Swiss francs. Where it has several general partners, they must together have a minimum paid-up share capital of 100,000 Swiss francs.

<sup>3</sup> In relation to the general partners, the authorisation and reporting duties defined in Articles 14 paragraph 1 and 15 paragraph 1 apply accordingly.

#### **Art. 119      Company agreement** (Art. 9 para. 3 and 102 CISA)<sup>173</sup>

<sup>1</sup> The general partners may delegate investment decisions and other activities, provided this is in the interests of efficient management.

<sup>2</sup> They shall exclusively commission persons who are properly qualified to execute such activities, and shall ensure the instruction, monitoring and control necessary with respect to implementation of the tasks assigned.

<sup>169</sup> Amended by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS 2013 607).

<sup>170</sup> SR 954.1

<sup>171</sup> Amended by Annex 1 No II 9 of the Financial Institutions Ordinance of 6 Nov. 2019, in force since 1 Jan. 2020 (AS 2019 4633).

<sup>172</sup> Repealed by No I of the Ordinance of 13 Feb. 2013, with effect from 1 March 2013 (AS 2013 607).

<sup>173</sup> Amended by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS 2013 607).

<sup>3</sup> The persons holding executive powers with the general partners may participate in the company as limited partners if:

- a. this is provided for in the company agreement;
- b. the participating interest stems from their private assets; and
- c. the participating interest is subscribed at the time of launch.

3bis ...<sup>174</sup>

<sup>4</sup> The company agreement regulates the details and must be published in an official language. FINMA may authorise a different language in individual cases.<sup>175</sup>

#### **Art. 120** Risk capital

(Art. 103 para. 1 CISA)

<sup>1</sup> Risk capital is generally used for the direct or indirect financing of companies and projects in the basic expectation of generating above-average added value, coupled with the above-average probability of making a loss.

<sup>2</sup> Financing may take the following specific forms:

- a. equity capital;
- b. borrowed capital;
- c. mixed forms of equity and borrowed capital such as mezzanine financing.

#### **Art. 121** Other investments

(Art. 103 para. 2 CISA)

<sup>1</sup> The following are specifically permitted:

- a.<sup>176</sup> construction, real estate and infrastructure projects;
- b. alternative investments;
- c.<sup>177</sup> other investments, in particular investments in real estate or infrastructure;
- d.<sup>178</sup> mixed forms of all possible investments in accordance with Article 120 and Article 121.

<sup>2</sup> The company agreement regulates the details.

<sup>3</sup> Construction, real estate and infrastructure projects are permitted only if they are by persons that are neither directly nor indirectly related to:

<sup>174</sup> Inserted by No I of the Ordinance of 13 Feb. 2013 (AS 2013 607). Repealed by Annex 11 No 1 of the Financial Services Ordinance of 6 Nov. 2019, with effect from 1 Jan. 2020 (AS 2019 4459).

<sup>175</sup> Amended by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS 2013 607).

<sup>176</sup> Amended by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS 2013 607).

<sup>177</sup> Inserted by Annex 11 No 1 of the Financial Services Ordinance of 6 Nov. 2019, in force since 1 Jan. 2020 (AS 2019 4459).

<sup>178</sup> Inserted by Annex 11 No 1 of the Financial Services Ordinance of 6 Nov. 2019, in force since 1 Jan. 2020 (AS 2019 4459).

- a. the general partner;
- b. the persons responsible for the administration and the management; or
- c. the investors.<sup>179</sup>

<sup>4</sup> The general partner, the persons responsible for the administration and the management and closely related natural and legal persons, and the investors in a limited partnership for collective investment, may acquire real estate and infrastructure assets from that partnership or assign any such assets to it if:

- a. the market conformity of the purchase and selling price of the real estate assets and infrastructure assets as well as the transaction costs are confirmed by an independent valuation expert; and
- b. the shareholders' meeting has approved the transaction.<sup>180</sup>

## Chapter 2 Investment Company with Fixed Capital

### Art. 122 Objects (Art. 110 CISA)

<sup>1</sup> The investment company with fixed capital may only manage its own assets. Its primary object is to generate income and/or capital gains, whereby it does not pursue any entrepreneurial activities in the true sense. It is specifically prohibited from rendering services pursuant to Articles 26 and 34 FinIA<sup>181</sup> on behalf of third parties.<sup>182</sup>

<sup>2</sup> It may delegate investment decisions as well as specific tasks, provided this is in the interests of efficient management.

### Art. 122a<sup>183</sup> Minimum investment amount (Art 110 para. 2 CISA)

<sup>1</sup> Shares amounting to at least 500,000 Swiss francs must be fully paid up in cash at the time of formation.

<sup>2</sup> The minimum investment amount must be maintained at all times.

<sup>3</sup> The SICAF shall notify FINMA of any shortfall in the minimum investment amount immediately.

<sup>179</sup> Inserted by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS 2013 607).

<sup>180</sup> Inserted by No I of the Ordinance of 13 Feb. 2013 (AS 2013 607). Amended by Annex 11 No 1 of the Financial Services Ordinance of 6 Nov. 2019, in force since 1 Jan. 2020 (AS 2019 4459).

<sup>181</sup> SR 954.1

<sup>182</sup> Amended by Annex 1 No II 9 of the Financial Institutions Ordinance of 6 Nov. 2019, in force since 1 Jan. 2020 (AS 2019 4633).

<sup>183</sup> Inserted by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS 2013 607).

**Art. 122b**<sup>184</sup> Treasury shares of the governing bodies

(Art 110 para. 2 CISA)

The governing bodies must at all times hold treasury shares as a percentage of the total assets of the SICAF as follows, subject to a maximum of 20 million Swiss francs:

- a. 1 percent for that portion not exceeding 50 million Swiss francs;
- b.  $\frac{3}{4}$  percent for that portion exceeding 50 million but not exceeding 100 million Swiss francs;
- c.  $\frac{1}{2}$  percent for that portion exceeding 100 million but not exceeding 150 million Swiss francs;
- d.  $\frac{1}{4}$  percent for that portion exceeding 150 million but not exceeding 250 million Swiss francs;
- e.  $\frac{1}{8}$  for that portion exceeding 250 million Swiss francs.

**Art. 123** Permitted investments

(Art. 110 CISA)

<sup>1</sup> The provisions concerning permitted investments for other funds apply accordingly.

<sup>2</sup> FINMA may authorise other investments.

**Art. 124** Media of publication

(Art. 112 CISA)

Article 39 applies accordingly.

**Art. 125** Enforced redemption

(Art. 113 para. 3 CISA)

Article 111 applies accordingly.

**Art. 126** Amendments to the articles of association and investment regulations

(Art. 115 para. 3 CISA)

In the media of publication, the SICAF shall publish the significant amendments to the articles of association and the fund regulations resolved by the general meeting and approved by FINMA, indicating the locations where the full wording of the amendments may be obtained free of charge.

<sup>184</sup> Inserted by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS 2013 607).

## Title 4 Foreign Collective Investment Schemes

### Chapter 1 Approval

**Art. 127** Designation of the foreign collective investment scheme  
(Art. 120 para. 2 let. c and 122 CISA)<sup>185</sup>

If the designation of a foreign collective investment scheme provides grounds or might provide grounds for confusion or deception, FINMA may require a supplementary explanation.

**Art. 127a**<sup>186</sup> Advertising for foreign collective investment schemes  
(Art. 120 para. 1 and 4 CISA)

Advertising for foreign collective investment schemes triggers the duties in accordance with Article 120 paragraphs 1 and 4 of the Act.

**Art. 128**<sup>187</sup> Representative agreement and paying agent agreement  
(Art. 120 para. 2 let. d CISA)

<sup>1</sup> A fund management company of a foreign collective investment scheme or a foreign fund management company whose collective investment scheme is approved to be offered to non-qualified investors in Switzerland shall provide evidence that it:

- a. has concluded a representative agreement in writing or in another form demonstrable via text;
- b. has concluded a paying agent agreement in writing or in another form demonstrable via text

<sup>2</sup> The custodian bank shall provide evidence that it has concluded a paying agent agreement in writing or in another form demonstrable via text.

<sup>3</sup> In relation to the offer of foreign collective investment schemes in Switzerland, the representative agreement specifically regulates:

- a. the rights and duties of the foreign fund management company in accordance with paragraph 1 and of the representative pursuant to Article 124 paragraph 2 of the Act, in particular with regard to its duty to report, publish and inform, as well as the code of conduct;
- b. the manner in which the collective investment scheme is offered in Switzerland;

<sup>185</sup> Amended by No I of the Ordinance of 13 Feb. 2008, in force since 1 March 2008 (AS 2008 571).

<sup>186</sup> Inserted by Annex 1 No II 9 of the Financial Institutions Ordinance of 6 Nov. 2019, in force since 1 Jan. 2020 (AS 2019 4633).

<sup>187</sup> Amended by Annex 1 No II 9 of the Financial Institutions Ordinance of 6 Nov. 2019, in force since 1 Jan. 2020 (AS 2019 4633).



- c. the duty of the fund management company in accordance with paragraph 1 to report to the representative, specifically with regard to changes to the prospectus and the organisational structure of the foreign collective investment scheme.

<sup>4</sup> FINMA shall publish a list of countries with which it has concluded an agreement on cooperation and the exchange of information pursuant to Article 120 paragraph 2 letter e of the Act.

**Art. 128<sup>a</sup>**<sup>188</sup> Duties of the representative

(Art. 124 para. 2 CISA)

<sup>1</sup> The representative of a foreign collective investment shall have an appropriate organisational structure for the fulfilment of its duties pursuant to Article 124 of the Act.

<sup>2</sup> FINMA shall regulate the details of the organisation and duties of the representative of foreign collective investment schemes.<sup>189</sup>

**Art. 129<sup>a</sup>**<sup>190</sup> Simplified, fast-track approval procedure

(Art. 120 para. 3 CISA)

FINMA may in individual cases specify a simplified, fast-track approval procedure for foreign collective investment schemes provided such investments have already been approved by a foreign supervisory authority, such arrangement being reciprocal.

**Art. 129<sup>a</sup>**<sup>191</sup> Exemptions

(Art. 120 par. 4 CISA)

Foreign collective investment schemes which are offered to qualified investors in accordance with Article 5 paragraph 1 of the Financial Services Act of 15 June 2018<sup>192</sup> (FinSA) within the scope of a permanent investment advice relationship within the meaning of Article 3 letter c item 4 FinSA are not required to meet the conditions of Article 120 paragraph 2 letter d of the Act.

<sup>188</sup> Inserted by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS **2013** 607).

<sup>189</sup> Inserted by Annex 1 No II 9 of the Financial Institutions Ordinance of 6 Nov. 2019, in force since 1 Jan. 2020 (AS **2019** 4633).

<sup>190</sup> Amended by Annex No 6 of the Financial Market Audit Act of 15 Oct. 2008, in force since 1 Jan. 2009 (AS **2008** 5363).

<sup>191</sup> Inserted by Annex 1 No II 9 of the Financial Institutions Ordinance of 6 Nov. 2019, in force since 1 Jan. 2020 (AS **2019** 4633).

<sup>192</sup> SR **950.1**

**Art. 129b**<sup>193</sup> Employee share participation schemes  
(Art. 120 para. 5 CISA)

Employee share participation schemes are employee participation schemes in accordance with Article 5 FinIO<sup>194</sup>.

**Art. 130** Lapse of approval  
(Art. 15 and 120 CISA)

The approval for foreign collective investment schemes pursuant to Articles 15 and 120 of the Act lapses if the supervisory authority in the country of domicile of the collective investment scheme withdraws its approval.

## Chapter 2 Representatives of Foreign Collective Investment Schemes

**Art. 131**<sup>195</sup> Minimum capital and furnishing of collateral  
(Art. 14 para. 1 let. d CISA)

<sup>1</sup> The representative of foreign collective investment schemes must possess minimum capital of 100 000 Swiss francs. This must be paid up in full and maintained at all times.

<sup>2</sup> FINMA may permit partnerships to provide, instead of minimum capital, collateral in the form of a bank guarantee or a cash deposit in a blocked account with a bank, said collateral being equivalent to the minimum capital.

<sup>3</sup> Where there are legitimate grounds for so doing, FINMA may stipulate a different minimum amount.

<sup>4</sup> In all other respects, Article 20 applies accordingly.

**Art. 131a**<sup>196</sup> Duties of the representative in respect of the offer of units to qualified investors  
(Art. 120 para. 4 CISA)

The representative shall ensure that investors can obtain from it the principal documents of the foreign collective investment scheme.

<sup>193</sup> Inserted by Annex 1 No II 9 of the Financial Institutions Ordinance of 6 Nov. 2019, in force since 1 Jan. 2020 (AS 2019 4633).

<sup>194</sup> SR 954.11

<sup>195</sup> Amended by Annex 1 No II 9 of the Financial Institutions Ordinance of 6 Nov. 2019, in force since 1 Jan. 2020 (AS 2019 4633).

<sup>196</sup> Inserted by No I of the Ordinance of 13 Feb. 2013 (AS 2013 607). Amended by Annex 1 No II 9 of the Financial Institutions Ordinance of 6 Nov. 2019, in force since 1 Jan. 2020 (AS 2019 4633).

**Art. 132** Professional indemnity insurance

(Art. 14 para. 1 let. d CISA)

The representative shall conclude professional indemnity insurance appropriate to its business activities of at least 1 million Swiss francs, less the minimum capital or effective collateral furnished in accordance with Article 131.

**Art. 133** Publication and reporting regulations(Art. 75–77, 83 para. 4 and 124 para. 2 CISA)<sup>197</sup>

<sup>1</sup> The representative of a foreign collective investment scheme shall publish the documents pursuant to Articles 13a and 15 paragraph 3, as well as the annual and semi-annual report, in an official language or in English. FINMA may authorise publication in another language, provided publication is directed only towards a specific investor eligibility.<sup>198</sup>

<sup>2</sup> The following must be indicated in the publications and marketing material:

- a. the country of domicile of the collective investment scheme;
- b. the representative;
- c. the paying agent;
- d.<sup>199</sup> the location where the documents pursuant to Articles 13a and 15 paragraph 3, together with the annual and semi-annual report, may be obtained.

<sup>2bis</sup> If in place of the key information document an equivalent document in accordance with Annex 10 of the Financial Services Ordinance of 6 November 2019<sup>200</sup> is used, the information in accordance with paragraph 2 may be contained in an annex to the key information document.<sup>201</sup>

<sup>3</sup> The representative of a foreign collective investment scheme shall submit the annual and semi-annual reports to FINMA immediately, notify it of amendments to such documents pursuant to Article 13a immediately and publish such amendments in the media of publication. Articles 39 paragraph 1 and 41 paragraph 1, second sentence, apply accordingly.<sup>202</sup>

<sup>197</sup> Amended by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS 2013 607).

<sup>198</sup> Amended by Annex 11 No 1 of the Financial Services Ordinance of 6 Nov. 2019, in force since 1 Jan. 2020 (AS 2019 4459).

<sup>199</sup> Amended by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS 2013 607).

<sup>200</sup> SR 950.11

<sup>201</sup> Inserted by Annex 11 No 1 of the Financial Services Ordinance of 6 Nov. 2019, in force since 1 Jan. 2020 (AS 2019 4459).

<sup>202</sup> Amended by No I of the Ordinance of 13 Feb. 2013, in force since 1 March 2013 (AS 2013 607).

<sup>4</sup> It shall publish the net asset values of units at regular intervals.

<sup>5</sup> The publication and reporting regulations do not apply to foreign collective investment schemes that are exclusively offered to qualified investors.<sup>203</sup>

## **Title 5      Audit and Supervision**<sup>204</sup>

### **Chapter 1    Audit**<sup>205</sup>

#### **Art. 134**<sup>206</sup>      Audit of the custodian bank

(Art. 126 para. 1 and 6 CISA)

<sup>1</sup> The audit company for the custodian bank shall verify whether the custodian bank is complying with the supervision and contractual provisions.

<sup>2</sup> If the audit company for the custodian bank identifies an infringement of supervision or contractual provisions or other irregularities, it shall inform FINMA and the audit company for the fund management company or for the investment company with variable capital (SICAV).

#### **Art. 135**<sup>207</sup>      Audit report

(Art. 126 para. 1 and 6 CISA)

<sup>1</sup> The audit company for the custodian bank shall specify in a separate audit report whether the custodian bank is complying with the supervision and the contractual provisions.

<sup>2</sup> It must also include any reservation in the audit report under Article 27 paragraph 1 of the Financial Market Supervision Act of 22 June 2007<sup>208</sup> on the custodian bank.

<sup>3</sup> It shall submit the audit report under paragraph 1 to the following recipients:

- a. the fund management company or the SICAV;
- b. FINMA;
- c. the audit company for the fund management company or the SICAV.

<sup>4</sup> The audit company for the fund management company or the SICAV shall take account of the results of the report on the audit of the custodian bank in their own audits.

<sup>203</sup> Inserted by No 1 of the Ordinance of 13 Feb. 2013 (AS **2013** 607). Amended by Annex 11 No 1 of the Financial Services Ordinance of 6 Nov. 2019, in force since 1 Jan. 2020 (AS **2019** 4459).

<sup>204</sup> Amended by Annex No 3 of the Financial Market Audit Ordinance of 5 Nov. 2014, in force since 1 Jan. 2015 (AS **2014** 4295).

<sup>205</sup> Inserted by Annex No 3 of the Financial Market Audit Ordinance of 5 Nov. 2014, in force since 1 Jan. 2015 (AS **2014** 4295).

<sup>206</sup> Amended by Annex No 3 of the Financial Market Audit Ordinance of 5 Nov. 2014, in force since 1 Jan. 2015 (AS **2014** 4295).

<sup>207</sup> Amended by Annex No 3 of the Financial Market Audit Ordinance of 5 Nov. 2014, in force since 1 Jan. 2015 (AS **2014** 4295).

<sup>208</sup> SR **956.1**

<sup>5</sup> It may request additional information from the audit company for the custodian bank that it requires to carry out its tasks.

#### **Art. 136**<sup>209</sup>

#### **Art. 137**<sup>210</sup>      Audit of accounts (Art. 126 para. 5 and 6 CISA)

<sup>1</sup> When auditing the accounts of collective investment schemes, the information under Articles 89 paragraph 1 letters a–h and 90 of the Act shall be audited.

<sup>2</sup> In relation to the auditing of accounts of persons named in Article 126 paragraph 1 of the Act, of the investment funds managed and of any real estate company belonging to the real estate funds or to the real estate investment companies, FINMA may regulate the details relating to form, content, periodicity, time limits and recipients of reports as well as the conduct of the audit.

#### **Art. 138–140**<sup>211</sup>

### **Chapter 2      Supervision**<sup>212</sup>

#### **Art. 141**              Continuation of the collective investment scheme (Art. 96 CISA)

<sup>1</sup> Where the continuation of the investment fund is in the interests of the investors and a suitable new fund management company or custodian bank can be found, FINMA may order the transfer of the fund contract thereto including rights and obligations.

<sup>2</sup> Where the new fund management company enters into the fund contract, the liabilities and ownership of the assets and rights belonging to the investment fund must by law be passed to the new fund management company.

<sup>3</sup> Where the continuation of the SICAV is in the interests of the investors and a suitable new SICAV can be found, FINMA may order the transfer of the assets thereto.

<sup>209</sup> Repealed by Annex 1 No II 9 of the Financial Institutions Ordinance of 6 Nov. 2019, with effect from 1. Jan. 2020 (AS **2019** 4633).

<sup>210</sup> Amended by Annex No 3 of the Financial Market Audit Ordinance of 5 Nov. 2014, in force since 1 Jan. 2015 (AS **2014** 4295).

<sup>211</sup> Repealed by Annex No 6 of the Financial Market Audit Act of 15 Oct. 2008, with effect from 1. Jan. 2009 (AS **2008** 5363).

<sup>212</sup> Inserted by Annex No 3 of the Financial Market Audit Ordinance of 5 Nov. 2014, in force since 1 Jan. 2015 (AS **2014** 4295).

**Art. 142** Form of documents to be submitted

(Art. 1 and 144 CISA)

<sup>1</sup> FINMA may determine the form for submission, specifically for the following documents:

- a. applications for authorisation in accordance with Articles 13 and 15 of the Act as well as related documents;
- b. prospectuses and key information documents;
- c. reports of changes in accordance with Article 16 of the Act as well as related documents;
- d. annual and semi-annual reports.<sup>213</sup>

<sup>2</sup> It may designate a third party as the recipient of the submission.

**Title 6** Final and Transitional Provisions**Art. 143**<sup>214</sup>**Art. 144**<sup>215</sup> Transitional provisions to the Amendment of 6 November 2019

<sup>1</sup> For collective investment schemes offered to retail clients prior to the entry into force of the amendment of 6 November 2019, simplified prospectuses and key investor information may be used for a further two years in accordance with the requirements of Annexes 2 in the version of 1 March 2013<sup>216</sup> and 3 in the version of 15 July 2011<sup>217</sup>.

<sup>2</sup> If key investor information pursuant to Annex 3 in the version of 15 July 2011 is used, including the appropriately revised presentation of the collective investment scheme's past performance in the period to 31 December, it must be published by the fund management company and SICAV within the first 35 working days of the following year.

<sup>3</sup> Within two years of the entry into force of the amendment of 6 November 2019, fund management companies, SICAVs and limited partnerships for collective investment must submit the revised fund contracts, investment regulations and partnership agreements to FINMA for approval. In special cases, FINMA may extend this time limit.

<sup>4</sup> Exceptions which FINMA has granted on a case-by-case basis to fund management companies of investment funds for institutional investors with professional

<sup>213</sup> Amended by Annex 11 No 1 of the Financial Services Ordinance of 6 Nov. 2019, in force since 1 Jan. 2020 (AS 2019 4459).

<sup>214</sup> Repealed by No. 1 of the Ordinance of 29 June 2011, with effect from 15 July 2011 (AS 2011 3177).

<sup>215</sup> Amended by Annex 11 No 1 of the Financial Services Ordinance of 6 Nov. 2019, in force since 1 Jan. 2020 (AS 2019 4459).

<sup>216</sup> AS 2013 607

<sup>217</sup> AS 2011 3177

treasury operations in accordance with Article 2 paragraph 2 of the Investment Fund Ordinance (Art. 10 para. 5 CISA) continue to apply.

<sup>5</sup> For structured products offered to retail clients prior to entry into force of the amendment of 6 November 2019, simplified prospectuses may be used for a further two years in accordance with the requirements of Annex 4 in the version of 1 March 2013<sup>218</sup>.

<sup>6</sup> The duty to inform investors pursuant to Article 6a must be satisfied at the time of the first client contact, but in any event within two years of this Ordinance coming into force.

**Art. 144a** and **144b**<sup>219</sup>

**Art. 144c**<sup>220</sup>

**Art. 145** Commencement

This Ordinance comes into force on 1 January 2007.

<sup>218</sup> AS **2013** 607

<sup>219</sup> Inserted by No I of the Ordinance of 29 June 2011 (AS **2011** 3177). Repealed by Annex 1 No II 9 of the Financial Institutions Ordinance of 6 Nov. 2019, with effect from 1 Jan. 2020 (AS **2019** 4633)

<sup>220</sup> Inserted by No I of the Ordinance of 13 Feb. 2013 (AS **2013** 607). Repealed by Annex 1 No II 9 of the Financial Institutions Ordinance of 6 Nov. 2019, with effect from 1 Jan. 2020 (AS **2019** 4633).

*Annex I*<sup>221</sup>

<sup>221</sup> Repealed by Annex 11 No 1 of the Financial Services Ordinance of 6 Nov. 2019, with effect from 1 Jan. 2020 (AS **2019** 4459).



*Annex 2<sup>222</sup>*

<sup>222</sup> Repealed by Annex 11 No 1 of the Financial Services Ordinance of 6 Nov. 2019, with effect from 1 Jan. 2020 (AS **2019** 4459).

*Annex 3*<sup>223</sup>

<sup>223</sup> Repealed by Annex 11 No 1 of the Financial Services Ordinance of 6 Nov. 2019, with effect from 1 Jan. 2020 (AS **2019** 4459)..