

Federal Act on Collective Investment Schemes

(Collective Investment Schemes Act, CISA)

of June 23, 2006

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Federal Act on Collective Investment Schemes (Collective Investment Schemes Act, CISA)

of June 23, 2006

The Federal Assembly of the Swiss Confederation

based upon Article 98, Paragraphs 1 and 2, and Article 122, Paragraph 1 of the Federal Constitution¹,
after the examination of a report by the Federal Council of September 23, 2005²,
resolves:

Title 1: General provisions

Chapter 1: Object and scope

Art. 1 Object

This Act aims to protect investors and to ensure transparency and the proper functioning of the market for collective investment schemes.

Art. 2 Scope

¹ This Act governs collective investment schemes irrespective of their legal status, and all persons who are responsible for the management of such schemes and the safekeeping of assets held in them.

² The following are not governed by this Act:

- a. Institutions and ancillary institutions in the occupational pensions sector, including investment foundations;
- b. Social security institutions and compensation funds;
- c. Public authorities and institutions;
- d. Operating companies which are engaged in business activities;
- e. Companies which by way of a majority of the votes or by any another way bring together one or more companies to form a group under single management (holding companies);

¹ SR101

² BBI 2005 6395

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- f. Investment clubs whose members are in a position to manage their financial interests themselves;
 - g. Associations and foundations as defined in the Swiss Civil Code.

³ Investment companies in the form of public limited companies are not governed by this Act, provided they are listed on a Swiss exchange, or provided that:

- a. only shareholders as defined in Article 10 Paragraph 3 are entitled to participate in them;
- b. the shares are registered; and
- c. auditors recognized by the supervisory authority provide evidence on an annual basis that these requirements have been met.

⁴ Foreign collective investment schemes which are the subject of public advertising in or from Switzerland, irrespective of their legal status, are governed by the relevant provisions of this Act (Art. 119). The supervisory authority may declare that further provisions of this Act have application where this is necessary to achieve the Act's protective purpose.

Art. 3 Public advertising

Public advertising pursuant to this Act is defined as any advertising that is directed towards the public. Specifically, the publication of current prices and net asset values by regulated financial intermediaries shall not qualify as advertising. Advertising is not deemed to be public if it is directed exclusively towards qualified investors as defined in Article 10 Paragraph 3.

Art. 4 In-house funds

¹ This Act shall not govern in-house funds of a contractual nature which are created by banks and securities traders for the purpose of collectively managing the assets of existing clients, provided the following requirements are met:

- a. Clients participate in such in-house funds exclusively on the basis of a written discretionary management agreement.
- b. No unit certificates are issued.
- c. No public advertising is undertaken in respect of such in-house funds.

² The creation and dissolution of in-house funds must be notified to the auditors appointed under the Swiss Banking Act and the Stock Exchange Act.

³ In the event of bankruptcy of the bank or securities trader, assets and rights that form part of in-house funds shall be segregated in favor of the investors.

Art. 5 Structured products

¹ Structured products such as capital-protected products, capped return products and certificates may only be offered publicly in Switzerland or from Switzerland if:

- a. they are issued, guaranteed or distributed by:
 - 1. a bank as defined in the Federal Act of November 8, 1934³;
 - 2. an insurance company as defined in the Federal Act on the Supervision of Insurance Companies of December 17, 2004⁴;
 - 3. a securities trader as defined in the Stock Exchange Act of March 24, 1995⁵;
 - 4. a foreign institution that is subject to equivalent standards of supervision;
- b. a simplified prospectus is available for them.

² The simplified prospectus must comply with the following requirements:

- a. It must describe, in accordance with a standard format, the key characteristics of the structured product (key data), its profit and loss prospects, together with the significant risks for investors.
- b. It must be easily understood by the average investor.
- c. It must make reference to the fact that the structured product is neither a collective investment scheme, nor does it require the authorization of the supervisory authority.

³ The simplified prospectus must be made available free of charge to any interested person at the time the product is issued or a product agreement is signed.

⁴ The requirement under Article 1156 of the Swiss Code of Obligations⁶ for a prospectus shall not apply in this case.

⁵ In all other respects, structured products are not governed by this Act.

Art. 6 Delegation to the Federal Council

¹ Within the framework of the implementing regulations, the Federal Council may fully or partially subject the collective investment schemes, similar schemes or companies to this Act, or fully or partially exempt asset-pooling constructs or companies from being subjected to this Act, provided that the protective purpose of this Act is not impaired.

² For consultation purposes, it submits the relevant provisions to the committee responsible, in accordance with Article 151 Paragraph 1 of the Parliament Act of December 13, 2002⁷.

³ SR 952.0
⁴ SR 961.01
⁵ SR 954.1
⁶ SR 220
⁷ SR 171.10

Chapter 2: Collective investment schemes

Art. 7 Definition

¹ Collective investment schemes are assets raised from investors for the purpose of collective investment, and which are managed for the account of such investors. The investment requirements of the investors are met on an equal basis.

² Collective investment schemes may be open or closed-ended.

³ The Federal Council may stipulate a minimum number of investors in accordance with the legal status and target group.

Art. 8 Open-ended collective investment schemes

¹ Open-ended collective investment schemes may be in the form of a contractual fund (Art. 25 et seq.) or an investment company with variable capital (SICAV, Art. 36 et seq.).

² With open-ended collective investment schemes, investors have either a direct or indirect legal entitlement, at the expense of the collective assets, to redeem their units at the net asset value.

³ Each open-ended collective investment scheme has its own fund regulations. In the case of contractual funds this is the collective investment contract (fund contract), and in the case of SICAVs it is the articles of association and the investment regulations.

Art. 9 Closed-ended collective investment schemes

¹ Closed-ended collective investment schemes may be in the form of a limited partnership for collective capital investments (Art. 98 et seq.) or an investment company with fixed capital (SICAF, Art. 110 et seq.).

² In the case of closed-ended collective investment schemes, investors have neither a direct nor an indirect legal entitlement at the expense of the collective assets to the redemption of their units at the net asset value.

³ Limited partnerships for collective investment schemes are based on a company agreement.

⁴ SICAFs are based on articles of association and issue a set of investment regulations.

Art. 10 Investors

¹ Investors are natural and legal persons, as well as general and limited partnerships, which hold units in collective investment schemes.

² Collective investment schemes are open to all investors, except where this Act, the fund regulations or the articles of association restrict investor eligibility to qualified investors.

³ Qualified investors pursuant to this Act specifically include:

- a. Regulated financial intermediaries such as banks, securities traders and fund management companies;
- b. Regulated insurance institutions;
- c. Public entities and retirement benefits institutions with professional treasury operations;
- d. Companies with professional treasury operations;
- e. High-net-worth individuals;
- f. Investors who have concluded a written discretionary management agreement with a financial intermediary as defined under a.

⁴ The Federal Council may deem other categories of investors to be qualified.

⁵ The supervisory authority may fully or partially exempt collective investment schemes from certain provisions of this Act, provided that they are directed exclusively towards qualified investors and that the protective purpose of this Act is not impaired, specifically from the provisions concerning:

- a. the issuing of unit certificates;
- b. the requirement to produce a prospectus;
- c. the requirement to produce a semi-annual report;
- d. the requirement to provide investors with the right to terminate their investment at any time;
- e. the requirement to issue and redeem units in cash;
- f. risk diversification.

Art. 11 Units

Units are claims against the fund management company conferring entitlement to the assets and income of the investment fund or interests in the investment company.

Art. 12 Protection against confusion or deception

¹ The designation "collective investment scheme" must not provide any grounds for confusion or deception, in particular in relation to the investments.

² Descriptions such as "investment fund", "investment company with variable capital", "SICAV", "limited partnership for collective investment", "investment company with fixed capital" and "SICAF" may only be used for the relevant collective investment schemes governed by this Act.

Chapter 3: Authorization and approval

Section 1: General

Art. 13 Authorization requirement

¹ Any party responsible for the management of a collective investment scheme or the safekeeping of the assets held in it must obtain authorization from the supervisory authority.

² The following are required to obtain authorization:

- a. fund management companies;
- b. SICAVs;
- c. limited partnerships for collective investment schemes;
- d. SICAFs;
- e. custodian banks;
- f. asset managers of Swiss collective investment schemes;
- g. distributors;
- h. representatives of foreign collective investment schemes.

³ Asset managers, distributors and representatives who are already subject to other official supervisory control may be granted exemption from the authorization requirements by the Federal Council.

⁴ Asset managers of foreign collective investment schemes (Art. 119 et seq.) may apply for authorization from the supervisory authority, provided that:

- a. their place of residence or registered office is in Switzerland;
- b. they are subject to supervision under foreign legislation;
- c. the foreign collective investment scheme that they manage is subject to supervision of an equivalent standard to that required in Switzerland.

⁵ The persons cited in Paragraph 2a-d may only be entered in the Commercial Register once authorization has been granted by the supervisory authority.

Art. 14 Authorization conditions

¹ Authorization is granted if:

- a. the persons responsible for management and the business operations have a good reputation, guarantee proper management, and possess the requisite specialist qualifications;
- b. the significant equity holders have a good reputation and do not exert their influence to the detriment of prudent and sound business practice;

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- c. compliance with the duties stemming from this Act is assured by internal regulations and an appropriate organizational structure;
 - d. sufficient financial guarantees are available;
 - e. the additional authorization conditions listed in the relevant provisions of the Act are met.

² Furthermore, the supervisory authority may make its granting of authorization dependent on compliance with the codes of conduct of a specific industry body.

³ Significant equity holders are considered to be natural or legal persons as well as general and limited partnerships which directly or indirectly own at least 10 percent of the capital or votes in the persons specified in Article 13 Paragraphs 2 and 4 or whose business activities can have a material influence in another way, in addition to financially related parties whose combined interest reaches this minimum level.

Art. 15 Duty to obtain approval

¹ The following documents are required for obtaining the approval of the supervisory authority:

- a. investment funds: the collective investment contract (Art. 25);
- b. SICAVs: the articles of association and investment regulations;
- c. limited partnerships for collective investment schemes: the company agreement;
- d. SICAFs: articles of association and investment regulations;
- e. foreign collective investment schemes: the relevant documents.

² If an investment fund or SICAV is structured as an open-ended collective investment scheme with subfunds (Art. 92 et seq.), each subfund or category of shares requires individual approval.

Art. 16 Change of circumstances

If there is a change in the circumstances underlying the authorization or approval, the supervisory authority's authorization or approval must be sought prior to the continuation of activity.

Art. 17 Simplified authorization and approval procedure

The Federal Council may specify a simplified authorization and approval procedure process for collective investment schemes.

Section 2: Asset managers of Swiss collective investment schemes

Art. 18

¹ Asset managers of Swiss collective investment schemes with their registered office or place of residence in Switzerland may be:

- a. natural persons;
- b. legal persons in the form of public limited companies, partnerships limited by shares or companies with limited liability;
- c. general and limited partnerships.

² Any change in asset manager must be notified to the supervisory authority in advance.

³ The Federal Council may make authorization dependent on additional conditions, specifically the conclusion of professional indemnity insurance.

Section 3: Distributors

Art. 19

¹ Any party offering or distributing units of a collective investment scheme for commercial reasons requires the authorization of the supervisory authority.

² The Federal Council defines the authorization conditions.

³ In particular, it may make authorization dependent on adequate financial and professional guarantees on the part of the distributors.

⁴ Distributors who are already subject to supervision by another government supervisory body may be granted exemption from the duty to obtain authorization.

Chapter 4: Code of conduct

Art. 20 Principles

¹ Licensees (authorized parties) and their agents shall observe the following requirements in particular:

- a. Duty of loyalty: they act independently and exclusively in the interests of the investors;
- b. Due diligence: they implement the organizational measures that are necessary for proper management;

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- c. Duty of disclosure: They ensure the provision of transparent financial statements and provide appropriate information about the collective investment schemes which they manage.

² The supervisory authority may specify minimum standards in the form of the codes of conduct of industry bodies.

Art. 21 Investments

¹ The licensees and their agents pursue an investment policy that at all times corresponds with the investment characteristics of the collective investment scheme as set out in the relevant documents.

² In respect of the purchase and sale of assets and rights on their own behalf as well as that of third parties, they are only entitled to receive the fees specified in the relevant documents. Commissions and other financial benefits must be credited to the collective investment scheme.

³ Assets acquired for their own account may only be purchased at market price, while any sale of own-account assets must also be at market price.

Art. 22 Securities transactions

¹ Counterparties for securities trades and other transactions must be carefully selected. They must offer a guarantee of best execution in terms of price, time and quantity.

² The choice of counterparties must be reviewed at regular intervals.

³ Agreements which curtail the freedom of decision of the licensees or their agents are not permitted.

Art. 23 Exercising of membership and creditors' rights

¹ The membership and creditors' rights associated with the investments must be exercised independently and exclusively in the interests of the investors.

² Article 685d Paragraph 2 of the Code of Obligations⁸ does not apply to investment funds.

³ If a fund management company manages several investment funds, the level of the participation with respect to the percentage limit set out in Article 685d Paragraph 1 of the Code of Obligations is calculated individually for each investment fund.

⁴ Paragraph 3 also applies to each subfund of an open-ended collective investment scheme as defined in Article 92 et seq.

⁸ SR 220

Art. 24 Distribution

- ¹ The licensees take the measures which are necessary in order to assure the legitimate acquisition of clients and the objective provision of advice to the latter.
- ² If they engage the services of third parties in the distribution of units in collective investment schemes, they shall conclude distribution agreements with these third parties.

Title 2: Open-ended collective investment schemes

Chapter 1: Contractual fund

Section 1: Definition

Art. 25

- ¹ The contractual fund (investment fund) is based on a collective investment agreement (fund contract) under which the fund management company commits itself to:
- a. involving investors in accordance with the number and type of units which they have acquired in the investment fund;
 - b. managing the fund's assets in accordance with the provisions of the fund contract at its own discretion and for its own account.
- ² The custodian bank is a party to the contract in accordance with the tasks conferred upon it by the law and by the fund contract.
- ³ The investment fund must have the stipulated minimum assets. The Federal Council determines the level thereof, and the period in which it must be accumulated.

Section 2: Fund contract

Art. 26 Contents

- ¹ The fund management company draws up the fund contract and, with the consent of the custodian bank, submits it to the supervisory authority for approval.
- ² The fund contract sets out the rights and duties of the investors, the fund management company and the custodian bank.
- ³ In particular, it contains provisions regarding:
- a. the name of the investment fund together with the name and registered office of the fund management company and the custodian bank;
 - b. the investment policy, risk diversification, as well as the risks associated with the investment;
 - c. the calculation of the net asset value and of the issue and redemption prices;

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- d. the appropriation of net income and capital gains from the sale of assets and rights;
 - e. 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;
 - f. the accounting year;
 - g. the locations at which the fund contract, prospectus and simplified prospectus, together with the annual and semiannual reports, may be obtained free of charge;
 - h. the media of publication;
 - i. the duration of the contract and the conditions of dissolution;
 - j. the subdivision into subfunds;
 - k. the unit classes;
 - l. the unit of account;
 - m. investors' right to cancel;
 - n. the conditions for the deferment of redemption and compulsory redemption;
 - o. the restructuring.

Art. 27 Amendments to the fund contract

¹ Amendments to the fund contract must be submitted by the fund management company, with the consent of the custodian bank, to the supervisory authority.

² If the fund management company amends the fund contract, it must publish a summary of the significant amendments in advance, in which reference is made to the locations where the full wording of the contractual amendments may be obtained free of charge.

³ In such publications, the attention of investors must be drawn to the possibility of lodging objections with the supervisory authority within 30 days after the last publication. The procedure is that laid down in Article 141. Investors must furthermore be made aware that they may request the repayment of their units in cash, while observing the contractual or regulatory notice period.

⁴ The supervisory authority publishes its decision in the media of publication.

Section 3: The fund management company

Art. 28 Organization

¹ The fund management company must be a public limited company with its registered office and main administrative office in Switzerland.

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- ² It must have a minimum capital. The Federal Council shall decide such amount.
- ³ The share capital must be divided into registered shares.
- ⁴ The fund management company must have an organizational structure that is appropriate to the tasks conferred upon it. It sets out the duties and responsibilities in the articles of association and in the organizational regulations.
- ⁵ The persons holding executive powers at the fund management company and custodian bank must be independent of the other party.

Art. 29 Object

The primary object of the fund management company is the conduct of fund business. In addition, it may perform the following ancillary services:

- a. asset management;
- b. investment advisory services;
- c. safekeeping and technical administration of collective investment schemes.

Art. 30 Duties

The fund management company manages the fund at its own discretion and in its own name but for the account of the investors. In particular:

- a. it shall decide on the issue of units, investments and their valuation;
- b. it shall calculate the net asset value;
- c. it shall determine issue and redemption prices in addition to income distributions;
- d. it shall exercise all rights associated with the investment fund.

Art. 31 Delegation of tasks

- ¹ The fund management company may delegate investment decisions as well as specific tasks, provided this is in the interest of efficient management.
- ² It shall commission only those persons who are properly qualified to execute the task, and ensure their instruction, monitoring and control necessary with respect to implementation of the assigned tasks.
- ³ It may only delegate investment decisions to asset managers who are subject to a recognized supervisory body. The supervisory body may grant exceptions in justifiable instances.
- ⁴ For securities funds (Art. 53 et seq.) subject to simplified distribution in the European Union under a specific treaty, investment decisions may not be delegated to the custodian bank or to other companies whose interests may conflict with those of the fund management company or the investors.
- ⁵ The fund management company shall be liable for the actions of its agents as if they were its own.

Art. 32 Capital adequacy

¹ There must be an appropriate relationship between the equity of the fund management company and the total assets of the collective investment schemes that it manages. The Federal Council regulates this relationship.

² In special cases, the supervisory authority may grant a relaxation of the requirements or may order a tightening thereof.

³ The fund management company may not invest the prescribed equity in fund units which it itself has issued, nor may it lend the equity to its shareholders or to closely connected natural and legal persons. The holding of liquid assets with the custodian bank is not deemed to be lending.

Art. 33 Rights

¹ The fund management company is entitled to:

- a. receive the fees stipulated in the fund contract;
- b. be exempt from any liabilities which may have arisen in the course of the proper execution of its duties;
- c. receive reimbursement of the expenses incurred in connection with such liabilities.

² These payments are made from the assets of the investment fund. Investors are not held personally liable.

Art. 34 Change of fund management company

¹ The rights and duties of the fund management company may be transferred to another fund management company.

² In order to be effective, the transfer agreement between the outgoing and incoming fund management company must be in writing, have the consent of the custodian bank and be approved by the supervisory authority.

³ Prior to approval by the supervisory authority, the outgoing fund management company publishes the proposed change twice in the media of publication.

⁴ The investors must be informed in these publications of their right to lodge objections with the supervisory authority within 30 days from the last publication. The procedure is laid down in Article 141.

⁵ The supervisory authority authorizes the change of fund management company if the legal requirements have been met and the continuation of the investment fund is in the interest of the investors.

⁶ It publishes its decision in the media of publication.

Art. 35 Segregation of fund assets

¹ In the case of bankruptcy, assets and rights belonging to the fund management company will be segregated in favor of the investors. The same is true for the schedule of debts, assets and income potential. The fund management's claims are subject to art. 33.

² Debts of the fund management company which do not arise under the fund contract may not be set off against claims of the investment fund.

Chapter 2: Investment company with variable capital

Section 1: General provisions

Art. 36 Definition

¹ An investment company with variable capital (SICAV) is a company:

- a. whose capital and number of shares are not specified in advance;
- b. whose capital is divided into company and investor shares;
- c. for whose liabilities only the company's assets are liable;
- d. whose sole object is collective capital investment.

² A SICAV shall have a minimum assets. The Federal Council determines the level thereof, and the period within which it must be accumulated.

Art. 37 Formation

¹ The formation of a SICAV is based on the provisions of the Code of Obligations⁹ regarding the formation of public limited companies, with the exception of the provisions regarding contributions in kind, acquisitions in kind and special benefits.

² A minimum investment amount of 250,000 Swiss francs must be provided at the time of formation.

³ The Federal Council may specify a higher minimum investment amount depending on the SICAV's proposed business activities, specifically if the board of directors of the SICAV has not appointed a fund management company to execute the duties set out in Article 51 Paragraph 5.

Art. 38 Company name

¹ The company name must contain a description of the legal status or the abbreviation thereof (SICAV).

² In all other respects, the provisions of the Code of Obligations¹⁰ regarding the name of public limited companies shall apply.

⁹ SR 220

¹⁰ SR 220

Art. 39 Capital adequacy

¹ There must be an appropriate relationship between the holdings of the company shareholders and the total assets of the SICAV. The Federal Council regulates this relationship.

² In special cases, the supervisory authority may grant a relaxation of the requirements or may order a tightening thereof.

Art. 40 Shares

¹ The company shares are registered.

² The company and investor shares have no nominal value and must be fully paid up in cash.

³ The shares are freely transferable. The articles of association may restrict investor eligibility to qualified investors if the shares of the SICAV are not listed on an exchange. If the SICAV withholds its consent to a transfer of the shares, Article 82 shall apply.

⁴ The articles of association may specify different categories of shares, to which different rights are assigned.

⁵ The issuing of participation certificates, dividend right certificates and preference shares is prohibited.

Art. 41 Company shareholders

¹ The company shareholders contribute the minimum holding necessary for the formation of the SICAV.

² They resolve the dissolution of the SICAV in accordance with Article 96 Paragraph 2.

³ In all other respects, the provisions regarding the rights of the shareholders (Art. 46 et seq.) shall apply.

⁴ The rights and duties of the company shareholders pass to the purchaser on the transfer of the shares.

Art. 42 Issue and redemption of shares

¹ Unless the law and articles of association provide otherwise, a SICAV may at any time issue new shares at the net asset value and must, if requested by a shareholder, at any time redeem issued shares at the net asset value. This requires neither an amendment to the articles of association nor an entry in the Commercial Register.

² A SICAV may not hold treasury shares, whether directly or indirectly.

³ The shareholders have no entitlement to the portion of newly issued shares corresponding to their previous holding. In the case of real estate funds, this is subject to Article 66 Paragraph 1.

⁴ In all other respects, the issue and redemption of shares is conducted in accordance with Articles 78 to 82.

Art. 43 Articles of association

¹ The articles of association must contain provisions concerning:

- a. the company name and its registered office;
- b. the object;
- c. the minimum investment amount;
- d. the convocation of general meetings;
- e. the executive and governing bodies;
- f. the media of publication.

² To be effective, the articles of association must include provisions on the following:

- a. the term;
- b. the restriction of shareholder eligibility to qualified investors and associated limitation of the transferability of shares (Art. 40, Para. 3);
- c. the categories of shares and rights associated therewith;
- d. the delegation of management and representation, and the attendant procedural details (Art. 51);
- e. the passing of resolutions by means of correspondence.

Art. 44 Investment regulations

A SICAV shall produce a set of investment regulations. Its contents are based on the provisions regarding the fund contract, unless the law and articles of association provide otherwise.

Art. 45 Relationship with the Stock Exchange Act

The provisions of the Stock Exchange Act concerning public takeover offers (Art. 22 et seq. of the Stock Exchange Act of March 24, 1995¹¹) shall not apply to SICAVs.

Section 2: Rights of shareholders

Art. 46 Membership rights

¹ Anyone recognized as a shareholder by the SICAV may exercise membership rights.

¹¹ SR 954.1

² The shareholders may represent their shares at a general meeting in person or be represented by a third party. Unless the articles of association provide otherwise, the latter are not required to be shareholders.

³ A SICAV shall keep a register of the shares, in which the names and addresses of company shareholders are recorded.

Art. 47 Voting rights

Each share carries one vote.

Art. 48 Inspection rights

Inspection rights are based on the provisions of the Code of Obligations¹² regarding the shareholders' inspection rights unless this Act provides otherwise.

Art. 49 Other rights

In all other respects, Articles 78 et seq. shall apply.

Section 3: Organization

Art. 50 General meeting

¹ The supreme governing body of the SICAV is the general meeting of shareholders.

² The general meeting is held every year within four months of the close of the business year.

³ In all other respects, the provisions of the Code of Obligations¹³ regarding the general meetings of public limited companies shall apply, with the exception of the provision regarding important resolutions (Art. 704 of the CO).

Art. 51 Board of directors

¹ The board of directors consists of at least three but no more than seven members.

² The articles of association may authorize the board of directors to transfer management and representation in full or in part to individual members or third parties in accordance with the organizational regulations.

³ The persons holding executive powers at the SICAV and custodian bank must be independent of the other party.

⁴ The board of directors produces the prospectus and the simplified prospectus.

¹² SR 220

¹³ SR 220

⁵ The administration of a SICAV may only be delegated to an authorized fund management company in accordance with Article 28 et seq.

⁶ In all other respects, the provisions of the Code of Obligations¹⁴ regarding the board of directors of public limited companies shall apply, with the exception of the provisions regarding the loss of capital and insolvency.

Art. 52 Auditors

A SICAV shall appoint auditors (Art. 126 et seq.).

Chapter 3:

Types of open-ended collective investment schemes and investment regulations

Section 1: Securities funds

Art. 53 Definition

Securities funds are open-ended collective investment schemes which invest their assets in securities and comply with the laws of the European Communities.

Art. 54 Permitted investments

¹ Securities funds may invest in transferable securities issued on a large scale and in non-securitized rights having the same function (uncertified securities) and which are traded on a stock exchange or another regulated market that is open to the public, in addition to other liquid financial assets.

² The fund management company may also hold a limited volume of other securities and rights, as well as adequate liquidity.

Art. 55 Investment techniques

¹ The fund management company and the SICAV may employ the following investment techniques for the purpose of efficient management:

- a. Securities lending;
- b. Repurchase agreements;
- c. Borrowing of funds, though only on a temporary basis and up to a certain percentage;
- d. Pledging or transferring the ownership of collateral, however, only up to a certain percentage.

² The Federal Council may permit other investment techniques such as short selling and the granting of loans.

³ It defines the percentage limits. The supervisory body regulates the details.

¹⁴ **SR 220**

Art. 56 Use of derivatives

¹ The fund management company and the SICAV may conduct transactions in derivatives provided:

- a. such transactions do not result in a change to the investment characteristics of the securities fund;
- b. they have an appropriate organizational structure and adequate risk management;
- c. the persons entrusted with processing and monitoring are qualified to do so, and can at all times comprehend and track the effect of the derivatives used.

² The overall exposure to transactions involving derivatives may not exceed a certain percentage of the fund's net assets. Exposure to transactions involving derivatives must be calculated in relation to the statutory and regulatory limits, specifically with regard to risk diversification.

³ The Federal Council determines the percentage rate. The supervisory authority regulates the details.

Art. 57 Risk diversification

¹ In relation to their investments, the fund management company and SICAV must comply with the principles of risk diversification. As a rule, they may invest only a certain percentage of the fund's assets in the same debt issuer or company.

² The voting rights acquired through the purchase of securities or rights in a single debt issuer or company may not exceed a certain percentage.

³ The Federal Council decides the percentage rates. The supervisory authority regulates the details.

Section 2: Real estate funds

Art. 58 Definition

Real estate funds are open-ended collective investment schemes which invest their assets in real estate.

Art. 59 Permitted investments

¹ Real estate funds may invest their assets in:

- a. Property, including fixtures and fittings;
- b. Investments in and claims on real estate companies whose sole objective is the purchase and sale and/or the rental and lease of their own property, provided that at least two thirds of their capital and voting rights are incorporated in the investment fund;

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- c. Units in other real estate investment funds and listed real estate investment companies amounting to no more than 25% of the fund's total assets;
 - d. Foreign real estate securities whose value can be adequately valued.

² Co-ownership of property is permitted only if the fund management company or the SICAV can exert a dominant influence.

Art. 60 Securing of liabilities

In order to secure their liabilities, the fund management company and SICAV must maintain an adequate proportion of the fund's assets in short-term fixed-interest securities or in funds available at short notice.

Art. 61 Use of derivatives

The fund management company and SICAV may conduct derivative transactions provided they comply with the investment policy. The provisions concerning the use of derivatives for securities funds (Art. 56) shall apply accordingly.

Art. 62 Risk diversification

Investments must be diversified by type of property, purpose of use, age, building fabric and location.

Art. 63 Special duties

¹ The fund management company shall bear responsibility with regard to the investors for ensuring that the real estate companies belonging to the real estate fund comply with the present Act and with the fund regulations.

² The fund management company, custodian bank and its agents, as well as closely connected natural and legal persons, may not acquire real estate assets from real estate funds or assign any such assets to them.

³ A SICAV may not acquire any real estate assets from the company shareholders, their agents, or closely connected natural or legal persons, nor may it assign such assets to them.

Art. 64 Valuation experts

¹ The fund management company and the SICAV shall appoint at least two natural persons or one legal person as valuation experts. Appointments require the approval of the supervisory authority.

² Approval is granted if the valuation experts:

- a. possess the necessary qualifications;
- b. are independent;
- c. are recognized by the supervisory authority.

³ The valuation experts must conduct their valuations with the due diligence and expertise required of a valuation expert.

⁴ The supervisory authority may make recognition dependent on the conclusion of professional indemnity insurance.

⁵ It may stipulate additional requirements for the valuation experts and describe the methods of valuation to be adopted.

Art. 65 Special powers

¹ The fund management company and the SICAV may commission the construction of buildings provided the fund regulations explicitly permit the purchase of building land and the execution of construction projects.

² They may pledge land and cede the rights of lien as collateral; however, the encumbrance may not exceed on average a certain percentage of the market value of all real estate assets.

³ The Federal Council defines the percentage rate. The supervisory authority regulates the details.

Art. 66 Issue and redemption of units

¹ The fund management company and the SICAV must offer new units first to existing investors.

² The investors may request the redemption of their units at the end of a financial year provided they give twelve months' prior notice.

Art. 67 Trading

The fund management company and the SICAV ensure that real estate fund units are regularly traded via a bank or a securities dealer on a stock exchange or over the counter.

Section 3:

Other funds for traditional and alternative investments

Art. 68 Definition

Other funds for traditional and alternative investments are open-ended collective investment schemes that are neither securities funds nor real estate funds.

Art. 69 Permitted investments

¹ In particular, investments in securities, precious metals, real estate, commodities, derivatives, units of other collective investment schemes, as well as other assets and rights, are permitted for other funds for traditional and alternative investments.

² The following investments in particular may be conducted for these funds:

- a. those that have only limited marketability;
- b. those that are subject to strong price fluctuations;
- c. those that exhibit limited risk diversification;
- d. those that are difficult to value.

Art. 70 Other funds for traditional investments

¹ Other funds for traditional investments include open-ended collective investment schemes which in terms of their investments, investment techniques and investment restrictions exhibit a risk profile that is typical for traditional investments.

² Other funds for traditional investments are subject to the provisions concerning the use of investment techniques and derivatives for securities funds.

Art. 71 Other funds for alternative investments

¹ Other funds for alternative investments include open-ended collective investment schemes whose investments, structure, investment techniques (short-selling, borrowing of funds, etc.) and investment restrictions exhibit a risk profile that is typical for alternative investments.

² Leverage is permitted only up to a certain percentage of the fund's net assets. The Federal Council determines the percentage rate. The supervisory authority regulates the details.

³ Reference must be made in the fund name, as well as in the prospectus and marketing material, to the special risks involved in alternative investments.

⁴ The prospectus must be offered free of charge to interested persons prior to an agreement being concluded or prior to subscription.

⁵ The supervisory authority may allow the transaction-related settlement services of a directly investing other fund for alternative investments to be provided by a regulated institution specializing in such transactions (prime broker). It may specify which monitoring functions must be undertaken by the fund management company and the SICAV.

Chapter 4: General provisions

Section 1: Custodian bank

Art. 72 Organization

¹ The custodian bank must be a bank pursuant to the Federal Act on Banks and Savings Institutions of November 8, 1934¹⁵.

¹⁵ SR 952.0

² In addition to the persons entrusted with the management of the business operations, the persons entrusted with the tasks of custodian bank activity must also comply with the requirements laid down in Article 14 Paragraph 1a.

Art. 73 Duties

¹ The custodian bank is responsible for the safekeeping of the investment fund's assets, the issue and redemption of units, as well as payment transfers on behalf of the investment fund.

² It may transfer responsibility for the safekeeping of the investment fund's assets to third-party custodians and collective securities depositories in Switzerland or abroad. It is liable for applying due diligence when choosing and instructing the third party, as well as for monitoring that it constantly complies with the selection criteria. Investors must be informed in the prospectus about the risks associated with such transfers.

³ It ensures that the fund management company or the SICAV is in compliance with this Act and with the fund regulations. It verifies whether:

- a. the calculation of the net asset value and of the issue and redemption prices of the units is in compliance with this Act and with the fund regulations;
- b. the investment decisions are in compliance with this Act and with the fund regulations;
- c. the income is appropriated in accordance with the fund regulations.

Art. 74 Change of custodian bank

¹ In the case of investment funds, the provisions concerning a change of fund management company (Art. 34) shall also apply accordingly to a change of custodian bank.

² In the case of a SICAV, a change of custodian bank requires written agreement and must be approved in advance by the supervisory authority.

³ The supervisory authority shall publish its decision in the media of publication.

Section 2: Prospectus and simplified prospectus

Art. 75 Prospectus

¹ The fund management company and the SICAV shall publish a prospectus for each open-ended collective investment scheme.

² The prospectus shall include the fund regulations in cases where interested persons are not notified as to where such regulations may be separately obtained prior to an agreement being concluded or prior to subscription. The Federal Council determines which other information must be contained in the prospectus.

³ If requested, the prospectus must be provided free of charge to interested persons prior to an agreement being concluded or prior to subscription.

Art. 76 Simplified prospectus

¹ A simplified prospectus must be published for securities funds, real estate funds and other funds for traditional investments.

² It contains a summary of the key information provided in the prospectus. The Federal Council determines the key information.

³ The simplified prospectus must be easily understood by the average investor.

⁴ It must be offered free of charge to any interested person prior to an agreement being concluded or prior to subscription.

Art. 77 General provisions

¹ Reference must be made to the prospectus and simplified prospectus in all advertising material, citing where such documents may be obtained.

² The prospectus, simplified prospectus and any amendment thereto must be submitted to the supervisory authority forthwith.

Section 3: Position of investors

Art. 78 Purchase and redemption

¹ Upon concluding a contract, or subscribing and paying in cash, investors acquire

- a. in the case of an investment fund, a claim against the fund management company to participate in the assets and income of the investment fund in accordance with the fund units they acquire;
- b. in the case of a SICAV, an interest in the company and its unappropriated net earnings in accordance with the shares they acquire.

² They are, in principle, entitled at all times to request the redemption of their units and payment of the redemption amount in cash. Unit certificates must be returned for cancellation purposes.

³ In the case of collective investment schemes with various unit classes, the Federal Council regulates the details.

⁴ The supervisory authority may allow a derogation from the duty to make payments in and out of the fund in cash.

⁵ In the case of collective investment schemes with subfunds, the asset entitlements are based on Article 93 Paragraph 2 and Article 94 Paragraph 2.

Art. 79 Exceptions from the right to redeem at any time

¹ In accordance with the investment provisions (Article 54 et seq., Article 59 et seq. and Article 69 et seq.), the Federal Council may in the case of collective investment schemes whose value is difficult to ascertain, or which have limited marketability, specify exemptions from the right to redeem at any time.

² However, it may only suspend the right to redeem at any time for a maximum period of five years.

Art. 80 Issue and redemption price

The issue and redemption prices of the units are based on the net asset value per unit on the day of valuation, plus or minus any fees and expenses.

Art. 81 Deferred repayment

¹ The Federal Council determines in which instances the fund regulations can specify a limited deferment of the repayment of the units in the interest of all investors.

² The supervisory authority may in exceptional instances grant limited deferment for the repayment of the units in the interest of all investors.

Art. 82 Enforced redemption

The Federal Council enforces redemption if:

- a. this is necessary to safeguard the reputation of the financial market, specifically to combat money laundering;
- b. the investor no longer meets the statutory, regulatory or contractual requirements, or the requirements set out in the articles of association, for participation in a collective investment scheme.

Art. 83 Calculation and publication of the net asset value

¹ The net asset value of an open-ended collective investment scheme is calculated at the market value as of the end of the financial year, and on each day on which units are issued or redeemed.

² The net asset value per unit represents the market value of the fund's assets, less all the fund's liabilities, divided by the number of units in circulation.

³ The supervisory authority may permit a method of calculating the net asset value(s) that differs from that specified in Paragraph 2, provided such method meets international standards and the protective purpose of this Act is not impaired as a result.

⁴ The fund management company and the SICAV publish the net asset values at regular intervals.

Art. 84 Right to information

¹ The fund management company and the SICAV shall on request supply investors with information concerning the basis for the calculation of the net asset value per unit.

² If investors express an interest in more detailed information on specific business transactions effected by the fund management company or the SICAV, such as the exercising of membership and creditors' rights, they must be given such information at any time.

³ The investors may request at the courts of the registered office of the fund management company or the SICAV that the auditors or another expert investigate the matter which requires clarification and furnish the investors with a report.

Art. 85 Claim for reimbursement

If the open-ended collective investment scheme is unlawfully denied asset entitlements or benefits are withheld from it, the investors may claim compensation from the open-ended collective investment scheme concerned.

Art. 86 Representative of the investors

¹ The investors may request that the courts appoint a representative if they wish to pursue a claim for damages in favor of the open-ended collective investment scheme.

² The court publishes such appointment in the media of publication of the open-ended collective investment scheme.

³ The representative has the same rights as the investors.

⁴ If the representative files a suit for compensation in favor of the open-ended collective investment scheme, the investors may no longer exercise their individual right to file such suit.

⁵ Unless the court decides otherwise, the expenses incurred by the representative are paid by the investment fund.

Section 4: Maintenance of books, valuation and financial statements

Art. 87 Duty to maintain books of account

Separate books of account must be kept for each open-ended collective investment scheme. Unless this Act or the implementing regulations provide otherwise, Article 662 et seq. of the Code of Obligations¹⁶ shall apply.

¹⁶ SR 220

Art. 88 Valuation at market value

¹ Investments which are listed on a stock exchange or another regulated market open to the public shall be valued at the prices paid on the main market.

² Other investments for which no current price is available must be valued at the price that would probably be obtained in a diligent sale at the time of valuation.

Art. 89 Annual and semi-annual report

¹ An annual report shall be published for each open-ended collective investment scheme within four months of the close of the financial year; it shall contain the following data in particular:

- a. the annual financial statements, consisting of a statement of net assets or the balance sheet and the income statement, together with information concerning the appropriation of net income and the disclosure of expenses;
- b. the number of units redeemed and newly issued during the financial year, as well as the final balance of the issued units;
- c. the inventory of the fund's assets at market value and the resulting value (net asset value) of a fund unit as of the last day of the financial year;
- d. the valuation principles as well as the principles used for the calculation of the net asset value;
- e. a breakdown of the buy and sell transactions;
- f. the names of persons and companies to which duties have been entrusted;
- g. information relating to matters of particular economic or legal significance, specifically:
 1. amendments to the fund regulations,
 2. material questions concerning interpretation of this Act and the fund regulations,
 3. a change of fund management company and custodian bank,
 4. changes concerning the persons holding executive powers at the fund management company, SICAV or asset manager,
 5. legal disputes;
- h. the performance of the open-ended collective investment scheme, possibly benchmarking it with comparable investments;
- i. a brief report by the auditors regarding the information mentioned above, as well as the items set out in Article 90 in the case of real estate funds.

² The statement of net assets of the investment fund and the balance sheet of the SICAV must be prepared on the basis of market values.

³ A semi-annual report must be issued within two months after the end of the first half of the financial year. The report contains an unaudited statement of net assets or unaudited balance sheet and income statement, as well as information as per Paragraph 1b, c and e.

⁴ The annual and semi-annual reports shall be filed with the supervisory authority at the latest at the time of publication.

⁵ These are made available for inspection free of charge to interested parties for ten years.

Art. 90 Annual financial statements and annual report of real estate funds

¹ The annual financial statements of a real estate fund consist of a consolidated statement of net assets or balance sheet and income statement of the real estate fund and the associated real estate companies. Article 89 shall apply accordingly.

² The statement of net assets must show property assets at market value.

³ The inventory of the fund's assets must state the purchase price and estimated market values of the individual property assets.

⁴ In addition to the information required as per Article 89, the annual report and the annual financial statements contain the particulars of the valuation expert, the valuation methods and the capitalization and discounting rates applied.

Art. 91 Supervisory requirements

The supervisory authority issues additional regulations concerning the duty to maintain books of account, valuation, financial statements and publication requirements.

Section 5: Open-ended collective investment schemes with subfunds

Art. 92 Definition

In the case of an open-ended collective investment scheme with subfunds (umbrella fund), each subfund constitutes a collective investment scheme in its own right and has its own net asset value.

Art. 93 Umbrella funds

¹ In the case of an umbrella fund, investors are only entitled to the income and assets of the respective subfund in which they are participating.

² Each subfund is liable only for its own liabilities.

Art. 94 SICAV with subfunds

¹ Investors are only entitled to participate in the assets and income of the respective subfund in accordance with the number of shares they hold.

² Each subfund is liable only for its own liabilities. In contracts with third parties, a SICAV must disclose the fact that liability is restricted to a single subfund. If the restriction is not disclosed, a SICAV shall be liable with its entire assets, subject to Article 55 and Article 100 Paragraph 1 of the Code of Obligations¹⁷.

Section 6: Restructuring and dissolution

Art. 95 Restructuring

¹ The following restructurings are permitted:

- a. in the case of investment funds: a merger through the transfer of assets and liabilities;
- b. in the case of SICAVs: the transfer of assets in accordance with the Merger Act of October 3, 2003¹⁸ (Art. 70 et seq.).

² The transfer of assets in accordance with Paragraph 1b may only be entered in the Commercial Register following approval (Art. 15) by the supervisory authority.

Art. 96 Dissolution

¹ An investment fund is dissolved:

- a. if it was formed for an unlimited period: upon notice by the fund management company or the custodian bank;
- b. if it was formed for a fixed period: upon expiration of such period;
- c. by order of the supervisory authority:
 1. if it was formed for a fixed period: based upon reasonable cause, at the request of the fund management company or the custodian bank,
 2. if the minimum assets fall below the required amount,
 3. in the cases specified in Article 13, Paragraph 3 et seq.

² A SICAV is dissolved:

- a. if it was formed for an unlimited period: by resolution of the company shareholders, provided such resolution is carried by at least two thirds of the company shares;
- b. if it was formed for a fixed period: upon expiration of such period;

¹⁷ SR 220

¹⁸ SR 221.301

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- c. by order of the supervisory authority:
 - 1. if it was formed for a fixed period: based upon reasonable cause, by resolution of the company shareholders, provided such resolution is carried by at least two thirds of the company shares,
 - 2. if the minimum assets fall below the stipulated amount,
 - 3. in the cases specified in Article 133 et seq.;
 - d. in the other cases specified by the Act.

³ For the dissolution of subfunds, Paragraphs 1 and 2 shall apply accordingly.

⁴ The fund management company and the SICAV shall notify the supervisory authority of the dissolution forthwith, and shall announce the dissolution in the media of publication.

Art. 97 Consequences of dissolution

¹ Following its dissolution, an investment fund or SICAV may neither issue nor redeem any units.

² In the case of an investment fund, investors have a claim to a proportionate share of the proceeds of liquidation.

³ In the case of a SICAV, investors have the right to a proportionate share of the proceeds of the liquidation. The rights of company shareholders are subordinate. In all other respects, Articles 737 et seq. of the Code of Obligations¹⁹ shall apply.

Title 3: Closed-ended collective investment schemes

Chapter 1: Limited partnership for collective investment

Art. 98 Definition

¹ A limited partnership for collective investment is a company whose sole object is collective investment. At least one member bears unlimited liability (general partner), while the other members (limited partners) are liable only up to a specified amount (limited partner's contribution).

² General partners must be public limited companies with their registered office in Switzerland. They may only be active as an general partner in one limited partnership for collective investment.

³ Limited partners must be qualified investors as defined in Article 10 Paragraph 3.

¹⁹ SR 220

Art. 99 Relationship to the Code of Obligations

Unless this Act provides otherwise, the provisions of the Code of Obligations²⁰ concerning limited partnerships shall apply.

Art. 100 Commercial Register

¹ The company shall exist upon being entered in the Commercial Register.

² Notification of the facts to be entered or any amendments thereto must be signed by all general partners in the Commercial Register or submitted in writing together with notarized signatures.

Art. 101 Company name

The name of the company must include designation of its legal status.

Art. 102 Company agreement and prospectus

¹ The company agreement must contain provisions regarding:

- a. the company name and its registered office;
- b. the object;
- c. the company name and the registered office of the general partners;
- d. total limited partners' contributions;
- e. the duration;
- f. the conditions of the limited partners' joining and departing;
- g. the maintenance of a register of limited partners;
- h. the investments, investment policy, investment restrictions, risk diversification, the risks associated with investment, and the investment techniques;
- i. the delegation of management and representation;
- j. the appointment of a custodian bank and a paying agent.

² The company agreement must be in writing.

³ The prospectus specifically sets out the information contained in the company agreement in accordance with Paragraph 1h.

Art. 103 Investments

¹ The company conducts investments in risk capital.

² The Federal Council may also permit other investments.

²⁰ SR 220

Art. 104 Non-competition clause

¹ The limited partners are entitled without the consent of the general partners to conduct other business transactions for their own account and on behalf of third parties and to participate in other companies.

² Unless the company agreement provides otherwise, the general partners may without the consent of the limited partners conduct other business transactions for their own account and on behalf of third parties and participate in other companies, provided this is disclosed and the interests of the limited partnership for collective investment are not impaired as a consequence.

Art. 105 Joining and departure of limited partners

¹ Where specified by the company agreement, the general partner may decide on the joining and departure of limited partners.

² This is subject to the provisions of the Code of Obligations²¹ regarding the exclusion of owners of the limited partnership.

³ The Federal Council may prescribe compulsory exclusion. This shall be based on Article 82.

Art. 106 Inspection and information

¹ The limited partners are entitled to inspect the business accounts of the company at any time. Business confidentiality with regard to the companies in which the limited partnership invests shall be assured.

² The limited partners are entitled to obtain information about the business performance of the company at least once every quarter.

Art. 107 Auditors

The company shall appoint auditors (Art. 126 et seq.).

Art. 108 Financial statements

¹ With respect to the financial statements of the company and the valuation of the assets, Article 88 et seq. shall apply accordingly.

² Internationally recognized standards must be observed.

Art. 109 Dissolution

The company is dissolved:

- a. by resolution of the owners;
- b. for the reasons set forth in this Act and in the company agreement;
- c. by order of the supervisory authority in the cases specified in Article 133 et seq.

²¹ SR 220

Chapter 2: Investment company with fixed capital

Art. 110 Definition

An investment company with fixed capital (SICAF) is a public limited company pursuant to the Code of Obligations²² (Art. 620 et seq. CO):

- a. the sole object of which is the investment of collective capital;
- b. the shareholders of which are not required to be qualified pursuant to Article 10 Paragraph 3; and
- c. which is not listed on a Swiss stock exchange.

Art. 111 Company name

¹ The company name must contain the designation of its legal status or the abbreviation thereof (SICAF).

² In all other respects, the provisions of the Code of Obligations²³ regarding the name of public limited companies shall apply.

Art. 112 Relationship with the Code of Obligations

Unless this Act provides otherwise, the provisions of the Code of Obligations²⁴ concerning public limited companies shall apply.

Art. 113 Shares

¹ The share capital is fully paid up.

² The issuing of voting shares, participation certificates, dividend right certificates and preference shares is prohibited.

³ The Federal Council may specify compulsory redemption. This is laid down in Article 82.

Art. 114 Custodian bank and paying agent

A SICAF must have a custodian bank and a paying agent.

Art. 115 Investment policy and investment restrictions

¹ A SICAF defines the investments, investment policy, investment restrictions, risk diversification, together with the risks associated with the investments, in the articles of association and in the investment regulations.

² The investments are subject to Article 69; Articles 64, 70 and 71 shall apply accordingly.

²² SR 220

²³ SR 220

²⁴ SR 220

³ Resolutions to amend the investment regulations must be passed by a majority of votes at the general meeting.

Art. 116 Prospectus

A SICAF shall produce a prospectus. In this respect Articles 75 and 77 shall apply accordingly.

Art. 117 Financial statements

With respect to the financial statements, Article 89 Paragraph 1a and c-i, Paragraphs 2-4 and Article 90 shall apply accordingly in addition to the statutory provisions concerning accounting standards.

Art. 118 Auditors

A SICAF shall appoint auditors (Art. 126 et seq.).

Title 4: Foreign collective investment schemes

Chapter 1: Definition and approval

Art. 119 Definition

¹ The following are considered foreign open-ended collective investment schemes:

- a. Assets that were accumulated on the basis of a fund contract or another agreement with similar effect for the purpose of collective investment and are managed by a fund management company with its registered office and main administrative office abroad;
- b. Companies and schemes with their registered office and main administrative office located abroad whose purpose is collective capital investment and whose investors have a legal right with regard to the company itself, or with regard to a closely associated company, to the redemption of their units at the net asset value.

² Closed-end collective investment schemes are deemed to be companies and schemes with their registered office and main administrative office located abroad whose purpose is collective capital investment and whose investors have no legal right with regard to the company itself, or with regard to a closely connected company, to the redemption of their units at the net asset value.

Art. 120 Duty to obtain approval

¹ If foreign collective investment schemes are distributed publicly in or from Switzerland, binding documents such as their sales prospectus, articles of association or fund contract require the approval of the Swiss supervisory authority.

² Approval is granted if:

- a. the collective investment scheme is subject to public supervision intended to protect investors in the country of domicile of the fund management company or the investment scheme company;
- b. the organization, investor rights and investment policy of the fund management company or the investment scheme company are equivalent to the provisions of this Act;
- c. the designation "collective investment scheme" does not provide grounds for confusion or deception;
- d. a representative and a paying agent are appointed for the distribution of units in Switzerland.

³ The Federal Council may 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. 121 Paying agent

¹ The paying agent must be a bank pursuant to the Federal Act on Banks and Savings Institutions of November 8, 1934²⁵.

² The investors may request the issue and redemption of the units from the paying agent.

Art. 122 International treaties

Assuming the mutual recognition of regulations and measures of an equivalent standard, the Federal Council may conclude international treaties which specify that collective investment schemes from the signatory countries merely have a duty to register rather than the duty to obtain approval.

Chapter 2: Representatives of foreign collective investment schemes

Art. 123 Appointment

¹ Prior to publicly distributing foreign collective investment schemes in or from Switzerland, the fund management and the **investment scheme** company must appoint a representative to undertake the duties specified in Article 124, subject to the provisions of Article 122.

² The fund management and the investment scheme company undertake to provide the representative with the information the latter may require for the performance of its tasks.

²⁵ SR 952

Art. 124 Duties

¹ The representative represents the foreign collective investment scheme with regard to investors and the supervisory authority. The representative's powers of representation may not be restricted.

² The representative observes the statutory obligations to report, publish and inform, as well as the codes of conduct of industry bodies which have been declared to be the minimum standard by the supervisory authority. The representative's identity must be disclosed in every publication.

Art. 125 Place of performance

¹ The place of performance for units of the foreign collective investment schemes distributed in Switzerland is the registered office of the representative.

² It shall continue to be the registered office of the representative after the revocation of authorization or following the dissolution of the foreign collective investment scheme.

Title 5: Audit and supervision

Chapter 1: Audit

Art. 126 Appointment

¹ The following persons must appoint auditors that are recognized by the supervisory authority:

- a. fund management companies for themselves and for the investment funds they manage;
- b. SICAVs;
- c. limited partnerships for collective investment schemes;
- d. SICAFs;
- e. asset managers of collective investment schemes;
- f. representatives of foreign collective investment schemes.

² Such appointments require the prior approval of the supervisory authority.

³ The same auditors must examine the following:

- a. the fund management company and the investment funds it manages;
- b. the SICAV and any fund management company that it appoints pursuant to Article 51 Paragraph 5.

⁴ The supervisory authority may grant exceptions in the cases given in Paragraph 3b.

Art. 127 Recognition of auditors

¹ The supervisory authority recognizes auditors if they are independent and meet the authorization conditions set out in Article 14 Paragraph 1.

² The Federal Council may determine additional qualifications for recognition.

Art. 128 Duties of the auditors

¹ The auditors examine whether the licensees comply with the statutory, contractual and regulatory provisions, as well as the provisions of the articles of association, and conduct interim audits on a spot-check basis. Specifically, they examine the following on an annual basis:

- a. the annual financial statements of the investment fund, the SICAV, the limited partnership for collective investment and the SICAF;
- b. the annual financial statements of each real estate company belonging to the real estate fund or real estate investment company;
- c. the prospectus and the simplified prospectus;
- d. the annual financial statements of the fund management company, the asset manager of the Swiss collective investment schemes and the representative of foreign collective investment schemes.

² The auditors perform their tasks with the due diligence and expertise required of auditors.

³ The auditors prepare a comprehensive report on their audit and a summary report; they submit the detailed audit report to the licensees and the supervisory authority.

⁴ If the auditors identify infringements of the Act or the fund regulations or any other irregularities, they shall notify the supervisory authority forthwith.

⁵ The supervisory authority sets out regulations for the audit and the preparation of the audit report.

Art. 129 Confidentiality of auditing

¹ The auditors are prohibited from disclosing to investors or third parties any information which they received or learned of in the course of their work.

² This confidentiality is subject to the federal and cantonal regulations concerning the duty to supply authorities with evidence and information.

Art. 130 Duty to provide information

¹ The licensees, valuation experts and real estate companies belonging to the collective investment scheme shall provide the auditors with complete access to the books of account and documentation as well as reports of the valuation experts, and supply them with all the information needed to perform the audit function.

² The auditors of the custodian bank, appointed in accordance with the Banking Act, and the licensees' auditors cooperate with each other.

Art. 131 Change of auditors

¹ In the event of a change of auditors, the supervisory authority must be notified of the reasons.

² The change must be approved by the supervisory authority in advance.

Chapter 2: Supervision

Art. 132 Supervisory authority

¹ The supervisory authority is the Swiss Federal Banking Commission.

² It issues the necessary authorizations and approvals pursuant to this Act and supervises compliance with the statutory, contractual and regulatory provisions as well as the provisions of the articles of association.

³ It does not supervise the expediency of the business decisions taken by the licensees.

⁴ The supervisory authority publishes its interpretations of the Act by way of circular letters.

Art. 133 Restoration of the proper state of affairs

¹ If the supervisory authority learns of infringements of the statutory, contractual or regulatory provisions or of the provisions of the articles of association, or any other irregularities, it provides for the measures necessary to restore the proper state of affairs, and sets an appropriate deadline for such.

² If the investors' rights appear to be endangered, the supervisory authority may order the licensees to provide the necessary security.

³ If an enforceable order issued by the supervisory authority is not complied with after prior warning within the set deadline, the supervisory authority may itself carry out the required actions at the expense of the negligent party.

Art. 134 Withdrawal of authorization or approval

¹ The supervisory authority shall withdraw granted authorizations from an licensee if the conditions of authorization are no longer complied with or if the licensee is in gross breach of the statutory, regulatory or contractual duties or the duties of the articles of association.

² The supervisory authority shall withdraw granted approvals from a collective investment scheme if the conditions of approval are no longer complied with or if there is a gross breach of the statutory, regulatory or contractual duties or the duties laid down in the articles of association.

³ Licencees from whom authorization was withdrawn, or collective investment schemes from whom approval was withdrawn, may be liquidated by the supervisory authority. The Federal Council sets out the details.

Art. 135 Measures in the case of non-authorized or non-approved activity

¹ Against persons who operate without any authorization or approval the supervisory authority may order to dissolve the collective investment scheme.

² To safeguard the interests of investors, the supervisory authority may order the collective investment scheme to be changed to another legal status.

Art. 136 Other measures

¹ In justified cases, the supervisory authority may, in accordance with Article 64, appoint valuation experts to value the assets of real estate funds or real estate investment companies.

² It may dismiss the valuation experts appointed by the real estate fund or by the real estate investment company.

Art. 137 Appointment of an investigating officer

¹ In the event the investors' rights appear to be seriously endangered, or if it is necessary to clarify a matter or in order to implement a supervisory measure which it has decreed, the supervisory authority may appoint an independent specialist (investigating officer) to investigate the licensee.

² It describes the tasks of the investigating officer in the implementation order. It determines the extent to which the investigating officer can act in place of the executive or governing bodies of the licensee.

³ The licensee must provide the investigating officer with access to its premises, supply all documents and disclose all information required by the officer for the latter to perform his/her function.

⁴ The cost of the investigating officer is borne by the licensee. It shall provide advance payment of costs on the orders of the supervisory authority.

Art. 138 Appointment of an administrative receiver

¹ The supervisory authority may appoint an administrative receiver for licensees which are no longer able to operate. It announces the appointment in the media of publication.

² Within six months the administrative receiver shall propose to the supervisory authority measures to restore the proper state of affairs or dissolve the licensee.

³ The supervisory authority shall set the administrative receiver's charges and determine whether and to what extent the licensee which is no longer able to operate must reimburse the collective investment scheme for such charges.

Art. 139 Duty to disclose

¹ The licensees and the persons who perform a role in the context of this Act must provide the supervisory authority with all the information and documents that it requires to carry out its duties. The supervisory authority may order additional audits.

² If there is reason to believe that an activity subject to this Act is being carried out by a person without permission, the supervisory authority may:

- a. request from the person concerned and from their auditors the information and documents that it needs to clarify the matter;
- b. appoint an investigating officer at the expense of the person concerned.

Art. 140 Delivery of verdicts

The cantonal civil courts and the Federal Court inform the supervisory authority of their verdict in civil disputes between a person or company subject to this Act and an investor, in their entirety and free of charge.

Art. 141 Appeals procedure

¹ The Federal Act of December 20, 1968²⁶ on Administrative Procedure is applicable to the procedure with the supervisory authority.

² An appeal may be lodged with the Federal Court against measures decreed by the supervisory authority.

³ The appeal procedure is based on the general provisions of the Federal Act on the Administration of Justice. The supervisory authority is entitled to appeal against rulings of the Federal Court.

Art. 142 Exchange of information with foreign supervisory authorities

¹ The supervisory authority may, for the purpose of implementing this Act, seek information and documentation from foreign supervisory authorities regarding licensees and collective investment schemes.

² It may transmit to foreign supervisory authorities information and documentation concerning licensees and collective investment schemes which is not in the public domain, provided that these supervisory authorities:

²⁶ SR 172.021

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- a. are subject to official or professional confidentiality;
 - b. use the data solely for the purpose of direct supervision of the licensees and the collective investment schemes;
 - c. only pass on this information on the basis of a general authorization by virtue of an international treaty, or with the consent of the supervisory authority, to the authorities and bodies charged with supervisory functions in the public interest.

³ The transmission of information to law enforcement authorities is prohibited in cases where legal aid in criminal matters is excluded. The supervisory authority reaches its decision in consultation with the Federal Office of Justice.

⁴ To the extent that the information transmitted by the supervisory authority concerns individual investors, the Federal Act on Administrative Procedure of December 20, 1968²⁷ is applicable.

⁵ Within the context of Paragraph 2, the Federal Council is authorized to regulate cooperation with foreign supervisory authorities in international treaties.

Art. 143 On-site inspections

¹ For the purpose of applying this Act, the supervisory authority may itself conduct direct audits at foreign branches of Swiss licensees which are subject to its consolidated supervision in the context of inspections in the country of origin, or it may arrange to have such audits conducted by third-party auditors.

² If requested by foreign supervisory authorities, it may authorize them in the case of foreign controlled licensees which are subject to its consolidated supervision in the context of inspections in the country of origin to conduct direct audits or arrange to have such audits conducted by third-party auditors. Such audits may be subject to specific conditions. The licensee may request that such audits be supervised.

³ If, in the case of direct audits in Switzerland, the foreign supervisory authorities wish to receive information which directly or indirectly concerns individual investors, the Swiss supervisory authority collects such information itself and transmits it to the supervisory authorities which have made the request. The procedure is based on the Federal Act on Administrative Procedure of December 20, 1968²⁸.

Art. 144 Collection of data

¹ To ensure transparency on the market for collective investment schemes or to execute its supervisory function, the supervisory authority is authorized to collect from the licensees the data it requires concerning their business activities and the development of the collective investment schemes which they manage or represent; it may also arrange for this data to be collected by third parties.

²⁷ SR 172.021

²⁸ SR 172.021

² Appointed third parties must observe confidentiality in relation to the data collected.

³ This is subject to the statistical reporting duties in respect of the Swiss National Bank, as specified in the National Bank Law of October 3, 2003²⁹, together with the entitlement of the supervisory authority and Swiss National Bank to exchange data.

Title 6: Liability and sanctions

Chapter 1: Liability

Art. 145 Principle

¹ Anybody who breaches their duties is liable to the company, the individual investors and the company's creditors for the damage resulting therefrom, unless they prove that the fault does not lie with them. All persons involved in the establishment or management of the company, asset management, distribution, auditing or liquidation may be held liable:

- a. the fund management company,
- b. the SICAV,
- c. the limited partnership for collective investment,
- d. the SICAF,
- e. the custodian bank,
- f. the distributor,
- g. the representative of foreign collective investment schemes,
- h. the auditors,
- i. the liquidator.

² Liability as defined in Paragraph 1 also applies to the valuation expert, the representative of the investors, the investigating officer and the administrative receiver.

³ Anyone who assigns the fulfillment of a task to a third party is liable for the damage caused by such person if they cannot prove that they applied the degree of due diligence with regard to the selection, instruction and monitoring required in the given circumstances, subject to Article 31, Paragraph 5, and Article 73, Paragraph 2.

⁴ The liability of the executive and governing bodies of the fund management company, SICAV and SICAF is based on the provisions of the Code of Obligations³⁰ governing public limited companies.

⁵ The liability of a limited partnership for collective investment is based on the provisions of the Code of Obligations governing limited partnerships.

²⁹ SR 951.11

³⁰ SR 220

Art. 146 Joint and several liability and recourse

¹ If more than one person is liable to pay compensation, each of them is liable jointly and severally to the extent that the damage is attributable directly to them by reason of their fault and the circumstances.

² The claimant may file a claim for the overall damage against more than one party jointly, and may request that in the same proceedings the court determine each individual defendant's liability to pay compensation.

³ The court, taking all circumstances into consideration, determines recourse among the parties.

Art. 147 Statute of limitation

¹ The right to claim damages expires five years after the day on which the person affected became aware of the damage and of the person liable to pay compensation, but not later than one year after redemption of a unit and in all cases not later than ten years after the harmful act.

² If the proceedings relate to a punishable act for which criminal law prescribes a lengthier statute of limitation, this shall also apply to the civil right of action.

Chapter 2: Sanctions

Art. 148 Offences

¹ Anyone who willfully does any of the following shall be liable to imprisonment or a fine of up to CHF 1,000,000.³¹

- a. acts without authorization as fund management company, SICAV, custodian bank, limited partnership for collective investment, SICAF, asset manager of Swiss collective investment schemes, distributor or representative of foreign collective investment schemes;
- b. establishes a collective investment scheme without approval or authorization;
- c. establishes an in-house fund without being an authorized bank or securities dealer;
- d. publicly advertises for domestic and foreign collective investment schemes without approval or authorization;
- e. fails to maintain the books of account in an orderly manner or does not archive company books of account records and documents as prescribed;

³¹ Upon entry into force of the amendment to the Swiss Penal Code (BBl 2002 8240) dated December 13, 2002, the introductory sentence of Article 148 Paragraph 1 is as follows: ¹ Anyone who willfully does any of the following shall be liable to imprisonment of up to three years:

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- f. in the annual financial statements, annual report, semi-annual report, prospectus and simplified prospectus, or in other communications:
 - 1. provides false information or withholds material facts,
 - 2. does not provide all the mandatory information;
 - g. with respect to the annual financial statements, annual report, semi-annual report, prospectus, or simplified prospectus:
 - 1. fails to produce them or fails to produce them in an orderly manner,
 - 2. fails to publish them or fails to publish them by the specified deadline,
 - 3. fails to submit them to the supervisory authority or fails to submit them to the supervisory authority by the specified time,
 - 4. fails to have them audited by recognized auditors;
 - h. provides false information to the auditors, the investigating officer, the administrative receiver, the liquidator or the supervisory authority or refuses to provide the requested information;
 - i. as recognized auditors, commit a gross breach of the duties assigned to them, specifically providing false information in the audit report, withholding material facts, failing to file a mandatory notification with the supervisory authority, or disclosing confidential information regarding audits;
 - j. as valuation experts, commit a gross breach of the duties assigned to them;
 - k. discloses confidential client information that has been entrusted to a person in their capacity as a member of an executive or governing body, employee, agent or liquidator of a fund management company, or that such person has become party to in the course of their duties, even after termination of the official or contractual relationship or the professional activity.

² Anyone acting in a negligent manner shall be liable to a fine of up to CHF 250,000.

³ In the case of a repeat offence within five years of a legally-binding conviction, the fine shall amount to at least CHF 50,000.

Art. 149 Breaches

¹ Anyone who willfully does any of the following shall be liable to a fine of up to CHF 500,000:

- a. commits a breach of the provision concerning the protection against confusion or deception (Art. 12);
- b. provides non-permissible, false or misleading information in advertising material for a collective investment scheme;
- c. publicly advertises an in-house fund;
- d. fails to file the required notification with the supervisory authority, the Swiss National Bank or investors, or provides false information therein;

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- e. publicly advertises a structured product without:
1. complying with the conditions of Article 5 Paragraph 1a,
 2. a simplified prospectus being available,
 3. the simplified prospectus being in compliance with the conditions of Article 5 Paragraph 2.

² Anyone acting in a negligent manner shall be liable to a fine of up to CHF 150,000.

³ In the case of a repeat offence within five years of a valid conviction, the fine shall amount to at least CHF 25,000.

⁴ Anyone who deliberately fails to comply with a binding ruling issued by the supervisory authority, in which warning was given of the criminal proceedings specified in this Article, or who fails to comply with a decision of the courts of appeal, shall be liable to a fine of up to CHF 100,000.

Art. 150 Prosecution and statute of limitation with regard to breach

¹ Responsibility for the prosecution and judgment of infringements of client confidentiality (Art. 148 Par. 1k) rests with the cantons.

² In all other respects, the Federal Department of Finance shall be responsible for the prosecution and judgment of breaches as defined in Articles 148 and 149, by applying the Federal Act on Administrative Penal Law of March 22, 1974³².

³ Breaches are subject to a statute of limitation of seven years.

Art. 151 Duty to report

¹ Should the supervisory authority become aware of an offence which is punishable under this Act, it shall notify the Federal Department of Finance to that effect.

² Where it becomes aware of other criminal offences, it shall inform the relevant prosecuting authorities.

Title 7: Final and transitional provisions

Art. 152 Implementation

¹ The Federal Council issues the implementing regulations. It may authorize the supervisory authority to issue administrative and technical implementing provisions.

² When issuing subordinate legislation, it observes the key requirements of the law of the European Communities.

³² SR 313.0

Art. 153 Repeal and amendment of existing law

The repeal and amendment of the existing law are set out in the Annex.

Art. 154 Transitional provisions for Swiss investment funds

¹ Upon entry into force of this Act, pending proceedings concerning amendments to the investment regulations as well as a change in fund management company or custodian bank are assessed on the basis of existing procedural law.

² Within one year of this Act's entry into force, fund management companies must:

- a. publish a simplified prospectus for each real estate fund and for all other funds for traditional investments;
- b. provide evidence to the supervisory authority that the asset managers of Swiss collective investment schemes which it appoints are subject to government supervision.

³ Within one year of this Act's entry into force, fund management companies must submit the amended fund regulations to the supervisory authority for approval.

⁴ In special cases, the supervisory authority may extend the time limits given in this Article.

Art. 155 Transitional provisions for foreign collective investment schemes

¹ Within six months of this Act's entry into force, foreign collective investment schemes which are newly subject to this Act must report to the supervisory authority and file an application for approval. They may continue their activities until a decision regarding approval is reached.

² The supervisory authority shall decide whether to grant approval within two years following the Act's entry into force.

³ In special cases, the supervisory authority may extend the time limits given in this Article.

Art. 156 Transitional provisions for representatives of foreign collective investment schemes

¹ Within one year of this Act's entry into force, representatives of foreign collective investment schemes must publish a simplified prospectus and submit it to the supervisory authority in respect of each foreign collective investment scheme which they represent in Switzerland and which is comparable in Switzerland to a real estate fund or other fund for traditional investments.

² Within one year of this Act's entry into force, representatives of foreign collective investment schemes must provide the supervisory authority with evidence that they have appointed auditors (Article 126 et seq.).

Art. 157 Transitional provisions for licensees and Swiss collective investment schemes

¹ Within six months of this Act's entry into force, the following persons must register with the supervisory authority:

- a. SICAF;
- b. asset managers of collective investment schemes.

² Within one year of this Act's entry into force, they must satisfy the requirements of the Act and file an application for approval or authorization. They may continue their activity until a decision regarding authorization is reached.

³ The supervisory authority decides whether to grant approval or authorization within two years following the Act's entry into force.

⁴ In special cases, the supervisory authority may extend the time limits given in this Article.

Art. 158 Transitional provisions for legal entities which use a designation pursuant to Article 12

¹ Within one year of this Act's entry into force, legal entities whose designation breaches Article 12 must amend such designation.

² If the necessary amendment of the designation is not completed within the given period, the supervisory authority shall grant the legal entity a period of grace. If such period of grace expires with no action being taken, the supervisory authority shall dissolve the legal entity for the purpose of liquidation and appoint the liquidators.

Art. 159 Referendum and entry into force

¹ This Act is subject to an optional referendum.

² The Federal Council determines its entry into force.

National Council, June 23, 2006
2006

President: Claude Janiak
Recording secretary: Ueli Anliker

Council of States, June 23,

President: Rolf Büttiker
Secretary: Christoph Lanz

Date of publication: July 4, 2006³³

Deadline for requesting a referendum: October 12, 2006

³³ BBI 2006 5805