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

of 23 June 2006 (Status as of 1 January 2020)

*The Federal Assembly of the Swiss Confederation,
based on Articles 98 paragraphs 1 and 2 and 122 paragraph 1 of the Federal
Constitution¹,
and having considered the Federal Council Dispatch of 23 September 2005²,
decrees:*

Title 1 General Provisions

Chapter 1 Aim and Scope of Application

Art. 1 Aim

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

Art. 2 Scope of Application

¹ This Act governs the following, irrespective of their legal status:

- a.³ collective investment schemes and persons who are responsible for the safe-keeping of assets held in them;
- b.⁴ foreign collective investment schemes which are offered in Switzerland;

AS 2006 5379

¹ SR 101

² BBl 2005 6395

³ Amended by Annex No II 13 of the Financial Institutions Act of 15 June 2018, in force since 1 Jan. 2020 (AS 2018 5247, 2019 4631; BBl 2015 8901).

⁴ Amended by Annex No II 13 of the Financial Institutions Act of 15 June 2018, in force since 1 Jan. 2020 (AS 2018 5247, 2019 4631; BBl 2015 8901).

c.–e.⁵ ...

f. persons who represent foreign collective investment schemes in Switzerland.⁶

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);

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 Code⁷;

h.⁸ ...

^{2bis} ...⁹

³ Investment companies in the form of a Swiss company limited by shares are not governed by this Act, provided they are listed on a Swiss exchange, or provided that:¹⁰

a.¹¹ only shareholders as defined in Article 10 paragraphs 3 and 3^{ter} are entitled to participate in them; and

b. their shares are registered.¹²

⁴ ...¹³

⁵ Repealed by Annex No II 13 of the Financial Institutions Act of 15 June 2018, with effect from 1 Jan. 2020 (AS **2018** 5247, **2019** 4631; BBl **2015** 8901).

⁶ Amended by No I of the FA of 28 Sept. 2012, in force since 1 March 2013 (AS **2013** 585; BBl **2012** 3639).

⁷ SR **210**

⁸ Inserted by No I of the FA of 28 Sept. 2012, in force since 1 March 2013 (AS **2013** 585; BBl **2012** 3639). Repealed by Annex No II 13 of the Financial Institutions Act of 15 June 2018, with effect from 1 Jan. 2020 (AS **2018** 5247, **2019** 4631; BBl **2015** 8901).

⁹ Inserted by No I of the FA of 28 Sept. 2012, in force since 1 March 2013 (AS **2013** 585; BBl **2012** 3639). Repealed by Annex No II 13 of the Financial Institutions Act of 15 June 2018, with effect from 1 Jan. 2020 (AS **2018** 5247, **2019** 4631; BBl **2015** 8901).

¹⁰ Amended by Annex No 3 of the Financial Services Act of 15 June 2018, in force since 1 Jan. 2020 (AS **2019** 4417; BBl **2015** 8901).

¹¹ Amended by Annex No 3 of the Financial Services Act of 15 June 2018, in force since 1 Jan. 2020 (AS **2019** 4417; BBl **2015** 8901).

¹² Amended by No I of the FA of 28 Sept. 2012, in force since 1 March 2013 (AS **2013** 585; BBl **2012** 3639).

¹³ Repealed by No I of the FA of 28 Sept. 2012, with effect from 1 March 2013 (AS **2013** 585; BBl **2012** 3639).

Art. 3–6¹⁴**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. It may authorise collective investment schemes for a single qualified investor (single investor fund) in accordance with Article 10 paragraph 3 in conjunction with Article 4 paragraph 3 letters b, e and f of the Financial Services Act of 15 June 2018¹⁵ (FinSA).^{16 17}

⁴ In the case of single investor funds, the fund management company and the investment company with variable capital (SICAV) may delegate the investment decisions to the single investor. FINMA may exempt them from the duty to subject themselves to supervision recognised under Article 31 paragraph 3 and Article 36 paragraph 3, respectively.¹⁸

⁵ Collective investment schemes must have their registered office and head office in Switzerland.¹⁹

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 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.

¹⁴ Repealed by Annex No 3 of the Financial Services Act of 15 June 2018, with effect from 1 Jan. 2020 (AS 2019 4417; BBl 2015 8901).

¹⁵ SR 950.1

¹⁶ Second sentence amended by Annex No 3 of the Financial Services Act of 15 June 2018, in force since 1 Jan. 2020 (AS 2019 4417; BBl 2015 8901).

¹⁷ Amended by No I of the FA of 28 Sept. 2012, in force since 1 March 2013 (AS 2013 585; BBl 2012 3639)

¹⁸ Inserted by No I of the FA of 28 Sept. 2012, in force since 1 March 2013 (AS 2013 585; BBl 2012 3639)

¹⁹ Inserted by Annex No 3 of the Financial Services Act of 15 June 2018, in force since 1 Jan. 2020 (AS 2019 4417; BBl 2015 8901).

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 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 within the meaning of this Act are professional clients as defined in Article 4 paragraphs 3–5 or Article 5 paragraphs 1 and 4 FinSA^{20;21}

^{3bis} ...²²

^{3ter} Qualified investors also include retail clients for whom a financial intermediary in accordance with Article 4 paragraph 3 letter a FinSA or a foreign financial intermediary that is subject to equivalent prudential supervision provides portfolio management or investment advice in accordance with Article 3 letter c items 3 and 4 FinSA within the scope of a permanent portfolio management or investment advice relationship, provided they have not declared that they do not wish to be treated as such. Such declaration must be made in writing or in another form demonstrable via text.²³

⁴ ...²⁴

⁵ The FINMA may fully or partially exempt collective investment schemes from certain provisions of the financial market acts within the meaning of Article 1 paragraph 1 of the Financial Market Supervision Act of 22 June 2007²⁵ (FINMASA),

²⁰ SR 950.1

²¹ Amended by Annex No 3 of the Financial Services Act of 15 June 2018, in force since 1 Jan. 2020 (AS 2019 4417; BBl 2015 8901).

²² Inserted by No 1 of the FA of 28 Sept. 2012, in force since 1 June 2013 (AS 2013 585; BBl 2012 3639). Repealed by Annex No 3 of the Financial Services Act of 15 June 2018, with effect from 1 Jan. 2020 (AS 2019 4417; BBl 2015 8901).

²³ Inserted by No 1 of the FA of 28 Sept. 2012, in force since 1 June 2013 (AS 2013 585; BBl 2012 3639). Amended by Annex No 3 of the Financial Services Act of 15 June 2018, in force since 1 Jan. 2020 (AS 2019 4417; BBl 2015 8901).

²⁴ Repealed by Annex No 3 of the Financial Services Act of 15 June 2018, with effect from 1 Jan. 2020 (AS 2019 4417; BBl 2015 8901).

²⁵ SR 956.1

provided that they are exclusively open towards qualified investors and that the protective purpose of this Act is not impaired, specifically from the provisions concerning:²⁶

- a.²⁷ ...
- b.²⁸ ...
- 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 Designations 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.²⁹

Chapter 3 Authorisation and Approval

Section 1 General

Art. 13 Duty to obtain authorisation

¹ Any party who establishes or operates a collective investment scheme or is responsible for the safekeeping of the assets held in it requires authorisation from FINMA.³⁰

²⁶ Amended by Annex No 3 of the Financial Services Act of 15 June 2018, in force since 1 Jan. 2020 (AS **2019** 4417; BBl **2015** 8901).

²⁷ Repealed by No I of the FA of 28 Sept. 2012, with effect from 1 June 2013 (AS **2013** 585; BBl **2012** 3639).

²⁸ Repealed by Annex No 3 of the Financial Services Act of 15 June 2018, with effect from 1 Jan. 2020 (AS **2019** 4417; BBl **2015** 8901).

²⁹ Amended by No III of the FA of 25 Sept. 2015 (Law on Business Names), in force since 1 July 2016 (AS **2016** 1507; BBl **2014** 9305).

³⁰ Amended by Annex No II 13 of the Financial Institutions Act of 15 June 2018, in force since 1 Jan. 2020 (AS **2018** 5247, **2019** 4631; BBl **2015** 8901).

² The following must apply for authorisation:

- a.³¹ ...
- b. SICAVs;
- c. limited partnerships for collective investment;
- d. SICAFs;
- e.³² the custodian bank;
- f. und g.³³ ...
- h. representatives of foreign collective investment schemes.

³ Representatives who are already subject to other equivalent official supervision may be granted exemption from the duty to obtain authorisation by the Federal Council.³⁴

⁴ ...³⁵

⁵ The persons cited in paragraph 2 letters b–d may only be entered in the Commercial Register once authorisation has been granted by FINMA.³⁶

Art. 14 Authorisation requirements

¹ Authorisation is granted if:

- a.³⁷ the persons under Article 13 paragraph 2 and the persons responsible for the administration and management provide the guarantee of irreproachable business conduct;
- abis.³⁸ the persons responsible for the administration and management enjoy a good reputation and possess the specialist qualifications required for the function;
- b. the significant equity holders have a good reputation and do not exert their influence to the detriment of prudent and sound business practice;
- c. compliance with the duties stemming from this Act is assured by internal regulations and an appropriate organisational structure;

³¹ Repealed by Annex No II 13 of the Financial Institutions Act of 15 June 2018, with effect from 1 Jan. 2020 (AS **2018** 5247, **2019** 4631; BBl **2015** 8901).

³² Amended by Annex No II 13 of the Financial Institutions Act of 15 June 2018, in force since 1 Jan. 2020 (AS **2018** 5247, **2019** 4631; BBl **2015** 8901).

³³ Repealed by Annex No II 13 of the Financial Institutions Act of 15 June 2018, with effect from 1 Jan. 2020 (AS **2018** 5247, **2019** 4631; BBl **2015** 8901).

³⁴ Amended by Annex No II 13 of the Financial Institutions Act of 15 June 2018, in force since 1 Jan. 2020 (AS **2018** 5247, **2019** 4631; BBl **2015** 8901).

³⁵ Repealed by No I of the FA of 28 Sept. 2012, with effect from 1 March 2013 (AS **2013** 585; BBl **2012** 3639).

³⁶ Amended by Annex No II 13 of the Financial Institutions Act of 15 June 2018, in force since 1 Jan. 2020 (AS **2018** 5247, **2019** 4631; BBl **2015** 8901).

³⁷ Amended by Annex No II 13 of the Financial Institutions Act of 15 June 2018, in force since 1 Jan. 2020 (AS **2018** 5247, **2019** 4631; BBl **2015** 8901).

³⁸ Inserted by Annex No II 13 of the Financial Institutions Act of 15 June 2018, in force since 1 Jan. 2020 (AS **2018** 5247, **2019** 4631; BBl **2015** 8901).

- d. sufficient financial guarantees are available;
- e. the additional authorisation conditions listed in the relevant provisions of the Act are met.

^{1bis} Insofar as the financial guarantees are used to meet minimal capital requirements, the Federal Council may stipulate higher capital requirements than required by the Code of Obligations^{39,40}

^{1ter} The Federal Council may stipulate additional authorisation conditions if this is consistent with recognised international standards.⁴¹

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³ The following are deemed to be significant equity holders, provided they directly or indirectly control at least 10 percent of the capital or votes in the persons specified in Article 13 paragraph 2 or can materially influence their business activities in another way:

- a. natural and legal persons;
- b. general and limited partnerships;
- c. financially related parties which meet this criterion on a combined basis.⁴³

Art. 15 Duty to obtain approval

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

- a. for investment fund, the collective investment contract (Art. 25);
- b. for SICAVs, the articles of association and investment regulations;
- c. for limited partnerships for collective investment, the company agreement;
- d. SICAFs, the articles of association and investment regulations;
- e.⁴⁴ the relevant documents of foreign collective investment schemes which are offered to non-qualified investors.

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.

³⁹ SR 220

⁴⁰ Inserted by Annex No 14 of the Financial Market Supervision Act of 22 June 2007, in force since 1 Jan. 2009 (AS 2008 5207 5205; BBl 2006 2829).

⁴¹ Inserted by No I of the FA of 28 Sept. 2012, in force since 1 March 2013. Amended by Annex No II 13 of the Financial Institutions Act of 15 June 2018, in force since 1 Jan. 2020 (AS 2018 5247, 2019 4631; BBl 2015 8901).

⁴² Repealed by Annex No II 13 of the Financial Institutions Act of 15 June 2018, with effect from 1 Jan. 2020 (AS 2018 5247, 2019 4631; BBl 2015 8901).

⁴³ Amended by No I of the FA of 28 Sept. 2012, in force since 1 March 2013 (AS 2013 585; BBl 2012 3639).

⁴⁴ Amended by Annex No II 13 of the Financial Institutions Act of 15 June 2018, in force since 1 Jan. 2020 (AS 2018 5247, 2019 4631; BBl 2015 8901).

Art. 16 Change in circumstances

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

Art. 17 Simplified authorisation and approval procedure

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

Section 2 ...**Art. 18–18c**⁴⁵**Section 3** ...**Art. 19**⁴⁶**Chapter 4 Protection of Investors' Interests**⁴⁷**Art. 20** Principles

¹ Persons who manage or represent collective investment schemes or hold the assets of these schemes in safekeeping, as well as their agents must fulfil the following duties in particular:⁴⁸

- a. duty of loyalty: they act independently and exclusively in the interests of the investors;
- b. due diligence: they implement the organisational measures that are necessary for irreproachable business conduct;
- c.⁴⁹ duty to provide information: They shall render account of the collective investment schemes which they manage and represent and the assets of these schemes which they hold in safekeeping, and provide information on all of the fees and costs incurred directly or indirectly by investors as well as com-

⁴⁵ Repealed by Annex No II 13 of the Financial Institutions Act of 15 June 2018, with effect from 1 Jan. 2020 (AS **2018** 5247, **2019** 4631; BBl **2015** 8901)

⁴⁶ Repealed by Annex No II 13 of the Financial Institutions Act of 15 June 2018, with effect from 1 Jan. 2020 (AS **2018** 5247, **2019** 4631; BBl **2015** 8901).

⁴⁷ Amended by Annex No 3 of the Financial Services Act of 15 June 2018, in force since 1 Jan. 2020 (AS **2019** 4417; BBl **2015** 8901).

⁴⁸ Amended by Annex No 3 of the Financial Services Act of 15 June 2018, in force since 1 Jan. 2020 (AS **2019** 4417; BBl **2015** 8901).

⁴⁹ Amended by Annex No 3 of the Financial Services Act of 15 June 2018, in force since 1 Jan. 2020 (AS **2019** 4417; BBl **2015** 8901).

pensation from third parties, particularly commissions, discounts or other financial benefits.

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³ Persons who manage or represent collective investment schemes or hold their assets in safekeeping, as well as their agents, shall take all necessary precautions to ensure that all duties in relation to all their business activities are performed properly.⁵¹

Art. 21 Investments

¹ Persons who manage or represent collective investment schemes or hold their assets in safekeeping, as well as their agents shall 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.⁵²

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. Compensation in accordance with Article 26 FinSA⁵³ must be credited to the collective investment scheme.⁵⁴

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. 22⁵⁵

Art. 23 Exercising 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 685*d* paragraph 2 of the Code of Obligations⁵⁶ 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 685*d* paragraph 1 of the Code of Obligations is calculated individually for each investment fund.

⁵⁰ Repealed by Annex No 3 of the Financial Services Act of 15 June 2018, with effect from 1 Jan. 2020 (AS **2019** 4417; BBl **2015** 8901).

⁵¹ Inserted by No I of the FA of 28 Sept. 2012 (RU **2013** 585; BBl **2012** 3639). Amended by Annex No 3 of the Financial Services Act of 15 June 2018, in force since 1 Jan. 2020 (AS **2019** 4417; BBl **2015** 8901).

⁵² Amended by Annex No 3 of the Financial Services Act of 15 June 2018, in force since 1 Jan. 2020 (AS **2019** 4417; BBl **2015** 8901).

⁵³ SR **950.1**

⁵⁴ Second sentence amended by Annex No 3 of the Financial Services Act of 15 June 2018, in force since 1 Jan. 2020 (AS **2019** 4417; BBl **2015** 8901).

⁵⁵ Repealed by Annex No 3 of the Financial Services Act of 15 June 2018, with effect from 1 Jan. 2020 (AS **2019** 4417; BBl **2015** 8901).

⁵⁶ SR **220**

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

Art. 24⁵⁷

Title 2 Open-Ended Collective Investment Schemes
Chapter 1 The 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 on 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 The Fund Contract

Art. 26 Content

¹ The fund management company draws up the fund contract and, with the consent of the custodian bank, submits it to FINMA for approval.

² The fund contract sets out the rights and duties of the investors, the fund management company and the custodian bank.

³ The Federal Council determines the minimum contents.⁵⁸

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 FINMA.

⁵⁷ Repealed by Annex No 3 of the Financial Services Act of 15 June 2018, with effect from 1 Jan. 2020 (AS 2019 4417; BBl 2015 8901).

⁵⁸ Amended by No I of the FA of 28 Sept. 2012, in force since 1 March 2013 (AS 2013 585; BBl 2012 3639).

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 These publications must inform investors of their right to lodge objections with FINMA within 30 days of their publication. The procedure is based on the Federal Act on Administrative Procedure of 20 December 1968⁵⁹. 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.⁶⁰

⁴ FINMA publishes its decision in the media of publication.

Section 3 ...

Art. 28–35⁶¹

Chapter 2 Investment Company with Variable Capital

Section 1 General Provisions

Art. 36 Definition and duties⁶²

¹ 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 level of assets. The Federal Council determines the level and the period within which it must be accumulated.

³ The SICAV may delegate investment decisions only to persons who hold the authorisation required for this activity. Articles 14 and 35 of the Financial Institutions Act of 15 June 2018⁶³ (FinIA) apply *mutatis mutandis*.⁶⁴

⁵⁹ SR 172.021

⁶⁰ Amended by No I of the FA of 28 Sept. 2012, in force since 1 March 2013 (RU 2013 585; BBl 2012 3639).

⁶¹ Repealed by Annex No II 13 of the Financial Institutions Act of 15 June 2018, with effect from 1 Jan. 2020 (AS 2018 5247, 2019 4631; BBl 2015 8901).

⁶² Amended by No I of the FA of 28 Sept. 2012, in force since 1 March 2013 (AS 2013 585; BBl 2012 3639).

⁶³ SR 954.1

⁶⁴ Inserted by by No I of the FA of 28 Sept. 2012 (AS 2013 585; BBl 2012 3639). Amended by Annex No II 13 of the Financial Institutions Act of 15 June 2018, in force since 1 Jan. 2020 (AS 2018 5247, 2019 4631; BBl 2015 8901).

Art. 37 Formation

¹ The formation of a SICAV is based on the provisions of the Code of Obligations⁶⁵ regarding the formation of companies limited by shares, with the exception of the provisions regarding contributions in kind, acquisitions in kind and special privileges.

² The Federal Council specifies the minimum investment amount for a SICAV on its formation.⁶⁶

³ ...⁶⁷

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 Obligations⁶⁸ regarding the name of companies limited by shares apply.

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, FINMA 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 applies.

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.

⁶⁵ SR 220

⁶⁶ Amended by No I of the FA of 28 Sept. 2012, in force since 1 March 2013 (AS 2013 585; BBl 2012 3639).

⁶⁷ Repealed by No I of the FA of 28 Sept. 2012, with effect from 1 March 2013 (AS 2013 585; BBl 2012 3639).

⁶⁸ SR 220

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 and its subfunds in accordance with Article 96 paragraphs 2 and 3.⁶⁹

³ In all other respects, the provisions regarding the rights of the shareholders (Art. 46 et seq.) 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 78–82.

Art. 43 Articles of association

¹ The articles of association must contain provisions concerning:

- a. the company name and its registered office;
- b. the objects;
- c. the minimum investment amount;
- d. the convening 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;

⁶⁹ Amended by No I of the FA of 28 Sept. 2012, in force since 1 March 2013 (AS 2013 585; BBl 2012 3639).

- 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. 44a⁷⁰ Custodian bank

¹ The SICAV must appoint a custodian bank in accordance with Articles 72–74.

² FINMA may grant exemptions from this duty if justified, provided:

- a. the SICAV is exclusively open to qualified investors;
- b. one or more institutions which are subject to equivalent supervision execute the transactions related to settlement and specialise in such transactions (prime broker); and
- c. it is ensured that the prime broker or the foreign supervisory authority responsible for the prime broker will provide FINMA with all the information and documents that it requires to carry out its duties.

Art. 45⁷¹ Relationship with the Financial Market Infrastructure Act

The provisions on public takeover offers (Arts. 125 to 141 of the Financial Market Infrastructure Act of 19 June 2015⁷²) do not apply to SICAVs.

Section 2 Shareholders' Rights and Obligations⁷³

Art. 46 Membership rights

¹ Any person recognised as a shareholder by the SICAV may exercise membership rights.

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 third party need not be a shareholder.

⁷⁰ Inserted by No I of the FA of 28 Sept. 2012, in force since 1 March 2013 (AS 2013 585; BBl 2012 3639).

⁷¹ Amended by Annex No 9 of the Financial Market Infrastructure Act of 19 June 2015, in force since 1 Jan. 2016 (AS 2015 5339; BBl 2014 7483).

⁷² SR 958.1

⁷³ Amended by No I 6 of the FA of 12 Dec. 2014 on the Implementation of the revised recommendations 2012 of the Financial Action Task Force, in force since 1 July 2015 (AS 2015 1389; BBl 2014 605).

³ A SICAV shall keep a register of the shares, in which the names and addresses of company shareholders are recorded. It shall also keep a register under Article 697l of the Code of Obligations⁷⁴ of the beneficial owners of the shares held by company shareholders.⁷⁵

⁴ The articles of association may specify that the company shareholders and investor shareholders are both entitled to at least one seat on the board of directors in the case of self-managed as well as externally managed SICAVs.⁷⁶

Art. 46a⁷⁷ Company shareholders' obligation to give notice

¹ Company shareholders whose shares are not listed on a stock exchange are subject to the obligation to give notice under Article 697j of the Code of Obligations⁷⁸.

² The consequences of failure to comply with obligation to give notice are governed by Article 697m of the Code of Obligations.

Art. 47⁷⁹ Voting rights

¹ Each share carries one vote.

² The Federal Council may authorise FINMA to order the splitting or merging of shares in a share class.

Art. 48 Inspection rights

Inspection rights are based on the provisions of the Code of Obligations⁸⁰ regarding the shareholders' inspection rights unless this Act provides otherwise.

Art. 49 Other rights

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

⁷⁴ SR 220

⁷⁵ Second sentence inserted by No I 6 of the FA of 12 Dec. 2014 on the Implementation of the revised recommendations 2012 of the Financial Action Task Force, in force since 1 July 2015 (AS 2015 1389; BBl 2014 605).

⁷⁶ Inserted by No I of the FA of 28 Sept. 2012, in force since 1 March 2013 (AS 2013 585; BBl 2012 3639).

⁷⁷ Inserted by No I 6 of the FA of 12 Dec. 2014 on the Implementation of the revised recommendations 2012 of the Financial Action Task Force, in force since 1 July 2015 (AS 2015 1389; BBl 2014 605).

⁷⁸ SR 220

⁷⁹ Amended by Annex No 14 of the Financial Market Supervision Act of 22 June 2007, in force since 1 Jan. 2009 (AS 2008 5207 5205; BBl 2006 2829).

⁸⁰ SR 220

Section 3 Organisation

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 Unless otherwise provided for by the Federal Council, in all other respects, the provisions of the Code of Obligations⁸¹ regarding the general meetings of companies limited by shares apply.⁸²

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 authorise 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 fulfils the duties associated with the offering of financial instruments under Title 3 of the FinSA^{83,84}
- ⁵ The administration of a SICAV may be delegated only to an authorised fund management company in accordance with Article 32 FinIA⁸⁵ that has authorisation.⁸⁶
- ⁶ Unless otherwise provided for by the Federal Council, in all other respects, the provisions of the Code of Obligations⁸⁷ regarding the board of directors of companies limited by shares apply.⁸⁸

Art. 52 Audit company

A SICAV shall appoint an audit company (Art. 126 et seq.).

⁸¹ SR 220

⁸² Amended by Annex No 14 of the Financial Market Supervision Act of 22 June 2007, in force since 1 Jan. 2009 (AS 2008 5207 5205; BBl 2006 2829).

⁸³ SR 950.1

⁸⁴ Amended by Annex No 3 of the Financial Services Act of 15 June 2018, in force since 1 Jan. 2020 (AS 2019 4417; BBl 2015 8901).

⁸⁵ SR 954.1

⁸⁶ Amended by Annex No II 13 of the Financial Institutions Act of 15 June 2018, in force since 1 Jan. 2020 (AS 2018 5247, 2019 4631; BBl 2015 8901).

⁸⁷ SR 220

⁸⁸ Amended by Annex No 14 of the Financial Market Supervision Act of 22 June 2007, in force since 1 Jan. 2009 (AS 2008 5207 5205; BBl 2006 2829).

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-securitised 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. FINMA regulates the details.

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 organisational 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. FINMA 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. FINMA 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;
- 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 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 this Act and with the fund regulations.

² The fund management company, custodian bank and its agents, as well as closely related 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.

⁴ If justified, individual situations may arise where FINMA may grant an exemption from the ban on transactions with closely related persons as defined in paragraphs 2 and 3 if this is in the interest of the investors. The Federal Council regulates the exemption criteria.⁸⁹

Art. 64 Valuation experts⁹⁰

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 FINMA.⁹¹

² Approval is granted if the valuation experts:⁹²

- a. possess the necessary qualifications;
- b. are independent;
- c.⁹³ ...

⁸⁹ Inserted by No I of the FA of 28 Sept. 2012, in force since 1 March 2013 (AS 2013 585; BBl 2012 3639).

⁹⁰ Amended by No I of the FA of 28 Sept. 2012, in force since 1 March 2013 (AS 2013 585; BBl 2012 3639).

⁹¹ Amended by No I of the FA of 28 Sept. 2012, in force since 1 March 2013 (AS 2013 585; BBl 2012 3639).

⁹² Amended by No I of the FA of 28 Sept. 2012, in force since 1 March 2013 (AS 2013 585; BBl g3639).

⁹³ Repealed by No I of the FA of 28 Sept. 2012, with effect from 1 March 2013 (AS 2013 585; BBl 2012 3639).

³ The valuation experts must conduct their valuations with the due diligence and expertise required of a valuation expert.⁹⁴

⁴ FINMA may make recognition dependent on the conclusion of professional indemnity insurance or on the evidence of financial guarantees.⁹⁵

⁵ It may stipulate additional requirements for the valuation experts and describe the valuation methods to be adopted.⁹⁶

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. FINMA 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.

⁹⁴ Amended by No I of the FA of 28 Sept. 2012, in force since 1 March 2013 (AS 2013 585; BBl 2012 3639).

⁹⁵ Amended by No I of the FA of 28 Sept. 2012, in force since 1 March 2013 (AS 2013 585; BBl 2012 3639).

⁹⁶ Amended by No I of the FA of 28 Sept. 2012, in force since 1 March 2013 (AS 2013 585; BBl 2012 3639).

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. FINMA regulates the details.

³ Reference must be made in the fund name and in the prospectus and key information document in accordance with Title 3 of the FinSA⁹⁷, as well as in advertising material, to the special risks involved in alternative investments.⁹⁸

⁴ ...⁹⁹

⁵ FINMA 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.

⁹⁷ SR 950.1

⁹⁸ Amended by Annex No 3 of the Financial Services Act of 15 June 2018, in force since 1 Jan. 2020 (AS 2019 4417; BBl 2015 8901).

⁹⁹ Repealed by Annex No 3 of the Financial Services Act of 15 June 2018, with effect from 1 Jan. 2020 (AS 2019 4417; BBl 2015 8901).

Chapter 4 Common Provisions

Section 1 Custodian Bank

Art. 72 Organisation

¹ The custodian bank must be a bank pursuant to the Federal Act on Banks and Savings Banks of 8 November 1934¹⁰⁰ and have an appropriate organisational structure to act as custodian bank to collective investment schemes.¹⁰¹

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

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 the responsibility for the safekeeping of the investment fund's assets to third-party custodians and central securities depositories in Switzerland or abroad, provided this is in the interest of efficient safekeeping. Investors must be informed in the prospectus and key information document in accordance with Title 3 of the FinSA¹⁰² about the risks associated with such transfers.¹⁰³

^{2bis} Financial instruments may only be transferred (paragraph 2) to regulated third-party custodians and central securities depositories. This does not apply to mandatory safekeeping at a location where the transfer to regulated third-party custodians and collective securities depositories is not possible, in particular due to mandatory legal provisions or to the investment product's modalities. Investors must be informed in the product documentation of safekeeping by non-regulated third-party custodians or collective securities depositories.¹⁰⁴

³ The custodian bank ensures that the fund management company or the SICAV complies with this Act and with the fund regulations. It verifies whether:¹⁰⁵

- 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;

¹⁰⁰ SR **952.0**

¹⁰¹ Amended by No I of the FA of 28 Sept. 2012, in force since 1 March 2013 (AS **2013** 585; BBl **2012** 3639).

¹⁰² SR **950.1**

¹⁰³ Amended by Annex No 3 of the Financial Services Act of 15 June 2018, in force since 1 Jan. 2020 (AS **2019** 4417; BBl **2015** 8901).

¹⁰⁴ Inserted by No I of the FA of 28 Sept. 2012, in force since 1 March 2013 (AS **2013** 585; BBl **2012** 3639). Amended by Annex No 3 of the Financial Services Act of 15 June 2018, in force since 1 Jan. 2020 (AS **2019** 4417; BBl **2015** 8901).

¹⁰⁵ Amended by No I of the FA of 28 Sept. 2012, in force since 1 March 2013 (AS **2013** 585; BBl **2012** 3639).

- 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.

⁴ The Federal Council regulates the requirements for acting as a custodian bank and may specify parameters for the protection of the securities investments.¹⁰⁶

Art. 74 Change of custodian bank

¹ In the case of investment funds, the provisions concerning a change of fund management company (Art. 39 FinIA¹⁰⁷) also apply accordingly to a change of custodian bank.¹⁰⁸

² In the case of a SICAV, a change of custodian bank requires a contract in writing or in another form demonstrable via text, and must be approved in advance by FINMA.¹⁰⁹

³ FINMA shall publish its decision in the media of publication.

Section 2 ...

Art. 75–77¹¹⁰

Section 3 Position of Investors

Art. 78 Purchase and redemption

¹ On 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.

¹⁰⁶ Inserted by No I of the FA of 28 Sept. 2012, in force since 1 March 2013 (AS 2013 585; BBl 2012 3639).

¹⁰⁷ SR 954.1

¹⁰⁸ Amended by Annex No II 13 of the Financial Institutions Act of 15 June 2018, in force since 1 Jan. 2020 (AS 2018 5247, 2019 4631; BBl 2015 8901).

¹⁰⁹ Amended by Annex No II 13 of the Financial Institutions Act of 15 June 2018, in force since 1 Jan. 2020 (AS 2018 5247, 2019 4631; BBl 2015 8901).

¹¹⁰ Repealed by Annex No 3 of the Financial Services Act of 15 June 2018, with effect from 1 Jan. 2020 (AS 2019 4417; BBl 2015 8901).

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

⁴ FINMA 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 (Art. 54 et seq., Art. 59 et seq. and Art. 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 may specify a limited deferment of the repayment of the units in the interest of all investors.

² FINMA 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, and 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 FINMA 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, or on risk management, they must be given such information at any time.¹¹¹

³ The investors may request at the courts of the registered office of the fund management company or the SICAV that the audit company 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 favour of the open-ended collective investment scheme.

² The court shall give notice of the 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 an action for damages in favour of the open-ended collective investment scheme, the investors may no longer exercise their individual right to file such an action.

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

¹¹¹ Amended by No I of the FA of 28 Sept. 2012, in force since 1 March 2013 (AS 2013 585; BBl 2012 3639).

Section 4 Accounting, Valuation and Financial Statements

Art. 87 Accounting duty

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 Obligations¹¹² apply.

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 accounts consisting of a statement of net assets or the balance sheet and the profit and loss account, 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,
 - 4.¹¹³ changes concerning the executive officers at the fund management company, SICAV or asset manager of collective investment schemes,
 5. legal disputes;

¹¹² SR 220. Today, Art. 957 et seq.

¹¹³ Amended by No I of the FA of 28 Sept. 2012, in force since 1 March 2013 (AS 2013 585; BBl 2012 3639).

- h. the performance of the open-ended collective investment scheme, possibly benchmarking it with comparable investments;
- i. a brief report by the audit company 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 1 letters b, c and e.

⁴ The annual and semi-annual reports shall be filed with FINMA 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 accounts and annual report of real estate funds

¹ The annual accounts of a real estate fund consist of a consolidated statement of net assets or balance sheet and profit and loss account of the real estate fund and the associated real estate companies. Article 89 applies 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 accounts shall contain the particulars of the valuation expert, the valuation methods and the capitalisation and discounting rates applied.

Art. 91 Supervisory requirements

FINMA 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 under paragraph 1 is liable only for its own liabilities.¹¹⁴

Section 6 Restructuring and Dissolution**Art. 95**¹¹⁵ Restructuring

¹ The following restructurings of open-ended collective investment schemes are permitted:

- a. a merger through the transfer of assets and liabilities;
- b. a conversion to a different legal status of a collective investment scheme;
- c. in the case of SICAVs: the transfer of assets in accordance with Articles 69–77 of the Mergers Act of 3 October 2003¹¹⁶.

² A restructuring in accordance with paragraph 1 letters b and c may only be entered in the Commercial Register following FINMA's approval in accordance with Article 15.

Art. 96 Dissolution

¹ An investment fund is dissolved:

- a. if it was formed for an unlimited period: on notice by the fund management company or the custodian bank;
- b. if it was formed for a fixed period: on expiry of such period;
- c. by order of FINMA:
 1. if it was formed for a fixed period: based on 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.

¹¹⁴ Amended by Annex No II 13 of the Financial Institutions Act of 15 June 2018, in force since 1 Jan. 2020 (AS 2018 5247, 2019 4631; BBl 2015 8901).

¹¹⁵ Amended by No I of the FA of 28 Sept. 2012, in force since 1 March 2013 (AS 2013 585; BBl 2012 3639).

¹¹⁶ SR 221.301

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: on expiry of such period;
- c. by order of FINMA:
 1. if it was formed for a fixed period: based on 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 apply accordingly.

⁴ The fund management company and the SICAV shall notify FINMA 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 Obligations¹¹⁷ apply.

Title 3 Closed-Ended Collective Investment Schemes

Chapter 1 The Limited Partnership for Collective Investment

Art. 98 Definition

¹ A limited partnership for collective investment is a partnership 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 companies limited by shares with their registered office in Switzerland. Companies limited by shares without authorisation as managers of

collective assets may only be active as a general partner in one limited partnership for collective investment.¹¹⁸

^{2bis} The conditions for obtaining an authorisation as defined in Article 14 also apply to the general partners.¹¹⁹

³ Limited partners must be qualified investors as defined in Article 10 paragraph 3 or 3^{ter}.¹²⁰

Art. 99 Relationship to the Code of Obligations

Unless this Act provides otherwise, the provisions of the Code of Obligations¹²¹ concerning limited partnerships apply.

Art. 100 Commercial Register

¹ The partnership exists on 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 notarised signatures.

Art. 101¹²² Partnership name

The partnership name must contain a description of the legal status or its permitted abbreviation.

Art. 102 Partnership agreement and prospectus

¹ The partnership agreement must contain provisions regarding:

- a. the partnership 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;

¹¹⁸ Amended by Annex No II 13 of the Financial Institutions Act of 15 June 2018, in force since 1 Jan. 2020 (AS **2018** 5247, **2019** 4631; BBl **2015** 8901).

¹¹⁹ Inserted by No I of the FA of 28 Sept. 2012, in force since 1 March 2013 (AS **2013** 585; BBl **2012** 3639).

¹²⁰ Amended by Annex No II 13 of the Financial Institutions Act of 15 June 2018, in force since 1 Jan. 2020 (AS **2018** 5247, **2019** 4631; BBl **2015** 8901).

¹²¹ SR **220**

¹²² Amended by No III of the FA of 25 Sept. 2015 (Law on Business Names), in force since 1 July 2016 (AS **2016** 1507; BBl **2014** 9305).

- 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 partnership agreement must be in writing.

³ ...¹²³

Art. 103 Investments

¹ The partnership conducts investments in risk capital.

² The Federal Council may also permit other investments.

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 partnership 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 partnership 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 Obligations¹²⁴ 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 partnership at any time. Business confidentiality with regard to the companies in which the limited partnership invests shall be preserved.

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

¹²³ Repealed by Annex No 3 of the Financial Services Act of 15 June 2018, with effect from 1 Jan. 2020 (AS 2019 4417; BBl 2015 8901).

¹²⁴ SR 220

Art. 107 Audit company

The partnership shall appoint an audit company (Art. 126 et seq.).

Art. 108 Financial statements

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

² Internationally recognised standards must be observed.

Art. 109 Dissolution

The partnership is dissolved:

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

Chapter 2 The Investment Company with Fixed Capital**Art. 110** Definition

¹ SICAF is a company limited by shares pursuant to the Code of Obligations¹²⁵ (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.

² There must be an appropriate relationship between a SICAF's equity and its total assets. The Federal Council defines this relationship.¹²⁶

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 Obligations¹²⁷ regarding the name of companies limited by shares apply.

¹²⁵ SR 220

¹²⁶ Inserted by No I of the FA of 28 Sept. 2012, in force since 1 March 2013 (AS 2013 585; BBl 2012 3639).

¹²⁷ SR 220

Art. 112 Relationship with the Code of Obligations

Unless this Act provides otherwise, the provisions of the Code of Obligations¹²⁸ concerning companies limited by shares 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. 114¹²⁹ Custodian bank

The SICAF must appoint a custodian bank in accordance with Articles 72–74.

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 apply accordingly.

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

Art. 116¹³⁰**Art. 117** Financial statements

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

Art. 118 Audit company

A SICAF shall appoint an audit company (Art. 126 et seq.).

¹²⁸ SR 220

¹²⁹ Amended by No I of the FA of 28 Sept. 2012, in force since 1 March 2013 (AS 2013 585; BBl 2012 3639).

¹³⁰ Repealed by Annex No 3 of the Financial Services Act of 15 June 2018, with effect from 1 Jan. 2020 (AS 2019 4417; BBl 2015 8901).

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 Foreign collective investment schemes must be approved by FINMA before they can be offered in or from Switzerland to non-qualified investors. The representative shall submit the documents requiring approval to FINMA¹³¹.

² Approval is granted if:

- a.¹³² the collective investment scheme, fund management company or company, asset manager of the collective investment scheme and depository are subject to public supervision intended to protect investors;
- b.¹³³ with regard to organization, investor rights and investment policy, the fund management company or company and the depository are subject to regulations which are equivalent to the provisions of this Act;
- c. the designation of the collective investment scheme does not provide grounds for confusion or deception;
- d.¹³⁴ a representative and a paying agent are appointed for the offer of units in Switzerland;

¹³¹ Amended by Annex No II 13 of the Financial Institutions Act of 15 June 2018, in force since 1 Jan. 2020 (AS 2018 5247, 2019 4631; BBl 2015 8901).

¹³² Amended by No I of the FA of 28 Sept. 2012, in force since 1 March 2013 (AS 2013 585; BBl 2012 3639).

¹³³ Amended by No I of the FA of 28 Sept. 2012, in force since 1 March 2013 (AS 2013 585; BBl 2012 3639).

¹³⁴ Amended by Annex No II 13 of the Financial Institutions Act of 15 June 2018, in force since 1 Jan. 2020 (AS 2018 5247, 2019 4631; BBl 2015 8901).

e.¹³⁵ there is an agreement on cooperation and the exchange of information between FINMA and the foreign supervisory authorities relevant to the offer.

^{2bis} The representative and the paying agent may only end their mandate with FINMA's prior approval.¹³⁶

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.

⁴ Foreign collective investment schemes which are offered in Switzerland to qualified investors in accordance with Article 5 paragraph 1 FinSA¹³⁷ do not require approval but must meet the conditions pursuant to paragraph 2 letters c and d at all times.¹³⁸

⁵ Employee share participation schemes in the form of foreign collective investment schemes that are offered exclusively to employees do not require approval.¹³⁹

Art. 121 Paying agent

¹ The paying agent must be a bank pursuant to the Federal Act on Banks and Savings Banks of 8 November 1934¹⁴⁰.

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 Mandate

¹ Foreign collective investment schemes may be offered in Switzerland to non-qualified investors and to qualified investors in Switzerland in accordance with

¹³⁵ Inserted by No I of the FA of 28 Sept. 2012 (AS **2013** 585; BBl **2012** 3639). Amended by Annex No II 13 of the Financial Institutions Act of 15 June 2018, in force since 1 Jan. 2020 (AS **2018** 5247, **2019** 4631; BBl **2015** 8901).

¹³⁶ Inserted by No I of the FA of 28 Sept. 2012, in force since 1 March 2013 (AS **2013** 585; BBl **2012** 3639).

¹³⁷ SR **950.1**

¹³⁸ Inserted by No I of the FA of 28 Sept. 2012 (AS **2013** 585; BBl **2012** 3639). Amended by Annex No II 13 of the Financial Institutions Act of 15 June 2018, in force since 1 Jan. 2020 (AS **2018** 5247, **2019** 4631; BBl **2015** 8901).

¹³⁹ Inserted by Annex No II 13 of the Financial Institutions Act of 15 June 2018, in force since 1 Jan. 2020 (AS **2018** 5247, **2019** 4631; BBl **2015** 8901).

¹⁴⁰ SR **952.0**

Article 5 paragraph 1 FinSA¹⁴¹ only if the fund management company or the company has first appointed a representative to undertake the duties specified in Article 124, subject to the provisions of Article 122.¹⁴²

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.

Art. 124 Duties

¹ The representative represents the foreign collective investment scheme with regard to investors and FINMA. 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 FINMA. The representative's identity must be disclosed in every publication.

Art. 125 Place of performance and place of jurisdiction¹⁴³

¹ The place of performance for units of the foreign collective investment schemes offered in Switzerland is the registered office of the representative.¹⁴⁴

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

³ The place of jurisdiction is:

- a. the registered office of the representative; or
- b. the registered office or place of residence of the investor.¹⁴⁵

¹⁴¹ SR 950.1

¹⁴² Amended by Annex No II 13 of the Financial Institutions Act of 15 June 2018, in force since 1 Jan. 2020 (AS 2018 5247, 2019 4631; BBl 2015 8901).

¹⁴³ Amended by Annex No II 13 of the Financial Institutions Act of 15 June 2018, in force since 1 Jan. 2020 (AS 2018 5247, 2019 4631; BBl 2015 8901).

¹⁴⁴ Amended by Annex No II 13 of the Financial Institutions Act of 15 June 2018, in force since 1 Jan. 2020 (AS 2018 5247, 2019 4631; BBl 2015 8901).

¹⁴⁵ Inserted by Annex No II 13 of the Financial Institutions Act of 15 June 2018, in force since 1 Jan. 2020 (AS 2018 5247, 2019 4631; BBl 2015 8901).

Title 5 Audit¹⁴⁶ and Supervision

Chapter 1 Audit

Art. 126 Appointment

¹ The following persons must appoint an audit company licensed by Federal Audit Oversight Authority under Article 9a paragraph 1 of the Auditor Oversight Act of 16 December 2005¹⁴⁷ to carry out an audit under Article 24 of the FINMASA^{148;149}

- a.¹⁵⁰ fund management companies for the investment funds they manage;
- b. SICAVs;
- c. limited partnerships for collective investment;
- d. SICAFs;
- e.¹⁵¹ ...
- f. representatives of foreign collective investment schemes.

² ...¹⁵²

³ The same audit company must audit the SICAV and any fund management company that it appoints pursuant to Article 51 Paragraph 5. FINMA may grant exemptions.¹⁵³

⁴ ...¹⁵⁴

⁵ The persons named in paragraph 1, managed investment funds and any real estate companies belonging to real estate funds or real estate investment companies must have their annual accounts and if applicable their consolidated accounts audited by a state supervised audit firm in accordance with the principles of the Code of Obligations¹⁵⁵ on the ordinary audit.¹⁵⁶

¹⁴⁶ Term in accordance with Annex No 14 of the Financial Market Supervision Act of 22 June 2007, in force since 1 Jan. 2009 (AS **2008** 5207 5205; BBl **2006** 2829). This change has been made throughout the text.

¹⁴⁷ SR **221.302**

¹⁴⁸ SR **956.1**

¹⁴⁹ Amended by Annex No 4 of the FA of 20 June 2014 (Consolidation of Oversight through Audit Companies), in force since 1 Jan. 2015 (AS **2014** 4073; BBl **2013** 6857).

¹⁵⁰ Amended by Annex No II 13 of the Financial Institutions Act of 15 June 2018, in force since 1 Jan. 2020 (AS **2018** 5247, **2019** 4631; BBl **2015** 8901).

¹⁵¹ Repealed by Annex No II 13 of the Financial Institutions Act of 15 June 2018, with effect from 1 Jan. 2020 (AS **2018** 5247, **2019** 4631; BBl **2015** 8901).

¹⁵² Repealed by Annex No 14 of the Financial Market Supervision Act of 22 June 2007, with effect from 1 Jan. 2009 (AS **2008** 5207 5205; BBl **2006** 2829).

¹⁵³ Amended by Annex No II 13 of the Financial Institutions Act of 15 June 2018, in force since 1 Jan. 2020 (AS **2018** 5247, **2019** 4631; BBl **2015** 8901).

¹⁵⁴ Repealed by Annex No II 13 of the Financial Institutions Act of 15 June 2018, with effect from 1 Jan. 2020 (AS **2018** 5247, **2019** 4631; BBl **2015** 8901).

¹⁵⁵ SR **220**

¹⁵⁶ Inserted by Annex No 4 of the FA of 20 June 2014 (Consolidation of Oversight through Audit Companies), in force since 1 Jan. 2015 (AS **2014** 4073; BBl **2013** 6857).

⁶ The Federal Council shall regulate the details. It may authorise FINMA to issue implementing provisions on matters of limited scope, and in particular on largely technical matters.¹⁵⁷

Art. 127–129¹⁵⁸

Art. 130¹⁵⁹ Duty to provide information

¹ The valuation experts and real estate companies belonging to the collective in vestment scheme shall provide the audit company with full access to the accounting records, the accounting vouchers, the records and to the reports of the valuation experts; moreover, they shall supply them with all the information needed to perform the audit function.

² The audit company of the custodian bank and the audit company of the other licensees cooperate with each other.

Art. 131¹⁶⁰

Chapter 2 Supervision

Art. 132¹⁶¹ Supervision

¹ FINMA issues the necessary authorisations 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.

² It does not review the expediency of the business decisions taken by the licensees.

Art. 133¹⁶² Supervisory instruments

¹ In the event of infringements of the contractual or regulatory provisions or of the provisions of the articles of association, the supervisory instruments pursuant to Articles 30–35 and 37 of the FINMASA¹⁶³ apply *mutatis mutandis*.¹⁶⁴

¹⁵⁷ Inserted by Annex No 4 of the FA of 20 June 2014 (Consolidation of Oversight through Audit Companies), in force since 1 Jan. 2015 (AS **2014** 4073; BBl **2013** 6857).

¹⁵⁸ Repealed by Annex No 4 of the FA of 20 June 2014 (Consolidation of Oversight through Audit Companies), with effect from 1 Jan. 2015 (AS **2014** 4073; BBl **2013** 6857).

¹⁵⁹ Amended by Annex No 14 of the Financial Market Supervision Act of 22 June 2007, in force since 1 Jan. 2009 (AS **2008** 5207 5205; BBl **2006** 2829).

¹⁶⁰ Repealed by Annex No 14 of the Financial Market Supervision Act of 22 June 2007, with effect from 1 Jan. 2009 (AS **2008** 5207 5205; BBl **2006** 2829).

¹⁶¹ Amended by Annex No 14 of the Financial Market Supervision Act of 22 June 2007, in force since 1 Jan. 2009 (AS **2008** 5207 5205; BBl **2006** 2829).

¹⁶² Amended by Annex No 14 of the Financial Market Supervision Act of 22 June 2007, in force since 1 Jan. 2009 (AS **2008** 5207 5205; BBl **2006** 2829).

¹⁶³ SR **956.1**

¹⁶⁴ Amended by No I of the FA of 28 Sept. 2012, in force since 1 March 2013 (AS **2013** 585; BBl **2012** 3639).

² Article 37 of FINMASA also applies *mutatis mutandis* to approval under the present Act.

³ If the investors' rights appear to be endangered, FINMA may order the licensees to provide the necessary collateral.

⁴ If an enforceable order issued by FINMA is not complied with after prior warning within the deadline that has been set, FINMA may itself carry out the required actions at the expense of the negligent party.

Art. 134¹⁶⁵ Liquidation

Licensees from which authorisation has been withdrawn or collective investment schemes from which approval has been withdrawn may be liquidated by FINMA. The Federal Council regulates the details.

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

¹ Where persons operate without any authorisation or approval, FINMA may order that the collective investment scheme be dissolved.

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

Art. 136 Other measures

¹ In justified cases, FINMA 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. 137¹⁶⁶ Initiation of bankruptcy proceedings

¹ Where there is justified concern that an authorised parties as defined in Article 13 paragraph 2 letters b–d is excessively indebted or has serious liquidity problems and there is no prospect of restructuring or restructuring has failed, FINMA shall withdraw authorisation from the financial institution, initiate bankruptcy proceedings and make this public.¹⁶⁷

² The provisions on composition proceedings (Art. 293–336 of the Federal Act of 11 April 1889¹⁶⁸ on Debt Enforcement and Bankruptcy, DEBA), on a stay of proceedings for companies (Art. 725 and 725a of the Code of Obligations¹⁶⁹) and on

¹⁶⁵ Amended by Annex No 14 of the Financial Market Supervision Act of 22 June 2007, in force since 1 Jan. 2009 (AS 2008 5207 5205; BBI 2006 2829).

¹⁶⁶ Amended by Annex No 3 of the FA of 18 March 2011 (Securing Investments), in force since 1 Sept. 2011 (AS 2011 3919; BBI 2010 3993).

¹⁶⁷ Amended by Annex No II 13 of the Financial Institutions Act of 15 June 2018, in force since 1 Jan. 2020 (AS 2018 5247, 2019 4631; BBI 2015 8901).

¹⁶⁸ SR 281.1

¹⁶⁹ SR 220

notification of the court (Art. 728c para. 3 of the Code of Obligations) do not apply to the licensee referred to in paragraph 1.

³ FINMA appoints one or more bankruptcy liquidators. These are subject to supervisory control by FINMA and shall provide FINMA with a report if requested.¹⁷⁰

Art. 138¹⁷¹ Conduct of bankruptcy proceedings

¹ The bankruptcy order has the effect of a commencement of bankruptcy proceedings pursuant to Articles 197–220 DEBA¹⁷².

² The bankruptcy proceedings are conducted in accordance with Articles 221–270 DEBA. Articles 138a–138c remain subject to reservation.

³ FINMA may issue different rulings and orders.

Art. 138a¹⁷³ Creditors' meetings and creditors' committees

¹ The bankruptcy liquidator may apply to FINMA for the following:

- a. to constitute a creditors' meeting and determine its powers as well as the necessary attendance and voting quorums necessary to pass resolutions;
- b. to designate a creditors' committee and determine its composition and powers.

² In the case of a SICAV with subfunds as defined in Article 94, a creditors' meeting or creditors' committee may be established for each subfund.

³ FINMA is under no obligation to follow the proposals of the bankruptcy liquidator.

Art. 138b¹⁷⁴ Distribution and closure of the proceedings

¹ If all assets have been realised and all processes relating to the calculation of assets and liabilities have been completed, the bankruptcy liquidators shall draw up the final distribution list as well as the final accounts and forward these to FINMA for approval. Processes arising from the assignment of legal claims under Article 260 DEBA¹⁷⁵ shall be disregarded.¹⁷⁶

² The approval decision, together with the distribution list and final accounts, shall be made available for inspection for 30 days. Notice of this availability for inspection shall be published in the Swiss Official Gazette of Commerce and on FINMA's

¹⁷⁰ Amended by No I of the FA of 28 Sept. 2012, in force since 1 March 2013 (AS 2013 585; BBl 2012 3639).

¹⁷¹ Amended by No I of the FA of 28 Sept. 2012, in force since 1 March 2013 (AS 2013 585; BBl 2012 3639).

¹⁷² SR 281.1

¹⁷³ Inserted by No I of the FA of 28 Sept. 2012, in force since 1 March 2013 (AS 2013 585; BBl 2012 3639).

¹⁷⁴ Inserted by No I of the FA of 28 Sept. 2012, in force since 1 March 2013 (AS 2013 585; BBl 2012 3639).

¹⁷⁵ SR 281.1

¹⁷⁶ Amended by Annex No II 13 of the Financial Institutions Act of 15 June 2018, in force since 1 Jan. 2020 (AS 2018 5247, 2019 4631; BBl 2015 8901).

website; advance notification shall be given to each of the creditors, stating their share, as well as to the owners if need be.¹⁷⁷

³ FINMA issues the necessary orders for the closure of the proceedings. It announces the closure publicly.

Art. 138c¹⁷⁸ Foreign insolvency proceedings

Articles 37*f* and 37*g* of the Federal Act on Banks and Savings Banks of 8 November 1934¹⁷⁹ apply to recognising foreign bankruptcy decrees and insolvency measures, as well as for coordination with foreign insolvency proceedings.

Art. 138d¹⁸⁰ Appeals

¹ In bankruptcy proceedings, creditors and owners of an authorised party covered by Article 137 paragraph 1 may appeal only against realisation actions and against approval of the distribution list and the final accounts. Appeals pursuant to Article 17 DEBA¹⁸¹ shall be excluded.

² The timeframe for filing an appeal against approval of the distribution list and the final accounts commences the day after they have been made available for inspection.

³ Appeals in bankruptcy proceedings have no suspensive effect. The instructing judge can restore the suspensive effect on request.

Art. 139¹⁸² Duty to provide information

¹ Persons who perform a role in the context of this Act must provide FINMA with all the information and documents that it requires to carry out its duties.

² FINMA may order licensees to provide it with the information it requires to carry out its duties.¹⁸³

Art. 140¹⁸⁴

¹⁷⁷ Amended by Annex No II 13 of the Financial Institutions Act of 15 June 2018, in force since 1 Jan. 2020 (AS **2018** 5247, **2019** 4631; BBI **2015** 8901).

¹⁷⁸ Inserted by No I of the FA of 28 Sept. 2012, in force since 1 March 2013 (AS **2013** 585; BBI **2012** 3639).

¹⁷⁹ SR **952.0**

¹⁸⁰ Inserted by Annex No 9 of the Financial Market Infrastructure Act of 19 June 2015 (AS **2015** 5339; BBI 2014 7483). Amended by Annex No II 13 of the Financial Institutions Act of 15 June 2018, in force since 1 Jan. 2020 (AS **2018** 5247, **2019** 4631; BBI **2015** 8901).

¹⁸¹ SR **281.1**

¹⁸² Amended by Annex No 14 of the Financial Market Supervision Act of 22 June 2007, in force since 1 Jan. 2009 (AS **2008** 5207 5205; BBI **2006** 2829).

¹⁸³ Inserted by No I of the FA of 28 Sept. 2012, in force since 1 March 2013 (AS **2013** 585; BBI **2012** 3639).

¹⁸⁴ Repealed by Annex No II 13 of the Financial Institutions Act of 15 June 2018, with effect from 1 Jan. 2020 (AS **2018** 5247, **2019** 4631; BBI **2015** 8901).

Art. 141¹⁸⁵**Art. 142**¹⁸⁶**Art. 143**¹⁸⁷**Art. 144** Collection and reporting of data¹⁸⁸

¹ FINMA is authorised to collect data concerning licensees' business activities and the trend of collective investment schemes in order to maintain market transparency or to execute its supervisory function. It may appoint third parties to collect this information or order licensees to submit this data themselves.¹⁸⁹

² Third parties appointed to collect data must treat such data as confidential.

³ The statistical reporting duties vis-à-vis the Swiss National Bank, as specified in the Swiss National Bank Act of 3 October 2003¹⁹⁰, together with the right of FINMA and the Swiss National Bank to exchange data are reserved.

Title 6 Liability and Criminal Provisions**Chapter 1 Liability****Art. 145** Principle

¹ Any person who breaches their duties is liable to the company, the individual investors and the company's creditors for the losses resulting therefrom, unless they prove that they are not at fault. Any person involved in the establishment, management, portfolio management, auditing or liquidation of any of the following financial institutions may be held liable:¹⁹¹

- a. the fund management company;
- b. the SICAV;
- c. the limited partnership for collective investment;
- d. the SICAF;

¹⁸⁵ Repealed by Annex No 9 of the Financial Market Infrastructure Act of 19 June 2015, with effect from 1 Jan. 2016 (AS **2015** 5339; BBl **2014** 7483).

¹⁸⁶ Repealed by Annex No 14 of the Financial Market Supervision Act of 22 June 2007, with effect from 1 Jan. 2009 (AS **2008** 5207 5205; BBl **2006** 2829).

¹⁸⁷ Repealed by Annex No 9 of the Financial Market Infrastructure Act of 19 June 2015, with effect from 1 Jan. 2016 (AS **2015** 5339; BBl **2014** 7483).

¹⁸⁸ Amended by No I of the FA of 28 Sept. 2012, in force since 1 March 2013 (AS **2013** 585; BBl **2012** 3639).

¹⁸⁹ Amended by No I of the FA of 28 Sept. 2012, in force since 1 March 2013 (AS **2013** 585; BBl **2012** 3639).

¹⁹⁰ SR **951.11**

¹⁹¹ Second sentence amended by Annex No II 13 of the Financial Institutions Act of 15 June 2018, in force since 1 Jan. 2020 (AS **2018** 5247, **2019** 4631; BBl **2015** 8901).

- e. the custodian bank;
- f.¹⁹² the manager of collective assets;
- g. the representative of foreign collective investment schemes;
- h. the audit company;
- i. the liquidator.

² Liability as defined in paragraph 1 also applies to the valuation expert and the representative of the investors.¹⁹³

³ Any person who assigns the fulfilment of a task to a third party is liable for the losses caused by that third party unless they 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 68 paragraph 3 FinIA^{194, 195 196}

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 Obligations¹⁹⁷ governing companies limited by shares.

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

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 loss is attributable directly to them by reason of their fault and the circumstances.

² The claimant may file a claim for the overall loss 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. 147¹⁹⁸ Prescription

¹ The right to claim damages prescribes five years from the date on which the person suffering damage became aware of the damage and of the identity of the person liable for it, but not later than three years after the redemption of a unit and in any

¹⁹² Amended by Annex No II 13 of the Financial Institutions Act of 15 June 2018, in force since 1 Jan. 2020 (AS **2018** 5247, **2019** 4631; BBI **2015** 8901).

¹⁹³ Amended by Annex No 14 of the Financial Market Supervision Act of 22 June 2007, with effect from 1 Jan. 2009 (AS **2008** 5207 5205; BBI **2006** 2829).

¹⁹⁴ SR **954.1**

¹⁹⁵ Second sentence amended by Annex No II 13 of the Financial Institutions Act of 15 June 2018, in force since 1 Jan. 2020 (AS **2018** 5247, **2019** 4631; BBI **2015** 8901).

¹⁹⁶ Amended by No I of the FA of 28 Sept. 2012, in force since 1 March 2013 (AS **2013** 585; BBI **2012** 3639).

¹⁹⁷ SR **220**

¹⁹⁸ Amended by Annex No 28 of the FA of 15 June 2018 (Revision of the Law on Prescription), in force since 1 Jan. 2020 (AS **2018** 5343; BBI **2014** 235).

event not later than ten years after the date on which the harmful conduct took place or ceased.

² If the person liable has committed a criminal offence through his or her harmful conduct, then notwithstanding the foregoing paragraphs the right to damages or satisfaction prescribes at the earliest when the right to prosecute the offence becomes time-barred. If the right to prosecute is no longer liable to become time-barred because a first instance criminal judgment has been issued, the right to claim damages or satisfaction prescribes at the earliest three years after notice of the judgment is given.

Chapter 2 Criminal Provisions

Art. 148 Felonies and misdemeanours¹⁹⁹

¹ Any person who wilfully does any of the following is liable to a custodial sentence not exceeding three years or to a monetary penalty:²⁰⁰

- a.²⁰¹ ...
- b. establishes a collective investment scheme without approval or authorisation;
- c.²⁰² ...
- d.²⁰³ offers domestic and foreign collective investment schemes that have not been approved to non-qualified investors;
- 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;
- f.²⁰⁴ in annual report or semi-annual report:
 1. provides false information or withholds material facts,
 2. does not provide all the mandatory information;

¹⁹⁹ Amended by No I 1 of the FA of 12 Dec. 2014 on Expanding the Offence of Breach of Professional Confidentiality, in force since 1 July 2015 (AS 2015 1535; BBl 2014 6231 6241).

²⁰⁰ Amended by No I 1 of the FA of 12 Dec. 2014 on Expanding the Offence of Breach of Professional Confidentiality, in force since 1 July 2015 (AS 2015 1535; BBl 2014 6231 6241).

²⁰¹ Repealed by Annex No 14 of the Financial Market Supervision Act of 22 June 2007, with effect from 1 Jan. 2009 (AS 2008 5207 5205; BBl 2006 2829).

²⁰² Repealed by Annex No 14 of the Financial Market Supervision Act of 22 June 2007, with effect from 1 Jan. 2009 (AS 2008 5207 5205; BBl 2006 2829).

²⁰³ Amended by Annex No 3 of the Financial Services Act of 15 June 2018, in force since 1 Jan. 2020 (AS 2019 4417; BBl 2015 8901).

²⁰⁴ Amended by Annex No 3 of the Financial Services Act of 15 June 2018, in force since 1 Jan. 2020 (AS 2019 4417; BBl 2015 8901).

- g.²⁰⁵ with respect to the annual report or semi-annual report:
1. fails to produce them or fails to produce them in an orderly manner,
 2. fails to publish it or fails to publish it by the specified deadline;
- h. provides false information to the audit company, the investigating officer, the administrative receiver, the liquidator or FINMA or refuses to provide the requested information;
- i.²⁰⁶ ...
- j. as valuation experts, commit a gross breach of the duties assigned to them;
- k.²⁰⁷ ...
- l.²⁰⁸ ...
- lbis ...²⁰⁹

² Where the offender acts through negligence, the penalty is a fine not exceeding CHF 250,000.

³ ...²¹⁰

Art. 149 Contraventions

¹ Any person who wilfully does any of the following is liable to a fine not exceeding 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.²¹¹ ...
- d. fails to file the required notification with FINMA, the Swiss National Bank or investors, or provides false information therein;

²⁰⁵ Amended by Annex No 3 of the Financial Services Act of 15 June 2018, in force since 1 Jan. 2020 (AS **2019** 4417; BBl **2015** 8901).

²⁰⁶ Repealed by Annex No 14 of the Financial Market Supervision Act of 22 June 2007, with effect from 1 Jan. 2009 (AS **2008** 5207 5205; BBl **2006** 2829).

²⁰⁷ Repealed by Annex No II 13 of the Financial Institutions Act of 15 June 2018, with effect from 1 Jan. 2020 (AS **2018** 5247, **2019** 4631; BBl **2015** 8901).

²⁰⁸ Inserted by No I 1 of the FA of 12 Dec. 2014 on Expanding the Offence of Breach of Professional Confidentiality (AS **2015** 1535; BBl **2014** 6231 6241). Repealed by Annex No II 13 of the Financial Institutions Act of 15 June 2018, with effect from 1 Jan. 2020 (AS **2018** 5247, **2019** 4631; BBl **2015** 8901).

²⁰⁹ Inserted by No I 1 of the FA of 12 Dec. 2014 on Expanding the Offence of Breach of Professional Confidentiality (AS **2015** 1535; BBl **2014** 6231 6241). Repealed by Annex No II 13 of the Financial Institutions Act of 15 June 2018, with effect from 1 Jan. 2020 (AS **2018** 5247, **2019** 4631; BBl **2015** 8901).

²¹⁰ Repealed by Annex No 9 of the Financial Market Infrastructure Act of 19 June 2015, with effect from 1 Jan. 2016 (AS **2015** 5339; BBl **2014** 7483).

²¹¹ Repealed by Annex No 3 of the Financial Services Act of 15 June 2018, with effect from 1 Jan. 2020 (AS **2019** 4417; BBl **2015** 8901).

e.²¹² ...

f.²¹³ fails to keep the share register in terms of Article 46 paragraph 3 correctly.

2 ...²¹⁴

3 ...²¹⁵

4 ...²¹⁶

Art. 150²¹⁷

Art. 151²¹⁸

Title 7 Final Provisions²¹⁹

Chapter 1

Implementation; Repeal and Amendment of Existing Legislation²²⁰

Art. 152²²¹ Implementation

¹ The Federal Council issues the implementing provisions.

² When issuing subordinate legislation, the Federal Council and FINMA shall observe the key requirements of the law of the European Communities.

Art. 153 Repeal and amendment of existing legislation

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

²¹² Repealed by Annex No 3 of the Financial Services Act of 15 June 2018, with effect from 1 Jan. 2020 (AS **2019** 4417; BBl **2015** 8901).

²¹³ Inserted by No I 6 of the FA of 12 Dec. 2014 on the Implementation of the revised recommendations 2012 of the Financial Action Task Force, in force since 1 July 2015 (AS **2015** 1389; BBl **2014** 605).

²¹⁴ Repealed by Annex No 3 of the Financial Services Act of 15 June 2018, with effect from 1 Jan. 2020 (AS **2019** 4417; BBl **2015** 8901).

²¹⁵ Repealed by Annex No 9 of the Financial Market Infrastructure Act of 19 June 2015, with effect from 1 Jan. 2016 (AS **2015** 5339; BBl **2014** 7483).

²¹⁶ Repealed by Annex No 14 of the Financial Market Supervision Act of 22 June 2007, with effect from 1 Jan. 2009 (AS **2008** 5207 5205; BBl **2006** 2829).

²¹⁷ Repealed by Annex No II 13 of the Financial Institutions Act of 15 June 2018, with effect from 1 Jan. 2020 (AS **2018** 5247, **2019** 4631; BBl **2015** 8901).

²¹⁸ Repealed by Annex No 14 of the Financial Market Supervision Act of 22 June 2007, with effect from 1 Jan. 2009 (AS **2008** 5207 5205; BBl **2006** 2829).

²¹⁹ Amended by No I of the FA of 28 Sept. 2012, in force since 1 March 2013 (AS **2013** 585; BBl **2012** 3639).

²²⁰ Inserted by No I of the FA of 28 Sept. 2012, in force since 1 March 2013 (AS **2013** 585; BBl **2012** 3639).

²²¹ Amended by Annex No 14 of the Financial Market Supervision Act of 22 June 2007, in force since 1 Jan. 2009 (AS **2008** 5207 5205; BBl **2006** 2829).

Chapter 2 ...**Art. 154–158**²²²**Chapter 3 ...****Art. 158a–158e**²²³**Chapter 4 Referendum and Commencement**²²⁴**Art. 159** ...²²⁵

¹ This Act is subject to an optional referendum.

² The Federal Council determines its commencement date.

Commencement date: 1 January 2007²²⁶

²²² Repealed by Annex No II 13 of the Financial Institutions Act of 15 June 2018, with effect from 1 Jan. 2020 (AS **2018** 5247, **2019** 4631; BBl **2015** 8901).

²²³ Inserted by No I of the FA of 28 Sept. 2012 (AS **2013** 585; BBl **2012** 3639). Repealed by Annex No II 13 of the Financial Institutions Act of 15 June 2018, with effect from 1 Jan. 2020 (AS **2018** 5247, **2019** 4631; BBl **2015** 8901)

²²⁴ Inserted by No I of the FA of 28 Sept. 2012, in force since 1 March 2013 (AS **2013** 585; BBl **2012** 3639).

²²⁵ Repealed by No I of the FA of 28 Sept. 2012, with effect from 1 March 2013 (AS **2013** 585; BBl **2012** 3639).

²²⁶ FCD of 22 Nov. 2006.

Annex
(Art. 153)

Amendment of existing legislation

I

The Investment Funds Act of 18 March 1994²²⁷ is repealed.

II

The following federal acts are amended as follows:

...²²⁸

²²⁷ [AS 1994 2523, 2000 2355 Annex No 27, 2004 1985 Annex No II 4]
²²⁸ The amendments may be consulted under AS 2006 5379.