

Legal representative services

The revised Collective Investment Schemes Act (CISA) and the Implementing Ordinance on the Collective Investment Schemes (CISO) came into effect on 1 March 2013. The changes align the Swiss Collective Investment Schemes Act with the European AIFM Directive regulations, and are intended to enhance investor protection. Funds aimed at qualified investor funds now require a legal representative and a paying agent in Switzerland. Fund documentation and documentation processes need to be adjusted to meet the new legal requirements.

Considerations for promoters of foreign collective investment schemes

- Securing a Swiss representative and paying agent
- Review of existing distribution agreements
- New information and documentation duties (code of conduct)
- New rules on information published on websites and visibility of offers and advertising

Appointment of a Swiss representative and paying agent

Distribution of a foreign collective investment scheme to qualified investors has become more stringent as per Art. 120 par.4 and 123 CISA.

A foreign collective investment scheme already marketed in Switzerland (on a private placement basis and to qualified investors only) will be required, as of 1 March 2015, to appoint a Swiss legal representative and a paying agent regardless of the type of investors to which the collective investment scheme is marketed. This is a new requirement.

These new rules are subject to a period of transition for existing funds and as from 1 March 2015, a foreign fund shall not be available to investors in Switzerland unless a Swiss legal representative has been appointed.

Distribution and financial intermediaries

Distribution must take place based on a distribution agreement between at least the representative and the respective distributor in accordance with Swiss law (Art. 131a CISO).

For Swiss financial intermediaries:

To be considered as adequately supervised as per Art. 19 para. 1 CISA, the financial intermediary must either have a distribution license issued by the FINMA or be dispensed from requiring such a license as per Art. 8 CISO (Art. 30a CISO in analogy).

For foreign financial intermediaries:

If distribution is performed in Switzerland, by a foreign financial intermediary, it must be supervised appropriately in the intermediary's home country (Art. 19 para. 1bis CISA).

These new rules are subject to a period of transition for existing distributors and will be compulsory from 1 March 2015.

Mandatory consultation transcripts

The distributor is obliged to maintain consultation transcripts.

Distributors offering their clients investment funds for purchase must justify their recommendations in writing and keep a record thereof.

Clients are to be given a copy of the transcript after the consultation.

In the transcript, the financial intermediary must indicate what the needs of the investor are and why the client was given the recommendation to purchase a certain fund.

These new rules took effect on 1 January 2014.

Website

The offers and the advertising for collective investment schemes reserved exclusively for banks, securities dealers, fund management companies and insurance companies may not be visible to either non-qualified investors or to other qualified investors (Art. 3 para. 4 CISO).

The FINMA circular 2013/9 "Distribution of Collective Investment Schemes" defines the requirements of the disclaimer and/or access restrictions.

Given that no explicit transitional period is foreseen regarding Art. 3 para. 4 CISO, it is advisable to start reviewing one's website immediately.

OpenFunds – About us

- Independent company licensed and supervised by FINMA as a Swiss representative.
- Focuses exclusively on the representation and distribution of funds.
- Draws on extensive know-how and experience within the financial services industry.
- Offers all clients high quality services, including customised solutions if these are required.

Our services – How we can help you

- **An all-in fee concept:**
A transparent, all-inclusive fee approach. For more details please contact us.
- **Smoothing the on-boarding process for your qualified investor funds (subject to approval by OpenFunds):**
We only partner with selected funds that cater to qualified investors and have undergone strict due diligence. We are careful about which funds we represent, and we maintain a strict focus on the delivery of high quality services to our existing client base.
- **Ensuring regulatory monitoring in order to mitigating legal and brand reputation risks:**
We make sure you know at all times what documents have to be available to which counterparties. We will also be updating fund promoters on relevant regulatory developments in the Swiss fund market.
- **Facilitating a paying agent service, in line with current regulations:**
We help fund promoters select a paying agent. This service includes the support for fund promoters wishing to change their representative or paying agent.
- **Arranging and assessing distribution services, in accordance with current regulations:**
 - We only work with distributors of the highest professional standing.
 - We perform due diligence on proposed distributors.
 - We advise fund promoters on Swiss distribution and the duties of a distributor.
 - We provide fund promoters with distribution contracts compliant with Swiss Fund & Asset Management Association (SFAMA) standards and acting as contracting party under CISA.
 - We negotiate distribution contracts with distributors at the fund promoter's request in accordance with the requirements of SFAMA distribution agreement.
- **Ensuring effective collaboration and interaction with FINMA, service providers and investors:**
 - Advising fund promoters and updating contracts to ensure compliance with applicable Swiss laws, self-regulations and FINMA standards.
 - Ensuring prompt responses to requests by investors and FINMA.
 - Supervision and education of distribution partners on how to meet regulatory requirements.

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