

Risks, Rules, and Opportunities in Art Investment

Session 1

Works of art: a common asset class?

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A. Creation of the investment vehicle (in Switzerland)

1. Concept of "collective investment scheme" under the Swiss Collective Investment Schemes Act ("**CISA**")
 - A. Pool of assets contributed by investors...
 - B. ... managed collectively in order to achieve a return on investment...
 - C. ... by a third party for the account of investors (*Fremdverwaltung*).
 - ▶ Interpretation by the Swiss Supreme Court in the decision dated 5 November 2010 in the matter n° 2C_571/2009
2. Overview of closed-ended collective investment schemes available under the CISA
 - A. Swiss investment company with fixed capital (*SICAF*)
 - B. Swiss limited partnership for collective investments (*société en commandite de placements collectifs*)
 - ▶ Pros & Cons

B. Distribution of interests in the investment vehicle in Switzerland

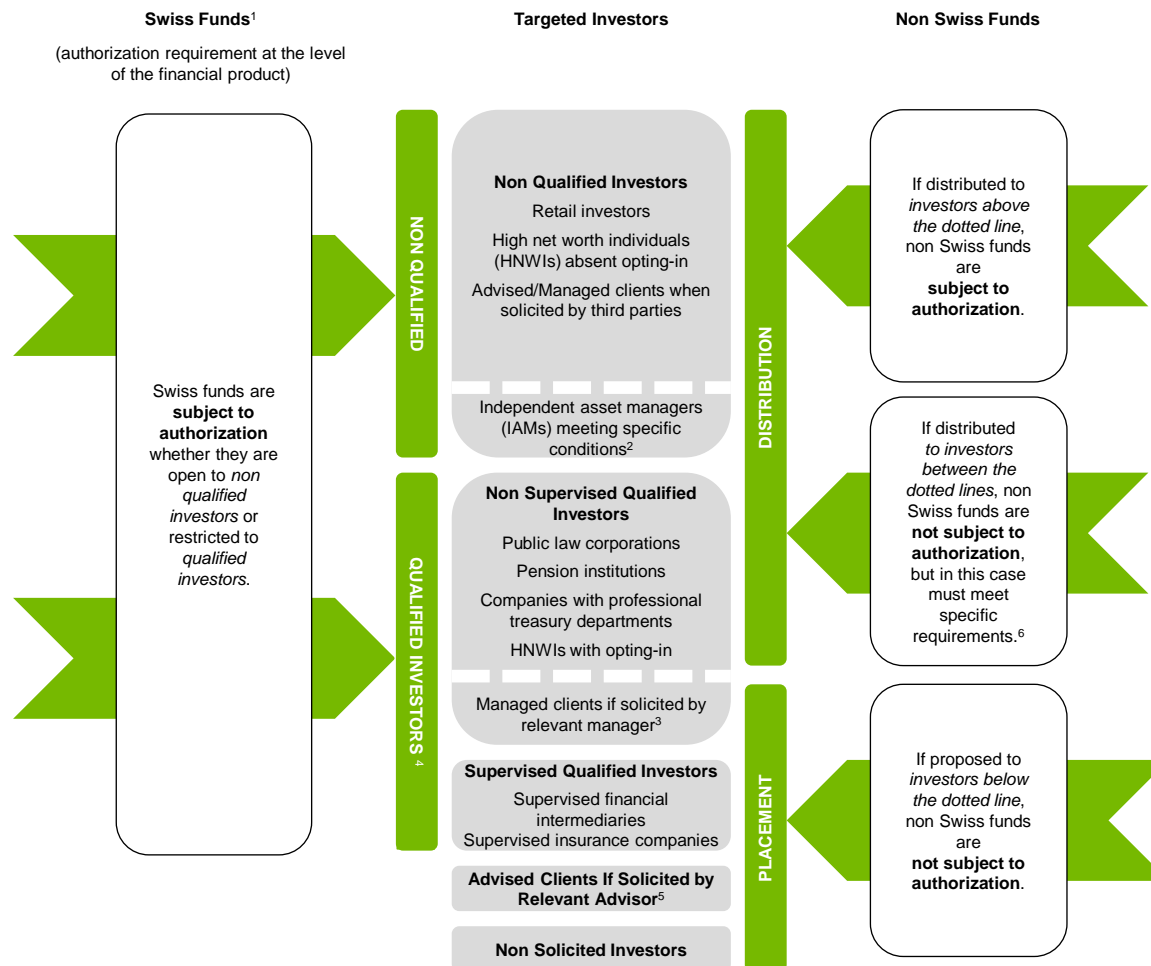
1. Legal requirements depend upon the characteristics of:

- the interests in the (Swiss or non-Swiss) investment vehicle
- the targeted investors in Switzerland
 - i. Non Qualified Investors (retail investors)
 - ii. Qualified Investors (e.g., pension funds, HNWI meeting certain requirements)
 - iii. Supervised Qualified Investors (e.g., Swiss banks, securities dealers, insurance companies)

2. Three sets of rules may possibly apply in Switzerland:

- Concept of "public offering"
 - i. Debt / equity securities → prospectus requirement in Switzerland?
- Concept of "distribution"
 - ii. Structured products → distribution to Non Qualified Investors?
 - iii. Interests in (Swiss or non-Swiss) collective investment schemes → see overview on next slide

B. Distribution of interests in the investment vehicle in Switzerland (continued)



Notes

This table constitutes a simplified overview of the Swiss legal and regulatory framework.

- Vehicles within the meaning of Articles 2 (2) (a-g) and 2 (3) CISA are not considered funds.
- IAMs must (i) be subject to the Anti-Money Laundering Act as financial intermediaries, (ii) be subject to recognized rules of conduct, (iii) use management agreements complying with recognized guidelines and (iv) undertake in writing to use information relating to funds only for qualified investors.
- Managed clients may decide to be considered non-qualified investors. The consequences of such choice are determined by the management agreement and the conduct rules applicable to wealth management.
- The definition of Qualified Investors under foreign law slightly differs from the definition under Swiss law presented here.
- Advisor must (i) be a Supervised Qualified Investor or an IAM meeting specific conditions and (ii) have entered into a written agreement with its client aiming at a long-term advisory relationship against compensation.
- A Swiss representative and a paying agent must be appointed. The name of the funds shall not be misleading. Distributors must enter into a written distribution agreement with the Swiss representative.

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