

A large, abstract graphic of a network or sphere made of interconnected blue nodes and lines, positioned in the upper right background of the page.

Argentina

Regulation

FUNDS AND FUND MANAGEMENT 2009

2.1 Type of funds

Open-ended mutual funds and closed-ended mutual funds are organized in Argentina and registered as Common Investment Funds (CIF). A CIF takes the form of a trust. It is not a company.

2.2 Laws

The CIF is organized under Law No. 24083 of 11 June 1992 (amended by Laws Nos. 24441 of 9 January 1995 and 24781 of 31 March 1997), Regulatory Decrees Nos. 174/93 and 194/98, and Resolutions of the National Securities Commission (CNV).

2.3 Managers, trustees, and custodians

The CNV is the institution that gives approval to an investment fund that intends to issue to the market. Specific approval is required from the CNV to enable a company to act as custodian or investment manager.

Custodian agents and investment management companies must be registered in Argentina as Sociedad Anónima (stock-company type) and they must also have an address in Argentina.

Any non-financial institutions that perform these activities must have been created for these specific purposes.

The management and board of these companies are responsible for the damages that could be caused to investors as a consequence of non-compliance with legal requirements, or non-compliance with the investment policy of each specific mutual fund (as set out in the Reglamento de Gestión, which is signed by the investor). In the case of non-compliance, the above mentioned responsible staff might have to pay the debts of the company with their personal assets. The management company and custodian company must be registered with the Public Registry of Commerce.

The minimum capital requirements are:

- USD 100,000 for custodian agent; and
- USD 50,000 for investment management company plus an additional USD 12,500 for every fund under management.

The custodian agent must be a company different from the investment management company. There are some requirements to be met, such as the custodian of a CIF should be independent of the management company of the CIF.

Banks are not allowed to issue mutual funds. They are only allowed to be the custodian, and the fund must be managed by an independent company. Except in the case of a bank, the custodian and management company are not allowed to share the same staff.

Although no limits on fees are applied to the custodian agent or to the trustee, the Reglamento de Gestión is the document issued by the investment company that details the maximum percentage of expenses that will be charged to investors. This document should be previously approved by the CNV, and then a copy of it is distributed to all investors before the subscription to the fund.

2.4 Investment restrictions

Law No. 24083 of 11 June 1992 restricts the investment policies of a CIF.

All cash balances must be retained in a financial institution approved for this purpose by the Central Bank.

Other investments must be only in quoted securities, or futures/options related to quoted securities, and at least 75 percent of such investments must be quoted in Argentina.

Investments in securities issued in Brazil, Paraguay, Uruguay, and Chile are also included when determining the percentage of investment in Argentina.

Investments in common investment funds, the equity of which is made up of the assets held by issuers pertaining to the Mercosur or certificates of these issuers, is reduced to 0 percent of the computable fund of Retirement and Pension Funds or Reserve Requirements.

A CIF may not invest in another CIF. A CIF may not invest in its trustee or in its manager, but may invest in securities of the parent company of the trustee or manager is reduced to 0 percent of the capital of the parent.

The Reglamento de Gestión issued by the investment company and approved by the CNV, sets out the investment policies of the fund. These must be adhered to.

It should be noted that the CNV regulations set forth that management companies may apply a specific investment policy to the mutual funds managed by them. Any such investment policy shall comply with the provisions of the Reglamento de Gestión timely approved by the CNV and may only restrict such provisions.

A number of limits exist vis-à-vis maximum percentage holdings by the fund in securities companies:

- Five percent of the right to vote on the same stock,
- Two percent of the debt securities or stocks issued by the owner of the custodian company or management company. These stocks lose the right to vote during the holding period.
- Debt securities: 10 percent of the total liabilities of a company,
- Ten percent of the shares (or similar type of financial assets) issued by the same company.

Maximum limits also exist relating to the percentage of the fund that can be invested in certain securities or cash:

- Ten percent of the total fund in cash. The amounts that mutual funds place temporarily in their depository companies must be invested in demand deposits up to 10 percent of the assets of the fund at the same rates paid by the depository company to the rest of the customers for the same investment term. In no case, the total amount thus invested may exceed USD 3,333,333 (ARS 3 = USD 1).
- Thirty percent of the total assets of the fund in the same government security.
- Twenty percent of the total fund in financial assets issued by the same company or the same economic group,

Five percent of the fund in USD 2 million in transitory cash accounts deposited in a bank. (This amount can be exceeded for up to 180 days with CNV notification.)

The mutual funds whose portfolios are made up of assets valued on an accrual basis shall not invest in such assets in excess of 30 percent of the portfolio of the mutual fund. In addition, the liquidity margin required was established in the amount equivalent to 80 percent of the total assets valued on an accrual basis and shall be maintained in a current account opened in the BCRA and held by the depository

Finally, it is set forth that as from 1 August 2008 the weighted average life of the portfolio shall not be over 35 days (the previous limit established that the

weighted average life of the portfolio could not be lower than 20 days), calculated on the basis of the investment portfolio made up of assets valued on an accrual basis.

The mutual funds whose portfolios are made up of assets valued at market and/or realization prices shall invest in such assets in the amount equal or higher than 70 percent of the mutual fund portfolio. Such funds cannot have cash equivalents at a percentage higher than 10 percent of their equity. (This amount can be exceeded for up to 180 days with CNV notification.)

Instruments valued on an accrual basis in the portfolios shall have a final maturity date that does not exceed 95 days as from acquisition date.

In the case of money market funds, a maximum 20 percent of the fund can be deposited in each financial institution. In the case of investment in securities issued by the same entity, the addition of deposits and chattels will not exceed 20 percent of the assets of the fund. The weighted average life of the portfolio of these funds cannot exceed 60 days based on the capital not yet amortized.

In the case of specialized funds, or when the name of the fund refers to a specific asset, 75 percent of the fund must be invested in what the fund specializes in or in the asset that the name refers to.

Mutual funds whose special investment targets are instruments intended for the financing of small and medium sized companies (PYMEs) shall be governed by the special regime described below and by the provisions applicable in general to open mutual funds.

Seventy-five percent, at least, of the fund's credit shall be invested in assets making up the special investment target mentioned above.

Forty percent of the percentage described above shall be invested in marketable securities issued by PYMEs (including postdated checks) whereas the remaining percentage may be invested in marketable securities issued by companies with low market capitalization organized in the country and/or instruments of other entities issued for the purposes of financing PYMEs.

The Reglamento de Gestión may provide for a period to complete the investment portfolio under the terms required, which shall not be over 180 running days after the launch of the mutual fund.

In order to apply for the redemption of the units when the reimbursement amount is over 10 percent of the equity of the mutual fund recorded in the Reglamento de Gestión, a term for advance notice may be established, which shall not exceed 10 days.

2.5 Borrowing

A CIF may not borrow.

2.6 Accounts and prospectus

A CIF must publish:

- weekly: a detailed composition of the portfolio, valuation of its investments and value of unit issues;
- quarterly: details of income statement; and
- annually: details of accounts.

The accounts must be for a period of one year. The fund may select its own accounting date.

Mutual funds are required to issue a prospectus. The CNV has established the minimum contents to be included in the prospectus issued by the mutual fund.

2.7 Supervision

The supervisory authority is the CNV.

All advertising by a CIF must be lodged with the Commission within three days of being issued. There is no requirement for a prospectus to receive approval from the Commission prior to issue. As an advertisement, however, it must comply with minimum ethical standards. It is not acceptable to promise any future performance of the fund. The performance of the fund should not be guaranteed in the advertisement.

2.8 Regulations for the protection of investors

Management companies shall have a publicly available Code for the Protection of Investors including the specific regulations aimed at the prevention, supervision and penalty of any behavior contrary to the investor loyalty duty which might lead to the market manipulation, affecting its transparency and the protection of public investors.

In addition, management companies shall prepare a publicly available report explaining the regulations included in the Code mentioned in the previous paragraph which have been applied, the minimum contents of which are described in General Resolution 529/08 issued by the CNV.

2.9 Fund ownership

For funds whose portfolios are made up of a percentage higher than 50 percent of the assets valued on an accrual basis, the interest of unit holders upon subscription cannot exceed 15 percent of the mutual fund equity. In the case of new mutual funds starting operations subsequent to 1 June 2001, this limit will

apply whenever the equity is higher than USD 1,333,333, (ARS 3 = USD 1). There are no other restrictions on the percentage of total units of the fund which may be held by one person nor are there a minimum number of unit holders which a fund must have.

2.10 Fund structure

Umbrella funds and funds of funds are not permitted.

2.11 Stock exchange

Only closed-ended funds are allowed to be quoted on the Argentine Stock Exchange subject to procedures that are not as expansive as those related to other companies. Although mutual funds are not quoted on the Argentine Stock Exchange, they have to send information to the Chamber of Mutual Funds and National Securities Commission on a weekly basis detailing the daily quotations certified by an independent accountant. These quotations are published in the newspaper.

2.12 Bank secrecy

The activities of a CIF may be subject to review by the CNV regarding the control of money laundering.

The resolutions of the CNV regulate bank secrecy about the development or business of an entity subject to the public offer system.

2.13 Fund set-up

The creation of a fund takes approximately three months and costs approximately USD 6,000 principally professional fees.

The minimum equity must be USD 50,000 for investment management company plus an additional USD 12,500 for every fund under management. An annual fee of USD 300 is payable to the supervisory authority.

2.14 Foreign funds

Foreign funds are not allowed to be offered for sale to the public unless the fund has already been registered with the CNV. Permission should be sought from the CNV, if effectively an advertisement is a public offer.

There is no difference in the procedures for local registration of a foreign fund as a consequence of its origin (such as United States, and Mercosur countries, rather than other countries).

The process, cost and time involved in registration are similar to those of a local fund.

2.15 Bearer shares

It is not possible to issue bearer units. The identity of the investor must be recorded by the custodian.

2.16 Use of the internet

The use of the Internet is allowed if it is aimed at promotion, publicity, or commercialization.

All regulations provided for the other forms of the media apply as regards deceptive or biased publicity (such as the results of the investment cannot be guaranteed).

Management companies of mutual funds that wish to trade the mutual fund shares through the internet shall register the procedure used for trading with the CNV.

2.17 Miscellaneous

Central Bank of the Republic of Argentina (BCRA) requirements:

From 8 January 1999, financial institutions are not able to hold shares in mutual funds whatever the nature of the assets that make up the fund except for the following cases:

- Shares corresponding to funds that can be computed as being part of the minimum reserve requirement.
- Shares of new mutual funds for a term of 120 days considered as from the day in which an initial public offering has been made, provided the financial institutions act as either investment management company, mutual fund custodian, fund company, or promoters, to the extent that holdings, calculated on a monthly average, do not exceed the amount equivalent to 2 percent of the minimum reserve requirement of the month to which they correspond or the amount of USD 2 million, whichever is larger.

The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act upon such information without appropriate professional advice after a thorough examination of the particular situation.