

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.

Belgium

Regulation

FUNDS AND FUND MANAGEMENT 2009

2.1 Type of funds

Open-ended collective investment funds may take the form of an FCP (investment fund with a variable number of units – fonds commun de placement) or of a bevek/sicav (investment company with a variable number of shares – beleggingsvennootschap met veranderlijk kapitaal/société d'investissement à capital variable). The FCP is a contractual arrangement and has no legal personality; the bevek/sicav is a legal entity and may take the form of a corporation or a limited partnership with shares.

Both the FCP and the bevek/sicav may be organized either as a capitalization or distribution fund.

Closed-ended investment funds may take the form of an FCP (with a fixed number of units) or of a bevak/sicaf (investment company with a fixed number of shares – beleggingsvennootschap met vast kapitaal/société d'investissement à capital fixe). Specific forms of closed-ended investment funds are prifonds (private equity fund), re-bevak/sicaf (real estate investment companies), and privak/pricaf (private equity bevak, mainly investing in non-quoted companies and growth companies).

The Belgian investment funds collect capital from the public through the public issue of shares or units. In 2003 a new investment company, named private privak/pricaf privée, was introduced. The shares of the private privak/pricaf privée are not publicly issued (see further Section 3.8). As from 2007 it is also possible to establish institutional funds which are only open to qualified investors (see the below section regarding private and institutional funds).

2.2 Laws

Public funds

Funds are organized under the UCITS law of 20 July 2004 implementing the European UCITS III Directives of 21 January 2002 (the Management Directive No. 2001/107/EC and the Product Directive No. 2001/108/EC), and the royal decree of 4 March 2005 (UCITS decree).

A distinction is made between investment funds complying with the conditions of the UCITS Directive (European passport funds) and other funds.

Besides the implementation of aforementioned EU Directives, the UCITS law of 20 July 2004 revised the entire fund regulation in Belgium, including the rules on Belgian funds without European passport. The provisions applicable on Belgian funds without European passport have been aligned on the provisions for European passport funds.

The Belgian fund regulation has been modernized. One of the most important changes is the introduction of share classes within one compartment.

Except for some exemptions specified by the law of 20 July 2004, the bevek/sicav and the bevak/sicaf are subject to normal company law. Where referred to, the normal company law is also applicable on FCPs and compartments of beveks. Specific provisions have been introduced in respect of the liquidation and restructuring of investment funds. The provisions in respect of restructuring (merger, de-merger, and contribution) only apply on transactions between Belgian funds.

The re-bevak/sicaf (real estate investment company with fixed number of shares) is governed by the Royal Decree of 10 April 1995.

The royal decree of 7 March 2006 sets out the conditions for stock lending transactions by Belgian UCITS.

Private and institutional funds

The UCITS law also provides for a general regime for institutional and private investment funds. Those regimes have been further elaborated by Royal Decree.

The prifonds and privak/pricaf are governed by the Royal Decree of 18 April 1997 and the private privak/pricaf privée by the Royal Decree of 15 May 2003.

The Royal Decree of 7 December 2007 implements the Law of 20 July 2004 in respect of Institutional Undertakings for Collective Investment with a variable number of shares/units. The Royal Decree came into force on 18 December 2007.

The institutional collective investment fund may be structured as a common contractual fund (FCP) or as a variable capital investment company (Sicav).

The Belgian government has announced that in the future it would be possible to set up institutional investment funds with a fixed number of shares. Such would enable public re-bevaks/sicafs to set up subsidiaries which are also recognized as (institutional) re-bevak/sicaf but whose shares are not publicly issued. This possibility to set up institutional investment funds with a fixed

number of shares is announced in the Law of 20 July 2004, but has not yet been implemented.

2.3 Managers, trustees, and custodians

The custodian of an FCP must be a credit institution registered with the Banking, Finance, and Insurance Commission (BFIC), a public credit institution under Belgian law or the National Bank of Belgium. Approval by the BFIC will be given only if evidence is provided that the candidate custodian has the financial and technical infrastructure to act as custodian.

Note that the BFIC recommends that such custodians be organized as separate entities, acting autonomously.

The management company of an FCP must itself be a company subject to Belgian law, whose approval by the BFIC is subject to certain conditions (such as form of a limited liability company, paid-up capital of at least EUR 620 million shareholders' equity must be equal to at least one hundredth of the value of the FCPs that it manages, registered shares).

Both the bevek/sicav and the bevak/sicaf are corporate bodies and are managed by its board of directors. They hold their assets in their own name.

Further to the law of 20 July 2004, the bevek/sicav has to choose between the statute of a self-managed bevek or a bevek with an appointed UCITS III management company. The management company of a Belgian UCITS has to be located in Belgium. Provided the Belgian UCITS has enough substance, it can still operate as a self-managed bevek. A self-managed bevek can delegate management services to an asset management company with the statute of investment company (non UCITS III).

For FCP, bevek/sicav and bevak/sicaf, the daily management must be the responsibility of at least two directors acting jointly.

The management of an FCP is remunerated by a fee calculated as indicated in the prospectus. No fees or costs may be charged on account of transactions relating to assets of an investment fund invested in shares/units of another investment fund, directly or indirectly managed by the same company or by any other company with which the management company, the investment company, or the custodian is linked.

There are no legal limits on fees which may be charged by managers or trustees. The law does, however, require that the fee be specified in the prospectus. The fee needs also to be approved by the Belgian Banking, Finance, and Insurance Commission. Notwithstanding the absence of a legal limit, the Belgian Banking, Finance, and Insurance Commission may appreciate the arm's-length character of the fee. A fee between 0.5 percent and 1.5

percent of the net asset value of the fund is considered to be a normal market price.

2.4 Investment restrictions

Public funds

The investment restrictions for UCITS and other Belgian investment funds are laid down in the UCITS law and the royal decree of 4 March 2005.

The UCITS law expands the range and type of permitted financial instruments of UCITS as follows:

- Transferable securities and money market instruments
- Bank deposits
- Units of other investment funds
- Financial derivative instruments
- Index tracking funds

Further restrictions for UCITS are as follows.

General limits

- UCITS may invest in transferable securities and money market instruments which are publicly quoted or which are traded on any other regulated, regularly operating and open market in any EU Member State. A UCITS may invest no more than 10 percent of its net assets in other transferable securities and/or money market instruments.
- Cash can be held only as an accessory activity.
- The fund may not invest in voting stock, if such investment results in considerable influence on the issuer's management. Investment in non-voting stock of any one issuer is limited to 10 percent.

Aggregate limits

- An overall combined limit of 35 percent of the assets of the UCITS may be invested in transferable securities and money market instruments, deposits, and/or derivatives issued by or made with the same institution.

- A maximum limit of 20 percent of the assets of the UCITS may be invested in a combination of transferable securities and money market instruments, deposits, and/or exposures arising from OTC derivative transactions issued by or made with the same institution.

Transferable securities and money markets instruments

- Investment in transferable securities and money market instruments of any one issuer is restricted to a maximum of 10 percent of the fund's net assets. The limit may be increased to 25 percent for certain bonds issued by credit institutions under the public control of an EU Member State.
- The total value of the transferable securities and money market instruments of any one issuer held by the fund in investments which individually represent 5 percent or more of the fund's net assets, may not exceed 40 percent of the net asset value of the fund. The limit is raised to 80 percent for investments in certain bonds issued by credit institutions under the public control of an EU Member State.
- There is an upper limit of 35 percent of the fund's net assets on the amount which can be invested in issues of any one EU or OECD Member State or other supranational organization, or in securities guaranteed by these bodies. This limit can be raised to 100 percent, with the approval of the BFIC, provided that investments are made in at least six different issues of that state and that no one issue represents more than 30 percent of net assets. The intention to invest 35 percent or more, together with the name of the country/organization in question, must be included in the incorporation documents, prospectus and all publicity.

Bank deposits

- Bank deposits are permitted provided the credit institution has its registered office in a EU Member State or, if located in a non-Member State, it is subject to equivalent prudential rules of a EU Member State.
- The deposits must be repayable on demand or have the right to be withdrawn and may have a maturity of up to 12 months.
- Not more than 20 percent of the UCITS' investments in deposits may be placed with the same credit institution.

Financial derivatives instruments

- The global exposure relating to the derivative instruments must not exceed the total net assets of the UCITS.

- The exposure must be calculated taking into account the current value of the underlying assets, the counterparty risk, future market movements, and the time available to liquidate the positions;
- In the case of OTC derivatives, the exposure to a single counterparty must not exceed 10 percent of the assets if the counterparty is a EU credit institution or equivalent, or 5 percent in other cases.
- Financial derivatives relating to a credit risk may not exceed 20 percent of the net assets.

Fund of funds

- A fund of funds, established as a UCITS, is permitted to invest up to 20 percent of its assets in a single UCITS and/or in a single non-UCITS (compartments are considered as separate UCITS/non-UCITS).
- Investments in non-UCITS may not exceed more than 30 percent of the assets.
- A UCITS may not acquire more than 25 percent of the units of any single UCITS.
- A UCITS fund of funds may not invest in an underlying fund if that underlying fund is permitted to invest more than 10 percent of its assets in other funds of funds.

Index tracking funds

- An investment limit of 20 percent of the fund's net assets applies where the investment consists of shares and/or debt securities issued by the same institution.
- The aforementioned limit is increased to 35 percent where it is justified by exceptional market conditions.

Group companies are regarded as single issuers for the purposes of calculating individual and aggregate restriction limits.

Institutional funds

The institutional SICAV/FCP is not subject to any quantitative limits. Also no risk-spreading rules apply. The permitted investments assets are initially restricted tot financial instruments and liquid assets; although, it is expected that the investment object of the Institutional SICAV/ FCP will be broadened in the near future.

2.5 Borrowing

Generally a fund may not borrow. However, it may take up short-term loans, not exceeding 10 percent of its net assets, as well as back-to-back loans for the acquisition of foreign currency.

2.6 Accounts and prospectus

Investment funds are required to publish audited annual accounts. In addition, they are required to submit six monthly interim accounts to their share/unitholders. The accounts are audited by an auditor registered with the Institut des Réviseurs d'Entreprises-Instituut der Bedrijfsrevisoren.

Investment funds have to publish a prospectus containing certain information for the public. Key information must be updated regularly. The prospectus and any amendment thereto, are subject to prior approval by the Banking, Finance, and Insurance Commission.

The UCITS law has introduced a simplified prospectus. The investor must always be offered a copy of the simplified prospectus prior to the conclusion of the sale of units. In despite of the UCITS III Directive, foreign UCITS will also need to draw up an addendum with information on the distribution in Belgium.

2.7 Supervision

The supervisory authority is the Banking, Finance, and Insurance Commission, Congresstraat 12-14, 1000 Brussels.

The institutional SICAV/FCP is not subject to the prudential control of the Belgian Finance, Banking, and Insurance Commission.

2.8 Fund ownership

There are no restrictions on the percentage of shares/units which may be held by one person or a group of persons. However, UCITS status requires that the shares/units must have been offered to the public. The Royal Decree of 7 July 1999 sets out the criteria to determine whether or not there is a public offering.

The favorable tax regime of beveks is only available for recognized public beveks, recognized private privaks, and institutional funds.

The institutional SICAV/FCP is only open to institutional or professional investors, such as financial institutions, insurance companies, investment companies, and pension funds.

2.9 Fund structure

Funds of funds (umbrella funds) are permitted under the conditions as outlined under Section 2.4.

The UCITS decree of 4 March 2005 introduces a Belgian hedge fund. Belgian hedge funds have to provide capital guarantee or capital preservation. Most hedge funds in Belgium are still structured as life insurance products linked to the index of foreign hedge funds or fund of hedge funds (a so-called Branch23). The specific regulations with respect to life insurance products are applicable.

2.10 Stock exchange

Stock exchange quotations are available for locally registered (Belgian or foreign) funds but the requirements for obtaining a quotation are not less onerous than those applying to publicly quoted companies. The shares/units of an investment fund with a fixed number of shares/units must be listed on the stock exchange. The shares/units of an investment fund with a variable number of shares/units may be listed on the stock exchange.

2.11 Bank secrecy

The law of 17 July 1990 relating to money laundering requires managers or bankers to investigate the legitimacy of major lodgements of money. No particular requirements or restrictions apply with regard to funds.

2.12 Fund set-up

It takes two to three months to create a fund.

It is difficult to assess the cost of creating a fund as this strongly depends on the attitude of the BFIC, which may require additional information.

The institutional SICAV/FCP only requires registration with the Belgian tax administration. It may commence business activities upon confirmation of its registration with the Belgian tax administration. Moreover, the institutional investment fund may be set up by only one institutional or professional investor.

2.13 Foreign funds

Foreign funds established within the EU, and benefiting from UCITS status, are authorized to sell their shares/units in all EU Member States upon registration with the BFIC. Other foreign investment funds may market in Belgium only subject to official approval by the Banking, Finance, and Insurance Commission, and subject to specific conditions set out in a royal decree. Due to the changes

in the Belgian fund regulation, it will probably be impossible to distribute in Belgium foreign funds not complying with the conditions of the UCITS III Directive.

2.14 Bearer shares

As from 1 January 2008 it is not possible anymore to issue fund units in bearer form.

2.15 Use of the internet

The delivery of financial services via the internet is commented in the Circular Letter of the Banking, Finance, and Insurance Commission of 5 May 2000.

The main condition for trading investment funds on the internet is that the potential investors have to see the prospectus before getting access to the registration form.

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.