



# France

## Regulation

FUNDS AND FUND MANAGEMENT 2009

### 2.1 Type of funds

Collective investment undertakings in France are called OPCVMs (Organismes de Placement Collectif en Valeurs Mobilières), which include: Sociétés d'Investissement à Capital Variable (SICAVs) and Fonds Communs de Placement (FCPs).

SICAV are open-ended companies, that is, they are legal entities set up under the form of a Société Anonyme (SA).

FCP are co-ownership entities with no legal personality.

The range of French OPCVMs is diversified and has been expanded further to the recent Financial Security Act (loi de la sécurité financière) implemented in August 2003.

There are two principal categories of OPCVMs:

- General category OPCVMs (OPCVM généraux )
- Specific category OPCVMs (OPCVM spécifiques)

Please note also the existence of a specific fund named Fonds Commun de Créances (FCC), which purpose is to invest into securitization products (banking and commercial receivables).

#### General OPCVMs

Certain types of general OPCVMs may choose to adopt the requirements of the European Directive no. 85-611. Funds respecting such conditions are known as coordonné.

In November 2003, the number of funds that may be coordonné was expanded. Currently, five types of general OPCVMs may choose to apply the European Directive:

- General OPCVM (fonds commun de placement à vocation générale) investing less than 10 percent of its portfolio in other investment funds

- Funds of funds investing more than 10 percent of its portfolio in other investment funds
- Umbrella funds (OPCVM à compartiments)

These are FCPs or SICAVs, each compartment of a sub-fund forms part of one sole legal entity and yet can pursue a distinct investment policy:

- Index funds with limited tracking error
- Certain structured funds (fonds à formule)

The decision to apply the requirements of the Directive to a fund may not be reversed. While the Directive encompasses numerous investment restrictions that must be complied with, compliance allows the fund to be sold throughout Europe. If not coordonné, the fund may be marketed to French clients only.

Other types of OPCVMs cannot claim compliance with the Directive because they do not, by definition, comply with the investment restrictions:

- Feeder funds (OPCVM nourriciers), which invest 100 percent of their portfolios in a master fund (OPCVM maître)

Each feeder fund is a separate legal entity which shares can be offered to a particular group of investors through a particular distribution channel with a particular fee structure and with a particular investment minimum.

- Funds with fewer regulatory restrictions (OPCVM à règles d'investissement allégée or ARIA)

ARIAs are licensed by the French regulator, Autorité des Marchés Financiers (AMF), and are not required to comply with all the investment restrictions set out in the French Monetary and Finance Code (Code Monétaire et Financier). Said funds are reserved for certain investors and the regulations contain three different categories:

- Simple ARIA (ARIA)
- Leveraged ARIA (ARIAEL)
- ARIA of alternative funds

### Contractual OPCVMs

Regulations with respect to contractual OPCVMs are a combination of general regulations relating to OPCVMs and certain rules that apply to investment mandates. The contractual nature of said types of fund lies in the determination of the investment strategy; the prospectus of the fund is similar to an

investment mandate in that it contains specific investment ratios, eligible investments, etc.

Such OPCVMs may be marketed only to certain experienced investors. The shares or stock can only be purchased and held by qualified investors or by legal entities or individuals who invest at least EUR 500,000. However, the AMF may authorize the shares or stock to be subscribed by other investors, depending of said investor's nature and the fund's risk level.

Contrary to OPCVM ARIAs, contractual OPCVMs are not licensed by the French regulator. However, in the case of both ARIAs and contractual OPCVMs, the asset manager itself must obtain a specific, related license from the regulator.

ARIAs and contractual OPCVMs will replace the classification, OPCVM à procédure allégée, which is currently reserved for certain institutional investors.

#### Specific OPCVMs

There are three principal types of specific OPCVMs:

- Employee savings funds (OPCVM d'épargne salariale) that are dedicated to managing funds attributed to employees and invested in the framework of a company-sponsored savings plan.

The regulations make a distinction between two types of employee savings funds: diversified funds and funds invested in the employer's shares (whether listed or not).

- Derivative management funds (fonds commun d'investissement sur les marchés à terme or FCIMTs).

Such funds are restricted to certain qualifying investors because of their relatively high risk (in particular, ability to invest in derivatives at more than 100 percent of their asset value).

- Venture capital funds (OPCVM de capital investissement).

Such funds must maintain a minimum percentage of investment in unlisted securities.

There are four types of venture capital funds:

- Wide distribution FCPRs (FCPR grand public)
- Innovation funds (fonds commun de placement dans l'innovation or FCPIs), that is, funds invested in unlisted companies classified as eligible by the national agency for research (Agence nationale de valorisation de la recherche or ANVAR / OSEO)

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- Regional funds (fonds commun de placement de proximité or FIPs) which are created to assist in the development of small to midsize regional companies
- FCPRs with fewer regulatory restrictions that are available only to experienced investors (FCPR à procédure allégée réservés à des investisseurs avertis)

Investors in the first three categories listed above are eligible for certain tax benefits in return for undertaking to invest over a minimum period.

All general OPCVMs must be classified into one of eleven categories:

- French equity
- Euroland equity
- European community equity
- International equity
- Fixed income denominated in euros
- International fixed income
- Monetary: EUR
- Monetary: international
- Diversified
- Fund of alternative funds: Classification created by the November 2003 regulatory instruction

More than 10 percent of the fund must be invested in foreign funds, contractual funds, and funds with fewer regulatory restrictions (OPCVM à règles d'investissement allégées) and derivative management funds (FCIMT).

- Structured fund (Fonds à formule): Classification created by the November 2003 regulatory instruction.

The management objective is to attain, at the end of a predetermined period, a guaranteed level of performance as determined using a specified calculation (such as 95 percent of the CAC 40). The achievement of the investment objective is guaranteed by a financial institution.

## 2.2 Laws

- The main laws and the Decrees nos. 89-623 and 89-624 that apply to OPCVMs are codified in the French Monetary and Financial Code (MFC),
- The AMF's November 24, 2004 General Regulations.

With respect to SICAVs, all the points not covered by the MFC's provisions dealing with OPCVMs are, insofar as SICAVs are Société Anonyme, governed by general legislation, and, in particular, Articles L 210-1 et seq. of the French Commercial Code.

Additional provisions and modifications for OPCVMs and management companies were introduced in the 1 August 2003 Act and two 21 November 2003 decrees, as well as in regulations (the AMF's General Regulations) from the former Commission des Opérations de Bourse (COB).

On October 2008, the AMF has taken measures to help the investment funds respond to the financial crisis. For example, the use of side pocket and, for funds reserved to qualified investors (ARIA), redemption gates is permitted.

## 2.3 Managers, trustees, and custodians

The manager must seek the AMF's prior approval.

The management company must be a commercial company. It must have at least EUR 125,000 in share capital (Article 312-3 of the AMF's General Regulation).

When the value of the portfolios of the management company exceeds EUR 250 million the management company shall be required to provide an additional amount of own funds. Said additional amount of its own funds must be equal to 0.02 percent of the amount by which the value of the portfolios of the management company exceeds EUR 250 million. The required total of the initial capital and the additional amount shall not, however, exceed EUR 10 million.

In order to protect investors, SICAV and FCP funds/assets must be deposited with certain custodians. Such custodian entities are not directly accredited by the Ministre chargé de l'Économie. Nevertheless, the Ministre chargé de l'Économie has designated a number of categories of entities that can be chosen as custodians of SICAV and FCP funds. Banks and other investment firms, insurance companies can be designated as custodians (Art. 1 of Ministre chargé de l'Économie's 6 September 1989 Order):

According to Articles L.214-26 of the MFC, the custodian must have its registered office in France. Said custodian must be a person other than the manager.

## 2.4 Investment restrictions

There are a number of legal restrictions to the investment powers of funds. With respect to OPCVM à vocation générale, the principal restrictions are as follows:

### General obligations of OPCVMs

- A collective investment fund must be mainly invested in securities traded on a regulated market in the EU or, if outside the community, traded on a market that is approved by the AMF. A fund may also hold substantial cash deposits.
- A French investment fund can invest in the financial futures market listed in the Ministre chargé de l'Économie's 6 September 1989 Order, provided that the risk does not exceed its net assets.
- The AMF's General Regulations provide for the conditions under which investment funds can use derivatives, that is, the ability to conclude transactions on organized markets with a futures clearing house and the maximum risk that can be borne by an investment fund with a given counterpart.
- Funds managers must use the marked-to-market method for the valuation of their financial products based on rates (that is, mainly currency-rate products and interest products).
- OPCVMs can enter into SWAP agreements. The counterpart must be a Credit Institution and the OPCVM must be allowed to stop the deal at any time.

### Obligations with respect to OPCVMs' investment policies

#### *Ratio actifs*

- An OPCVM may invest no more than 5 percent of its assets in securities issued by the same issuer. The 5-percent limit may rise to a maximum of 10 percent (or 20 percent for group). However, the total value of such securities held by the OPCVM in the issuing bodies in each of which it invests more than 5 percent of its assets must not then exceed 40 percent of the value of its assets.
- An OPCVM may not invest more than 20 percent of its assets in deposits made with the same credit institution.
- The risk exposure to a counterpart of the OPCVM in an OTC transaction (derivative, etc.) may not exceed 10 percent of its assets.

- A coordinated OPCVM may acquire no more than 10 percent of its assets in units of coordinated collective investments.
- The fund can also invest up to 35 percent of its assets in quoted securities issued by the same issuer where they are issued with a guarantee of an OECD Member State, a public local institution of an EU Member State, or a public international organization in which one or more of the members are an EU Member State.
- This 35 percent limit does not apply and the fund can invest up to 100 percent where the investment fund invests in securities issued or guaranteed by an OECD Member State, a public local institution of an EU Member State, or a public international organization in which one or more of its members is an EU Member State, where the securities emanate from at least six different issues, provided that the securities corresponding to any single issue represent less than 30 percent of its assets.
- The fund can also invest up to 25 percent of its assets in quoted securities issued by the same issuer if the securities are land bonds (obligations foncières) and if, overall, the entire value of such land bonds does not exceed 80 percent of the fund's assets.
- The value of the shares issued by a FCC and held by an OPCVM cannot exceed 5 percent of the value of the OPCVM, if the directors are related to the credit institution that sold the security to the FCC.
- Up to 10 percent of the fund's assets can be invested in subscription bonds, cash certificates, mortgage notes, promissory notes, or other securities not traded on a regulated market, or funds of funds' shares.

### *Ratio passif émetteur*

An investment fund cannot hold more than 10 percent of the securities issued by the same issuer in the same category: securities bearing voting rights, securities that allow future access to the issuer's share capital, securities directly or indirectly representing the issuer's general debt to the owner.

## 2.5 Borrowing

Cash borrowings cannot exceed 10 percent of an OPCVM's assets.

Securities lending may, under some conditions, represent 100 percent of an OPCVM's assets.

French Monetary and Financial Code, as amended, provides for the conditions under which funds can conclude temporary transfers of securities, that is, the

compliance with diversification ratios relating to the counterparts and the financial institutions in OECD countries with which they can be concluded.

## 2.6 Accounts and prospectus

A publicly marketed fund must publish its accounts and information documentation on a periodical basis. It must also publish a prospectus that requires the supervisory authority's prior approval.

The AMF's General Regulations specify the form, structure, content, and communication of the complete prospectus, that is, the simplified prospectus, a detailed notice and the SICAV's byelaws or the FCP's rules.

According to Article L.214-8 of the MFC, the accounting period cannot exceed 12 months. An FCP's or a SICAV's first accounting year can differ slightly in length but may not exceed 18 months.

## 2.7 Supervision

The supervisory authority of funds in France is the Autorité des Marchés Financiers (AMF), 17, place de la Bourse, 75082 Paris Cedex 02, France, which replaced the Commission des Opérations de Bourse (COB) and the Conseil des Marchés Financiers (CMF).

## 2.8 Fund ownership

There are no legal restrictions to the numbers of units that one person or a related group of persons may hold. However, a SICAV must have at least seven shareholders and an FCP must have at least two unitholders.

## 2.9 Fund structure

A FCP is a co-ownership entity with no legal personality composed of a management company and a custodian. A SICAV is a company constituted under the form of the Société Anonyme.

## 2.10 Stock exchange

One kind of French fund, Trackers, may have a stock exchange quote.

## 2.11 Bank secrecy and money laundering

France has bank secrecy and money laundering laws.

## 2.12 Fund set-up

It takes approximately one month to create a French fund.

For a SICAV, the initial stock equity must be EUR 8 million (for an FCP: EUR 400,000) and the stock equity can never be less than EUR 4 million for a SICAV and EUR 300,000 for a FCP.

## 2.13 Foreign funds

Mutual funds organized under the laws of an EU country must be authorized by the AMF in order to market its units in France. The AMF must be notified beforehand and provided with a certificate issued by the supervisory authority of the country of origin, attesting that the fund is organized according to the 21 January 1985 European Regulation.

Marketing, in France, of units from countries outside the EU is subject to the AMF's prior approval. The marketing and advertising of foreign units are subject to the same regulations as French SICAVs and FCPs. Consequently, the documents to be issued in this respect are under the control of the AMF.

According to the French exchange control regulations, no restrictions prevent marketing by foreign funds.

## 2.14 Bearer shares

Units of FCPs, as well as shares of SICAVs, are classed as securities (valeurs mobilières). Consequently, such units and shares cannot be issued in bearer form, that is, in paper form, as described in Article L.211-4 of the MFC. Shares of SICAVs must be registered in an account held by EUROCLEAR France, the French clearing institution. Units of FCPs can also be registered at EUROCLEAR France. They can be registered in a bearer account, that is, transfers are carried out electronically, or held by the manager or a third party.

## 2.15 Use of the internet

In 1999, the COB issued a guideline relating to the rules of business conduct applicable to the use of the Internet.

It states that the existing rules governing the promotion and the sale of collective investment schemes or mandated portfolio management services apply to all operations effected via the Internet.

It also states that, even though an investment scheme or mandated portfolio management service does not, prima facie, appear to be addressed to the residents of a particular country, it is still nevertheless possible that, after a close examination of the offer, the regulator of the country in question will hold

that, as the offer falls within certain criteria, it will be considered and treated as being addressed to residents of its country.

Accordingly, any information given, the language used, the site map and presentation, the links provided to its own or other Web sites on its own initiative or the conditions of acceptance of orders from the residents of the countries in question can all indicate at which public the product or service is being directed.

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