

# Australia

## Regulation

HEDGE FUNDS 2009

### Hedge fund managers/advisors

#### Regulation

##### Authorization requirements and process

In Australia, the regulatory regime makes no distinction between hedge funds and other managed funds. The same registration, operational, and disclosure requirements apply to a fund regardless of whether it is a hedge fund or not.

Unit trust structures are most commonly adopted for the management of both wholesale and retail funds and are generally referred to as managed investment schemes, schemes, or retail schemes to distinguish them from other types of unit trusts, such as those used to carry on active businesses.

Wholesale unit trusts are created under common law and are subject to general trust law.

Retail funds, that is those widely held and offered to the public for subscription, must be established under and subject to the Managed Investment Scheme provisions of the Corporations Act (Chapter 5C).

Superannuation entities are subject to the Superannuation Industry (Supervision) Act 1993 (SIS Act) and its Regulations.

##### Typical timescale to receive approval

Timescales are the same as for traditional fund managers. There is no prescribed timeframe, but general practice is two to four months.

##### Regulatory capital requirements

The prescribed capital level for all fund managers is AUD 5 million.

### Significant restrictions on marketing to investors

There are no restrictions specific to offshore hedge funds. Rather any products offered by offshore companies must comply with Australia's local licensing rules. The Australian Securities and Investments Commission (ASIC) administer the Corporations Act 2001 including licensing, conduct, and disclosure in relation to financial products. The Corporations Act incorporates the Financial Services Reform Act (in Chapter 7), the purpose of which is to establish a single licensing and regulatory regime applicable to all financial service providers covering a wide range of financial products and services, as defined by the Act.

Under ASIC's Financial Services Regulation (FSR) framework, individuals or entities that provide certain services in relation to financial products, such as advising, dealing in or distributing those products, are subject to a single licensing regime, and must comply with various disclosure and consumer protection requirements when selling or distributing those products to retail clients.

### Hedge fund structures

#### Regulation

##### Authorization requirements

Nothing specific to hedge funds

##### Restrictions on types of investments, concentration levels, and the manner in which hedge funds can invest and/or strategies

None

##### Rules regarding the publishing of the accounts and prospectuses

Nothing specific to hedge funds

##### Time-scale of establishment of a hedge fund

Timescales are the same as for traditional funds. Timeframes depend on the complexity of the fund and can vary from two to six months.

## Investors

## Regulation

### Restrictions on which type of investors can invest in a hedge fund and/or the minimum/maximum number of investors in a hedge fund

None

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.