

# France

## Regulation

HEDGE FUNDS 2009

### Hedge fund managers/advisors

#### Regulation

##### Authorization requirements and process

To create and manage a French FCP, it is necessary to establish a portfolio management company in France.

In France, some types of FCPs are similar to hedge funds:

- FCIMTs which only invest in futures markets. This FCP cannot be promoted and is restricted to qualified investors.
- Simple ARIA (OPCVM à règles d'investissement alléges/fund with fewer regulatory restrictions) - This FCP cannot be promoted and is restricted to qualified investors.
- Leveraged ARIA (ARIAEL) - This FCP cannot be promoted and is restricted to qualified investors.
- ARIA of alternative funds - This FCP cannot be promoted and is restricted to qualified investors.
- Contractual OPCVMs - This FCP does not need to be approved by the AMF. This FCP cannot be promoted and is restricted to qualified investors.

To receive authorization, a portfolio management company must file an application with the AMF specifying the scope of the requested authorization, together with a file that complies with the model provided for in Article R. 532-10 of the Financial and Monetary Code. The AMF issues an acknowledgement of receipt when it receives this file.

The procedure and the terms and conditions of authorization are set forth in an AMF instruction.

The AMF also ensures that the applicant's program of operations specifies the human and technical resources required to monitor and supervise the operation of these collective investment schemes.

In 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.

### Typical timescale to receive approval

In deciding whether to issue an authorization to a portfolio management company, the AMF reviews in the application form described above (Article 311-1 to 315-73 AMF General Regulation). It may ask the applicant to supply any additional information that it needs to take a decision. The AMF outlines the scope of the authorization.

The AMF rules on the application within three months from receipt of the filing. If need be, this deadline is suspended until any additional information requested has been received.

### Regulatory capital requirements

The share capital of a portfolio management company must be at least EUR 125,000 and must be fully paid in cash at least to this minimum amount.

When authorization is granted and in subsequent financial years, the portfolio management company must be able to prove at any time that its capital is at least equal to the higher of the two amounts specified below:

- EUR 125,000 plus an amount equal to 0.02 percent of assets under management by the portfolio management company in excess of EUR 250 million.

The total capital requirement will not exceed EUR 10 million.

- One-quarter of general expenses during the preceding financial year.

The initial capital requirement at the time of authorization is calculated on the basis of forecast data.

### Significant restrictions on marketing to investors

There is a general prohibition on the promotion of unregulated collective investment schemes (the most common form of hedge fund) to the general public.

Types of FCPs which are similar to hedge funds (FCIMT, ARIA, etc.) are restricted to qualified investors.

## Hedge fund structures

### Regulation

#### Authorization requirements

The portfolio management company must have its registered office in France.

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

Ratio restrictions of various types exist in relation to the types of FCPs listed above (FCIMT, ARIA, etc.) including those which relate to concentration levels. No specific rules exist regarding permitted strategies however, it is noted that the strategy must be set out in the prospectus. KPMG in France has set out below some information regarding specific rules on sub-investments in alternative funds.

Types of FCPs which are similar to hedge funds (FCIMT, ARIA, etc.) may invest their assets in alternative investment funds as defined in Article R. 214-5 of the Financial and Monetary Code. These funds must meet at all times 13 defined criteria. These criteria include the following:

- The units or shares in the fund shall be transferable by book entry or by traditional procedures in a central register of fund holders.
- The unit holders and shareholders in the fund shall have equal rights within each category or class of units of capital or assets.
- The fund shall have rights and obligations arising from the existence of its own assets and liabilities.
- The responsibility for custody of the fund's assets shall be entrusted to one or more companies, which are separate from the portfolio management company, regulated for this purpose and identified in the prospectus.
- Custody of the funds assets shall be provided separately from the custody of the custodian's own assets and those of its agents.

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

French regulated funds are required to produce annual financial statements.

In addition to annual financial statements, the AMF General Regulation requires certain periodic reporting to be published. Depending on the size of the fund, this information must be produced either quarterly or semi-annually. However, these rules are not specific to hedge-type funds.

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

Types of FCPs which are similar to hedge funds (FCIMT, ARIA, etc.) are licensed by the French regulator within one month from receipt of the filing. If need be, this deadline is suspended until any additional information requested has been received.

### 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

FCIMT, ARIA, and Contractual 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 on the investor's nature and the fund's risk level.

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.