

# Monaco

## Regulation

HEDGE FUNDS 2009

### Hedge fund managers/advisors

#### Regulation

##### Authorization requirements and process

At inception date, investment funds must comprise two legal entities: the fund management company and a bank that is the sole custodian of the fund's assets.

The management company must seek the Monegasque supervisory authority's prior approval (Commission de contrôle des activités financières). The application for authorization to manage an investment fund must include a certain amount of information relative to the functioning of the management company.

For this purpose, please note that:

- The management company must have its central administration in Monaco. However, the management entity can delegate part of its activities to a foreign company which can demonstrate that it has the required capacities to exercise the delegated activities.

Please be advised that the delegation of the activity of fund management can be consented to a foreign company under the condition of the signature of a cooperation treaty between the Monegasque supervisory authority and the supervisory authority of the management company home state. However, this requirement does not apply to the companies which do not contemplate to distribute the shares of the funds they manage outside of the Principality's territory.

- The custodian must be a credit institution established in the Principality or the branch of a credit institution established in a foreign country. It must furnish proof that it has the necessary resources to carry out its duties.

### Typical timescale to receive approval

The Monegasque supervisory authority shall inform the management company of its decision within six months following the receipt of the complete application. In practice, regulatory approval can be obtained within a three-month timeframe.

### Regulatory capital requirements

The minimum capital of the management company duly approved by the Monegasque authorities and which manages Monegasque funds must be at least EUR 150,000 if the assets of the funds that it manages are lower than EUR 250 million. A supplementary EUR 40,000 is required for each additional EUR 200 million of managed assets.

Should the management company manage foreign funds, its minimum capital must be at least EUR 450,000. However, the capital can be limited to EUR 150,000 if at least 50 percent of its shares are held by a bank with a minimum capital of EUR 2 million.

Should the fund manager market the units of the FCP (excluding hedge funds) solely in Monaco (that is, to a client who, irrespective of his/her residency or citizenship, maintains a bank account in Monaco), the minimum capital of the management company must be at least EUR 150,000 or 0.5 percent of the assets of the funds that it manages within the limit of a maximum of EUR 750,000. However, the capital of the management company can be limited to EUR 150,000 if at least 50 percent of its shares are held by a Bank with a minimum capital of EUR 2 million.

Without prejudice to the amounts stated above, in the event that the management company contemplates to distribute shares of the investment funds outside of the Principality's territory, its capital (fonds propres) must never be inferior to the quarterly amount of its precedent year administration costs.

### Significant restrictions on marketing to investors

The Monegasque legislation does not regulate the marketing of any offshore fund to Monegasque investors.

## Hedge fund structures

### Regulation

#### Authorization requirements

The establishment of an investment fund is subject to the authorization of the Monegasque supervisory authority. It must comply with the conditions set forth in Act n° 1.339 dated 7 September 2007 and Sovereign Order n°1.285 dated 10 September 2007. These vehicles are rather flexible and there is some room for discussion with the regulator when there are not offered to the public.

As stated above, the management company must have its central administration in Monaco (that is, in practice its accounting and secretary). However, the management entity can delegate part of its activities to a foreign company which can demonstrate that it has the required capacities to exercise the delegated activities.

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

Specific restrictions are applicable to hedge funds, which are defined as funds using arbitrage or directional strategies and which in particular turn to short selling, investments in derivatives instruments and leverage:

- The hedge funds adopting exclusively arbitrage strategies must limit the amount of their commitment to 500 percent of their net asset. The hedge funds adopting exclusively directional strategies must limit the amount of their commitment to 300 percent of their net assets.
- Neither position nor firm or optional commitment can represent more than 20 percent of the amount of their commitments.

Please note that the hedge funds can derogate to the restrictions stated above under certain conditions defined by Ministerial Order. In such a case, the distribution of their shares is reserved to professional investors (investisseurs professionnels).

Specific restrictions are also applicable to funds of hedge funds:

- A fund of hedge funds can invest 20 percent of its assets in the same Monegasque hedge fund if this hedge fund respects the restrictions listed above. It can invest 10 percent of its assets in a hedge fund reserved to professional investors or in a foreign hedge fund.
- A fund of hedge fund can temporary borrow up to 20 percent of its assets to face the repurchase of shares.

Please note that the fund of hedge funds can derogate to the restrictions listed above. In such a case, they are reserved to qualified investors (investisseurs avertis). The fund of hedge funds cannot borrow more than 100 percent of their assets.

In addition, please be advised that investment funds must respect their investment objectives as described in their prospectus complet. Rules regarding the publishing of the accounts and prospectuses.

The asset manager must publish the accounts and information documentation on an annual and on a semi-annual basis. These reports summarize the fund's investment policy, the information on the management and the information relative to the accounts. They must be published three months after the end of the financial year (annual report) and two months after the end of the first semester.

In addition, please note that specific rules apply to hedge funds: the management company must also publish similar reports on a quarterly basis and specific monthly reports can be required.

The simplified prospectus (prospectus simplifié) must be delivered without expenses to the subscriber before the conclusion of the agreement. The complete prospectus (prospectus complet) is delivered without expenses to the shareholders upon request.

Please note that the investment fund which shares are reserved to determined individuals or legal entities can derogate to the publishing rules.

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

The supervisory authority informs the management company of its decision to approve or not the hedge fund within three months after receipt of the complete application form. In practice, the timeframe can be significantly shorter.

This delay does not apply to the investment funds which shares are reserved to determined individuals or legal entities. In such a case, the agreement is delivered within eight business days after receipt of the complete application form.

## 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

The subscription of shares may be public or reserved to qualified investors (investisseurs avertis) or professional investors (investisseurs professionnels) according to the risk level, sophistication and liquidity of the fund. Accordingly, please note that some hedge funds may require a minimum investment.

- A qualified investor is an individual or a legal entity which is experienced enough to evaluate the merit, risks and liquidity characteristics of the investments. The minimum amount of initial investment in funds reserved to qualified investors is EUR 10,000.
- The qualification of professional investor is reserved to certain categories of investors listed by article 48 of the Sovereign Order n°1.285 (such as, institutional investors). The minimum amount of initial investment in funds reserved to professional investors is EUR 125,000.

As an exception, individuals and legal entities not mentioned in article 48 can be considered as professional investors if their capacities, their knowledge and experience enable them to evaluate the merits and risks of investments and if they are not expecting investments with high liquidity.

In addition, professional investors must also satisfy specific requirements regarding the value of their portfolio or their experience.

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.