Investment Management and Real Estate

Operational risk: an alternative challenge*

The regulation, taxation and distribution of hedge funds around the globe

September 2008

Contents

Whilst this information represents our understanding at the time of going to press, given the rapid pace of change in the global hedge fund industry, the factual data in this paper may quickly be superceded. Up-to-date advice should always be obtained regarding current regulations and fiscal rules.

Foreword

This is the 6th year of our whitepaper report. The year has been characterised by the credit crunch, slowing of economic growth and high commodity prices. This has caused significant volatility in the financial markets which has impacted adversely on hedge fund performance in certain months and unfortunately, also the demise of some hedge funds and their managers. As we go to print, Lehmans is in administration and AIG has been rescued by the US government so volatility can be expected to continue.

Perhaps the most significant industry development has been the publication of the Hedge Fund Standards in the UK and similar proposals, currently at a consultative stage, in the USA. Although it is too early to determine whether the industry will embrace wholeheartedly these voluntary and self regulatory regimes, one of the consequences has been to focus attention on the importance of ensuring that there is a robust operational control framework in existence at the hedge fund manager and fund complex. Indeed, the publication of these benchmarking regimes has served to provide more transparency over the types of controls that should be in place. Therefore, it would not be surprising if investors, particularly institutional investors, do not start to request increasing levels of comfort on what they might consider are the key operational risks pertinent to these sort of structures (eg governance, investment management process, valuation, operational tax risks).

Compilation of this paper requires a high degree of cross-border collaboration across our international network and I am indebted to our central team in coordinating this effort and to my colleagues, Robert Mellor (tax services) and Roger Turner (regulatory services) for building our network of hedge fund tax and regulatory specialists. If you would like to discuss any of the issues raised in this whitepaper in more detail, please speak with your usual contact at PricewaterhouseCoopers[1] or one of the country members listed at the end of this document.

Graham Phillips

Graham P.N. Phillips
European Hedge Fund Practice Leader
Partner, PricewaterhouseCoopers (UK)

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1. 'PricewaterhouseCoopers' refers to the network of member firms of PricewaterhouseCoopers International Limited, each of which is a separate and independent legal entity.

Operational risk: an alternative challenge

When we produced our whitepaper last year in June 2007, the sub prime crisis was gathering pace and the credit crisis was just starting. At that time, we predicted that those hedge fund managers wanting to gather a share of the increasing amount of Institutional money being allocated to hedge fund strategies would face increasing competition from Investment Banks growing their in-house proprietary offerings and traditional asset managers broadening their product range.

We predicted that the influx of institutional money would have two effects on the marketplace – first, there would be a degree of polarisation towards the larger funds; and secondly, those funds and their managers attracting such money would come under increasing pressure to demonstrate that they operated robust systems and controls. This trend was validated to us, when we commissioned our recent EIU briefing "Transparency versus returns: The institutional investor view of alternative assets".

What we did not predict was that the industry itself would come forward and develop its own best practice standards. In January 2008, the Hedge Fund Standards Board ("HFSB") in London published its 28 Best Practice Standards (the "Standards") and in the USA the asset managers' and the investors' committees of the US President's Working Group on Financial Markets ("PWG") proposed best practices for hedge fund managers and investors (the "Practices").

The future will determine whether these industry developments are an appropriate response to the perceived issues and concerns (widely debated by politicians, regulators and the press) about the influence of hedge funds on the global capital markets. The current question is whether these proposed self-regulatory regimes can be shown to have enough teeth to meet the industry's critics but also the fiduciary responsibilities of Institutional investors for a framework of transparency and governance at the managers with whom they invest.
Of course, there is the risk that if these voluntary regimes are not seen to work, then there will be increased pressure for regulatory intervention.

The New Frameworks of Standards and Practices

So the key question is whether the Hedge Fund industry will embrace these new Standards and Practices. Both initiatives are voluntary and adopt a market discipline approach, assuming that peer pressure and, particularly investor pressure will encourage conformity. Whilst there are some similarities between these two initiatives there are also some interesting differences.

The HFSB approach is one of “comply or explain” and existing managers who intend to register their conformity with the Standards have until 31 December 2008 to do so.

The UK “comply or explain” approach follows a similar regime in the UK for disclosure of compliance with governance standards for publicly listed companies - the Combined Code of the London Stock Exchange. However, one important difference is that certain disclosures of compliance in a listed company’s annual report have to be independently validated by auditors. There is no such provision in the HFSB Standards; it is a self-attest regime which necessarily carries with it the risk that less scrupulous managers will claim compliance but in fact act below the benchmark of the Standards.

There is, of course, no reason why a manager (or a Fund’s directors) shouldn’t commission such independent validation work (and some are already doing so) and this maybe something that over a period of time investors will come to expect.

Similarly, the HFSB required “Explanatory statement” covering those Standards with which a manager does not comply is submitted privately to the HFSB and therefore not automatically available to an investor; arguably this would be an interesting document for existing or potential investors albeit there is nothing to stop a particular manager from releasing this to investors.

The proposed US PWG best Practices do not have an enforcement or disclosure mechanism and will rely on voluntary conformity, which is perhaps contrary to the general perception of the US as a place of rules and regulations.

A significant difference in the remit of the US PWG is that investors were involved in developing proposed best practices for both the decision to invest in a hedge fund and the ongoing monitoring of the hedge fund investment thereafter – there is both a Fiduciary’s guide (for those responsible for allocation of assets to hedge funds) and an Investor’s guide (for those executing and monitoring a hedge fund investment programme). This is a welcome development and addresses one of the criticisms of the HFSB Standards where there was no investor representation.

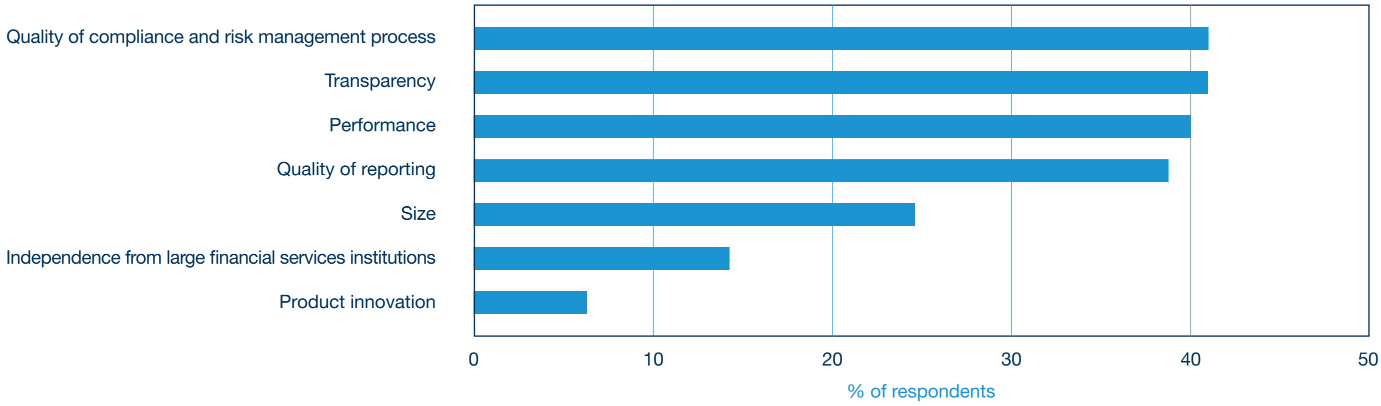
Operational Controls and Governance

What is clear is the landscape has changed. The increasing Institutional money flowing into hedge fund strategies is fuelling more and more focus on operational risk.

The speed of demise of some large funds is causing Institutional investors to reappraise the strength of the systems and controls at their underlying hedge fund investments, whether the exposure to the strategies is via fund-of-hedge fund vehicles or made directly. Institutions, as investors, unlike high net worth individuals, are subject to fiduciary risk and therefore acutely conscious of the need to demonstrate that they have done all that is reasonably possible in due diligence and ongoing monitoring to guard against investment failure; failure brings litigation risk. Indeed our briefing “Transparency versus returns: The institutional investor view of alternative assets” produced in cooperation with the Economist Intelligence Unit (“EIU”), reported that concerns around operational risk areas was a greater risk for manager deselection by Institutional investors than actual investment performance.

“Transparency and risk management assume greater importance when deselecting a provider”

Q: What do you consider to be the main criteria for de-selecting a provider?



Please note that totals do not always add up to 100 because of rounding, or because respondents could choose more than one answer.

Source: PricewaterhouseCoopers/Economist Intelligence Unit survey, January 2008

The current market conditions and resulting volatility are causing particular scrutiny of certain aspects of controls and governance in any hedge fund manager’s processes. Although the extent of adoption and implementation of the voluntary standards and practices discussed above remains to be seen, their publication is, by definition, raising the awareness of the types of controls that should be in place and ways in which monitoring of their ongoing effectiveness can be achieved. Three areas are noted below:

- There is increased focus on the investment process and whether the risk management systems in place are fit for purpose – fit to meet the risk and volatility profile portrayed to the end investor.
- Similarly, there is much discussion about the robustness of the procedures around the valuation of a fund’s net assets. Indeed the implementation of FSA 157 under US GAAP (and a similar standard being developed under IFRS) is set to make valuation processes and disclosure even more complicated. A properly documented valuation process with appropriate escalation procedures to the Fund’s Board which is made transparent to investors is the right answer. Hedge funds are private investment vehicles and transparency of process between investor, the Fund’s Board and the advising hedge fund manager is surely a prerequisite of a successful partnership.
- Less highlighted are the issues around taxation and the need to incorporate appropriate procedures to ensure that tax rules and regulations are met both at the fund investment level and at the level of the fund’s interaction with its hedge fund manager. If the relevant tax rules and regulations are not followed, there is a risk that the tax neutral status of the hedge fund will be jeopardised. The implementation of Fin 48 for US GAAP funds and the need to provide for tax where it “is more likely than not” that a tax liability will arise is only serving to highlight the importance of the proper operational management of tax within a hedge fund’s infrastructure.

Culture, controls, and reward

The effective operation of a process of systems and controls requires that individuals adhere to the control framework. This in turn requires the overall culture of the firm or "the tone from the top" to be supportive and, in particular, that the reward and compensation strategies give sufficient weight to adherence to the control framework in each individual's annual performance assessment.

Businesses that grow rapidly, where there is a high emphasis on revenue/profit generation such as the hedge fund industry, often find that the operational infrastructure (often referred to as the mid and back office) to be in a state of permanent "catch up". There have been well publicised instances of where a firm's culture has developed so that it becomes accepted that controls can be overridden or are not taken seriously. Balancing reward strategies and talent management so that they are not biased towards risk and short-term thinking is becoming increasingly recognised as a key ingredient of a strong control framework. This issue has not escaped the attention of the regulators and is line with their focus on governance and the competence of a firm's management.

Regulation

Since our last whitepaper, the EU's MiFID legislation has come into effect. Hedge fund managers have had to embrace more prescriptive rules in relation to best execution and conflicts of interest. Whilst this has mainly involved enhancement of existing procedures, there have been repeated warnings from the regulators, notably the UK FSA, that they are concerned about market abuse; their interest is hardly surprising given the involvement of hedge funds in the world capital markets.

In June 2008 the UK FSA quickly introduced a rule concerning the disclosure from entities with short positions in stocks undergoing a rights issue; this was unusual in that there was no prior consultation and certainly caused ripples of discontent in the industry. It appears that the regulators were concerned about the then market conditions and potential impact on a number of financial sector rights issues.

Although two to three years ago there was much talk about the retailisation of hedge funds, there has been slow progress in the last year. The EU is still considering whether there should be a regime for private investment funds to be marketed under a pan-European set of rules. In the meantime, the UCITS III legislation is allowing the development of short extension funds, typically 130/30 funds, following the lead established in the US; investments in such funds is to date mainly funded by Institutional money.

Potential future EU developments include the emergence of a group led by Poul Rasmussen calling for an EU framework for transparency, registration and authorisation for managers of hedge and private equity of funds. His report has been ratified by the European Parliament but it is too early to determine precisely where the legislative effect will fall.

Conclusion

The immediate challenge for the hedge fund industry is to prove that it can embrace the principle of transparency around operational controls (and prove on an on-going basis that they are working effectively) as more Institutional money is allocated to hedge fund strategies. At present, it seems that this Institutional money is tending to find its way to the larger and longer standing hedge fund managers who should have the resources and infrastructure to demonstrate (or develop) a system of strong controls and processes.

For any hedge fund manager, embracing the publicised Standards and Practices will not be without cost. In all likelihood, such associated costs will be absorbed by the hedge fund manager. But if this is a cost that must be paid to demonstrate to investors that well run hedge fund operations have appropriate governance and controls and to satisfy the regulators concern for investor protection and avoidance of systemic risk, then it is a cost of doing future business in this sector and a cost that must be met.

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Regulatory developments

While the headlines have been dominated in recent months by the effects of the credit crunch, the regulators, and others, have not ceased in their commentary and surveillance of the hedge fund industry. Notwithstanding certain changes to law in some territories, the primary focus of attention has been concerned with valuation and transparency. In the UK, the formation of the Hedge Funds Standards Board saw the publication of industry best practices, and in the USA, the two committees established by the President's Working Group on Financial Markets have also issued best practices for managers and investors. It is likely that these initiatives will gain common currency as the benchmark to which firms will be assessed by investors.

The last year has, in many ways, been a continuation of the same trends experienced in prior years. In general the regulatory authorities have not sought to define specific rules targeted at hedge fund managers. Instead, the focus has been to tighten up or clarify the circumstances in which hedge funds may be distributed to investors and to make clear the areas where the regulators have concerns. These concerns have been well documented as surrounding the valuation process and the transparency of operations of hedge fund managers and we will probably see more commentary on both of these topics as the industry, regulators and investors begin to implement the published best practices into day-to-day operations.

However, not all regulatory initiatives are so benign. In May 2008, the European Parliament received a report from the ex-Danish Prime Minister Poul Rasmussen recommending additional regulation over hedge funds.

This report received some 200 amendments prior to being debated in July 2008 but eventually received approval in the vote of the Parliament on 10th July. (A final confirmation is expected on 23 September 2008). This vote now necessitates the Commission drafting new rules in relation to the capital adequacy of (EEA) domiciled funds and or the managers. (It remains unclear precisely where the legislative effect will fall). In addition new rules regarding the disclosure of levels of gearing, debt exposure and investment strategies and potentially all staffs remuneration arrangements are but some of the headline changes the Commission must put in place by November 2008. It remains to be seen how precisely the Commission will interpret the intentions behind the Parliament's proposals, and in particular whether they apply only to EEA domiciled funds and managers or seek to include all funds distributed within the EEA.

In the UK this summer we saw the FSA introduce rules relating to disclosure of short positions in securities that are undergoing a rights (capital raising) issue. The rules were introduced with no consultation period and only one weeks notice of implementation. The subsequent confusion as to what exactly had to be reported was understandable and the FSA responded by production of a "frequently asked questions list". The debate is likely to continue for some time as interested parties perhaps question some of the oddities of the requirements, such as for example being able to net one's long and short positions across a firm.

MiFID beds down

Across Europe, MiFID finally lurched into existence and for the majority the process of transition was achieved, even if the "just in time" model was used. As with any new piece of legislation, and MiFID was a substantial piece, there is bound to be a period of bedding down and clarifications to be received as issues emerge. The regulators seem to have accepted that the introduction of MiFID necessitates a degree of patience while organisations implement the necessary changes to process and procedure to comply with the new regime.

Summary of changes

In December 2007, Germany announced changes to the Investment Act of 2004. These changes bring under the scope of the Act the distribution by way of private placement single manager hedge funds; they will necessitate the preparation of all documentation in German and for this to be delivered to the customer prior to concluding the contract. Funds of hedge funds can, subject to satisfying the requirements of the Bundesanstalt für Finanzdienstleistungsaufsicht ("BaFin"), be distributed publicly and are also able to leverage their positions up to 10% of the fund's value. Other amendments include new rules for prime brokers and the introduction of warning notices within the prospectus regarding the risk of total capital loss.

In India, there are currently no specific regulations governing hedge funds. Prior to October 2007, overseas funds invested in India via Participatory Notes ("P Notes") issued by Foreign Institutional Investors ("FII") registered with the Securities and Exchange Board of India ("SEBI"), as SEBI was granting FII registrations only to regulated entities. Since October 2007, SEBI has been discouraging the issue of P Notes and has begun to grant FII or its sub-account to all funds including hedge funds.

In the Isle of Man, two new categories of fund were introduced in 2007. The Specialist Fund is designed for Institutional investors and the Qualifying Fund is intended for non-retail investors. Foreign funds may be administered in the Isle of Man without being subject to Manx regulation hence avoiding the potential for dual regulation.

In Italy, from June 2007 management companies can now offer both traditional and alternative products providing they enhance risk management, internal control and compliance functions.

In Jersey, the regulation of fund functionaries acting for the "unclassified fund" regime was transferred from the Collective Investment Fund Law ("CIF") to the Financial Services (Jersey) Law on 14 November 2007. This focuses on the regulation of service providers rather than the underlying products they administer, and the functionaries will now have to comply with new Codes of Practice for Fund Services Business and provide a report from the directors to this effect.

In South Africa, from February 2008 all hedge fund managers have to register as Category IIA financial service providers under the Financial Advisory and Intermediary Services ("FAIS") Act, a separate category of financial service providers created solely to regulate hedge fund managers. Specific "fit and proper" criteria are applied to the manager to ensure that they have a track record of managing the strategy in question.

In the UK, the FSA issued its feedback statement on retail funds-of-hedge funds. This confirmed that the majority of the FSA's proposals were accepted by industry. It is anticipated that the new rules permitting retail-orientated Funds of Alternative Investments ("FAIFs") will be in place by the third quarter of 2008.

In the USA, in August 2007 the SEC adopted a new anti-fraud provision rule intended to protect prospective and current investors of "pooled investment vehicles" advised by registered or unregistered investment advisers. This rule would extend to offshore advisers whose activities fall within the jurisdiction of the SEC. However, the rule presumably does not extend to offshore funds with no US clients, since such funds do not meet the definition of an investment company under the Investment Company Act.

Tax section

The last year has seen alternative investment funds coming under ever greater pressure to adopt governance standards with reports being published by both the Hedge Fund Standards Board in the UK and the US President's Working Group. The latter is of particular significance in the tax arena because for the first time it highlights tax as an issue which investors need to understand prior to making investments and which the fund Boards should take into account when considering their fiduciary duties.

Alongside this, FIN48 is the most significant development in accounting for tax in a number of years. With the International Accounting Standards Board due to publish the draft of an equivalent IFRS accounting standard modelled on FIN48 for implementation in 2009, virtually all funds will also be required to assess and document their tax risks.

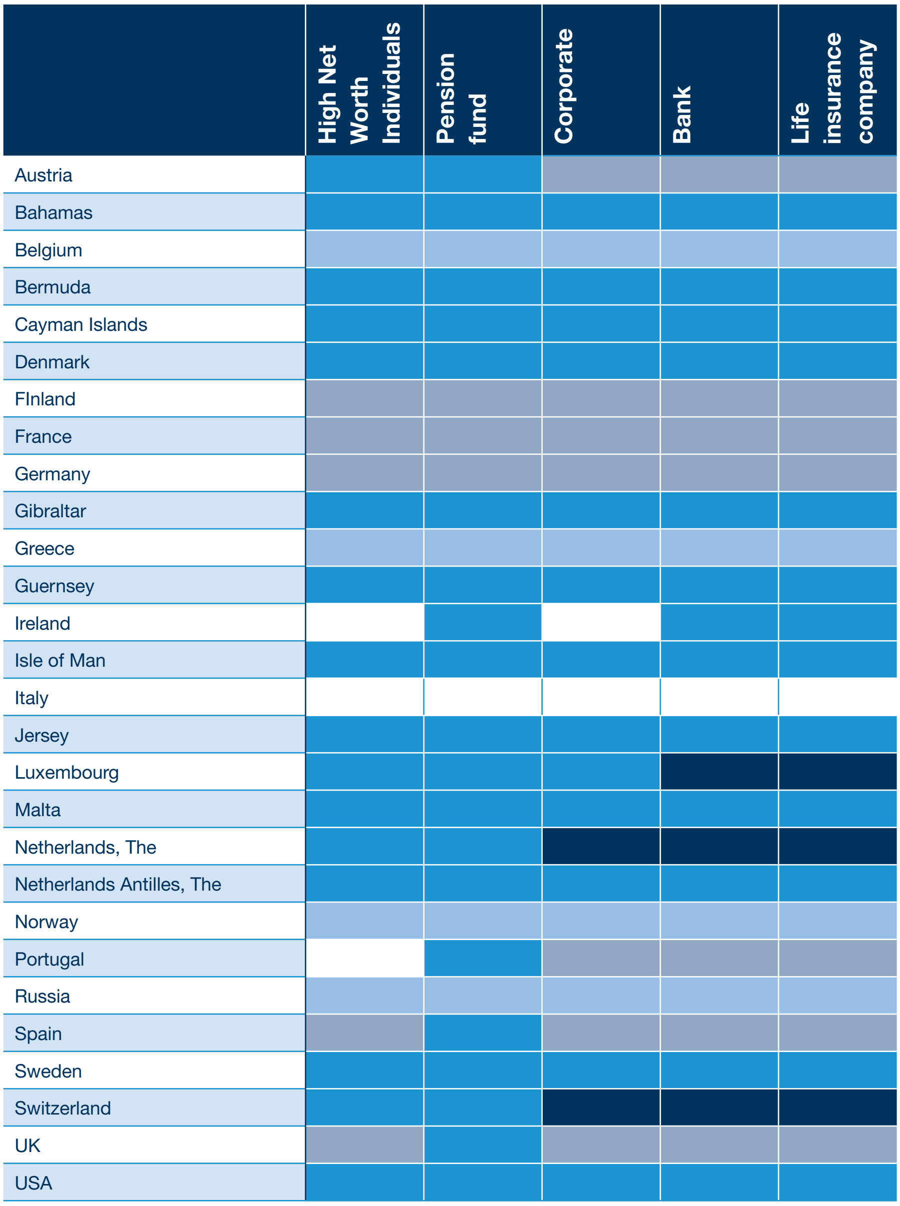
Interestingly, a consequence of these accounting standards is that some funds are voluntarily reporting in some territories as opposed to the issues being identified as a result of an enquiry by the fiscal authorities.

Examples of this include the German tax on capital gains derived from the sale of shares; an issue which is extremely difficult to monitor due to the 1% threshold and the fact that you have to look back over a five-year period. Another area which has given rise to difficulties is Spanish capital gains tax, all of which means that funds are being required to look at the tax implications of making investments in ever increasing detail.

However, the risks are not confined to the investment level. Many funds use investment platforms located in territories such as Luxembourg and The Netherlands to manage their tax liabilities. There is growing interest from the fiscal authorities in some territories over the use of these investment platforms and an insistence that they have substance, or real business presence, before they will grant treaty benefits. This is being driven by the fiscal authorities in the countries in which the assets are located, so again poses challenges to funds in terms of managing their tax risk, because clearance can generally not be obtained in advance. In addition, following the decision in the Indofoods case, it is anticipated that the issue of beneficial ownership/substance will be revisited by the OECD in the next two years, which will further focus the attention of global tax authorities on this issue. However, it is clear that some funds are not waiting and are taking action in advance of a revenue challenge or a change in interpretation by the OECD. Taking Luxembourg as an example, a recent internal PricewaterhouseCoopers survey of 35 funds has shown that the majority now have their own offices and employees in Luxembourg.

Outside Europe the markets in Asia are continuing to develop, with Japan introducing an independent agent exemption and China seeking to protect

Figure 1: **Tax barriers to the distribution of hedge funds**



- No tax discrimination against foreign hedge fund
- More favourable treatment for foreign hedge fund
- Direct tax discrimination against foreign hedge fund
- Not likely to be a significant investor class; investment in hedge funds not permitted; or there are no domestic hedge funds
- Indirect tax discrimination against foreign hedge fund

its tax revenues by introducing a new definition of a “Tax Resident Enterprise” under which foreign-incorporated companies with Chinese nationals working in China could be exposed to Chinese tax. This parallels the developments in India with the Hutch Vodafone case where the Indian tax authorities are seeking to tax the profits on the sale of a Mauritius company by an overseas investor.

These examples all illustrate the fact that tax risk is an issue for a fund wherever or however it invests and that fund managers need to review their current position and take action. Ignoring tax risk is simply not an option.

Taxation of Investors

Each territory has its own legislation governing the taxation of hedge fund returns for each investor class including within the EU, where the taxation of investors remains in the hands of the governments of the European Member States. Whilst at one level the barriers to investing in foreign hedge funds seem to be decreasing, there is an increasing trend in Europe towards introducing tax reporting requirements which impose an indirect barrier to investment. This started in Germany and Austria, but Switzerland is introducing reporting requirements and the update of the UK Offshore Fund Rules expected to take effect in 2009 will also introduce tax reporting requirements in order for investors to qualify for capital gains tax treatment on disposal of their investment.
When you add in the US K1 reporting requirements which have existed for many years, this leaves fund managers facing a difficult dilemma, and in some cases deciding not to market funds in a particular jurisdiction because the cost of complying with the investor reporting requirements is not commensurate with the level of assets which they can raise.

Country-by-country overview

Regulation and taxation of hedge funds and hedge fund investors at September 2008

Australia

Taxation

Domestic hedge funds usually take the form of unit trusts which are taxed on a flow-through basis. Investors are taxed on their share of the tax net income of the fund in the year in which their entitlement arises. Income and gains generally retain their character as they flow through the fund to be taxed at the investor's marginal rate.

The taxation of Australian investors in foreign hedge funds is more problematic.

The foreign hedge fund will constitute a Foreign Investment Fund ("FIF"). Retail investors with more than A$50,000 in FIFs and Institutional investors which do not enjoy an exemption from the FIF regime will be subject to tax on an annual basis, generally on a mark-to-market calculation.

In the event that market value information is not available at the appropriate times, a deemed rate of return method may apply.

Complying superannuation entities (i.e. pension funds and the pension money of life companies) are exempted from the FIF regime. Such investors will generally be taxed on distributions received from the foreign hedge fund when paid and on the gain made on the disposal of their investment in the foreign hedge fund at the time of disposal. Investors are taxed at a general rate of 15% but an effective rate of 10% on capital gains realised on disposal of assets held for more than 12 months.

Austria

Regulation

According to the Austrian Investment Fund Act the launch of domestic single manager hedge funds is not permitted. Nevertheless, foreign single manager hedge funds, and domestic and foreign funds-of-hedge funds may be distributed to both retail and institutional investors in Austria. They can be distributed either via private placement or via public placement, if they are registered with the Financial Market Authority ("FMA"). A registration for public distribution is not possible if the hedge fund uses physical short-selling, if the investor can be obliged to make additional contributions or if loans can exceed 10% of the fund's assets.

Taxation

Since 1 July 2005, Austrian banks have deducted a 25% withholding tax on distributions and deemed distributed income from foreign funds (calculated by a local tax representative) such that foreign funds are taxed on the same basis as domestic funds, provided that the following requirements are met:

1) The foreign hedge fund appoints a local tax representative to calculate deemed distributed income on an annual basis and provides the Oesterreichische Kontrollbank ("OeKB") with this information within four months of the financial year-end (annual reporting).

2) The foreign hedge fund provides the OeKB with information on the net interest income (interest income plus/minus equalisation minus expenses on interest income) on a daily ("daily" in terms of each time a NAV is published) basis (daily reporting).

3) The foreign hedge fund provides the OeKB with details of the taxable income on the distribution date (periodic reporting).

Hedge funds are tax transparent according to Austrian tax law. Individual investors are subject to withholding tax on income distributions and deemed income distributions from hedge fund investments at the rate of 25%, i.e. the income from the fund does not need to be included in the personal income tax return of the investor. Capital gains realised at fund level on the disposal of equities are taxed at an effective rate of 5%, whilst capital gains on the disposal of bonds are tax free.

If individual investors sell the investment fund certificates within one year of acquisition, such gain is subject to progressive income tax as speculative income (up to a maximum rate of 50%).

Corporates, banks and insurance companies are taxed at 25% on both income and capital gains from hedge fund investments. Special rules apply for insurance companies. However, realised capital gains of domestic funds are only taxable on corporate investors when distributed; the total realised underlying gains of foreign funds are taxable, even if they are not distributed.

Austrian pension funds are exempt from tax in Austria.

The safeguard tax of 1.5% deducted by the Austrian depository bank if an Austrian private investor holds shares in a foreign hedge fund will also not apply if the above conditions are met.

If a foreign hedge fund does not follow this new reporting regime, an Austrian investor in the fund must include the income in his income tax return. Only distributions paid to Austrian investors holding shares on Austrian deposit are subject to Austrian withholding tax. The same tax rates as for the reporting funds apply. Safeguard tax will be applicable if the investor does not disclose his/her holdings to the tax office.

If a foreign fund has not appointed a local tax representative, it will be treated as a "black fund" and all investors (except pension funds) will be subject to unfavourable lump-sum taxation whereby the higher of:

i) 10% of the last redemption price in the calendar year; or

ii) 90% of the increase in value between the first and the last redemption price in the calendar year less the actual distribution received by the investor will be subject to 25% tax.

If foreign funds do not appoint an Austrian tax representative, an Austrian investor is able to provide the tax authorities with information on deemed distributed income to avoid lump-sum taxation (previously such information could only be provided by an Austrian tax representative officially appointed by the fund), although it is very difficult for the individual to collect the information and to calculate the relevant figures.

Bahamas

Regulation

Under the Investment Funds Act 2003, foreign funds wishing to distribute their shares or units in the Bahamas must appoint a representative who has been approved by the Securities Commission of the Bahamas.

Section 29(5) of the Securities Industry Act 1999 requires the registration and licensing of a Securities Investment Adviser ("SIA"). However, the Securities Commission has adopted a policy which exempts SIAs from registration and licensing in the Bahamas, if the investment funds they advise are licensed in the Bahamas.

Taxation

Investors and funds are not subject to tax in the Bahamas.

Belgium

Regulation

Only the private placement of hedge funds is possible in Belgium, subject to certain conditions (related to the investor and the minimum amount to be invested).

However, the legislation implementing UCITS III in Belgium makes it possible for the public in Belgium to invest indirectly in hedge funds by allowing capital guaranteed funds or funds with capital protection. In this respect, the Belgian UCITS III Royal Decree of 2005 allows investment through:

- A UCI investing in hedge funds (funds-of-hedge funds) which is allowed in and under permanent supervision of a Member State of the European Economic Area;
- A diversified basket of units issued by hedge funds which are allowed in and under permanent supervision in one or more Member States of the European Economic Area such that each fund represents a maximum 20% exposure; and
- A hedge fund index approved by the Banking, Finance and Insurance Commission which must be diversified, representative and published.

Taxation

The tax treatment when investing in a foreign hedge fund depends on whether or not the hedge fund qualifies as a tax transparent entity from a Belgian tax perspective. This in turn has different consequences for different types of investors.

Where the hedge fund is treated as a tax transparent entity from a Belgian tax perspective, all revenues received by the fund will be considered as directly received by its investors. In principle tax would be due in the hands of Belgian investors at the time the foreign fund receives the income from its underlying investments.

The Belgian tax treatment is determined on a case-by-case basis based on the specific factual circumstances. In the case of non-transparent hedge funds, Belgian (tax-resident) individual investors will be taxed on the dividends distributed by the hedge funds and will in principle be subject to a Belgian withholding tax at a rate of 25% or 15%. In principle capital gains realised upon the sale of shares, redemption of shares by the hedge fund or liquidation of the hedge fund, will not be subject to taxation in the hands of the individual investors. However, some exceptions exist in this respect for capitalisation shares. Belgian individual investors could potentially suffer tax leakage of 15% if:

- There is commitment in the hands of the hedge fund, for a period less than or equal to eight years, regarding the amount to be recovered by the investors; or
- The hedge fund has an EU passport and invests more than 40% in interest-bearing products.

Where no Belgian financial intermediary is involved, additional municipality taxes will be levied for private investors.

Finally, the Belgian "Tax on Stock Exchange Transaction" might apply in the case of a sale, redemption or liquidation of the shares/the fund to the extent that the transaction takes place on the secondary stock market and a Belgian financial intermediary is involved. The application of this tax and its level (if applicable), will depend on the parties involved, the underlying shares and the importance of the transaction.

Corporates (including banks and insurance companies) are in principle taxed at a rate of 33.99% on any dividends or capital gains received.

If the investor is a Belgian regulated SICAV no taxation occurs. Under certain conditions, Belgian corporate investors could fall within the participation exemption regime which provides exemption from taxation on dividends received and capital gains. If Belgian withholding tax were to be due, Belgian corporate investors and pension funds will either be exempt or be granted a credit.

When investments are made indirectly via wrapper instruments, the specific tax treatment will depend on the type of wrapper used.

Bermuda

Regulation

Bermuda-domiciled funds are regulated by the Bermuda Monetary Authority ("BMA") through the Investment Funds Act 2006 (the "Act") which serves as one Act to regulate the set-up and operation of Bermuda-domiciled investment funds and fund administrators.

Bermuda allows for four distinct types of collective investment schemes:

1) Institutional funds – for investment by "qualified" participants or where the minimum investment is US$100,000;
2) Administered funds – where the fund has retained a Bermuda-licensed administrator and either (i) the minimum subscription is US$50,000; or (ii) the fund is listed on a stock exchange recognised by the BMA;
3) Standard funds – any fund not qualifying to be classed under (1) or (2).
4) Exempted funds – subject to certain criteria, a fund can apply to be exempt from the requirements of the Act.

The Exempted funds scheme is in response to the EU Savings Directive ("EUSD"), whereby Swiss authorities have agreed that such a scheme will not fall within the EUSD for their purposes. In addition, the Act provides for Private or Excluded funds, where the number of participants does not exceed 20 persons and the fund does not promote itself to the public generally.

Fund structures recognised in Bermuda include:

1) Corporate entities of a limited or unlimited life;

2) Unit trusts;

3) Partnerships; and

4) Segregated account companies.

The Act also establishes core criteria for the fund administration business, requiring persons or entities carrying on the business of a fund administrator in/from Bermuda to be licensed.

The Bermuda Monetary Authority ("BMA") and the Bermuda Stock Exchange ("BSX") provide a service whereby funds can be simultaneously approved by the BMA and listed on the BSX in as short a time as two weeks.

Taxation

Bermuda domiciled investment funds are not subject to income, profit, capital transfer or capital gains taxes. Upon establishment, a fund applies to the Minister of Finance of Bermuda for an undertaking that the fund will be exempt from such taxes, should they be enacted. At present, this undertaking extends until 28 March 2016.

Canada

Regulation

Direct regulation of hedge funds in Canada is dependent upon whether the fund is distributed under a prospectus, under exemptions in securities regulation that allow the fund to be sold without a prospectus, or through a linked product such as a principal protected note ("PPN"). Hedge funds sold pursuant to a prospectus comprise a small portion of the overall hedge fund market in Canada, the majority falling into the other categories.

Hedge funds sold under a prospectus and hedge funds sold under the prospectus exemptions are both subject to a range of general securities legislation requirements:

- Portfolio managers or advisers who manage hedge fund portfolios and dealers who sell hedge fund securities must both be registered. Registered advisers and dealers advising on or selling hedge funds are required to meet "Know Your Client" and suitability requirements (which include knowing your product).

- Dealers who sell securities must be registered.

- Hedge funds sold under exemptions from prospectus requirements may only be sold to accredited investors who meet certain net income or financial asset tests or who can make a minimum purchase in the hedge fund of CDN$150,000. This is the most common method of hedge fund distribution in Canada. While these funds are not required to provide a prospectus they do generally provide an offering memorandum and may be required to provide certain continuous disclosures, such as annual financial statements, to investors.

- Disclosure requirements apply, depending on how the hedge fund is sold. Hedge funds sold pursuant to a prospectus are subject to continuous disclosure requirements which include specified disclosures in the prospectus, and annual and semi-annual filing of financial statements and management reports on fund performance. Many prospectus exempt funds are required to deliver annual audited financial statements. Annual financial statements are required to be filed/delivered (as applicable) within 90 days.

- PPNs, which may give retail investors access to alternative investments, are currently outside the scope of securities regulations in Canada. PPNs are currently under significant regulatory scrutiny in Canada due to the ability of these products to expose retail investors to riskier investment without any regulation.

- Compliance reviews of advisers, fund managers and dealers are performed by compliance staff of the securities regulatory authorities and self-regulatory organisations using risk-based approaches.

There is currently no requirement for hedge fund managers in Canada to be registered unless they are also managing portfolio assets. The Canadian Securities Administrators ("CSA") have proposed, through the Registration Reform Project, to require the registration of fund managers, including those who manage hedge funds. This project is currently in the second comment period stage and is expected to significantly change the current regime.

Taxation

The taxation of an investment made by a Canadian resident in an offshore hedge fund depends on the type of investor and the type of fund.

Type of Investor

An investor that is a Canadian pension fund (governed by a registered pension plan) or a charitable foundation (including a charitable endowment) is exempt from Canadian income tax.

An investor that is a Canadian bank calculates its income from an investment in certain securities on a mark-to-market basis. Other Canadian financial institutions (including life insurance companies, trust companies and investment dealers) are also subject to the mark-to-market regime.

Under currently enacted rules, this mark-to-market regime applies to investments in shares and certain debt obligations, but not to an interest in a trust or a partnership (unless controlled by the financial institution). Draft legislation released on 7 November 2007 which is still being discussed proposes to include "tracking property" as property subject to the mark-to-market regime. "Tracking property" may include an interest in a trust or partnership.

Type of Offshore Hedge Fund

The proposed non-resident trust ("NRT") and foreign investment entity ("FIE") rules are part of a new statutory regime for taxing Canadians investing in foreign entities. The rules are designed to ensure that income earned indirectly by Canadian taxpayers through foreign intermediaries is not taxed at a more favourable rate than would be the case were the income earned without the involvement of those intermediaries. This regime is not currently law but is expected to be passed into law effective for taxation years starting in 2007. The following discussion assumes this regime will be passed into law as currently proposed.

The non-resident trusts that fall within the purview of the new NRT rules will be considered resident in Canada for the purposes of computing income. Consequently, the NRT will be liable for Canadian tax on its worldwide income. If the trust fails to pay this liability, the resident contributors and resident beneficiaries may be jointly and severally liable, within limits in certain circumstances.

Deemed residency also applies for a variety of other provisions. The rules ensure that beneficiaries under the trust are generally accorded parallel treatment to beneficiaries under trusts that are in fact resident in Canada. For example, distributions of certain types of income to a non-resident beneficiary can be subject to Canadian withholding tax.

Exempt foreign trusts are not subject to the new rules. These include, among other things, trusts for physically or mentally infirm individuals, trusts established for charitable purposes, trusts that administer pension benefits, and certain widely held trusts. The intention is that an investment in an "exempt foreign trust" will be taxed under the "FIE" rules, discussed below.

The draft FIE rules apply to Canadian taxpayers holding investments in foreign entities that earn primarily (i.e. more than 50%) passive income. The rules generally use an asset based test to make this determination. The property of an FIE must be segregated into investment properties and other properties. Investment properties include such property as shares, partnership and trust interests, real property, resource properties and currency. Generally, if the carrying value of investment properties exceeds 50% of the carrying value of all the properties, the entity is an FIE. Limited exemptions are provided. For example, the rules do not apply to investments in controlled foreign affiliates or partnerships or when the "mark-to-market'" regime applies. Provided there is no tax avoidance motive, they also do not apply to FIEs that trade on a prescribed stock exchange or are resident in a treaty country (in both cases, certain conditions must be met to qualify for the exemption). Cash settled derivatives are also excluded from the FIE rules.

Taxpayers subject to the new rules are required to include in income one of the following amounts:

- An inclusion based on a prescribed rate of interest;
- The full amount of any change in value of their investments under the mark-to-market regime; or
- Their share of the actual income and capital gains computed under the Canadian tax rules under the income accrual regime.

If the offshore hedge fund does not fall under the proposed NRT or FIE rules, the tax implications to a Canadian investor will depend on the structure of the fund. If the fund is a corporation, the Canadian investor will include in its income any dividends paid by the fund. If the fund is a trust, a Canadian investor is required to record distributions from the non-resident trust in its taxable income to the extent that it would be the non-resident trust's income. The amount that would be the non-resident trust's income would be calculated in accordance with the Canadian tax rules. If the fund is a partnership, a Canadian investor is required to include in income their portion of the foreign partnership's income computed under Canadian tax rules.

Canadian Taxation of an Offshore Hedge Fund

If the offshore fund makes certain investments in Canada or relies on Canadian service providers in the course of making its investments, some care should be taken to ensure that the fund is not itself subject to Canadian tax on its investments by virtue of carrying on business in Canada.

Canada has a safe haven rule that is designed to ensure that an offshore fund would not be considered to carry on business in Canada by virtue of using Canadian service providers (such as investment advisers, dealers, custodians) in respect of its investments. This safe haven rule is generally not available for a fund that has Canadian resident investors. For this reason, it may be appropriate to use a feeder fund to house Canadian resident investors if a master fund is expected to make certain Canadian investments or relies on Canadian service providers.

Cayman Islands

Regulation

Cayman-domiciled funds are required to register under the Mutual Funds Law (Revised) with, and be regulated by, the Cayman Islands Monetary Authority ("CIMA"). Funds are required to file certain extracts from the Offering Memorandum on application for registration with CIMA.

A fund's operator (directors, trustee, and general partner) is required to complete a Fund Annual Return which must be filed with CIMA by the fund's Cayman auditors within six months of its financial year end, along with a PDF version of the fund's annual audited financial statements.

Taxation

Funds, fund managers and investors are not subject to taxation in the Cayman Islands.

Denmark

Regulation

Domestic hedge funds can only be organised in Denmark as "hedge associations" and are subject to approval by the Danish Financial Supervisory Authority ("Danish FSA"). They can only be organised if the objective of the hedge fund is:

1) To receive funds from a wide circle or from the general public or,

2) To place their funds in liquid funds, including currency, or in instruments as mentioned in annex 5 of the Financial Business Act, in accordance with the risk policy and risk profile of the association, and to redeem a member's share of the assets with funds derived therefrom.

Hedge funds which do not aim at a wide circle or the general public may be approved by the Danish FSA as hedge associations. Hedge funds that are not approved by the Danish FSA cannot use the term hedge association ("hedgeforening") in their name. Other hedge funds may not use names or expressions that may create the impression that they are hedge associations.

A hedge association must have assets of no less than DKK25 million. Intangible assets may not be included in the total assets for this purpose.

The funds of a hedge association are required to be entrusted to and kept separately from said association with a depositary approved by the Danish FSA. The depositary must be a bank with its registered office in Denmark or a corresponding foreign credit institution with a branch in Denmark and with its registered office in another country within the European Union, or in a country with which the Community has entered into an agreement for the financial area.

Foreign hedge funds registered outside the EU and the EEA are required to obtain approval in the same way as a domestic hedge association. Foreign hedge funds registered within the EU or the EEA are required to obtain approval from the Danish FSA for distribution in Denmark.

Taxation

Individual investors, corporates, life and general insurance companies investing in hedge funds will be taxed on dividend distributions and unrealised capital gains and losses (individuals up to 59%, others 25%).

Pension funds and life insurance companies are subject to a special pension tax regime and taxed at a rate of 15% on the net yields from investments on a mark-to-market basis. Special rules ensure that life insurance companies are not subject to double taxation.

Finland

Regulation

In the case of UCITS funds, both the licence to distribute and the submission of notification to the Finnish Financial Supervision Authority ("FFSA") are required. UCITS funds are considered to be open for retail and professional investors.

For non-UCITS funds, a licence to distribute is required when targeting retail customers. For professional investors a marketing licence or notification is not needed. Requirements for a foreign hedge fund to be granted a licence in Finland include adequate home state supervision of the fund recognised by the FFSA.

Taxation

If a hedge fund is structured as a (special) common fund (within the meaning of the Finnish law), an individual investor is taxed at 28% on distributions or redemptions. If a foreign hedge fund is non-transparent from a Finnish tax perspective, the return is taxed either as a:

1) Dividend, which will usually be taxed at 28% or at progressive rates (depending on several factors, e.g. a dividend from a non-EU non-Tax Treaty state, such as Cayman or Bermuda, is fully taxed at progressive rates); or as

2) "Fund distribution", taxed at 28%.

If the hedge fund is structured as a partnership, transparent from a Finnish tax perspective, the individual would be taxed annually on his/her portion of the realised income of the hedge fund either at 28% or at progressive rates.

If a hedge fund is structured as a (special) common fund, corporates, pension funds, banks and insurance companies are taxed at 26% on distributions or redemptions. If a foreign hedge fund is non-transparent from a Finnish tax perspective, the return is taxed either as a:

1) Dividend, which will usually be fully or 75% taxable at 26% (depending on several factors, e.g. a dividend from a non-EU non-Tax Treaty state, such as Cayman or Bermuda, is fully taxable); or as

2) "Fund distribution", at 26%.

If the hedge fund were structured as a partnership (transparent from the Finnish tax perspective), these investors would be taxed annually on their portion of the realised income of the hedge fund at 26%.

A foreign hedge fund could be regarded as a Controlled Foreign Company under certain conditions, if Finnish tax residents directly or indirectly held at least 50% of the capital or the votes of the fund. Should that be the case, the pro rata share of the income of the fund could be taxable for the investor even if the income had not been distributed. As this would not apply to e.g. Finnish funds, this could be seen as discriminatory.

If an investor receives dividends through a Finnish fund which is structured as a Finnish limited partnership, the dividends may be fully or partially tax exempt under certain conditions. However, if the investor receives the dividends through a foreign fund structured as a limited partnership it seems, based on the wording of the law, that the dividend is fully taxable income. This could, in certain cases, be seen as discriminatory.

France

Regulation

Since 2004, there have been no significant changes in the regulation applicable to hedge fund-like products in France.

Pursuant to the 2003 Financial Security Act, the Autorité des Marchés Financiers ("AMF") authorised in 2004 the creation of two new types of funds called "ARIA funds" and contractual funds along with the already existing future funds ("Fonds communs d'intervention sur les marchés à terme"). While not strictly similar to the Anglo Saxon hedge fund structures, these funds share a number of similar characteristics and, in particular, the use of leverage.

There are three types of ARIA Funds:

1) "Simple funds" are subject to certain rules relating to diversification of holdings and may leverage up to 200% of net assets. Individual investors with a minimum net worth of €1 million or a minimum of one year of relevant work experience are subject to a minimum investment threshold of €10,000. Other individual investors are required to make a minimum investment of €125,000. Certain qualified investors or other types of financial or governmental organisations are not subjected to any minimum investment thresholds.

2) "Leveraged funds" are subject to identical rules regarding diversification and minimum investment thresholds as Simple funds, but may leverage up to 400% of net assets.

3) "Funds-of-alternative funds" may leverage up to 200% of net assets and are required to invest in a minimum of three underlying funds. Where investors are provided with a guarantee of capital preservation, there is no minimum investment threshold; otherwise, there is a threshold of €10,000. Certain qualified investors or other types of financial or governmental organisations are not subjected to any minimum investment threshold.

Contractual funds are not subject to rules relating to diversification of holdings or limits on the amount of leverage they may employ. Individual investors with a minimum net worth of €1 million or individual investors with a minimum of one year of relevant work experience are subject to a minimum investment threshold of €30,000. Other individual investors are required to make a minimum investment of €250,000. Certain qualified investors or other types of financial or governmental organisations are not subjected to any minimum investment.

Future funds are able to invest in futures markets and in trading commodities and are not subject to a leverage cap. Anyone can invest in future funds with a minimum investment of €10,000.

In order to create and manage an ARIA leveraged fund, a contractual fund or a future fund, the investment management company must obtain specific approval from the AMF. There is no specific approval required for a simple ARIA fund. It should be noted that all investment management companies in France are registered with, and regulated by, the AMF.

Taxation

Currently, the taxation rules are applied based on the existing OPCVM taxation principles (French UCITS), which provide for tax exemption at the level of the fund (tax transparency). New tax provisions are likely to be implemented in the next couple of years specifically to address the taxation of hedge funds.

Individuals are taxed on receipt of income at marginal income tax rates (up to 40% plus social contributions at 11%). Individuals may, subject to satisfying certain requirements, benefit from a 40% relief on dividends received or be taxed at a flat rate of 18% upon request. Capital gains on disposal of shares realised since 1 January 2008 are taxed at 29% (including social contributions). If the OPCVM is a FCIMT, which is a special vehicle for alternative investments, capital gains will be taxed at marginal income tax rates if the individual is an existing or professional investor.

Corporations, banks and insurance companies are taxed on receipt of dividends and taxed annually on the adjusted liquidation value of the shares (on a mark-to-market basis). Generally, pension funds may benefit from total tax exemption on capital gains and suffer a maximum 24% taxation on other income.

French investors in foreign funds are normally taxed on the same basis, provided the foreign fund is considered resident in the foreign country and under double-tax treaty provisions signed by France. In other cases, depending on the French tax analysis of the foreign fund's status, the tax transparency of the fund may not be recognised and all income distributed from the foreign based fund may be taxed at the maximum individual and corporation tax rates.

This tax issue is very important for hedge funds domiciled in jurisdictions such as the Bahamas or the Cayman Islands, which are considered as tax havens for French tax purposes. This may consequently trigger some adverse French CFC issues.

Germany

Regulation

The Investment Act of 2004 introduced a new regime covering both single manager hedge funds and funds-of-hedge funds. In December 2007 different legal amendments to the Investment Act of 2004 concerning hedge funds came into force.

Single manager hedge funds, both domestic and foreign, may not be publicly distributed to retail investors in Germany. According to the amendments to the Investment Act dated December 2007, not only German but also foreign single manager hedge funds which are distributed in the way of private placement fall under the scope of the Investment Act. With regard to the Investment Act domestic and foreign private placed single manager hedge funds are obliged to hand out all sale documents to the potential investor – if the investor is an individual – before the conclusion of the contract. Thus documents have to be drafted in German. Foreign funds-of-hedge funds may be publicly distributed in Germany once registered with the regulator, the Bundesanstalt für Finanzdienstleistungsaufsicht ("BaFin").

Registration of foreign funds-of-hedge funds will only be granted in cases where the BaFin considers that home state regulation of the fund is effective and that the home state regulator is prepared to cooperate with the BaFin.

The aforementioned amendments to the German Investment Act, dated December 2007, included new rules for hedge funds. One of the key amendments in relation to hedge funds is the setting of formal legal rules for prime brokers for German single manager hedge funds. Before December 2007 the application of prime brokers was only regulated in subsequent decrees of the Investment Act.

The new rules for prime brokers are designed to allow all currently prevalent models of prime brokerage.

In this context the new rules explicitly state that the safe custody of assets can be transferred to a prime broker, as long as this prime broker:

a) Is domiciled within the EEA or a state that is a full Member of the Organisation for Economic Co-operation and Development ("OECD");

b) Is subject to effective public supervision in its home state; and

c) Has adequate solvency.

The prime broker can from now on be mandated either directly by the investment company or via a depositary bank. The amendments also introduce a legal definition of the term "prime broker". According to this definition the main components of a prime brokerage service are the provision of the custody services, leverage financing, securities lending and clearing services related to a hedge fund's operations. If a prime broker is mandated with the custody of the assets there has to be a special warning notice in the prospectus. Furthermore there has to be another explicit warning notice in the prospectus if the prime broker is not a domestic one.

According to the new rules of December 2007, there are no publication requirements for redemption prices, annual reports and semi-annual reports for single manager hedge funds as they may not be publicly distributed.

For single manager hedge funds, the prospectus has henceforward to include a warning notice with respect to the risk of total capital loss. There also has to be a warning notice for single manager hedge funds referring to the limited possibility to return the fund shares to the investment company. These warning notices have in the past only been required for funds-of-hedge funds.

Referring to the limited possibility to return the fund shares, the amendments establish a payment period up to 50 days after the date of redemption for single manager hedge funds and funds-of-hedge funds.

Funds-of-hedge funds are now authorised to leverage their position through short-term loans up to 10% of the fund's value and investments in domestic or foreign money market funds for liquidity management purposes.

Based on the Ordinance on the Investments of Restricted Assets of Insurance Undertakings (Anlageverordnung – AnlV), issued by the German insurance regulator, insurance companies may invest up to 5% of committed assets in domestic hedge funds and funds-of-hedge funds and EEA-domiciled hedge funds and funds-of-hedge funds that are subject to supervision in their home country. Additionally, insurance companies may invest in hedge funds indirectly via regulated mixed funds, which can invest up to 10% of their net asset value in domestic and foreign single manager hedge funds. Indirect investments in hedge funds are also possible via wrapper products by EEA-domiciled issuers. Total direct exposure to a single manager hedge fund may not exceed 1% of the committed assets and overall total exposure (direct and indirect) may not exceed 5% of committed assets.

Taxation

German legislation classifies hedge funds as either tax transparent or opaque, depending on the fund's level of German tax reporting. The tax rules provide for a more or less level playing field for German and non-German hedge funds and abolish the prior direct discrimination against foreign funds. The most important tax reporting obligation for German and foreign funds is that a tax transparent fund has to determine its income/capital gains under German tax law. Funds will only be treated as tax transparent if the fund:

1) Calculates taxable income in accordance with German law;
2) Calculates and publishes distributed and accumulated income;
3) Obtains a tax certificate; and
4) Files tax data with the German authorities upon request.

A tax adviser, an auditor or a similar professional has to certify that the fund's German tax reporting complies with German tax law. Dividends, interest and other income (less expenses) generated by an accumulating fund (i.e. where the hedge fund does not make any distributions to the ultimate German investor during the relevant accounting year) will accrue to the German investor as a deemed distribution at the accounting year-end of the fund (so called phantom income). Capital gains generated by an accumulating fund do not accrue to the investor as part of the deemed distribution (tax deferral effect for institutional investors).

Individual investors are taxed on distributed/deemed distributed income generated by the hedge fund at marginal income tax rates of up to 45% plus surtaxes. Income from dividends generated by the fund is 50% tax free.

Capital gains from the sale/redemption of hedge fund investments by individual investors are generally tax free after a one-year holding period. Corporate entities are taxed on average at approximately 30% on distributed/ deemed distributed income generated by the hedge fund. The same tax rate applies to capital gains from the sale/ redemption of hedge fund investments. However, there is an exception: dividends and realised/ unrealised capital gains from long equity investments generated by the fund are 95% tax free at the corporate investor level, whether distributed by the fund or realised by the investor upon sale/ redemption of the investment in the hedge fund. This 95% tax exemption only applies if the hedge fund provides the German investor with an additional NAV-related reporting figure (Aktiengewinn), accounting for that portion of the NAV increase driven by equity components.

Pension funds and insurance companies are fully taxable on the relevant income and gains components but there are provisions which entitle them to reduce their effective tax burden.

Investors who hold opaque funds at the end of the calendar year are subject to punitive lump sum taxation. The investor is then taxed on the higher of:

i) 70% of the positive increase between the first and the last NAV of the fund in the calendar year; and
ii) 6% of the last NAV of the fund in the calendar year.

This means that for an opaque investment fund, even if the fund's NAV decreased during the calendar year, a minimum taxation of 6% of the calendar year end NAV will be triggered. The tax rates are the same as mentioned above. It is noteworthy that the taxation rules for private investors in the transparent fund are usually more tax beneficial than a direct investment into the assets held by the fund. These significant tax benefits correlate with enhanced but manageable reporting requirements.

Since 2007, there is a legal option for hedge funds to calculate interim profit.

With effect from 1 January 2009 there is a flat rate taxation of 25% on income and gains from capital investments realised by private investors. This has a high impact on the taxation of hedge funds in the hands of German private investors. Until the end of December 2008, only interest and dividends are taxed at the investor level. Capital gains from the sale of hedge funds were tax free after a one-year holding period (see above). From 2009 onwards the capital gains are also taxed at a flat rate of 25%. In this context there are grandfathering rules for capital investments acquired before 1 January 2009. These capital investments can generally be disposed of tax-free as before once the year-long holding period has expired.

Furthermore, the amendments of December 2007 to the German Investment Act established a new formal definition for a foreign investment fund. This has the consequence that some foreign hedge funds fall outside the scope of the Investment Tax Act. These foreign hedge funds are taxed according to general German tax law.

Such funds may fall within the scope of the German CFC rules which may require a tax reporting format which is different from the fund tax reporting. However, this has to be determined on a case-to-case basis.

Gibraltar

Regulation

For a number of years, Gibraltar has experienced growth in its hedge fund industry. Due to the number of new entrants into the market and the interest generated in establishing funds in Gibraltar, the government of Gibraltar issued the Financial Services (Experienced Investor Fund) Regulations 2005. This enhanced the regulatory structure that existed under the Financial Services (Collective Investment Schemes) Act 2005 and has since been added to by the Financial Services (Collective Investment Scheme) Regulations 2006, increasing the choice available to hedge fund promoters, and allowing for greater flexibility, lower set-up costs and a general streamlining of the set-up process.

Funds in Gibraltar are supervised by the Financial Services Commission. The Regulations effectively divide the funds that may be set up in Gibraltar into four sectors:

- Private funds
- Experienced Investor funds
- Public non-UCITS funds
- UCITS funds

Private funds

Private funds are not regulated in Gibraltar. These are funds where the shareholders are an identifiable group of persons not exceeding 50 in number, such as close clients, friends and family of the promoter or manager. These funds cannot promote themselves to the public and all investments must be made by way of a private placement.

Experienced Investor funds

These are funds designed for high net worth or experienced investors. An investor must either show that they have a net worth in excess of €1 million or invest a minimum of €100,000 in the fund. The fund must have at least two Gibraltar-resident directors who are pre-approved by the Financial Services Commission, a Gibraltar-licensed fund administrator and a custodian or prime broker.

The fund administrator will notify the Financial Services Commission within 14 days of the establishment of the fund together with an opinion from a lawyer that the fund qualifies as an experienced investor fund. These funds do not have to go through the regular licensing procedure and are intended to provide adequate investor protection whilst at the same time providing for a flexible and "lighter" regulatory environment.

Ongoing supervision of these funds is carried out through the licensed fund administrator and the requirement to file audited financial statements with the Financial Services Commission six months after the fund's year end.

Public funds

These are licensed funds which are allowed to sell their shares to the public. The licensing procedure can take between three and six months and is quite involved, requiring the submission of application documents, prospectus and incorporation documents for the fund, the names of the investment manager and the directors, together with copies of administration agreements, custodian agreements, investment management agreements and registrar and transfer agent agreements where applicable.

All of the directors (at least two of whom have to be Gibraltar resident) have to be approved as "fit and proper" persons with the proper level of investment experience. The minimum share capital requirement is £50,000 and public funds are required to have a "bricks and mortar" presence in Gibraltar.

Public funds are supervised by the Financial Services Commission and ongoing supervision is exercised by the requirement to submit semi-annual reports and an audited annual report.

- **Non-UCITS public funds:**
  A non-UCITS fund is one that does not invest in transferable securities. The Regulations impose restrictions on the types of investments that a non-UCITS public fund may hold. It is, however, possible to obtain derogations from the Financial Services Commission allowing the fund to invest in certain investments.

- **UCITS public funds:**
  A UCITS fund is one which invests in transferable securities (stocks and bonds registered in a recognised stock exchange). A UCITS fund is licensed in compliance with EU Directives. Unlike the non-UCITS public funds, they must comply with all of the regulations with regard to investment restrictions and structure, for example:
  - No more than 10% of the fund's assets may be invested in one entity; and
  - The fund can invest only up to a total of 10% of the share capital of any one entity.

  In addition, the investment manager, custodian and fund administrator of a UCITS fund must also be licensed. A UCITS fund is usually set up by a bank or an investment manager and its shares or units will be marketed to clients and retail investors. A UCITS fund licensed under the Regulations will be able to "passport" into the EU.

Taxation

Licensed funds in Gibraltar (including EIFs) are exempt from taxation in Gibraltar upon receipt of a certificate from the Commissioner of Income Tax.

In addition, there is no capital gains tax or wealth tax in Gibraltar and stamp duty on the increase of capital and on the transfer of shares is fixed at £10.

Note that Gibraltar is currently in the process of obtaining a decision from the EU as to whether it can have a tax system separate from that of the UK (currently, it does have a tax system different to the UK). The expectation is that this will prove successful and if so a new tax system will be introduced in Gibraltar. However, there are no firm proposals as to what the new system will involve, although expectations are that it will be an across the board 10% – 12% corporation tax.

Greece

Regulation

Greek legislation effectively prevents the establishment of domestic hedge funds, unless under a UCITS III form (which seems unlikely under current practice). Distribution of foreign hedge funds by private placement is permissible, subject to the granting of a licence by the Capital Markets Committee.

Taxation

Individuals are taxed based on a tax scale ranging from 15% to 40%. Individual investors are not taxed on income and capital gains from UCITS funds. For non-UCITS funds, in the absence of any special provision, the taxation will depend on the legal form of the fund (but generally it is expected that the respective income would be fully taxable at the rates above). Corporates, banks and insurance companies are taxed on income and capital gains from UCITS funds at 25% when the respective income and gains are distributed. Special rules determine how taxation may be deferred by allocating the profit that is not distributed to a special tax reserve. Pension funds are exempt from tax, although special rules may apply, depending on the type of pension fund.

Guernsey

Regulation

With effect from 1 February 2007, the Guernsey Financial Services Commission ("GFSC") introduced the registered closed-ended investment trust regime. Under this regime, closed-ended funds are granted regulatory consent as registered funds within three working days provided that a Guernsey fund administrator makes the appropriate certifications to the GFSC. The only restrictions that are imposed on this regime are that such funds cannot be marketed to Guernsey residents and that a statement is included in the prospectus that GFSC has not reviewed the offering documentation. There are no other restrictions on the identity of investors.

The regime will not be appropriate where the GFSC consent is required by another regulator, e.g. Euronext. The GFSC has also announced that with effect from 1 February 2007 there will no longer be any Guernsey regulatory requirements to have a principal manager established in respect of Guernsey open-ended funds.

Proposals to remove open-ended funds, including hedge funds, from regulation, will require amendments to the Protection of Investors Law and will be subject to the legislative process which is ongoing.

Guernsey funds will be classified as either "Registered" or "Regulated" and the distinction between open and closed ended will be removed. Those investment funds that take the "Registered" route will be exempt from any prior authorisation or regulation, subject only to notification requirements as to whether structured as open or closed ended. Closed-ended funds that seek to be "Regulated" will need to comply with new funds' rules to be enacted. Presently, closed-ended funds are not regulated in Guernsey.

Taxation

Individual investors resident in Guernsey investing into hedge funds are taxed at the rate of 20% on income. A Guernsey resident investor who invests into an exempt company will only be taxed on actual distributions made to him, whereas a Guernsey resident investor may be taxed on underlying investment income or on deemed distributions where investment is made into a company which is resident but pays tax at 0%. No capital gains tax regime exists in Guernsey.

A "Zero/Ten" corporate income tax regime was introduced in Guernsey from 1 January 2008. Under the Zero/Ten regime the standard rate of corporate income tax is 0%, whilst specified banking activities are taxed at 10% and property development and rental income are taxed at 20%.

An Exempt Company scheme exists in Guernsey. Collective investment schemes and closed-ended investment vehicles are eligible to apply for exempt company status. Exempt entities are treated as not resident in Guernsey for tax purposes and will only suffer tax on Guernsey source income, excluding by concession Guernsey bank deposit interest.

Gulf Cooperation Council ("GCC")

The GCC is a cooperative agreement involving six countries: Bahrain, Kuwait, Oman, Qatar, Kingdom of Saudi Arabia and the United Arab Emirates ("UAE"). Each of the six countries has its own laws, rules and regulations. The agreement between the GCC member states was signed to foster cooperation and harmonisation on a wide range of issues.

This agreement makes specific reference to taxation and accordingly GCC nationals should be taxed in each of these separate jurisdictions as if they are nationals of that jurisdiction itself.

In most GCC countries the taxation of foreigners (i.e. non-GCC nationals) differs from that of GCC nationals.

As part of the overall economic growth in the region, there has recently been a focus on the development of modern investment laws and regulations. Dubai in particular (an Emirate of the UAE) has taken some significant steps to establish a new regulatory framework. It has issued specific collective investment legislation to encourage both the establishment of hedge funds and the active management of those funds from a designated financial services centre, i.e. the Dubai International Financial Centre ("DIFC").

Similarly, Bahrain and Qatar have followed suit by also establishing, or revamping, their own specific regimes aimed at the financial services industry.

More recently, the Dubai Financial Services Authority ("DFSA"), the independent regulator of the DIFC, has issued a code of practice for hedge funds, which seeks to set out best practice standards for operators of hedge funds. In particular, the code of practice sets out nine key principles which are aimed at addressing risks inherent in the operation of hedge funds.

VAT in the GCC Region

There has been much publicity about the introduction of a VAT in the UAE and possibly those countries comprising the GCC.

For information on the position in each of the countries that make up the GCC, please refer to each country individually, listed alphabetically.

Hong Kong

Regulation

Hedge funds that have been authorised by the Securities and Futures Commission ("SFC") in Hong Kong can be marketed to retail investors in Hong Kong. All authorised funds, including authorised hedge funds, are governed by the Code on Unit Trusts and Mutual Funds ("the Code") issued by the SFC. The Hedge Fund Guidelines of the Code (last updated by the SFC in September 2005) provide a regulatory framework for authorised retail hedge funds and cover both single manager hedge funds and funds-of-hedge funds. The Hedge Fund Guidelines establish minimum subscription thresholds for different categories of hedge funds e.g. US$50,000 for single manager hedge funds and US$10,000 for funds-of-hedge funds. As of March 2007, 14 hedge funds have been authorised by the SFC.

An entity providing asset management services in Hong Kong is required to be licensed by the SFC to carry out such activities in Hong Kong. The regulated activities which require SFC licences are defined in Schedule 5 of the Securities and Futures Ordinance.

Taxation

Individual and corporate investors are generally not taxed on distributions from corporate hedge funds, where these distributions are in the form of dividends. Distribution of profits by a partnership hedge fund to its partners, in most cases, is not taxed in the hands of the partners. However, the operation of the deeming provisions pursuant to the Profits Tax Exemption for Offshore

Funds may deem certain distributions as taxable in the hands of certain Hong Kong investors.

Where gains on the disposal of equity interests in hedge funds are considered to be capital in nature, such capital gains will not be subject to profits tax in Hong Kong. Accordingly, individual investors are usually not taxed on the gains on the disposal of the equity interests in hedge funds provided that the individuals are not carrying on a business of trading in hedge funds. Where corporate investors are carrying on a business of securities trading, the gains on the disposal of equity interests in hedge funds will be subject to Hong Kong profits tax unless the disposal gains are derived from an offshore source. The Hong Kong profits tax rates for individuals and corporations from 2008/09 are to be reduced to 15% and 16.5% respectively pursuant to the 2008/09 Budget.

If an offshore hedge fund is exempt from Hong Kong profits tax under the Profits Tax Exemption for Offshore Funds (enacted on 10 March 2006), a Hong Kong resident investor will be subject to the "deeming provisions" if either one of the following conditions is satisfied:

i) The Hong Kong resident investor, together with his associates (regardless of the residency of the associates), directly or indirectly holds 30% or more of the beneficial interests in the fund; or

ii) The Hong Kong-resident investor is associated with the fund and holds, directly or indirectly, a beneficial interest in the fund.

The deeming provisions will not be invoked if the fund is bona fide widely held. If the "deeming provisions" are invoked, the Hong Kong resident will be taxed based on his portion of the underlying Hong Kong sourced profit of the offshore hedge fund, regardless of whether an actual distribution has been made or not.

Funds authorised under section 104 of the Securities and Futures Ordinance are exempt from Hong Kong profits tax. Unauthorised funds, including hedge funds, are typically exempt from Hong Kong profits tax if they comply with certain regulatory requirements and the following Profits Tax Exemption for Offshore Funds conditions are satisfied:

i) The fund is a non-resident of Hong Kong;

ii) Profits were derived from "specified transactions";

iii) The specified transactions were carried out through or arranged by a "specified person"; and

iv) The fund does not carry on any other trade, profession or business in Hong Kong.

Income from transactions incidental to the specified transactions is also exempt from Hong Kong profits tax if the receipt from such incidental transactions is not more than 5% of the total trading receipts.

Hedge funds that do not qualify for Hong Kong profits tax exemption will be subject to Hong Kong profits tax if:

i) The hedge funds, directly or indirectly, carry on a trade or business in Hong Kong; and

ii) Hong Kong sourced profits of a revenue nature are derived from such trade or business.

Profits sourced outside Hong Kong and capital gains (which are not revenue in nature) are not taxable in Hong Kong.

India

Regulation

Currently, there are no specific regulations governing hedge funds or investment by hedge funds in India. Prior to October 2007, overseas hedge funds were investing in Indian markets through Participatory Notes ("P Notes") issued by the Foreign Institutional Investors ("FII") registered with the securities market regulator, the Securities and Exchange Board of India ("SEBI"), as SEBI was granting FII registrations only to regulated entities. Since October 2007, SEBI has been discouraging the issue of P Notes and has started granting FII or its sub-account registration to all funds including hedge funds. Since then, SEBI has granted registration to approx 500 FIIs / sub-accounts, many of which could be hedge funds. Even prior to that, since there is no legal distinction between a private equity fund and a hedge fund, many hedge funds have invested in India as Foreign Venture Capital Investors ("FVCI") after registering with the SEBI. Any fund registered with SEBI as FII or its sub-account has to comply with the regulations laid down in SEBI (Foreign Institutional Investors) Regulations, 1995. If the fund is registered as an FVCI, it would need to comply with the SEBI (Foreign Venture Capital Investor) Regulations, 2000.

Taxation

The Income Tax Act in India provides for a specific tax regime for the FIIs and its sub-accounts. The rates applicable to them are summarised below. Investing through treaty jurisdiction can mitigate tax in India.

Nature of income	Rates of tax For a non-corporate FII*	Rates of tax For a corporate FII**
Long term capital gains[i] (Transaction chargeable to Securities Transaction Tax ("STT")	Nil	Nil
Long term capital gains (Transaction not chargeable to STT)	11.33%	10.558%
Short term capital gains[ii] (Transaction chargeable to STT)	11.33%	10.558%
Short term capital gains (Transaction not chargeable to STT)	33.99%	31.67%
Dividend	Exempt	Exempt
Interest on securities	22.66%	21.12%

* Including Surcharge at 10% and Cess at 3%

** Including Surcharge at 2.5% and Cess at 3%

i. Long-term capital gains arise on the sale of shares held for more than 12 months from the date of acquisition.

ii. Short-term capital gains arise on shares which are held for not more than 12 months from the date of acquisition.

There is no separate / beneficial tax regime applicable to FVCIs, which are taxed normally. Long term capital gains are exempt from tax and short term capital gains are chargeable to tax at the rate of 15% if the sale transaction is of shares in a company or a unit of an equity oriented fund which is chargeable to Securities Transaction Tax ("STT"). In all other cases, long term capital gains and short term capital gains are chargeable to tax at the rate of 10% and 30% respectively. In addition a surcharge at a rate of 2.5% in the case of corporate assessee (10% in the case of a non-corporate if taxable income exceeds INR1 million) and Cess at 3% on tax and surcharge is also payable. Dividends declared, distributed or paid by an Indian company, which are chargeable to dividend distribution tax, are exempt from tax.

If income is held to be business income, it can be charged to tax at 42.23% if FVCI is held to have a Permanent Establishment ("PE"). In the absence of PE, the income is not taxable in India.

In the case of FVCIs, investing through a treaty jurisdiction can mitigate tax in India.

Ireland

Regulation

Hedge funds in Ireland can be set up as Qualifying Investor Funds ("QIFs"), Professional Investor Funds ("PIFs") or Retail Funds-of-Hedge Funds. The QIF has proven to be the most popular structure for the establishment of hedge funds and other types of alternatives funds. Irish QIFs have no restrictions on investment strategy or gearing. They can now be authorised by the Irish financial regulator within 24 hours of the submission of relevant documentation to the financial regulator. The table on page 31 summarises the main characteristics of the fund types available in Ireland.

Hedge funds seeking to domicile in Ireland must obtain authorisation from the Irish financial regulator. Approval is a two-stage process involving the approval of the fund's promoter and the approval of the fund itself, including details of the service providers. The promoter must be approved before approval of the fund can take place by the financial regulator. In 2007, the financial regulator introduced a new fast-track approval process for promoters of Irish funds. The fast track approval for the promoters is available to firms that are already regulated as investment firms under the Markets in Financial Instruments Directive ("MiFID") in a Member State of the European Economic Area ("EEA") (European Union Member States, Norway, Iceland and Liechtenstein). On provision of the necessary information set out in the financial regulator's application checklist and subject to certain criteria, the financial regulator will accept the entity as a promoter for an Irish fund within one week of receipt of the application. This new fast track process reduces the overall length of the approval process for hedge funds.

For a number of years, Ireland has been positioning itself as a location for the establishment of "regulated" alternative investment funds such as hedge funds and property funds. The new "fast track" authorisation process, which the financial regulator introduced in close cooperation with the Irish funds industry, substantially improves the time to market for Irish-domiciled funds set up as QIFs. The success of this new authorisation process for QIFS, coupled with the fast track approval for the promoters, has significantly improved Ireland's position as a centre for funds and has allowed it to keep pace with similar regulatory developments in other jurisdictions.

Taxation

Irish resident individual investors in hedge funds are generally subject to tax on income at the standard rate of income tax (currently 20%) and on capital gains at the standard rate of income tax plus 3% (23%) on a receipts basis.

For investors who acquired their interest in the fund on or after 1 January 2001, the holding of shares at the end of a period of eight years from acquisition (and thereafter on each eight year anniversary) will constitute a deemed disposal and reacquisition at market value by the shareholder of the relevant shares. The tax payable on the deemed disposal is subject to tax at the

Summary of the main characteristics of the fund types available in Ireland

	Retail FOHF	PIFs	QIFs
Investment Restrictions	Retail FOHF may not invest more than 20% of net assets in the units of any one scheme (this can be increased to 30% for one of the underlying schemes)	PIFs can invest up to 40% in any one scheme; if they invest in more than 40% they are considered to be feeder-type investments.	None, however like PIFs, if they invest in more than 40% they are considered to be feeder-type investments.
Investments in unregulated schemes	May not invest more than 10% of net assets in unregulated schemes.	May invest up to 100% in unregulated schemes subject to a maximum of 20% in any one unregulated scheme.	May invest up to 100% in unregulated schemes subject to a maximum of 40% in any one unregulated scheme.
Redemptions	While open-ended PIFs and QIFs may provide for dealing on a quarterly basis, the Financial Regulator requires that the time between submission of a redemption request and payment of settlement proceeds must not exceed 90 calendar days. This period can, however, be extended to 95 calendar days in the context of a PIF/QIF feeder or fund of funds scheme, including a PIF or QIF which provides for dealing on a more frequent basis (e.g. monthly, weekly, etc). In such circumstances, a prominent statement highlighting the fact that while the scheme deals, for example, on a monthly basis, there may be times when redemption proceeds are paid on a quarterly basis. Retail FOHF, PIFs or QIFs can retain up to 10% of redemption proceeds, where this reflects the redemption policy of the underlying scheme and until such time as the full redemption proceeds from the underlying scheme are received.		
Investment in other Funds of Funds	A retail FOHF may not invest in other funds-of-hedge funds. A PIF is permitted to derogate from this requirement provided investment in other fund of funds does not exceed 10% of net assets. This requirement is disapplied in the case of a QIF.		
Other Requirements	The underlying unregulated schemes must be subject to independent audit and must have arrangements in place whereby all assets are held by a party or parties independent of the manager of the underlying schemes.		

standard rate of income tax plus 3% (currently 23%). Any tax arising on such a deemed disposal will be taken into account in respect of any subsequent disposal of the relevant shares.

If a hedge fund is based outside Ireland but in an EU, EEA or double tax treaty country, it must be analogous to an Irish-regulated fund in order for the above treatment to apply. If it is not analogous to an Irish-regulated fund, then Irish investors will be subject to taxation at their marginal rate of income tax, likely 41% (plus 5.5% social insurance/health levy) on income received from the fund, and at 20% on gains realised. Special anti-avoidance rules may also apply where the investor, together with connected parties, is in a position to direct the investment strategy of the fund.

If, however, the hedge fund is located in a country outside the EU or EEA, and with no double tax agreement with Ireland (non-EU/non-EEA/non-DTA), individual investors will be taxed at 41% (plus 5.5% social insurance/health levy) on income and gains on a receipts basis (gains on disposal of units in a fund which has been designated by the Irish Revenue as a “distributing fund” are liable to capital gains tax at 40% and are not liable to social insurance/health levy).

Corporate investors in hedge funds are subject to tax on trading income at 12.5%, non-trading income at 25% and capital gains at either 12.5% or 23% (normally on a receipts basis). If the hedge fund is located in a non-EU/non-EEA/non-DTA country, corporate investors will be taxed on capital gains at 40% (qualifying distributing funds) or 25% (non-distributing funds) on a receipts basis.

In general, bank and insurance company investors in hedge funds are subject to tax on income and capital gains at 12.5% on a fair value basis, although a realisation basis applies in certain circumstances.

Where such companies are reporting under IFRS, the accounting profit (fair value) will form the basis of the taxable profits. Pension fund investors are tax exempt.

Legislation introduced a number of years ago effectively ensures that locating the investment management activity of a non-Irish hedge fund in Ireland does not give rise to an Irish tax exposure for the fund, once it meets certain independence criteria.

Isle of Man

Regulation

Two new fund categories were introduced in the Isle of Man during 2007:

- The Specialist Fund has been designed for Institutional investors:
  - Minimum subscription US$100,000;
  - No regulatory pre-approval, only post-launch notification;
  - No regulatory limits on asset types or borrowing; and
  - One IOM resident director required if fund administered overseas.
- The Qualifying Fund is intended for non-retail investors:
  - No minimum subscription level;
  - No regulatory pre-approval, only post-launch notification;
  - No regulatory limits on asset types or borrowing;
  - Regulated promoter required;
  - One independent non-executive director required; and
  - One IOM resident director required (can be same as above).

Foreign funds may be administered in the Isle of Man without being subject to Manx regulation. This enables Cayman and BVI incorporated funds to be administered in the Isle of Man without the burden of dual regulation

Taxation

All Isle of Man tax resident companies (excluding licensed banks and companies that receive income from land and property situated in the Isle of Man) are taxed at 0%.

Italy

Regulation

Domestic and foreign hedge funds are required to be authorised by the Bank of Italy and CONSOB (Commissione Nazionale per le Società e la Borsa). The CONSOB regulates the distribution of foreign and domestic hedge funds.

Distribution to individual investors is restricted by the fact that no public marketing is allowed, and that there is a €500,000 minimum investment requirement and a maximum limit of 200 shareholders.

Domestic hedge funds are required to appoint an Italian bank or an Italian branch of a bank incorporated in another EU Member State as a depository bank.

Starting from June 2007, management companies can offer both traditional and alternative products provided that they appropriately enhance the risk management, internal control and compliance functions.

Taxation

Italian hedge funds investing in financial instruments should not be subject to ordinary Italian income taxes. However, a 12.5% substitutive tax should apply on the annual asset value appreciation. Most of the profits (e.g. dividends) received by the fund should not be subject to Italian withholding taxes. The rate should be reduced to nil where all the investors are “qualified” non-resident investors.

Private individuals investing in domestic hedge funds should not be subject to tax on the fund’s proceeds. Corporations, banks, insurance companies and foreign investors with an Italian permanent establishment investing in a domestic fund should be taxed at ordinary income tax rates, with a tax credit of 15% on income from capital received.

Non-resident investors without an Italian permanent establishment should not be subject to withholding tax upon collection of the fund’s proceeds. “Qualified” non-resident investors in domestic funds may obtain a tax refund of 15% on income from capital received.

Italian pension funds investing in domestic funds should be subject to an 11% tax with a credit of 15% on income from capital received.

Italian individuals investing in foreign hedge funds should be fully taxable at progressive ordinary tax rates starting from 23% up to 43%. Italian corporations, banks and insurance companies investing in foreign hedge funds should be taxed at ordinary income tax rates. Pension funds investing in foreign hedge funds may be subject to tax at 12.5%.

Notes

1) With reference to the foreign hedge funds, a withholding tax of 12.5% may be applied by Italian authorised intermediaries upon remittance of the income, which is treated as a creditable advance tax payment by individuals, corporations, banks and insurance companies.
2) “Qualified” non-resident investors include investors resident in “white list” countries (i.e. countries with exchange of information procedures in place with Italy).
3) For funds investing in “qualified” participations (i.e. more than 10% of the voting rights in the case of listed companies or more than 50% of the voting rights for unlisted companies), the portion of the annual asset value appreciation attributable to the “qualified” participations should be subject to a 27% substitutive tax. However, if more than 50% of the fund’s units are held by certain “qualified” investors (other than individuals), the 12.5% substitutive tax should apply (in lieu of the 27%). To this extent, the following are treated as “qualified” investors: investment firms, banks, stockbrokers, management companies, SICAVs, pension funds, insurance companies, financial holding companies of banking groups, other financial intermediaries (under articles 106, 107 and 113 of the banking text code), bank foundations and other entities with specific expertise and competence in transactions involving financial instruments.

Japan

Taxation

Japanese corporations investing in hedge funds are generally subject to corporate tax at the effective statutory tax rate of approximately 42% (unless size-based taxation applies, in which case the rate may vary) on income and gains from investments in hedge funds. If hedge funds are structured as corporations or investment trusts and the paying agent is based in Japan, distributions from hedge funds may also be subject to withholding tax at the rate of 20% (reduced to 7% until 31 March 2009 if the funds are publicly traded, and 15% thereafter).

In the case of Japanese individual investors, distributions from hedge funds (where established as corporations or investment trusts) are subject to withholding tax at the rate of 20% (reduced to 10% until 31 December 2010, subject to the ceiling noted below, provided the hedge funds are publicly traded).

From 1 January 2009, Japanese individual investors who receive dividends on listed stocks may elect separate assessment taxation at the rate of 20%. Where a Japanese individual elects separate assessment taxation, any capital losses incurred by the investor in the current year, or three prior years, on the disposal of listed stocks made through a broker-dealer acting in Japan may be offset against dividend income derived from listed stocks. A transitional rate of 10% will apply to dividends on listed stocks from 1 January 2009 until 31 December 2010 up to an annual ceiling of JPY1 million.

If the hedge funds are not publicly traded, the distribution is subject to income tax at progressive individual income rates (up to 50%). Capital gains arising from the sale of units/shares in a hedge fund are subject to income tax at the rate of 20%. A transitional rate of 10% will apply to capital gains on listed stocks from 1 January 2009 until 31 December 2010 (up to an annual ceiling of JPY5 million) where the sale is made to or through a broker-dealer acting in Japan.

If hedge funds are established as partnerships and treated as pass though for Japanese tax purposes, Japanese investors are treated as investing in the underlying assets of the hedge funds directly and taxed on an "arising" basis.

Foreign hedge funds structured as a corporation or certain investment trusts may be subject to the Japanese anti-tax haven ("CFC") rule if more than 50% of their units are owned directly or indirectly by Japanese resident (including related parties) individuals or corporate investors. In such a case, investors who own 5% or more of the total number of units of a hedge fund may be liable to tax in respect of the portion of income retained in the foreign hedge funds attributable to the investor, even if it is not distributed by the hedge fund.

A foreign hedge fund that has a permanent establishment ("PE") in Japan may be subject to tax in Japan on Japanese source income. In this regard the 2008 Tax Reforms, which were passed by the Japanese Diet on 30 April 2008, introduced an independent agent exemption from the definition of dependent agent PE under Japan's domestic law. This exemption is broadly in line with Article 5 of the Organisation of Economic Co-operation and Development's ("OECD") Model Tax Convention on Income and on Capital.

If a foreign hedge fund has no PE in Japan, capital gains derived from certain sales of shares may still be subject to Japanese tax in certain circumstances. In addition, capital gains derived from the sale of shares in a Japanese corporation, holding mainly real estate assets in Japan, will be subject to taxation in specified cases based on the extent of the shareholding of the hedge fund in the real estate holding corporation. In certain circumstances, the above rules may be overridden by the terms of double tax treaties with Japan, as applicable.

Jersey

Regulation

There are four different regimes available to hedge funds in Jersey:

1) "Expert Funds", which has a streamlined and accelerated regulatory approval process by shifting the emphasis away from comprehensive regulation of each fund towards a regulation of the functionaries in the Island. The Expert investor definition includes professional investors, individuals or entities with net investment assets of not less than US$1 million, carried interest investors and any investor who invests a minimum initial amount of US$100,000. There are no restrictions on investment strategies and investment limits.

2) "Unclassified Funds" which fall under the Collective Investment Fund ("CIF") Law but have a lower minimum investment requirement than the Expert and Private Funds. This category covers funds which are to be marketed principally outside the UK by means either of a public offering or an offering to more than 50 persons or where the securities to be issued by the fund will be listed.

3) "Private Funds" are not governed by the CIF Law provided that the fund is offered to fewer than 50 professional or institutional investors and has a minimum investment requirement of £250,000. The Regulator ("JFSC") does continue to exercise ongoing supervision of these funds but there is considerable flexibility in the way in which these funds can be structured and operated.

4) "Unregulated Funds" are exempt from regulation by virtue of an enabling order made under the CIF Law which covers schemes or arrangements that have been established as either an unregulated exchange-traded fund or an unregulated eligible investor fund. An unregulated exchange-traded fund must be closed–ended, listed or have applied for listing on a stock exchange or market and may take any form recognised under the laws of Jersey including a company or limited partnership. An unregulated eligible investor fund is one which restricts investment to eligible investors only. An eligible investor is defined as an investor who makes a minimum initial investment of US$1 million or is an institutional investor or professional investor.

The regulation of fund functionaries acting for unclassified funds was transferred from the CIF Law to the Financial Services (Jersey) Law 1998 on 14 November 2007. This focuses on the regulation of service providers rather than the underlying products they administer, and as part of this change functionaries will now have to comply with new Codes of Practice for Fund Services Business and provide a report from the directors to this effect.

Companies may also be established as a Protected Cell Company ("PCC") or an Incorporated Cell Company ("ICC") and in January 2007 the JFSC introduced the Listed Fund Guide, which ensures that closed-ended investment funds that are listed on European and other leading stock exchanges can be subject to a streamlined 72-hour approval process.

Jersey continues to review its regulatory framework in light of industry developments.

Taxation

Individual investors resident in Jersey and investing into hedge funds are taxed, on a receipts basis, at the rate of 20% on income. No capital gains tax regime exists in Jersey.

Under the existing Income Tax (Jersey) Law 1961, banks, insurance companies and corporate entities resident in Jersey are taxed on income from hedge fund investments at the rate of 20% on a receipts basis. Pension funds are not taxed. Companies which have obtained International Business Company status or Exempt Company status may benefit from a lower rate of tax, however the current Jersey tax regime together with the International Business Company and Exempt Company schemes are being phased out and will be replaced by a new "Zero/Ten" corporate income tax regime from 1 January 2009.

Under the Zero/Ten tax regime the standard rate of corporate income tax will fall to 0%, whilst regulated financial services companies which provide specified services will be taxed at 10% and property income will be taxed at 20%. The new regime will not change the tax treatment of hedge funds and hedge fund managers will be taxed at 0%. Capital gains will continue to be outside the scope of Jersey tax.

Kingdom of Saudi Arabia

(Part of the Cooperation Council for the Arab States of the Gulf ("GCC"))

Taxation

A new tax law was recently introduced in Saudi Arabia. Accordingly, there is some degree of uncertainty over several tax issues and it is therefore highly advisable to seek professional tax advice on a case by case basis.

The new tax law essentially introduced two types of income taxes: a flat rate of income tax at 20%, and withholding taxes on any payments made outside the Kingdom (again at rates of up to 20%).

Kuwait

(Part of the Cooperation Council for the Arab States of the Gulf ("GCC"))

Taxation

The Kuwaiti tax authorities apply corporate income tax rates of up to 55% on all Kuwaiti sourced gains and profits of a corporate entity. However, there is no clear definition of what constitutes Kuwaiti source income, though work which is done outside of Kuwait under a composite contract which involves an onshore activity may be considered to be work performed in Kuwait.

However, it should be noted that the existing tax law has been amended and provides for a reduced flat rate of corporate taxation (15%) on all Kuwaiti sourced gains and profits. Furthermore, the amended tax law provides for an exemption on capital gains realised by non-residents on the disposal of Kuwaiti shares. These changes are due to come into force by the end of the year.

Liechtenstein

Regulation

Under current law domestic IUG (Law on Investment Undertakings) regulated hedge funds and funds-of-hedge funds need a custodian bank and an administrator domiciled in Liechtenstein.

Foreign sub-custodians are acceptable and certain administrator services can be further delegated by the administrator to foreign administrators. Currently, Liechtenstein does not have a typical prime broker concept.

For domestic IUG-regulated hedge funds and funds-of-hedge funds the formal "fund management company" as defined by the law has to be domestic. However, portfolio management services can be delegated to a foreign investment adviser.

Foreign hedge funds and funds-of-hedge funds approved for distribution in Liechtenstein need a domestic approved representative and a domestic paying agent for the settlement of subscriptions, redemptions, distributions, etc.

IUG-regulated open-ended Liechtenstein hedge funds or funds-of-hedge funds and foreign-regulated hedge funds approved for distribution in Liechtenstein can be sold to retail, high net worth and institutional investors. Alternatively, a bank or other professional asset manager can distribute hedge funds and funds-of-hedge funds within the scope of an approved and disclosed formal asset allocation policy, based on a discretionary management contract with the client.

The distributor of IUG-regulated funds is generally either an FMA ("Financial Market Authority Liechtenstein") regulated institution or has to obtain the FMA's approval as a distributor.

Furthermore, hedge funds and funds-of-hedge funds not approved for distribution in Liechtenstein can still be used within the scope of the asset allocation policy applied on discretionary management contracts, or can be sold to investors on their own request, but such funds must not be publicly advertised and promoted.

Taxation

Since 1 July 2006 there has been no taxation on a hedge fund's capital. Income on assets under management is not subject to income taxes at the fund level.

There is no withholding tax levied in Liechtenstein on distributions made by the fund. The investors receive the whole distribution without any deductions, irrespective of where the investors (corporation or individual) have their tax residence.

Individual investors who are tax resident in Liechtenstein have to declare the income received from hedge funds on their normal income tax return. In Liechtenstein, individuals are taxed based on realised capital gains, while unearned income is not taxed.

Tax privileged Liechtenstein companies, like privileged foundations, do not pay any income tax. Any capital gain or distribution from a hedge fund is therefore tax free.

Luxembourg

Regulation

Foreign hedge funds/fund-of-hedge funds can be distributed in Luxembourg.

Luxembourg retail investors can invest in foreign hedge funds and foreign funds-of-hedge funds, provided that the fund is approved by the Commission de Surveillance du Secteur Financier ("CSSF") for public offering in Luxembourg.

Only foreign funds that are subject to home state supervision, which the CSSF deems to be adequate, will be approved. Luxembourg regulations furthermore require that the CSSF approves foreign funds documentation and scrutinises the sound experience and good repute of the depositary as well as one of the board of directors or managers of the fund. The regulator also makes sure that foreign funds have appointed a local paying agent and intend to take appropriate measures to disclose key information to investors.

Except for restrictions on public offering, there are no major obstacles in Luxembourg to distributing foreign hedge funds and/or funds-of-hedge funds through a private placement regime.

Domestic hedge funds/ funds-of-hedge funds

Domestic hedge funds and funds-of-hedge funds will be set up as non-harmonised collective investment schemes (thus not benefiting from an EU passport). They can be created pursuant to one of the following two regimes:

- A collective investment scheme compliant with Part II of the Law of 20 December 2002 on Collective Investment Schemes (so called "Part II funds"). Shares/units of Part II funds can be distributed to retail investors in Luxembourg. The possibility to distribute a Part II fund to retail investors abroad will depend upon the flexibility of foreign authorities in the target distribution country; retail distribution will only be possible if registration of the fund with the foreign authorities in the target country is possible, which must be analysed on a case-by-case basis.

- A collective investment scheme compliant with the Law of 13 February 2007 on Specialised Investment Funds ("SIFs"). Shares/units of SIFs can only be distributed to "well-informed investors" as defined by the law of 13 February 2007, which include institutional investors, professional investors and other investors, provided they meet the following conditions:

  a) They state in writing that they adhere to the status of "well-informed" investors; and

  b) They invest a minimum of €125,000 or they benefit from a certificate issued by a bank or an investment firm or a management company stating their expertise, experience and knowledge to measure the investment made in the SIF, in an adequate way.

One of the key advantages of SIFs is that such funds can be launched without pre-approval by the CSSF. Therefore, the time to market can be very short provided that an application is filed for approval with the CSSF within one month following the creation of the fund.

Finally, it must be pointed out that the UCITS III regime (which applies to coordinated funds which benefit from a EU passport) has allowed the implementation within UCITS funds of certain strategies that are typically encountered in hedge funds ("130 / 30" strategies for example). However, this remains a limited phenomenon as a number of hedge fund strategies cannot be pursued within UCITS funds.

Taxation

Luxembourg resident individual investors are taxed, in principle, on receipt of income (dividends) derived from hedge fund investments at their progressive tax rates up to a maximum of 38.95% increased by the 1.4% dependency contribution. However, certain kinds of dividends may benefit from a 50% exemption.

Capital gains realised by a Luxembourg resident individual investor are exempt after six months if their direct/indirect shareholding in the fund does not exceed 10% (alone or together with members of his/her household) and the disposal takes place more than six months from the date of acquisition. Otherwise, if the disposal takes place within six months of the acquisition the capital gains will be taxed at a maximum of 38.95% increased by the 1.4% dependency contribution (some allowances are available). If the disposal takes place after six months and the shareholding exceeds 10%, the capital gain will be taxed at half the rate mentioned above.

In certain situations, depending on the characteristics of the fund and the location of the paying agent, the European Union Savings Directive ("EUSD") may be applicable, resulting in either exchange of information or withholding tax being levied.

Banks, insurance companies and corporate entities are taxed upon receipt of income and capital gains from hedge fund investments at the rate of 29.63%.

For pension fund investors, income and capital gains from hedge fund investments are included in their taxable base; however, pension schemes generally are tax neutral.

Malta

Regulation

The Maltese Investment Services Act provides a comprehensive regulatory regime for investment services and collective investment schemes ("CIS") – which include Private Investment Funds ("PIFs"). All hedge funds that have been set up in Malta are PIFs and these can take the form of open or closed-ended investment companies (SICAV or INVCO), or a limited partnership or a unit trust.

The Malta Financial Services Authority ("MFSA") is responsible for the licensing, regulation and supervision of CISs, including PIFs. PIFs are subject to minimal regulation if their only activity is operating as a PIF and the PIF appoints "functionaries" (e.g. custodian, prime broker, investment adviser, etc) to carry out licensable activities, and accordingly, the PIF will not itself carry out any investment services licensable activity. If the PIF carries out investment services licensable activities – for example, by acting as its own manager – those activities will be regulated. The MFSA only accepts regulatory responsibility for that part of the PIF's activity that constitutes licensable activity in Malta.

Hedge funds set up as PIFs may not be marketed to retail investors in Malta although UCITS funds (which may have certain hedge fund-like characteristics) are eligible for a "passport" enabling them to be marketed in Malta. Furthermore, although hedge funds are typically established as PIFs, it is also possible for a fund established overseas to transfer its domicile to Malta and apply to be registered as a PIF.

The PIF regime consists of three categories: PIFs promoted to Experienced Investors, PIFs promoted to Qualifying Investors and PIFs promoted to Extraordinary Investors:

Experienced Investors

"Experienced Investors" are defined as persons having the expertise, experience and knowledge to be in a position to make their own investment decisions and understand the risks involved. An investor must state the basis on which he/she satisfies this definition by making a confirmation in writing. Furthermore, the minimum investment threshold is €15,000 or equivalent in foreign currency.

PIFs promoted to Experienced Investors are not subject to any restrictions. Whilst borrowing on a temporary basis for liquidity purposes is permitted and not restricted, borrowing for investment purposes or leverage via the use of derivatives is restricted to 100% of the NAV.

Qualifying Investors

"Qualifying Investors" are defined as persons who have reasonable experience in the acquisition and/or disposal of (a) funds of a similar nature or risk profile, and (b) property of the same kind as the property to which the PIF in question relates. There are also various other criteria to be met to be classified as a "qualifying investor". However, the main criteria is that the investor must have more than €750,000 of net assets and the minimum initial investment is at least €75,000 (or equivalent in another currency).

PIFs promoted to Qualifying Investors are not subject to any restrictions on their investment or borrowing powers (including leverage) other than those which may be specified in their Offering Document.

Extraordinary Investors

"Extraordinary Investors" are required to meet various criteria, including the requirement that the investor must have more than €7.5 million of net assets and that the minimum initial investment is at least €750,000 (or equivalent in another currency).

Unless they invest in immovable property, PIFs promoted to Extraordinary Investors are not subject to any restrictions on their investment powers other than those which may be specified in their offering document/ marketing document.

The MFSA has committed to process applications for the authorisation of PIFs within seven working days, provided all relevant documentation (including the application form) has been properly completed and that all functionaries are based and regulated in a "Recognised Jurisdiction" (i.e. members of the EU or EEA and some other specified countries).

Taxation

Distributions to non-resident investors and capital gains on exit made by non-resident investors are exempt from Malta tax. A 15% final withholding tax is imposed on distributions and capital gains to Maltese resident investors.

Mauritius

Regulation

There are no specific regulations currently enacted in Mauritius in respect of hedge funds.

Hedge funds in Mauritius are authorised closed-end funds that are regulated by the Financial Services Commission ("FSC") under the Securities Act 2005 and under the same regime as collective investment schemes. Such an authorisation may be subject to conditions prescribed by the FSC. Regulations on closed-end funds are currently being prepared and are expected to be issued shortly.

A hedge fund can be structured as a company incorporated under the Companies Act 2001, as a trust under the Trust Act 2001 or in such other form approved by the Financial Services Commission. It will generally be a Mauritius-resident company holding a Category 1 Global Business Licence ("GBL1") under the Financial Services Act 2007.

Where one or more funds wish to invest, they can do so through a special type of Mauritius limited liability resident company, referred to as a Protected Cell Company ("PCC"). A PCC is a Mauritius-resident company, holding a GBL1 and valid annual Tax Residence Certificate ("TRC"), which is internally structured so that the assets (investments) and liabilities of one class of shareholder are kept separate and distinct from that of another, i.e. in separate "cells". Similarly, on liquidation, if one cell has remaining unpaid creditors, no claim can be made against the assets of another cell.

An annual ("TRC") will be required in respect of each country the Fund wishes to invest in and is renewable on an annual basis.

Taxation

Income received by a hedge fund operating through a Mauritius resident company (holding a GBL1 and valid TRC), would be subject to tax at a rate of 15%. A foreign tax credit ("FTC") would, however, be available to set off against the Mauritius tax levied on the foreign source income. The FTC would be the higher of the actual foreign tax paid or 80% of the Mauritius tax charged with respect to that income. Therefore, the maximum tax rate which applies to foreign source income is 3%, and, where it can be shown that the actual foreign tax paid is 15% or more, no Mauritius tax will arise.

Under Mauritius domestic tax legislation, where 5% or more of the share capital is owned in an overseas resident company and part of the foreign source income represents the receipt of a dividend from that company, underlying tax representing the foreign tax charged on the income out of which the dividend was paid, together with any foreign withholding tax deducted at source, can also be considered as foreign tax paid for the purpose of the FTC. There are also tax spared considerations provided, for foreign tax to be deemed paid in certain circumstances, under the domestic FTC provisions.

Netherlands, The

Regulation

Foreign hedge funds can be authorised for distribution in the The Netherlands, subject to the same rules as ordinary investment funds: these rules require the manager to obtain a licence prior to offering its participations in The Netherlands, unless an exemption is available.

The Netherlands Authority for the Financial Markets ("AFM") will grant such a licence provided certain requirements are met. These may include consideration of whether the manager, established outside The Netherlands in a non-EU country, is subject to adequate supervision in that jurisdiction. The AFM has determined that currently only a limited number of countries provide appropriate levels of supervision.

As of 1 January 2007 a new Act has come into force in The Netherlands in relation to the supervision of, amongst others, hedge funds. This act is called the Act on Financial Supervision, the "AFS" ("Wet op het financieel toezicht"). The AFS incorporates seven formerly applicable supervisory Acts that were applicable in The Netherlands. The new AFS does not have the intention to create any material changes to the requirements as stated in the formerly applicable acts. The AFS has, inter alia, implemented UCITS III and MIFID into Dutch legislation.

The main effects of the AFS on hedge funds and their managers are as follows:

1) Domestic hedge fund managers are required to obtain a licence from the AFM and may then launch new sub-funds in existing hedge funds without the individual sub-funds being required to obtain a separate licence, provided an updated prospectus is available.
2) Foreign hedge fund managers established in countries that the AFM has determined apply adequate home country supervision may apply for a notification in The Netherlands.

Hedge fund managers in other countries should apply for a licence. Furthermore, the AFS requires providers of various types of financial services (for instance offering and acting as intermediary in relation to financial products) to obtain a licence from the AFM. Therefore hedge fund managers may, under certain circumstances, be required to obtain a second licence.

Legal entities and natural persons making offers of shares in hedge funds or providing advice to the public on hedge funds will be required to obtain a licence pursuant to the AFS.

Taxation

As a general rule, resident individual portfolio investors are deemed to receive a notional yield of 4% on the average annual value of their hedge fund investments, which is taxed at a rate of 30%. Distributions of actual income and gains are not taxable. Banks, insurance companies and corporate entities are taxed on income and capital gains from hedge fund investments at the corporate tax rate of 25.5% (2008 rate). Pension funds are exempt from corporate income tax.

No capital duty is due.

Netherlands Antilles, The

Regulation

A hedge fund domiciled in The Netherlands Antilles can be incorporated as an LLC, a private LLC or a Netherlands Antilles private LLC, all of which are subject to supervision by the central bank of The Netherlands Antilles.

Taxation

The Netherlands Antilles private LLCs are exempt from taxation. Individual investors resident in The Netherlands Antilles, are deemed to receive a notional yield of 4% on hedge fund investments (held through a non-Antilles investment company or a Netherlands Antilles exempt company), which is taxed at the rate of 19.5% (in the case of a 5% shareholding or more in the hedge fund) or at maximum 49.4% (in the case of a shareholding lower than 5% in the hedge fund). Distributions of actual income and gains are not taxable.

Banks, insurance companies and corporate entities are taxed on income and capital gains from hedge fund investments at the profit tax rate of 34.5%. A 95% participation exemption may be available in respect of investments of 5% or more in foreign hedge funds, or 5% or more in Netherlands Antilles exempt companies or investments in hedge funds with a cost price of at least ANG1 million (approximately US$561,798).

Insurance companies may also opt for a special regime under which only the premium income is subject to profit tax.

Norway

Regulation

Under current regulations, the Norwegian Securities Fund Act prohibits the solicitation of subscriptions in hedge funds, from both individuals and legal entities, although foreign hedge funds may be actively promoted in Norway with the permission of the Norwegian Financial Supervision Authority ("FSA"). However, we understand that no foreign hedge fund has yet been granted permission by the FSA to be promoted in Norway.

The Ministry of Finance has proposed an amendment of The Securities Fund Act in order to allow solicitation of subscriptions in hedge funds both to professional and non-professional investors. At the current time, it is not known whether or when the proposed amendments can be expected to come into force.

Taxation

Individual investors, tax resident in Norway, will be subject to tax at 28% on income and capital gains on a receipts basis from hedge fund investments structured as corporate vehicles. From 1 January 2007 a component of the return (currently estimated at 3.3% of cost price) is treated as tax exempt. Hedge funds structured as partnerships will be treated as tax transparent in Norway and all classes of investors will be taxed on a proportionate part of the hedge fund's income under the tax regulations applicable to each investor. Corporate investors in EEA domiciled hedge funds, structured as corporate vehicles, will be exempt from tax on dividends received and gains made on shares under the tax exemption method, when certain conditions set out in interpretative statements from the Norwegian tax authorities are met, such as:

- The company (the hedge fund) must be "resident in an EU/EEA country" according to the tax treaty;
- The company must be liable to corporate income tax in its home country;
- The company must be regarded as similar to a Norwegian company falling within the tax exemption method based on a overall evaluation. The company must among other factors invest in shares which fall within the tax exemption method;
- The recipient is the "real owner" (beneficial owner) of the distributed dividends; and
- The recipient of the dividends has to be subject to corporate income tax.

The tax exemption method will apply regardless of the level of holding or the time period for which the shares have been held. Losses will not be tax deductible. For corporate hedge funds domiciled outside the EEA, the tax exemption method will only apply for capital gains and dividends where the shareholder holds 10% or more of the capital and voting rights of the fund for a period of two consecutive years. In addition, the tax exemption method will not be available where the hedge fund is situated in a low tax country.

Oman

(Part of the Cooperation Council for the Arab States of the Gulf (“GCC”)).

Taxation

All Omani registered companies, irrespective of the extent of foreign ownership, are taxed at reduced income tax rates of up to 12%. This is compared to a top rate of tax of 30% for branches of foreign companies and unregistered entities.

There are a number of tax exemptions and of particular note is a tax exemption for investment funds which are incorporated in Oman or incorporated abroad dealing with securities listed on the Muscat Security Market.

Portugal

Regulation

There is no specific legislation for hedge funds in Portugal other than the legislation applicable to special investment funds (“SIFs”). SIFs were introduced by the end of 2003 following the changes introduced in the investment funds regulation. Short selling, leveraging, cash and security loans, repos and derivatives, including commodity derivatives, are permitted in SIFs, subject to the limits defined in the fund’s incorporation documents. Fewer rules apply to SIFs than to mutual funds, but certain rules are still applicable, for example those relating to the authorisation by the Portuguese Securities Market Commission (“CMVM”) and transparency.

Taxation

Individual investors into domestic hedge funds that qualify as mutual funds are exempt from tax on income distributed by the fund or income arising from units’ redemption, unless the income is connected with commercial, industrial, or agricultural activity, which is taxed at marginal rates, but taxation up to 25% is imposed at the fund level. Capital gains arising from the sale of units to other investors are taxed at 10%, unless gains are connected with commercial, industrial, or agricultural activity, which are treated as taxable profits taxed at normal rates.

Individual investors in foreign hedge funds are subject to tax at marginal rates up to 42%, although distributions by paying agents located in Portugal are taxed at 20%. Capital gains are taxed at a flat rate of 10%.

Corporations, banks and insurance company investors in domestic hedge funds are taxed on income and capital gains (up to 26.5%). These entities can recover the tax paid at the fund level.

Pension funds are exempt from tax and may reclaim withholding tax and any tax paid by the domestic fund. Income derived from a foreign fund is also exempt from taxation.

Foreign investors in domestic hedge funds are exempt from tax on income (distribution and redemption) and on capital gains arising from the sale of units. The exemption on capital gains does not apply in the case of investors resident in offshore countries, or to corporate investments held by Portuguese entities with a participation of at least 25%.

Qatar

Taxation

Entities established in the QFC are subject to corporate tax at a flat rate of 10% (regardless of whether the entity is owned by GCC nationals).

Profits arising as a result of “activities” in Qatar, outside the QFC, are taxed at rates of up to 35%.

Singapore

Regulation

The hedge funds industry in Singapore has blossomed over the last five to eight years, largely due to the liberalisation of the regulatory environment and continuous efforts by the Singapore Government to make Singapore a central hub for alternative investments in Asia through tax incentives and other means.

Broadly, hedge funds are available for subscription by both retail and non-retail investors, although certain restrictions and regulatory criteria exist.

Hedge funds that have been registered as Authorised Unit Trusts (“AUT”) or Recognised Unit Trusts (“RUT”) under the Securities and Futures Act (“SFA”) in Singapore may be offered to retail investors in Singapore. All onshore authorised hedge funds are governed by the Hedge Fund Guidelines set out in the Code on Collective Investment Scheme (the “Code”) issued by the Monetary Authority of Singapore (“MAS”). Offshore hedge funds which are granted “Recognised” status are not subjected to the Code, but are approved for subscription on the basis of sufficient regulatory oversight in the home jurisdiction. The determination of whether a home jurisdiction is acceptable is subject to MAS approval, and as a minimum would require that the applicable regulatory framework and guidelines applicable in those jurisdictions are similar to those of Singapore.

Fund managers offering such funds to retail investors must hold a Capital Markets Services (“CMS”) licence for fund management activities to manage and offer an AUT. In addition, the fund manager has to satisfy a base capital requirement of S$1 million. The fund manager of a RUT must be licensed or regulated in the jurisdiction of its principal place of business.

The minimum subscription requirements are the same for both AUTs and RUTs, i.e. S$100,000 for single manager hedge funds and S$20,000 for funds-of-hedge funds. In addition, a prospectus in compliance with the SFA must be lodged and registered.

Hedge funds that come under the Restricted Authorised Unit Trust (“RAUT”) and Restricted Recognised Unit Trust (“RRUT”) schemes can only be marketed to accredited investors. Such funds are not required to lodge or register a prospectus but the offer to investors must be accompanied by an information memorandum. In addition, there is a minimum requirement of S$200,000 per transaction in relation to the offer of a RAUT or RRUT.

The fund manager of an RAUT can either be CMS licensed or be exempted under the SFA. For CMS licence holders where fund management activities are only conducted in respect of accredited investors, there is a base capital requirement of S$250,000. There are no base capital requirements for an exempt fund manager, although the exemption carries certain criteria, e.g. the exempt fund manager can only act for up to 30 qualified investors.

Taxation

Investors

Generally, investors who are individuals are exempt from tax on Singapore sourced dividends and distributions from unit trusts that are authorised under Section 286 of the Singapore Securities and Futures Act (the units of which are offered to the public for subscription) and those that are restricted authorised schemes under the same Act. Foreign sourced dividends and distributions from unit trusts received by individuals in Singapore are generally not subject to tax. Further, the gains derived by individuals from the disposal of their investment in funds will generally not be subject to tax in Singapore, unless they are derived in the course of a trade or business carried on in Singapore.

Non-individual investors are similarly exempt from tax on Singapore-sourced dividends. However, such investors will, generally, be taxed on distributions from unit trusts in Singapore, and on foreign sourced unit trust distributions if received in Singapore. Foreign sourced dividends are, generally, subject to tax in Singapore if received by non-individuals in Singapore, but may be exempted from tax if specified conditions are met. Also, the gains derived by non-individuals from the disposal of their investment in funds will generally be subject to tax in Singapore, unless they are determined to be capital in nature.

Funds managed in Singapore

A fund manager in Singapore who manages funds on a discretionary basis for a person not resident in Singapore could be regarded as constituting a Singapore permanent establishment ("PE") of that non-resident person and considered to be carrying on a business in Singapore on behalf of the non-resident. Under Singapore legislation, income attributable to the PE would be exposed to Singapore tax, in the absence of any tax treaty or a tax incentive under domestic law. The Singapore Government has provided tax exemption in some of these situations.

Based on a circular issued by the Singapore Government on 31 August 2008, a "qualifying fund" will be granted tax exemption on "specified income" derived in respect of "designated investments" from funds managed by any "fund manager" in Singapore.

Further, the investors in the qualifying fund will be split into two categories – "qualifying investors" and "non-qualifying investors". A "non-qualifying investor" is required to pay a "financial amount" to the Inland Revenue Authority of Singapore (IRAS). In essence, the "financial amount" is to be computed by applying the applicable corporate tax rate (currently 18%) to a non-qualifying investor's share of the profits of the qualifying fund for the year in question. The status of whether an investor of a qualifying fund is a qualifying investor will be determined on the last day of the qualifying fund's financial year.

A qualifying fund, in the context of a company, is a company that is not resident in Singapore, and where the value of its issued securities is not 100% beneficially owned by investors in Singapore (which includes resident individuals, resident non-individuals and Singapore-based permanent establishments of non-residents) and the company does not have a Singapore PE or business activity (other than a fund manager).

A qualifying investor of a qualifying fund (which is a corporate fund) is:

a) An individual investor;

b) A bona fide non-resident non-individual investor (excluding a PE in Singapore) that:

   i) Does not have a PE in Singapore (other than a fund manager) and does not carry on a business in Singapore; or

   ii) Carries on an operation in Singapore through a PE in Singapore but does not use funds from its operation in Singapore to invest in the qualifying fund, where a "bona fide non-resident non-individual investor" is one which carries out substantial business activities for genuine commercial reasons and does not have as its sole purpose the avoidance or reduction of tax.

c) Certain Singapore Government entities; and

d) An investor other than those listed in (a), (b) and (c), where such an investor, alone or with his associates, beneficially owns not more than 30% (50% if the qualifying fund has 10 or more investors) of the total value of issued securities of the qualifying fund.

The Singapore fund manager and non-qualifying investors of a qualifying fund need to fulfil certain reporting obligations in connection with the above tax exemption scheme.

In addition to the above, tax exemption may also be available for funds set up in the form of Singapore resident companies (which are subject to the qualifying fund rules as described above but have further conditions imposed on them) and unit trusts.

Funds managers in Singapore

Fund managers in Singapore are ordinarily taxed at 18% on their taxable income (typically, fee income less expenses). This rate can be reduced to 10% if certain conditions are satisfied.

South Africa

Regulation

Prior to February 2008, the Financial Services Board ("FSB") did not have any hedge fund industry-specific regulatory requirements. Legislation was introduced in South Africa in the last year whereby hedge fund managers had to register as Discretionary Financial Service Providers under the Financial Advisory and Intermediary Services ("FAIS") Act, with no distinction being made between hedge fund managers and traditional asset managers. Hedge fund products remain unregulated and may not be marketed to retail investors in South Africa.

Effective from February 2008, all hedge fund managers had to register as Category IIA financial services providers under the FAIS Act, a separate category of financial services provider created solely to regulate hedge fund managers. Unique "fit and proper" requirements were created to ensure that all "applicants must have a track-record of managing particular hedge fund strategies and be able to adequately demonstrate knowledge, skills and competency in managing all instruments and asset classes comprising a hedge fund portfolio". Hedge fund managers are also subject to their own Codes of Conduct with an increased focus on communicating the investment objectives, guidelines, trading philosophies and risks involved in hedge fund strategies to investors.

The regulation of hedge fund products in South Africa is not foreseen in the immediate future.

Taxation

There is still much uncertainty in South Africa regarding the tax treatment of hedge funds. Generally, domestic hedge funds are operated as tax transparent partnerships or trusts with investors participating as limited partners or beneficiaries and subject to tax on income and gains on an accruals basis. Individual investors are taxed on income at marginal rates of up to 40% and 25% of capital gains (if not viewed as a trader).

Companies, banks and insurance companies (except certain policyholder funds) are taxed on income at 28% and 50% on capital gains. Retirement funds are not taxed on any streams of income or capital gains.

Investors in corporate foreign hedge funds are taxed on income derived by the foreign fund. Capital gains on disposal of interests in foreign hedge funds are subject to tax as either revenue or capital gains. Investors in non-corporate foreign hedge funds are taxed on their share of the fund's income and expenditure.

The South African Revenue Service is yet to finalise specific rules regarding the taxation of hedge funds. In the absence of formal hedge fund product regulation, it is unclear whether domestic hedge funds will be treated in a similar manner to other collective investment schemes, which are effectively treated as tax transparent at the fund level, with investors only being subject to tax when income is declared or when units are redeemed.

Spain

Regulation

Following the adoption of the 2003 regulatory framework for hedge fund products and hedge fund managers in Spain, more than 25 hedge fund managers have been authorised by the Spanish Financial Services Authority and around 25 single manager hedge fund products and 35 funds-of-hedge funds are now operating in the local hedge fund industry in Spain. In 2007, the Spanish authorities made additional changes to the general regulations, following some industry players' demands. The new regulatory framework was modified and completed in March 2007 with the adoption of the Royal Decree 362/2007, which provided specific changes to the general rules applicable to single manager hedge funds and funds-of-hedge funds.

This revision of the general rules provided more flexible rules for the subscription and redemption conditions (e.g. single manager hedge funds and funds-of-hedge funds may impose cap amounts for redemptions and require advanced notice for subscriptions or redemptions) and the NAV calculations.

Other changes referred to the ability of the asset manager to impose minimum holding periods on investors in single strategy hedge funds on investors. There was also a clarification of the regulatory restrictions applicable to the active marketing of local single manager hedge funds which are confined to qualified investors. This does not prevent retail investors from investing at their own discretion in such products.

Under the new rules local funds-of-hedge funds are not allowed to invest in target funds-of-hedge funds products, in either local or foreign jurisdictions.

The current Spanish regulatory framework for single hedge funds and funds-of-hedge funds includes the following rules:

- Law 35/2003, dated 4 November 2005, on undertakings for collective investments (which was adopted in November 2005 and provided a basic framework for launching and distributing domestic single manager hedge funds and funds-of-hedge funds in Spain).
- Royal Decree 1309/2005 dated 4 November 2005, implementing Law 35/2003 (as amended by RD 362/2007 of 16 March 2007).
- Ministerial Order EHA/1199/2006, dated 25 April 2006, implementing Royal Decree 1309/2005.
- CNMV Circular 1/2006, dated 3 May 2006, implementing Royal Decree 1309/2005.

The framework covers, inter alia, the distribution of domestic hedge fund products to institutional and retail investors, and specific requirements for hedge fund managers regarding authorisation and ongoing requirements covering organisational matters, internal control and risk management matters, as well as controls over outsourcing and operational risk.

Marketing of single manager hedge funds is limited to qualified investors. However, access to retail investors is not prevented on the basis of unsolicited marketing, provided that the retail investor acknowledges the level of risks connected to the investment in such products in writing.

Marketing of foreign hedge fund products remains subject to prior authorisation by the Comisión Nacional del Mercado de Valores ("CNMV"). However, it seems likely that authorisation could be granted in cases where foreign hedge fund products are subject to similar regulatory requirements as those now applicable to domestic funds. The CNMV is likely to pay particular attention to investor protection matters in determining whether authorisation will be granted.

Taxation

Individual investors in Spanish hedge funds or funds-of-hedge funds are taxed as if they invested in Spanish UCITS funds. Distributions and the redemption or sale of units or shares in a fund are taxed as savings income at a fixed rate of 18%. Individual investors in foreign hedge funds or funds-of-hedge funds are not taxed under rules similar to those applicable to investors in Spanish funds. This is mainly due to the fact that such funds are not included in the scope of application of the UCITS Directive. The taxation may vary significantly depending on the legal status of the vehicle and on whether the fund is resident in a black listed tax haven jurisdiction.

Corporations, banks and insurance companies are taxed at a fixed rate of 30% in 2008. Investment funds and SICAVs incorporated under Law

35/2003 of Collective Investment Institutions (Real Estate funds have to comply with additional tax rules) are taxed at a 1% rate and pension funds are not subject to tax (0% rate). Investments in Spanish hedge funds or funds-of-hedge funds are taxed (except in the case of pension funds) as if they invested in Spanish UCITS funds.

The rules for the computation of income or gains vary depending on the specific accounting guidelines applicable to ordinary corporations or to each type of institutional investor and on the choices an institutional investor makes for accounting purposes.

Corporate investors in foreign hedge funds or funds-of-hedge funds are not taxed under rules similar to those applicable to investors in Spanish funds. As in the case of individual investors, this is mainly due to the fact that such funds are not included in the scope of application of the UCITS Directive. There are different tax rules for the taxation of investment in foreign hedge funds or funds-of-hedge funds depending on:

1) The legal status of the fund;

2) Its fiscal residence;

3) The specific accounting guidelines applicable to any ordinary corporation or to each type of institutional investor;

4) Choices an institutional investor may make for accounting purposes; and

5) Regulatory approvals for marketing in Spain.

Sweden

Regulation

Approval from the Swedish Financial Supervisory Authority (“FSA”) is required, prior to distributing or marketing foreign hedge funds in Sweden. Registration takes approximately two months and is only granted if certain requirements are met, including that the foreign hedge fund is subject to adequate home state supervision.

Domestic funds are required to obtain a licence from the FSA following the same procedures as for UCITS III funds, but applying for exemptions regarding specific investment restrictions.

Swedish funds-of-hedge funds are permitted to invest in foreign hedge funds and may be marketed to retail investors. Single manager hedge funds may be distributed to retail investors.

Taxation

Individual investors are taxed, on a receipts basis, on income and capital gains from hedge fund investments at the rate of 30%. Banks and insurance companies (non-life business) are taxed on income and capital gains from hedge fund investments at the rate of 28% on an accruals basis (although they may elect for a receipts basis). Other corporate entities are taxed on income and capital gains from hedge fund investments at the rate of 28% on a receipts basis. Life insurance companies are not taxed on income arising from policyholders’ funds. Pension funds are not taxed on income.

Switzerland

Regulation

Since 2007 the Federal Act on Collective Investment Schemes (“CISA”), the related ordinance of the Federal Council and the ordinance of the Swiss Federal Banking Commission (SFBC) have formed the basis of the relevant fund regulation.

Swiss fund regulation that applies to hedge funds and funds-of-hedge funds includes the following key elements:

- A qualified investor concept: qualified investors in general include all regulated financial intermediaries, other institutional investors with a professional treasury function (pension funds, government, corporates), private investors with financial assets of at least CHF2 million, and private investors who have a discretionary asset management agreement with a regulated bank, securities dealer, fund management company or independent professional asset manager;

- Historically non-corporate open-ended funds on the basis of collective investment contracts; in 2007 introduction of new corporate forms for funds, such as the investment company with variable capital (SICAV), the limited partnership for collective investment, and the (non-listed) investment company with fixed capital (SICAF);

- A licensing requirement for the asset managers of Swiss collective investment schemes: not only the funds but also the independent asset manager of a Swiss collective investment scheme needs to be authorised by the SFBC;

- Swiss-domiciled asset managers of foreign funds can apply for an asset manager licence if they manage funds subject to foreign supervision equivalent to supervision in Switzerland and the foreign regulator requires a regulated asset manager;

- A prime broker concept: upon application by a hedge fund, the SFBC approves the use of regulated prime brokers, both foreign and domestic;

- A simplified prospectus regime;

- A revised simplified approval and authorisation process for both qualified investor funds and public funds, if SFBC-approved standard fund documents developed by recognised industry organisations are used for the application; and

- A possible lock-up period for investors of up to five years, upon application.

The scope of regulatory supervision in the fund market includes not only the open-ended investment funds, but also the managers of Swiss collective investment schemes and SICAFs, if they have non-qualified investors and are not listed. Also all closed-ended foreign funds are within the scope of the CISA (previously only open-ended foreign funds were subject to Swiss regulation, if public distribution was intended in Switzerland).

Closed-end investment companies listed on a regulated stock exchange, investment foundations, holding companies and investment clubs are, in general, not in the scope of the CISA.

Also, domestic managers of foreign collective investments are not in the scope of the CISA; however, if they manage funds which are subject to regulation and supervision equivalent to Switzerland and for which a regulated manager is required, they can apply for an asset manager licence on a voluntary basis. Regulated by the CISA, however to a very limited extent only, are structured products. Structured products can only be offered to the public if they are issued or guaranteed by regulated banks, securities dealers or insurance companies. The simplified prospectus for a structured product must disclose that it is neither a collective investment nor subject to regulatory supervision.

In Switzerland both qualified and retail investors may invest in the shares of funds-of-hedge funds that are closed-ended, non-regulated investment companies listed on a regulated stock exchange. Open-ended domestic hedge funds or funds-of-hedge funds regulated under the CISA, and foreign hedge funds approved for distribution in Switzerland, may also be sold to retail and qualified investors. Hedge funds that are not approved in this manner may not be publicly marketed. However, they can be sold to qualified investors via private placement and to all types of investors in connection with a discretionary management contract, provided that hedge funds form part of an overall asset allocation by the wealth manager (bank, securities dealer, independent professional asset manager) for the specific investor profile.

Taxation

Swiss individual investors in domestic distributing hedge funds are taxed on a receipts basis, with a tax refund for any withholding tax (35%) levied by the fund on the distribution. The applicable tax rate for individual investors for this income is between 25% and 55%, depending on the canton where the individual investor is resident. Individual investors in domestic accumulating funds are taxable on deemed income distributions. Capital gains distributed/ accumulated by funds are tax exempt provided sufficient information is provided to the Swiss tax authorities and the investment is held as a private asset.

Swiss corporation, pension fund, bank and insurance company investors in domestic distributing funds are taxed on income and capital gains distributed. The average applicable tax rate is between 16% and 25%, depending on the canton where the company is domiciled and on any special tax status of the company. Accumulated income is not subject to tax on an unrealised basis. Pension funds may be exempt from income tax if certain conditions are satisfied. Individual investors in a capital gains oriented domestic funds-of-hedge funds (transparent for Swiss tax purposes) that derives 98% of income from capital gains are deemed to derive capital gains, which are not subject to income tax. Investors in other funds-of-hedge funds are taxed as if the investors had a direct investment in the underlying funds.

Incomes of foreign hedge funds that are organised in non-corporate form (e.g. tax transparent) are taxed at the investor level. Any distributions from corporate foreign hedge funds that are not treated as transparent for Swiss tax purposes are treated as dividend income in the hands of corporate and individual investors. Corporate investors may be able to apply for participation relief if certain conditions are satisfied.

Taiwan

Regulation

Neither local nor offshore fund managers are permitted to offer hedge funds publicly in Taiwan. Moreover, the Taiwan Financial Supervisory Commission ("FSC") is careful to prohibit offshore hedge funds from investing in Taiwan, due partly to uncertainty about the impact of their investments on the Taiwan market.

In April 2006, the FSC for the first time agreed to relax its policy, allowing hedge funds to be marketed in Taiwan through an unregistered private placement, as distinguished from a registered public offering. Therefore, two options became available for local investors to invest directly in offshore hedge funds – they may invest in a privately placed local fund which is itself a hedge fund or is a local feeder fund which in turn invests in offshore hedge funds, or they may invest in a privately placed offshore hedge fund. Local investors may also replicate the effect of hedge funds through purchasing derivatives that track hedge fund indices. The conditions for a private placement include satisfaction of qualitative and quantitative criteria.

In the short term, with the absence of a supervisory framework for hedge funds, it does not appear that Taiwanese authorities are ready for deregulation in this sector.

Taxation

Under the Taiwanese tax regime, a Taiwanese fund itself is a "pass-through" entity and hence is not a tax entity for Taiwanese income tax purpose. However, the fund is still subject to Taiwanese indirect tax on its trading transactions where applicable (such as security transaction tax). In addition, the fund would be liable to potential withholding tax obligations when it distributes income to its investors (if any).

With respect to taxation on investors, capital gains realised from redemption of units of a Taiwanese fund are exempted from Taiwanese income tax. However, gains realised from distributions by a Taiwanese fund to its investors would attract income tax (corporate income tax rate 25%; individual income tax rates range from 6% to 40%). As the fund is treated as a transparent vehicle from a tax perspective, withholding tax withheld on income (such as interests or dividends) received by the fund can, subject to certain criteria, be passed on to its investors along with distributions.

Distributions by a fund investing in offshore securities or funds (i.e. where a Taiwanese feeder fund invests in an offshore hedge fund) to Taiwanese resident individuals would be exempt, as currently Taiwan individual income tax is only levied on Taiwan-sourced income. A new regulation named Alternative Minimum Tax ("AMT") introduced in 2006 has potentially changed the above exemption status. Under the AMT, starting from 2009 or 2010 (subject to the tax authority's further announcement) offshore income (including income distributed by a local fund which in turn invests into an offshore fund) exceeding certain thresholds received by a resident individual would be subject to the AMT at the rate of 20%.

On the other hand, where an investor invests directly into an offshore fund (instead of investing in a Taiwanese fund which in turn invests into an offshore fund), gains and income from the offshore fund would be taxable income to a resident corporate investor.

Turkey

Regulatory

Domestic Funds

The regulatory framework for hedge funds is provided by the Capital Markets Board of Turkey – Sermaye Piyasasi Kurulu ("CMB"). Based on an authority granted to the CMB by the Capital Market Law in late 2006, an amendment to the Communiqué regarding Investment Funds has been introduced by the CMB, which allowed the establishment of Turkish-domiciled hedge funds, which are called Free Investment Funds ("FIFs") – Serbest Yatirim Fonlari - in the Communiqué.

- The establishment procedures for FIFs are similar to those applicable for other Turkish investment funds (i.e., securities investment funds). The approval of the CMB is required, a prospectus should be prepared in line with the CMB rules and units are to be registered with the CMB. Turkish banks, brokerage houses, insurance companies, pension funds and employee funds (which are established according to Temporary Article 20 of Social Securities Law, No. 506), that meet the requirements set out by the CMB are allowed to establish FIFs. Portfolio management companies are currently not allowed to establish FIFs or any other investment funds, but in order to become harmonised with the EU legislation, and particularly for compatibility with the UCITS directive, the CMB is planning to change the regulations so as to eliminate this restriction on portfolio management companies.
- FIFs can only be marketed to "qualified investors". Qualified investors include Turkish and foreign investment funds, securities investment trusts, venture capital investment trusts, REITs, brokerage houses, banks, insurance companies, portfolio management companies, mortgage finance institutions, pension funds, relief funds, foundations, employee funds, benevolent societies and other investors to be accepted as similar to these organisations by the CMB and real and/or legal persons that have total assets of at least TRY1 million cash (TRY or foreign currency) and/or (Turkish or foreign) capital market instruments. FIFs are not allowed to publish any advertisement or announcement for any reason. Moreover, they are exempted from the requirement of preparing and publishing a circular, which is a disclosure document similar to a simplified prospectus. They are allowed to declare their unit price on a monthly basis, rather than the daily basis which applies for other investment funds. Finally, they are subject to annual independent audit.
- FIFs are allowed to freely determine their own investment strategies and concentration limits in their internal statute. Compared to other investment funds they can use more sophisticated portfolio management techniques and strategies, inter alia, short sales, leverage and derivatives.

- All investment funds employing derivatives under the CMB regulation are required to set up internal audit procedures and risk management systems in line with the standards determined by the CMB. However, given that FIFs investment strategies and the instruments used are more sophisticated, the risk management systems of FIFs are also more complicated and sophisticated.

Foreign Funds

The rules above only relate to hedge funds established in Turkey. The sale of units, with or without public offering, of a foreign hedge fund in Turkey may also require registration with the CMB. The term "sale" covers the sale of units in return for a consideration and promotion through mail or any other means of communication, one to one or collectively, and all activities aimed at contacting investors, in order to market the certificates. Under the Communiqué of the CMB on Registration and Sale of Units of Foreign Investment Funds, only those foreign funds that meet certain qualifications are entitled to sell their units in Turkey through public offering after the registration of certificates with the CMB. The qualifications required, inter alia, are as follows:

- The fund should have a history of at least three years;
- The current value of the units to be sold at the date of application should not be less than the minimum threshold for investment funds in Turkey;
- The units of the fund should have been offered to the public in the country of establishment and the total value of the units in circulation should not be less than US$1 million;
- At least 80% of the fund's portfolio should consist of capital market instruments other than Turkish government securities or securities issued by Turkish residents;
- The proportion of the fund's portfolio that can be invested in one particular company should be less than 10%;
- The fund should be audited in accordance with international auditing standards at least annually; and
- The assets of the fund should be kept under the responsibility of at least one institution having paid-in capital of a minimum of US$1 million in the country where the fund is established or an authorised custodian institution in Turkey.

The sale of units through private placement is not subject to all such conditions, however, the investors to whom private placements can be made are limited to sophisticated investors (persons and institutions that can have access to the required information and sufficient to decide correctly in terms of their structure and financial profiles).

Moreover, it is obligatory that the fund has a representative in Turkey (either a bank or a brokerage firm) and has drawn up a written agreement with the representative covering the minimum issues listed in the Communiqué.

It is also worth noting that if the fund is a fund-of-hedge funds all the sub-hedge funds should also meet the criteria mentioned above and should register with the CMB prior to the sale of the units to the investors.

Taxation

Domestic funds

There is no clear and specific regulatory guidance issued by the Ministry of Finance ("MoF") so far with respect to the taxation of the hedge funds which are established in Turkey in accordance with the CMB legislation ("FIFs"). However, despite the lack of specific guidance, it is widely accepted in practice that analogous to other types of investment funds, such as securities investment funds, venture capital funds, real estate funds and pension funds, the portfolio investment income of a FIF is exempt from corporate tax; 0% withholding tax is applied at source on most typical sources of portfolio investment income (i.e. repo income, interest from deposits, bonds and capital gains from the disposal of securities etc.); the corporate tax exempt income of a hedge fund is also subject to 0% withholding tax. Thus, the effective rate of taxation at the FIF level is 0%.

Income derived from the redemption of participation certificates of FIFs by Turkish resident individual investors and Turkish resident corporate investors is subject to 10% withholding tax at source. This tax is applied by the intermediary bank or brokerage house. There is an exemption from the 10% withholding tax provided that the participation certificates of the FIF are held by the investor for a period of more than one year and at least 51% of the portfolio of the FIF is invested on a continuous basis in Turkish equities traded on the Istanbul Stock Exchange. Income derived by resident corporate investors and non-resident corporate investors that have a permanent establishment in Turkey is subject to ordinary corporate income taxation at the rate of 20%. The 10% withholding tax levied at source can be offset against the corporate tax liability.

Income derived by non-resident individual investors and non-resident corporate investors who do not have a permanent establishment in Turkey from the redemption of participation certificates issued by FIFs is subject to 0% withholding tax provided that the documentation requirements are met (i.e. certificate of residence should be submitted to the tax office for non-resident individuals and documents of incorporation, such as articles of association and a certificate of establishment, should be submitted to the tax office for non-resident companies).

Foreign funds

Generally, the taxation of portfolio investment income (e.g. capital gains, interest and dividends) derived in Turkey by foreign hedge funds changes depending on various factors, such as the residence status of the fund, the legal status of the hedge fund in its country of domicile, whether or not the foreign hedge fund has a permanent establishment (fixed place of business or a representative) in Turkey, the type of income, the type of assets and the specifications of the assets (e.g. for securities, the issuance date, date of acquisition, type etc.). For example, foreign hedge funds which are similar to Turkish FIFs are deemed as non-resident corporations. Nevertheless, the standards to be applied to make the similarity test have not yet been determined by the MoF. Therefore, depending on the specifications of the case, a foreign hedge fund may either be perceived as a taxable personality (a non-resident corporation) or may be looked through under the Turkish tax laws. Moreover, Turkish sourcing rules, which determine when the income of a non-resident is subject to Turkish taxation rules, set out different standards for various sources of income (e.g. income from real property, securities, etc.).

When Turkish resident individual investors derive income from a foreign hedge fund (e.g. from the disposal/redemption of participation certificates of foreign hedge funds), such income is usually subject to income tax through filing an annual income tax return and is subject to progressive income tax rates that vary from 15% to 35%. Likewise, Turkish resident corporate investors (including banks and insurance companies) and non-resident corporate investors that have a permanent establishment in Turkey are subject to taxation on income derived from foreign hedge funds as part of their ordinary corporate income. Taxes paid offshore can be offset against Turkish taxes, subject to certain conditions. Certain transactional taxes such as banking and insurance transaction tax may also become due on such income.

Nevertheless, these explanations are very generic and in order to determine the exact Turkish tax treatment each case should be analysed on its own merits taking into account the facts and circumstances.

United Arab Emirates

(Part of the Cooperation Council for the Arab States of the Gulf ("GCC")).

Regulation

Broadly, there are two potential options for establishing a fund or a fund manager in the United Arab Emirates ("UAE"). These are to establish under the supervision of the UAE Central Bank (i.e. an onshore registration) or alternatively the Dubai Financial Services Authority ("DFSA").

Onshore registrations tend to be unattractive due to a number of local restrictions. Accordingly, the majority of funds or fund managers may therefore consider establishing in a free zone.

Currently, the only free zone specifically aimed at the financial services industry is the DIFC. The DIFC is regulated by the Dubai Financial Services Authority ("DFSA") for all financial and ancillary services.

The Collective Investment Law was enacted in DIFC in 2006 and mirrors much of the existing regulatory framework. For example, there are limitations on promotion, requirements for risk assessment, audit requirements and the provision of specific oversight roles.

Of particular note, the enacted legislation contains several restrictions relating to the distribution of some foreign funds. Broadly speaking, the restrictions apply where the foreign fund is not located in a "recognised jurisdiction". A recognised jurisdiction is one which is a signatory to the IOSCO framework.

Furthermore, the Collective Investment Law may in certain circumstances prohibit the operation of a foreign fund from the DIFC, or the operation of a domestic fund (i.e. a fund that is established or domiciled in the DIFC) from outside the DIFC.

As mentioned above, onshore funds or fund managers (i.e. those not located within the DIFC) are regulated by the UAE Central Bank.

Taxation

There are no federal taxes in the UAE. Instead, most of the Emirates introduced individual (general) income tax decrees in the late 1960s which potentially tax activities carried out in the Emirates.

In practice, however, the general tax decrees have not been enforced to date and consequently tax is not actually levied under these decrees for most businesses operating in the UAE (oil producing activities and branches of foreign banks are the exceptions to this rule).

DIFC registrations are, however, treated differently for tax purposes from businesses established under UAE domestic law. In particular, the DIFC offers guaranteed tax holidays (via a zero rate of tax) for a period of 50 years to businesses (and their employees) set up in the free zone. The zero rate of tax also extends to transfers of assets or profits to any party outside the DIFC.

The guaranteed tax holiday should provide greater certainty for the financial services sector going forward if the above mentioned tax decrees are enforced in the future.

United Kingdom

Regulation

Following its consultation paper in March 2007 on retail funds-of-hedge funds, in February 2008 the FSA issued a feedback paper confirming the acceptance by respondents of most of its proposals. In summary, the FSA proposed to create retail-oriented Funds of Alternative Investment Funds ("FAIFs") by way of:

- Introducing FAIFs into the existing FSA regulatory regime for Non-UCITS Retail Schemes ("NURS");
- Relaxing the existing NURS restriction of investing into unregulated collective investment schemes from 20% and increasing this to 100%, thereby allowing the development of FAIFs;
- Removing the 15% rule that prohibits circularity of investment within NURS; and
- Applying due diligence criteria for fund managers investing more than 20% in unregulated collective investment schemes.

The feedback also identified some further issues in need of consultation, which are:

- Master/feeder structures – in particular, the use of NURS funds as feeder funds and the associated regulatory and consumer protection risks;
- Genuine diversity of ownership – avoidance of FAIFs being used to obtain unintended tax advantages and to match the genuine diversity of ownership that will apply to Property Alternative Investment Funds ("PAIFs"); and
- Due diligence – some managers requested more detailed guidance on due diligence, specifically in relation to valuations, the use of pricing models and managing conflicts of interest.

The further consultation closed on 22 May 2008. The FSA is expected to finalise the draft rules in light of responses and give feedback in Q3 of 2008.

Recent market volatility has seen many firms struggle with liquidity issues and this has led to challenges to firms' internal capital adequacy assessment processes ("ICAAP"s). Whilst the ICAAP is used to challenge the level of regulatory capital firms should hold to adequately cover the risks to which their business may be exposed, the FSA commented in its Financial Risk Outlook 2008 that: "the recent tightening in financial conditions may have exposed some firms' business models as being potentially unsuitable in more stressed financial conditions where, for example, access to liquidity is restricted."

With much attention on the stress testing of balance sheets and capital levels, less attention has been devoted to portfolio and product level stress testing. Changes at the portfolio and product level can impact the business on a significant scale through revenue loss and reputational risk arising from unexpected redemptions or forced sales. The FSA considers that managers should be stress testing their portfolios and products where appropriate to prepare for such changes.

The FSA also questioned whether all asset managers have the appropriate systems and skills to manage and control their business effectively. In summary, the FSA reported that:

- Managers need to have robust systems and controls to value illiquid and complex instruments accurately before they start to use them;
- Staff with sufficient experience and expertise to understand the increasingly complex range of products should be retained or employed by managers;
- Managers need to implement effective systems and controls to monitor and control the risks associated with complex products ahead of their launch and on an ongoing basis; and
- Anti-market-abuse systems and controls need to be improved, with the mitigation of market abuse to be a priority for senior management. The controls around inside information need to be strengthened and the quality of training improved.

Taxation

Individual investors are taxed at up to 32.5% on dividends from non-transparent overseas hedge funds. Individual investors will also be subject to tax on non-dividend income and capital gains up to 40%.

Corporations are subject to 28% tax on income derived from an offshore hedge fund. For corporate investors, the return from a foreign hedge fund may be taxed on an annual mark-to-market basis in certain circumstances, in which case the offshore fund rules (see below) do not apply.

Pension fund investors are exempt from tax.

Open ended investment companies ("OEICs") and authorised unit trusts are taxed at 20% on income, but are not subject to tax on capital gains on disposal of investments. Unauthorised unit trusts are taxed at 20% on income.

The regulations governing the taxation of authorised funds (including QISs) came into force from 1 April 2006. These rules set out that qualified investor schemes and retail non-UCITS funds will generally be taxed in the same manner as authorised unit trusts and OEICs. These rules do, however, contain anti-avoidance rules that affect certain investors holding substantial interests in a QIS (broadly meaning that which exceeds 10%). This would require taxation of the increase in market value of the fund whether or not a distribution or disposal has been made.

Investment in a foreign hedge fund is likely to constitute an interest in an offshore fund. This means that UK resident investors may prefer the foreign hedge fund to obtain UK distributor status in order to safeguard the tax treatment of realised capital gains as opposed to having an income receipt on disposal. This legislation is currently under review with a new reporting regime expected to come into effect from 2009. Under these rules funds will have to report their annual income to the tax authorities and investors will have to include their share of the income in their annual tax return irrespective of whether it is distributed by the fund. Sale of units in a fund with reporting status will be taxed as capital gains. The capital gains tax rate for individual investors is 18%.

These rules are currently under review with changes expected to be enacted in the Finance Act 2009.

United States

Regulation

As noted in Section 2 of this report, the Securities and Exchange Commission ("SEC") requires offshore hedge fund advisers to be registered if the adviser has more than 14 clients who are resident in the United States, unless an exemption is available. The SEC had passed a rule requiring that such investors be counted on a "look through" basis rather than a product basis; however this rule was overturned by the DC Circuit Court of Appeals and is no longer relevant.

An offshore adviser that is required to register with the SEC can avoid most of the substantive compliance requirements applicable to onshore advisers if it advises offshore funds only. Such offshore advisers will still be subject to examination by SEC staff, although we note that current SEC staffing constraints would seem to make the wholesale review of offshore advisers highly unlikely in the near term. Offshore advisers with no domestic clients will also not be exempt from the requirement (generally arising through the application of Rule 204-2(a) of the Investment Advisers Act) to keep certain books and records, although there are some exceptions with respect to transactions involving offshore clients.

Certain other requirements applicable to onshore advisers, including the compliance, custody and proxy voting rules under the Investment Advisers Act, would not apply to registered offshore advisers, provided that they have no US clients (other than for the purpose of determining whether SEC registration is required).

Registered offshore advisers with no US clients (other than for counting purposes, as above) will not be required to adopt a code of ethics, but will be required to retain the personal securities dealing reports for so-called "access persons" that would otherwise be required to be kept under such a code.

Finally, in August of 2007, the SEC adopted a new anti-fraud provision rule intended to protect prospective and current investors of "pooled investment vehicles" advised by registered or unregistered investment advisers. This rule would extend to offshore advisers whose activities fall within the jurisdiction of the SEC. However, the rule presumably does not extend to offshore funds with no US clients, since such funds do not meet the definition of an investment company under the Investment Company Act.

US Federal Income Taxation

Hedge funds marketed to US and non-US investors are often formed through a "parallel" or a "master-feeder" structure. Under a "parallel" structure, two separate funds are formed, an "offshore" fund treated as a corporation for US tax purposes (generally, a Cayman or a BVI corporation) and an "onshore" fund treated as a partnership for US tax purposes (generally, a US or Cayman limited partnership). Non-US persons and US tax exempts (such as universities' pension funds, and endowments) typically invest through the offshore fund. An onshore fund is organised for US taxable investors such as US corporations and individuals.

Under a "master-feeder" structure, the two funds described above hold their investments through a third offshore corporate vehicle (the "master fund") that sometimes makes an election to be treated as a partnership for US tax purposes. While the parallel structure normally allows for more flexibility with respect to structuring of the investments, a master feeder structure could reduce the administrative costs because all the investments are held in one vehicle. An onshore fund is not subject to tax in the US itself. Rather, the fiscally transparent nature of the onshore fund results in its US investors being taxed on a current basis on the fund's profits (i.e. whether or not distributed). Income earned by a fiscally transparent fund should generally retain its character at the level of its investors as ordinary or capital gains income.

The income earned by an onshore fund is taxed at the US investor level at graduated rates, with the highest rate currently being 35% (excluding any state taxes). However, a US individual investor pays tax on qualifying dividends and long term capital gains at the rate of 15% or lower, depending on his or her income tax bracket. This reduced rate is scheduled to end on 31 December 2010. When an investor disposes of his or her interests in an onshore fund, capital gains arise to the extent that the amount realised on the sale exceeds his or her tax basis in the fund (adjusted for the income allocable to the investor over the life of the fund and contributions/distributions).

The impact of the US anti-deferral rules needs to be considered if a fund invests in companies that are considered corporations for US tax purposes. These anti-deferral provisions, the controlled foreign corporation ("CFC") and passive foreign investment company ("PFIC") rules, provide that certain types of "passive" income earned by a CFC or a PFIC are taxed to the US shareholders, either on a current basis, whether or not distributed (CFC or PFIC treated as a Qualified Election Fund ("QEF")), or on a realisation basis, with a deferred interest charge (PFIC regime without a QEF election).

Although it is not common, a US investor may invest in an offshore, non-fiscally transparent foreign fund. In such case, the US investor generally is not subject to tax on a current basis, with an important exception. If such an investor chooses to make a QEF election with respect to such fund, he or she will generally be taxed on a flow through basis on his or her share of the fund's ordinary income and capital gains. Of course, there are certain procedural requirements that have to be satisfied by the fund and the investor to make a QEF election. If a QEF election is not made, any gains on the sale of the fund or distributions received from the fund form part of the holder's taxable income and are subject to tax. The computation of the tax amount attempts to spread any gain over the holder's ownership period, tax such gains at the highest rates in effect, and subject such taxes to an interest charge to eliminate any benefit of deferral. Note that QEF considerations are only relevant for US investors who are subject to US tax.

As mentioned above, US tax exempt investors normally invest through an offshore or non-fiscally transparent corporation fund. The rationale for this approach stems from the desire to avoid any exposure to US unrelated business income tax ("UBIT"). UBIT is imposed on certain income unrelated to a not-for-profit's tax exempt purpose or income financed by debt. By investing through a non-fiscally transparent fund, a US not-for-profit investor shields itself from any UBIT exposure. Since not-for-profit investors are not subject to tax in the US, the US anti-deferral rules considerations generally are not relevant for them.

Without careful planning, the profits of an offshore fund may be subject to US income tax (at rates of up to 55%) if it has a taxable presence in the United States. An exception that is of particular interest to hedge funds may apply to a fund that trades in stocks and securities from a US office. While the "US trading safe harbour" provides clear guidance with respect to plain vanilla activities, the qualification for the safe harbour for certain novel investments (such as trading in carbon credits) is less certain and invites further clarification by the US tax authorities.

Finally, non-US fund managers looking to market funds to US investors should be aware of the potentially significant tax compliance costs required to prepare information in accordance with US tax principles.

Table 1

Availability of hedge funds and funds-of-hedge funds to investors by country at September 2008

Country	Single strategy hedge funds			Funds-of-hedge funds			Minimum investment amount	Average time taken to set up a fund
	Domestic	EU domiciled?	Other domiciles?	Domestic	EU domiciled?	Other domiciles?		
Austria	✗	✓	✓	✓	✓	✓	€nil – minimum investment amounts can be set by the hedge funds individually.	For domestic funds-of-hedge funds 2 to 3 months; for foreign funds-of-hedge funds approximately 4 to 6 months.
Bahamas	✓	✓	✓	✓	✓	✓	N/A	Professional funds – 3 days. Recognised foreign funds – 1 day SMART Funds – for an approval template will vary between 2 days and a week. Standard funds – 4 weeks.
Belgium	✗	✓	✓	✓	✓	✓	N/A	N/A
Bermuda	✓	✓	✓	✓	✓	✓	$nil (retail) $50,000 (administered fund) $100,000 (institutional fund).	Set-up can be a 2-stage process: 1) incorporation – 1 day (to allow bank accounts, etc. to be created) and 2) fund approval by BMA – 2 to 3 days.
Canada	✓	✓	✓	✓	✓	✓	$nil [1]	3 to 6 months.
Cayman Islands	✓	✓	✓	✓	✓	✓	$100,000 (Cayman-regulated funds) $nil (retail).	1 day for Cayman-regulated funds.
Denmark	✓	✓	✓	✓	✓	✓	Depends on type of investors the fund is marketed to and the type of fund.	6 to 8 weeks from filing all required documents with the Danish Financial Supervisory Authority.
Finland	✓ [2]	✓	✓	✓	✓	✓	€nil – funds may set own requirements for minimum amounts.	2 to 4 months. [3, 4]
France	✓	✓	✓	✓	✓	✓	€10,000 for funds-of-hedge funds. Generally either €125,000 (Aria Funds) or €250,000 (Contractual Funds) for single manager funds.	Once the manager is authorised by the Autorité des Marchés Financier (AMF), it may take a further 1 to 2 months to set up a single manager hedge fund.
Germany	✓	✓	✓	✓	✓ [5]	✓ [5]	€nil for domestic hedge funds and funds-of-hedge funds.	Approximately 2 months for German single manager hedge funds and funds-of-hedge funds. Foreign hedge funds may be distributed immediately by private placement. Foreign single manager hedge funds and funds-of-hedge funds distributed publicly: up to 6 months.

Country	Single strategy hedge funds			Funds-of-hedge funds			Minimum investment amount	Average time taken to set up a fund
	Domestic	EU domiciled?	Other domiciles?	Domestic	EU domiciled?	Other domiciles?		
Gibraltar	✓	✓	✓	✓	✓	✓	Depends on type of investors the fund is marketed to and the type of fund.	14 days for Experienced Investor Funds. 3 to 6 months for public funds.
Greece	✗	✓[6]	✓[6]	✗	✓[6]	✓[6]	N/A	N/A
Guernsey	✓[7]	✓	✓	✓[7]	✓	✓	Depends on type of investors the fund is marketed to and the type of fund.	Depends on nature and type of fund but can range from a minimum of 3 days to 6 to 8 weeks.
Hong Kong	✓	✓	✓	✓	✓	✓	For distribution to retail investors the minimum level of initial subscription by each investor must not be less than USD 50,000 and USD 10,000 for single strategy hedge funds and funds-of-hedge funds respectively. No statutory minimum subscription thresholds for hedge funds which are not subject to SFC authorisation requirements.	Approximately 1 to 3 months.
Ireland	✓	✓	✓	✓	✓	✓	Single manager hedge funds: [8] €125,000 or €250,000.	24 hours for QIFs; 6 to8 weeks for all other fund structures.
Isle of Man	✓	✓	✓	✓	✓	✓	No minimum subscription level for Qualifying Funds. USD 100,000 for Specialist Funds.	3 days.
Italy	✓	✓	✗	✓	✗	✗	€500,000	6 to 8 months.
Jersey	✓	✓	✓	✓	✓	✓	USD nil, USD 100,000 or USD 1 million [9]	3 days for expert funds, notification only for unregulated funds.
Liechtenstein	✗	✓	✓[10]	✓	✓	✓	CHF nil	4 months
Luxembourg	✓	✓	✓	✓	✓	✓	€nil except for SIF where the minimum investment is €125,000.	1 to 3 months except for SIF where NO pre-approval by the Regulator is required.[11]

Country	Single strategy hedge funds			Funds-of-hedge funds			Minimum investment amount	Average time taken to set up a fund
	Domestic	EU domiciled?	Other domiciles?	Domestic	EU domiciled?	Other domiciles?		
Malta	✓	✓	✓	✓	✓	✓	€15,000 in the case of an Experienced Investor Fund, €75,000 in the case of a Qualifying Investor Fund and €750,000 in the case of an Extraordinary investor Fund.	The MFSA has committed to process applications for the authorisation of PIFs within 7 working days, provided all relevant documentation has been properly completed and that all functionaries are based and regulated in a “Recognised Jurisdiction” (i.e. members of the EU or EEA and some other specified countries).
Netherlands, The	✓	✓	✓	✓	✓	✓	€nil	Approx 1 month for managers established in countries with adequate supervision; regular licence application for manager approx 3 to 6 months.[12]
Netherlands Antilles, The	✓	✓	✓	✓	✓	✓	€nil	2 to 4 weeks.
Norway	✗	✓	✓	✗	✓	✓	N/A	N/A
Portugal	✓	Information unavailable [13]	Information unavailable [13]	✓	Information unavailable [13]	Information unavailable [13]	€nil. Amounts are defined individually by each fund in the incorporation documents.	1 to 2 months for a straightforward fund; longer for more complex funds.
Singapore	✓	✓ subject to MAS approval of home jurisdiction	Possibly subject to MAS approval of home jurisdiction	✓ subject to MAS approval of home jurisdiction	✓	Possibly subject to MAS approval of home jurisdiction	Authorised/Recognised schemes available to retail investors. Minimum subscription for single manager hedge funds is S$100k while funds-of-hedge funds are S$20k. Restricted Authorised/ Recognised schemes only available to accredited investors as defined in SFA (C289). Minimum of S$200k per transaction.	Approximately 1 to 3 months.
South Africa	✓	✓	✓	✓	✓	✓	ZAR nil [14]	No regulatory time period, but current structures can be complex to avoid being classified as a collective investment scheme.
Spain	✓	✓	✓	✓	✓	✓	€50,000 for subscription to single manager hedge funds.	Standard regulatory 3-month period for authorisation of collective investment undertakings.

Country	Single strategy hedge funds			Funds-of-hedge funds			Minimum investment amount	Average time taken to set up a fund
	Domestic	EU domiciled?	Other domiciles?	Domestic	EU domiciled?	Other domiciles?		
Sweden	✓	✓	Possibly	✓	✓	Possibly	SEK nil	Domestic hedge funds: up to 6 months from completing the application. Other domiciles: approximately 2 months.
Switzerland	✓	✓	✓ [15]	✓	✓	✓ [15]	CHF nil	1 to 2 months for funds eligible for simplified approval process. For other funds 3 to 12 months.[16]
Taiwan	✗	✓ [17]	✓ [17]	✓	✓	✓	The minimum investment amount is at the discretion of hedge fund manager	N/A
Turkey	✓	✓ [18]	✓ [18]	✓	✓ [18]	✓ [18]	TRY nil – minimum investment amounts can be set by the hedge funds individually.[19]	N/A [20]
United Kingdom	✓	✓	✓	✓	✓	✓	£250 to £250,000	2 to 6 months.
USA	✓	✓	✓	✓	✓	✓	$nil	3 to 6 months.

Table 1 notes

Canada	1. Minimum investment depends on method of distribution.
Finland	2. Hedge funds are formed as Special Funds (usually Special Common Funds) with a definition of UCITS or non-UCITS. 3. The Financial Services Authority ("FSA") must be notified or a licence must be obtained when marketing mutual funds or special common funds. 4. Under the Mutual Funds Act, UCITS funds may commence marketing their units two months after the submission of the relevant notification, unless the FSA has special cause to prohibit the commencement of marketing.
Germany	5. The average time for authorisation depends on the complexity of the investment strategy and the product structure.
Greece	6. Only via private placement, subject to the granting of a licence by the Capital Markets Committee.
Guernsey	7. Proposals to be enacted to allow all regulated funds to be offered to Guernsey residents; however, registered funds will not be capable of being offered to the public in Guernsey, but may be listed.
Ireland	8. Minimum investment amounts have been abolished for retail funds-of-hedge funds. Minimum investments are €125,000 for Professional Investor Funds ("PIFs") and €250,000 for Qualified Investor Funds ("QIFs").
Jersey	9. For Jersey-regulated hedge funds there is no minimum investment for professional or institutional investors or investors with a net worth above USD 1 million. Otherwise the minimum initial investment is USD 100,000. For Jersey unregulated hedge funds investors must make a minimum initial investment of USD 1 million, or be institutional investors or professional investors as defined in the legislation.

Liechtenstein	10. Generally, offshore products in jurisdictions not subject to adequate regulation and supervision will not be approved for public distribution in Liechtenstein. However, such products can be invested in by regulated funds-of-hedge funds, structured products, as well as by professional wealth managers and banks who manage customer accounts under a discretionary management agreement, provided hedge funds form part of the regular asset allocation for the relevant client category that a particular client of a given asset manager falls into.
Luxembourg	11. Art. 41 of the law of 13 February 2007, which provides that the application file should be sent within the month of the set up of the FIS.
Netherlands, The	12. The periods stated are for (1) managers established in counties with adequate supervision (to be determined by the AFM). This is a new facility since for such countries a licence application is no longer necessary but only a registration with the AFM. Therefore, the period of one month is an estimate, or (2) established in an EU country. The AFM has determined that currently only a limited number of countries provide adequate supervision, including the United States.
Portugal	13. There are funds marketed in Portugal which are domiciled elsewhere but no information on whether these are EU or non-EU. There is no information publicly available on whether any of these are hedge funds and if so whether they are single strategy hedge funds or funds-of-hedge funds.
South Africa	14. The minimum investment amount is at the discretion of the hedge fund manager. The Financial Services Board issued a discussion paper to assist in drafting hedge fund regulations. The paper suggested that ZAR 250,000 should be considered reasonable as a minimum investment amount in a single-strategy hedge fund and that regulated funds-of-hedge funds might have no minimum investment amount.
Switzerland	15. Funds from jurisdictions not subject to adequate regulation and supervision will not be approved for public distribution in Switzerland. However, such funds can be distributed to qualified investors (which also include regulated funds-of-hedge funds); also, such funds can serve as underlying for structured products, or be used by banks, securities dealers and independent professional wealth managers who manage customer accounts under a discretionary management agreement, provided that hedge funds form part of the regular asset allocation for the relevant client category that a particular client of a given asset manager falls into. 16. Funds which use a standard fund regulations/fund prospectus of an industry organisation which are accepted as a minimum standard by the Swiss Federal Banking Commission (SFBC) are eligible for a simplified authorisation process: Qualified investor funds for alternative investments are automatically authorised four weeks after acknowledgement of receipt of the fund application by the SFBC, however the SFBC can request changes of the fund application documents for up to three months; public funds for alternative investments are authorised within eight weeks after acknowledgement of receipt of the fund application by the SFBC, unless the SFBC requires further information which stops the authorisation period. The authorisation for all other domestic funds for alternative investments not eligible for the simplified authorisation process will be in the range of three to 12 months, depending on the quality of application documents, the complexity of the fund and the profile of the applicant at the SFBC.
Taiwan	17. Only via private placement, subject to the submission of relevant notification to Financial Supervisory Commission.
Turkey	18. Foreign hedge funds should be registered with the Capital Markets Board (“CMB”) in order to distribute their units in Turkey. 19. Minimum total portfolio value for FIFs is TRY 3.5 million at the time of establishment. There is no separate regulatory requirement for the minimum investment amounts for investor. FIFs may set their own requirements for the minimum investment amounts applicable for the qualified investors. 20. Since there is no precedent for FIFs in Turkey, it is not possible to provide the estimated time. However, setting up any other investment fund takes approximately four to six months.

Table 2

Channels of distribution of hedge funds by country at September 2008

Country	Minimum investment amount							Summary of regulations currently governing distribution of hedge fund products and significant non-tax barriers to development of new distribution channels	Restrictions on location of key service provider's service providers?
	Banks	Fund distribution companies	Via wrappers	Private placement	Investment managers	Other regulated financial services institutions	Non-regulated financial intermediaries		
Austria	✓	✓	✓	✓	✓	✓		If a foreign hedge fund qualifies as an investment fund within the meaning of the Austrian law, public distribution will require the permission of the Austrian Financial Market Authority ("FMA"). Such permission will not be granted where the fund undertakes physical short selling, if investors can be obliged to make additional contributions or if loans exceed 10% of the fund's assets.	✗ [1]
Bahamas				✓	✓			Hedge fund products not generally available to retail investors in the Bahamas.	✓ [2]
Belgium	✓		✓	✓				Domestic legislation effectively prevents the establishment of domestic hedge funds. Public distribution of foreign hedge funds is not permitted except through bond wrappers, life wrappers or capital protected or capital guaranteed fund of fund wrappers.	✗
Bermuda	✓			✓	✓			Distribution to retail investors is governed by the Investment Funds Act 2006.	✓ [3]
Canada	✓	✓	✓	✓	✓	✓		Registration status is determined based on whether the hedge fund is distributed under a prospectus, under prospectus exemptions or through a linked product. Know your client and suitability requirements exist for dealers in the distribution chain.	✗
Cayman Islands	✓			✓	✓			Most Cayman funds are distributed to institutional and high net worth individuals outside the Cayman islands. A fund cannot be distributed to retail investors in the Cayman Islands unless it is registered as a licensed fund under the Mutual Funds Law or it is listed on a recognised stock exchange. If the fund is structured as a Cayman offshore company and is distributed in Cayman as a retail fund, then it must be listed on the Cayman Islands Stock Exchange.	✓ [4]
Denmark	✓	✓		✓	✓	✓		Full FSA approval is required for distributing domiciled funds and funds domiciled outside the EEA. Other hedge funds registered in EU countries must give notice to the Danish FSA before cross-border distribution	✗ [5]
Finland	✓	✓			✓	✓ [6]		The Mutual Funds Act on Common Funds governs the distribution of Common Funds (UCITS) and Special Common Funds (non-UCITS). Domestic hedge funds are generally formed as SCFs. The Securities Market Act governs distribution of non-Finnish funds that are available only to professional investors (for which no marketing licence is required. The FSA must be notified prior to the commencement of marketing of UCITS funds. Non-EU mutual funds marketing their units to retail investors must obtain a licence from the FSA.	✗

Country	Minimum investment amount							Summary of regulations currently governing distribution of hedge fund products and significant non-tax barriers to development of new distribution channels	Restrictions on location of key service provider's service providers?
	Banks	Fund distribution companies	Via wrappers	Private placement	Investment managers	Other regulated financial services institutions	Non-regulated financial intermediaries		
Germany	✓	✓	✓		✓	✓		Hedge funds and hedge fund-like products are regulated as Authorised Funds with Simplified Investment Rules (OPCVM Agreés à Règles d'Investissement Allégées – ARIA), Contractual Mutual Funds (OPCVM Contractuels), or future funds (Fonds communs d'intervention sur les marches à terme) and may be marketed to different categories of investors, including retail investors.	✗[7]
Germany	✓[8]	✓	✓	✓	✓	✓	✓[9]	Single strategy hedge funds may not be publicly distributed to retail investors. Funds-of-hedge funds, whether foreign or domestic, may be publicly distributed to retail investors with the permission of BaFin. As of December 2007, according to the German Investment Act, even single manager hedge funds have to hand out all sale documents to the potential investor. Generally, aside from the duty to publish a prospectus, publicly distributed wrapper products are not subject to direct supervision.	✓[10]
Gibraltar	✓				✓	✓		None.	✓[11]
Greece				✓				Domestic funds are regulated according to their legal form; however Greek legislation effectively prevents the establishment of domestic hedge funds. All non-UCITS funds seeking to distribute to retail investors are required to obtain a licence from the Capital Markets Committee. Distribution of foreign hedge funds tends to be by private placement only and outside the scope of the regulatory framework.	✗
Guernsey	✓	✓	✓	✓	✓	✓	✓	Hedge funds can be distributed globally, subject to the rules of the territory in which they are being promoted.	✗
Hong Kong: Retail funds	✓	✓			✓	✓		Hedge funds which are marketed to the Hong Kong public must be authorised by the Securities and Futures Commission in Hong Kong.[12]	✗[13]
Private funds	✓	✓				✓	✓		
Ireland	✓[14]			✓	✓	✓[15]		Hedge funds domiciled outside Ireland, which are seeking to market publicly in Ireland, must be approved by the Financial Regulator.	✓[16]
Isle of Man	✓	✓	✓	✓[17]	✓	✓	✓	Hedge funds can be distributed worldwide, subject to the rules of the territory in which they are being sold.	✓[18]
Italy				✓				Authorisation to establish domestic hedge funds (single strategy and funds-of-hedge funds) is granted by the Bank of Italy, which must approve the fund's constitutional documents. Hedge funds may not be offered publicly in Italy.	✓[19]

Country	Minimum investment amount							Summary of regulations currently governing distribution of hedge fund products and significant non-tax barriers to development of new distribution channels	Restrictions on location of key service provider's service providers?
	Banks	Fund distribution companies	Via wrappers	Private placement	Investment managers	Other regulated financial services institutions	Non-regulated financial intermediaries		
Jersey	✓	✓	✓	✓	✓	✓	✓	Hedge funds can be distributed globally, subject to the rules of the territory in which they are being promoted.	
Liechtenstein	✓				✓	✓		Regulated open-ended Liechtenstein hedge funds or funds-of-hedge funds and foreign-regulated hedge funds	✗
Luxembourg	✓					✓		Hedge funds domiciled outside Luxembourg seeking to market to the public in Luxembourg must be approved by the Commission de Surveillance du Secteur Financier ("CSSF"). Only funds which are subject to adequate prudential supervision in their country of origin will be approved.	
Malta	✓	✓		✓	✓	✓		In order for hedge funds to be marketed in Malta, they must first be approved by the Malta Financial Services Authority.	✓[20]
Netherlands, The	✓	✓	✓	✓	✓	✓		The Act on Financial Supervision or ("AFS") provides licence requirements for hedge fund managers. When in possession of a licence, no minimum investment amount applies. A hedge fund manager may offer participations in The Netherlands without a licence only if (a) participations are offered above the threshold of €50,000 nominal value per participation or if the package of participations represents a value of at least €50,000; (b) if the offer is limited to less than 100 persons not being institutional (qualified) investors; (c) if the offer is limited solely to institutional (qualified) investors.	✓[21]
Netherlands Antilles, The				✓				Domiciled funds are generally not available to retail investors in The Netherlands Antilles.	✓
Norway								Under current regulations, the Norwegian Securities Fund Act prohibits the solicitation of subscriptions in hedge funds, from both individuals and legal entities, although foreign hedge funds may be actively promoted in Norway with the permission of the Norwegian Financial Supervision Authority ("FSA"). However, we understand that no foreign hedge fund has yet been granted permission by the FSAto be promoted in Norway. The Ministry of Finance has proposed an amendment of the Securities Fund Act in order to allow solicitation of subscriptions in hedge funds both to professional and non-professional investors. At the time it is not known whether and when the proposed amendments can be expected to enter into force.	

Country	Minimum investment amount							Summary of regulations currently governing distribution of hedge fund products and significant non-tax barriers to development of new distribution channels	Restrictions on location of key service provider's service providers?
	Banks	Fund distribution companies	Via wrappers	Private placement	Investment managers	Other regulated financial services institutions	Non-regulated financial intermediaries		
Portugal	✓				✓			Domestic/EU-domiciled funds Special Investment Funds ("SIFs") are distributed to institutional investors. When this is not the case CMVM needs to be informed on the training program of the entities involved in the distribution to non-institutional investors. CMVM may refuse to authorise the distribution of SIFs to certain investors if there are concerns that existing conditions do not adequately protect those investors. Foreign funds that are EU domiciled can be distributed in Portugal provided that CMVM does not oppose the distribution and that it authorises the related contract. Non-EU-domiciled fund or EU domiciled funds that do not follow the EU directive 85/611/CE are also required to be authorised by CMVM prior to distributing publicly in Portugal. Authorisation will not be granted if the distribution conditions and the fund itself do not provide the investor with similar security and protection conditions to those of the funds domiciled in Portugal.	✓ [22]
Russia				✓				Hedge funds may only be distributed by private placement.	✗
Singapore	✓			✓	✓	✓	Yes if filed notice with MAS as an exempt fund manager or exempt financial adviser	Distribution/promotion to retail investors is allowed only if it is an authorised hedge fund or recognised hedge fund. Restricted authorised hedge fund and restricted recognised hedge fund can only be marketed to accredited investors. Distribution of hedge funds to retail investors is typically through distributor banks or licensed financial advisers, while non-retail hedge funds distribution is mainly through private banks and other exempt institutions.	✗
South Africa	✓		✓	✓	✓			Hedge fund managers are not currently allowed to actively solicit investments into their funds. The restriction on marketing covers foreign hedge funds sold in South Africa as well as domestic hedge funds. A collective investment scheme managed outside South Africa must at all times have a representative office in South Africa and maintain a minimum capital amount of ZAR 2 million (invested in liquid assets) in order to distribute in South Africa.	✓

Country	Minimum investment amount							Summary of regulations currently governing distribution of hedge fund products and significant non-tax barriers to development of new distribution channels	Restrictions on location of key service provider's service providers?
	Banks	Fund distribution companies	Via wrappers	Private placement	Investment managers	Other regulated financial services institutions	Non-regulated financial intermediaries		
Spain	✓	✓		✓	✓	✓ [24]		Under Spanish legislation, the marketing of domestic or foreign single manager hedge fund products is confined to qualified investors as defined under the Prospectus Directive (it does not mean that retail investors are prevented from investing in such categories provided certain conditions are met). Retail investors may invest in single manager hedge funds and funds-of-hedge fund products subject to certain conditions and representations about their knowledge about the risk of such type of products. This representation is not necessary in the case of investment under a portfolio discretionary management basis. Any category of foreign hedge fund product which intends to distribute shares/units in Spain under the same conditions as those prescribed for Spanish products is required to obtain prior authorisation of the CNMV.	✓ [24]
Sweden	✓	✓	✓	✓	✓	✓		Activities aiming to further the sale of any product or service in Sweden, including securities and fund shares, are subject to the provisions of the Swedish Marketing Practices Act and the Swedish Act on Investment Funds (2004:46).	✓ [25]
Switzerland	✓	✓	✓	✓	✓	✓		There are no restrictions for retail investors to invest in shares of closed-ended investment companies listed on a regulated stock exchange (funds-of-hedge funds), as these are not in the scope of the CISA. CISA-regulated open-ended Swiss hedge funds or funds-of-hedge funds and foreign-regulated hedge funds approved for public distribution in Switzerland can be sold to retail and/or qualified investors. Investments in closed-end CISA-regulated limited partnerships can only be distributed to qualified investors. Banks, securities dealers and other independent professional asset managers can use regulated and non-regulated domestic and foreign hedge funds and funds-of-hedge funds on the basis of discretionary management contracts with clients. Furthermore, hedge funds and funds-of-hedge funds not approved for distribution in Switzerland may be sold via private placement to qualified investors. Distributors of CISA-regulated funds or SFBC-registered foreign funds are either an SFBC-regulated institution or are required to obtain the SFBC's approval as a distributor prior to commencing distribution.	✓ [26, 27]

Country	Minimum investment amount							Summary of regulations currently governing distribution of hedge fund products and significant non-tax barriers to development of new distribution channels	Restrictions on location of key service provider's service providers?
	Banks	Fund distribution companies	Via wrappers	Private placement	Investment managers	Other regulated financial services institutions	Non-regulated financial intermediaries		
Taiwan	✓			✓	✓	✓		Foreign hedge funds cannot be promoted in public; they may only be accessed through private placement. Investors can access foreign hedge funds via 1) a privately placed local feeder fund which in turn invests in/feeds into offshore hedge funds, or 2) a privately placed offshore hedge fund, or 3) derivatives that replicate the effect of hedge funds by, among others, tracking hedge funds indices. [28]	✗
Turkey	✓					✓ [29]		CMB approval is required for distributing foreign hedge funds in Turkey. Domestic hedge funds are formed under the CMB as Free Investment Funds ("FIFs"). Their units can only be sold to qualified investors and should not be promoted to the public. FIFs are not allowed to advertise or make announcements regarding their sales activities.	✓ [30]
United Kingdom	✓		✓	✓	✓			Hedge funds should not be promoted to the public. However, there are a number of products that are aimed at, and promoted to, the retail market in the UK with hedge fund exposure. These have typically been structured as UK listed companies, which are funds-of-funds.	✗
USA				✓				In the USA, marketing rules governing hedge funds are covered by: (1) The rules of the SEC, which govern much of the activities of investment advisers; (2) State/Blue Sky regulations; and (3) The rules of the NASD, which regulate the offering of hedge funds by registered representatives of broker dealers who offer hedge funds. The majority of hedge funds and funds-of-hedge funds are sold via private placements, however funds may register with the SEC and be offered more widely.	✗

Table 2 notes

Austria	1. Foreign funds need to appoint a custodian bank, a paying agent as well as a legal representative in Austria. Only Austrian credit institutions or domestic branches of an European Economic Area credit institution can take over these functions.
Bahamas	2. Foreign funds must appoint a representative in the Bahamas who is approved by the Securities Commission.
Bermuda	3. The custodian and administrator must be located in Bermuda for Bermuda-domiciled retail funds, although the Bermuda Monetary Authority ("BMA") may grant exemptions or permit services to be sub-contracted outside Bermuda in certain circumstances.
Cayman Islands	4. Funds registered with CIMA are required to appoint a local CIMA-approved auditor.
Denmark	5. Domestic hedge associations are required to appoint a bank as the depository. This bank is required to have its registered office in Denmark or be a corresponding foreign credit institution with a branch in Denmark and with its registered office within the EU or EEA.
Finland	6. Other regulated financial services institutions consist of Investment Firms with MiFID compliance.
France	7. The custodian must be located in the EU.
Germany	8. Banks may distribute overseas hedge funds by issuing wrapper products. 9. Only funds-of-hedge funds may be distributed by non-regulated financial intermediaries. 10. For domestic funds the investment manager is required to be located and regulated in Germany. The fund can cooperate with prime brokers of good solvency which are domiciled and regulated in the OECD, EU or EEA.
Gibraltar	11. The custodian, investment manager and trustee must be registered in Gibraltar and must be regulated.
Hong Kong	12. Under the Securities and Futures Ordinance, a person is registered to be licensed with the Securities and Futures Commission for distribution of investment products in Hong Kong, if the activities constitute the making or offering to make an agreement with another person, or inducing or attempting to induce another person to enter into or to offer to enter into an agreement: a) For or with a view to acquiring, disposing of, subscribing for or underwriting securities; or b) The purpose or pretended purpose of which is to secure a profit to any of the parties from the yield of securities or by reference to fluctuations in the value of securities. 13. SFC-authorised schemes, are required to appoint a Representative in Hong Kong if their management company is not incorporated and does not have a place of business in Hong Kong.
Ireland	14. Private banks only. 15. Brokers only. 16. Irish-domiciled hedge funds must appoint an Irish trustee/custodian and fund administrator and perform certain other tasks in Ireland.
Isle of Man	17. Wrapper products issued by insurance companies only. 18. Day-to-day operations of Professional Investor Funds, Experienced Investor Funds and Qualifying Funds must be carried out in the Isle of Man.
Italy	19. The depository bank for Italian hedge funds must be located in Italy, however this could be an Italian bank or a branch of an EU bank located in Italy.

Malta	20. The custodian/prime broker, administrator, manager and adviser appointed by the Fund must be located in an established, regulated and recognised jurisdiction; these include members of the EU or EEA and some third countries.
Netherlands, The	21. Outsourcing of services to external service providers by a regulated investment vehicle is possible provided certain restrictions are met as defined in the AFS. The investment manager remains responsible for the outsourced activities and outsourcing may not hinder supervision. Outsourcing of the execution of the investment policy is only allowed to regulated entities. There must be an outsourcing agreement in place that meets certain requirements.
Portugal	22. Domestic funds must appoint a local bank or a local branch of an EU bank as custodian. It is possible for the investment management function of domestic funds to be sub-contracted to an entity (authorised financial intermediary) either in Portugal or in the EU, subject to certain conditions and to the management company keeping its ultimate responsibilities. Outside the EU, authorisation can also be granted where regulation in the country of the investment manager is deemed by the Portuguese regulator to be of an acceptable standard and the cooperation between the regulators is secured.
Spain	23. ISD Firms and financial intermediaries. 24. Domestic funds must appoint a local bank or a branch of an overseas bank in Spain as Custodian. Additionally, regulations require that any outsourcing entity can demonstrate appropriate experience in performing the outsourced activity and the local hedge fund manager must have proper follow-up resources and systems to ensure adequate monitoring of the activities outsourced. In any case, outsourcing should not imply “letter-box” management companies in Spain.
Sweden	25. Funds must have a domestic paying agent for the settlement of subscriptions, redemptions and distributions.
Switzerland	26. Domestic open-ended hedge funds and funds-of-hedge funds must appoint a domestic administrator (except for self-administrated SICAVs) and a domestic custodian. Closed-end CISA-regulated hedge funds and funds-of-hedge funds have to appoint a domestic custodian and paying agent. Hedge funds, upon approval by the SFBC, can use foreign professional prime brokers. 27. Foreign hedge funds and funds-of-hedge funds approved for public distribution in Switzerland are required to appoint an SFBC-approved domestic representative and a domestic paying agent for the settlement of subscriptions, redemptions and distributions.
Taiwan	28. The sale of foreign hedge funds is governed by the Regulations Governing Offshore Funds, which provide that privately placed offshore funds can contract with the following channels to access potential investors: bank, trust enterprise, securities broker, Securities Investment Trust Enterprises or Securities Investment Consulting Enterprises (revised on 5 February 2008)
Turkey	29. If the units of the foreign funds are distributed in Turkey it is subject to certain conditions set out for the registration of the units to the CMB by the CMB regulations. Domestic FIFs can only appoint CMB-registered portfolio managers (i.e. non-deposit collecting banks (such as investment banks), portfolio management companies, and intermediary brokerage houses) which are established in Turkey to manage their portfolio. Furthermore, the founder is responsible for the protection and safekeeping of the fund’s assets; there is no requirement for the existence of a depositary. ISE Settlement and Custody Bank (Takasbank A.S.) acts only as a safekeeper for investment funds’ assets, and has no legal and financial responsibility in the content of UCITS Directive. It is also worth noting that portfolio management companies are not allowed to distribute units of the hedge funds as per CMB regulation. 30. Other regulated financial institutions refer to brokerage houses operating in Turkey in accordance with CMB rules.

Table 3

Regulation of hedge fund managers by country at September 2008

Country	Name of regulator	Minimum capital required to operate as hedge fund manager	Notes
Austria	Finanzmarktaufsicht ("FMA")	Varies	1
Bahamas	Securities Commission of The Bahamas	$25,000	
Belgium	Banking, Financial and Insurance Commission	N/A	2
Bermuda	Bermuda Monetary Authority ("BMA")	None	3
Canada	Canadian Securities Administrators ("CSA")	None (unless managing portfolio assets)	4
Cayman Islands	Cayman Islands Monetary Authority ("CIMA")	Cayman-domiciled investment managers must register under the Securities Investment Business Law ("SIBL"). An exemption from the normal US$500,000 minimum capital, audit and financial statement filing requirement is available where the funds being managed are only open to institutional and high net worth investors.	
Denmark	Danish Financial Supervisory Authority ("FSA")	Varies depending on the manager. Most commonly the manager is either the investment management department for a bank or an Investment Manager ('Fondsmæglerselskab'). The minimum capital required to operate as a hedge fund manager in Denmark will be an Investment Management company with a capital of €300,000.	
Finland	Financial Supervision Authority ("FSA")	€125,000 + 0.02% of assets under management in excess of €250 million (subject to an overall maximum capital requirement of €10 million).	
France	Autorités des Marchés Financiers ("AMF")	Net equity must be maintained at a level equal to the greater of: • 25% of annualised expenditure; and • €125,000 + 0.02 % of assets under management in excess of €250 million (subject to an overall maximum capital requirement of €10 million).	
Germany	Bundesanstalt für Finanzdien-stleistungsaufsicht ("BaFin")	Initial capital of €300,000 according to the modifications of December 2007 of the German Investment Act plus an ongoing capital requirement based on assets under management. Own funds shall at no time be less than 25% of annual operating expenses.	
Gibraltar	Financial Services Commission ("FSC")	**Fund administrator** £10,000 of paid-up share capital if no staff or premises, otherwise the higher of £25,000 and 3 months' expenditure. **Investment manager** €125,000 minimum share capital. **UCITS Fund Manager** The greater of: • 13/52 of its relevant annual expenditure and; • €125,000 or the equivalent in another currency; and an additional financial resource requirement equals 0.02% of the value of funds under management that exceed €250,000 or the equivalent in another currency.	
Greece	N/A	N/A	
Guernsey	Guernsey Financial Services Commission ("GFSC")	£10,000 of paid-up share capital if no staff or premises, otherwise the higher of £25,000 and 3 months' expenditure.	5
Hong Kong	Securities and Futures Commission ("SFC")	Minimum paid-up share capital: Nil to HK$5 million. Minimum liquid capital: HK$100,000 to HK$3 million. Both depend on the nature and scope of the activities.	
Ireland	Irish Financial Services Regulatory Authority ("IFSRA")	Promoters of Irish-domiciled hedge funds must maintain minimum regulatory capital of €635,000.	6

Country	Name of regulator	Minimum capital required to operate as hedge fund manager	Notes
Isle of Man	Financial Supervision Commission ("FSC")	The greater of £75,000, or 3 months' expenditure.	
Italy	Bank of Italy; Commissione Nazionale per le Società e la Borsa	€1 million (although this can be larger depending on the nature and scale of investment management activities). Since June 2007 management companies can offer both traditional and alternative products provided that they appropriately enhance the risk management, internal control and compliance functions.	7
Jersey	Jersey Financial Services Commission ("JFSC")	£25,000	8
Liechtenstein	Finanzmarktaufsicht (FMA)	Varies	9
Luxembourg	Commission de Surveillance du Secteur Financier ("CSSF")	€125,000	10
Malta	Malta Financial Services Authority ("MFSA")	A Hedge Fund Manager will typically hold a category 2 licence under the Investment Services Act and the minimum capital requirement is €125,000.	
Netherlands, The	Netherlands Authority for the Financial Markets ("AFM") for supervision of market conduct. Dutch Central Bank ("DCB") for prudential supervision	€225,000 (non-UCITS manager) if it manages assets of at least €250 million. €125,000 (non-UCITS manager) if it manages assets of less than €250 million.	
Netherlands Antilles, The	Central Bank of The Netherlands Antilles	N/A	
Norway	Financial Supervisory Authority of Norway	€125,000	
Portugal	Portuguese Securities Market Commission ("CMVM")	(i) €250,000 (share capital) plus a requirement based on assets under management. (ii) €7.5 million (own funds) for managers of closed-ended vehicles other than an investment funds management company (only credit institutions).	11
Russia	N/A	N/A – hedge fund managers are not regulated in Russia.	
Singapore	Monetary Authority of Singapore	No requirements if operating as an "exempt fund manager", which is subject to exemption criteria being met on an ongoing basis. If the fund manager holds a CMS licence, there is a minimum capital requirement of S$250,000.	12
South Africa	Financial Services Board ("FSB")	N/A	13
Spain	Comisión Nacional del Mercado de Valores (CNMV)	€300,000 plus additional own funds requirements based on the level of assets under management and their net income received from its management activities.	
Sweden	The Swedish Financial Supervisory Authority	€125,000 initial capital. In addition, capital equal to 3 months' annualised expenditure must be maintained, plus 0.02% of assets under management in excess of €250 million (up to a maximum capital requirement of €10 million).	
Switzerland	Swiss Federal Banking Commission ("SFBC")	Minimum capital of CHF200,000 fully paid (or bank guarantee for natural persons and non-corporate entities). Additional regulatory capital of up to CHF 20 million, depending on assets under management and fixed operating cost of the hedge fund manager. Net regulatory capital has to cover at least 25% of the fixed expenses per the last annual financial statements of the hedge fund manager.	14
Taiwan	Financial Supervisory Commission	N/A	15
Turkey	Capital Markets Board ("CMB")	Varies	16
United Kingdom	Financial Services Authority ("FSA")	Regulatory capital must generally be equivalent to 3 months' fixed overheads.	17
USA	The Securities and Exchange Commission ("SEC") and, in some cases, the Commodity Futures Trading Commission ("CFTC")	None	18

Table 3 notes

Austria	1. The FMA is only responsible for Austrian banks and Austrian ISD firms: if a bank is the manager, the capital requirement is €5 million (€2.5 million for Austrian ManCos); if an ISD firm is the manager, the capital requirement is either €50,000 or €125,000 depending on scope of services provided.
Belgium	2. Hedge fund managers may only operate private hedge funds (public distribution of hedge funds in Belgium is not allowed (except through bond wrappers, life wrappers or capital guaranteed or protected fund of fund wrappers)). Hedge fund managers operating such funds are not subject to any specific prudential controls.
Bermuda	3. Domestic hedge fund managers are not regulated in Bermuda unless they are distributing funds to residents of Bermuda, in which case they are required to be registered under the Investment Business Act.
Canada	4. There is currently no requirement for a hedge fund manager to be registered unless they are also managing portfolio assets. This is currently under examination by the CSA as part of its Registration Reform Project. Current proposals would require minimum capital of CDN$100,000 for an investment fund manager.
Guernsey	5. There is no requirement to have a principal manager set up and regulated in Guernsey to operate either a closed- or open-ended hedge fund. The Guernsey hedge fund engages the services of a regulated Guernsey administrator.
Ireland	6. Promoters of Irish-domiciled hedge funds must maintain minimum regulatory capital of €635,000.
Italy	7. The Finance Ministry has clarified that Real Estate funds can invest in units of Real Estate funds (Italian and foreign funds), in Luxembourg Real Estate SICAV, in listed Real Estate company and in Real Estate Investment Trust.
Jersey	8. There is no requirement to have a principal manager set up and regulated in Jersey to operate either a closed- or open-ended Jersey-regulated hedge fund. The Jersey-regulated hedge fund engages the services of a regulated Jersey administrator. From 14 November 2007 Hedge Fund Managers are regulated under the Financial Services (Jersey) Law 1998. For a Jersey unregulated hedge fund there is no requirement to engage the services of a regulated Jersey administrator or to have a principal manager set up and regulated in Jersey.
Liechtenstein	9. The initial capital in the case of a fund management company must be at least CHF 1 million. A self-managed investment company is required to have an initial capital of at least CHF500,000 (or a bank guarantee for an equivalent amount). The initial capital of an investment company managed by a third management company is at least CHF 50,000.
Luxembourg	10. Type 2 and Type 3 managers manage non-UCITS funds domiciled inside and outside Luxembourg respectively. However, the implementation of MIFID is expected to change those rules with a harmonisation of capital requirements for both types of hedge funds managers to €125,000.
Portugal	11. (i) €250,000 is the minimum share capital for an investment funds management company (Sociedade Gestora de Fundos de Investimento – SGFI); additionally, SGFIs are required to maintain own funds that are not less than the sum of 0.5% of the first €75 million of assets under management and 0.1% of any additional assets. Own funds cannot exceed €10 million except if this amount is lower than 25% of the entity general expenses of the previous year. (ii) For closed-ended funds other than the SGFI, the manager can also be a credit institution (CI). The minimum share capital of a CI depends on the nature of its main activity, e.g. banking, leasing, etc. However, other than the share capital, to manage a closed ended fund a CI has a minimum requirement for own funds of €7.5 million.
Singapore	12. MAS does not regulate hedge funds which are only distributed to accredited investors, i.e. as Restricted Authorised/Recognised schemes. No annual regulatory reporting requirement to MAS is necessary if the hedge fund manager is exempt, although an annual declaration of continued compliance with exemption criteria is required. If the hedge fund manager is CMS licensed, annual audited regulatory reporting will be required using prescribed forms, including quarterly regulatory filings with the MAS. For Authorised/Recognised schemes, MAS will require annual audited reports to be distributed to investors within three months of the year end in accordance with the Code of Collective Investment Schemes.

South Africa	13. There are no minimum capital requirements for hedge fund managers. Hedge fund managers are authorised by the FSB as Category IIA Discretionary Financial Services Providers under FAIS. This is a separate category of FSPs created by the FSB (effective February 2008) specifically to regulate hedge fund managers.
Switzerland	14. Applicable to hedge fund managers of Swiss collective investment schemes. Usually no minimum capital requirements are applicable to Swiss-domiciled hedge fund managers of foreign hedge funds, as they are generally not regulated. If hedge fund managers manage foreign hedge funds subject to foreign supervision equivalent to Swiss supervision, and the foreign regulator requires a regulated hedge fund manager, they can voluntarily apply for an asset manager licence of the Swiss Federal Banking Commission.
Taiwan	15. Hedge funds may not be established by local Taiwan fund managers, either through public distribution or private placement. In the short term, absent the establishment of a supervisory framework for hedge funds, it does not appear that Taiwanese authorities are ready for deregulation in this sector.
Turkey	16. Portfolio management companies, intermediary institutions and non-deposit collecting banks (e.g. investment banks) are allowed to provide portfolio management services provided that they get CMB approval. For portfolio management companies, the minimum capital requirement is TRY290,000. For intermediary institutions such as brokerage houses, the minimum capital requirement is at least 25% of the shareholders' equity. The minimum shareholders' equity for intermediary institutions ranges between TRY82,000 and 780,000 depending on the type of licence they hold. The minimum capital requirement for non-deposit collecting banks is TRY20 million. (Please note that these figures are applicable for the year 2008.) Please also note that these rules only apply for domestic hedge funds (FIFs) but not for foreign hedge funds distributed in Turkey subject to CMB approval.
UK	17. Detailed requirements depend on the precise activities of the manager.
USA	18. Rules in the US generally require investment advisers to register with the SEC if they manage the assets of US clients. There are certain exemptions from registration for advisers that manage the assets of fewer than 15 clients (or for US-domiciled advisers that manage less than US$25 million). Advisers who have their principal place of business outside the United States (Offshore Advisers) only need to count their US-resident clients (determined at the time of initial investment) towards this 15-client threshold.

Table 4

Taxation of hedge funds and hedge fund managers

Country	Single-strategy fund	Funds-of-hedge funds	Hedge fund manager
Austria	Fund is tax transparent.		Subject to corporate income tax at the rate of 25%.
Australia	Resident fund is tax transparent.		Subject to corporate income tax at the rate of 30%. However, if Offshore Banking Unit concession applies, tax rate is 10%.
Bahamas	0%		0%
Belgium	N/A		N/A
Bermuda	0%		0%
Canada	Domestic funds are generally not subject to tax as long as they are structured as such. However, the investors are subject to tax on any amounts paid or payable to them. Assuming that the foreign fund meets Canada's Safe Harbour rules (i.e. it does not have a nexus in Canada) and is excluded from the proposed non-resident trust rules, foreign funds are generally subject to a 25% withholding tax on investment income paid by Canadians, which can be reduced if the foreign fund is eligible for treaty benefits. Interest paid from a non-related Canadian to a non-resident is not subject to withholding tax, with some exceptions. Non-residents are subject to Canadian income taxes on disposition of "Taxable Canadian Property", which tax can be reduced if the foreign fund is eligible for treaty benefits.		A Canadian-domiciled hedge fund manager in the legal form of a corporation is taxed at a federal corporate income tax at the rate of 19.5% plus the applicable provincial rate (i.e. 14% for an Ontario resident corporation). A foreign-domiciled hedge fund manager without any permanent establishment that does not carry on business in Canada is generally not subject to Canadian income taxes.
Cayman Islands	0%		0%
Denmark	Tax exempt. Subject to a final withholding tax of 15% on dividends received on shares in Danish companies.		Taxed at corporate rates.
Finland	Finnish common funds within the meaning of the Finnish law are tax exempt.		Subject to corporate income tax at the rate of 26%.
France	Fund is tax transparent.		Taxed at standard rates.
Germany	Tax-exempt.		A German-domiciled hedge fund manager in the legal form of a corporation is taxed at a flat rate of 15% corporate tax plus trade tax (trade tax rate is applicable according to regional laws) and solidarity surcharge.
Gibraltar	Any Gibraltar fund approved by the Commissioner of Income Tax will be exempt from tax.		0% (tax-exempt companies) or 30% for tax year 2008/09 for income accrued in or derived in Gibraltar (there is a small company's rate of 20% which rises to 30% once taxable profits have exceeded £95,665).
Greece	25%		25%
Guernsey	5% (20% on Guernsey income excluding bank interest).		0% to 20%
Hong Kong	0% if tax exempted otherwise 16.5% subject to legislative enactment.		16.5% subject to legislative enactment.
Ireland	Tax-exempt assuming declarations are in place for all non-resident investors.		12.5% on trading profits; 25% on non-trading income.
Isle of Man	0%		Taxed at 0%.
Italy	12.5% / 0% (only foreign qualified investors).		27.5% (corporate income tax) and 3.9% / 4.82% (regional tax on productive activities).
Japan	0% / 30% / 42% depending upon the income and whether or not the Fund has a PE in Japan.		A Japanese resident corporate fund manager, and non-resident corporate fund managers deemed to have a PE in Japan, would be subject to corporate income tax at an effective rate of 42%.
Jersey	0%		20%, falling to 0% from 2009.

Country	Single-strategy fund	Funds-of-hedge funds	Hedge fund manager
Liechtenstein	0%		Profits taxed under normal corporate tax regime from 7.5% to 15% (up to 20% if a distribution with a sum bigger than 8% of the capital of the company is made). Capital of the company is taxed at 0.2%. Additional withholding tax of 4% must be paid on distributions of corporations.
Luxembourg	Tax-exempt, but registration duty of €1,250 and annual subscription tax of 0.01% (for Specialized Investment Funds or sub-funds, the shares of which are dedicated to institutional investors) or 0.05% on funds NAV. For fund of hedge funds, no subscription tax is levied in respect of Luxembourg-domiciled underlying funds. An exemption can also be granted for funds the securities of which are reserved for institutions for occupational retirement provision, or similar investment vehicles set up on one or several employers' initiative for the benefit of their employees and companies of one or several employers investing the funds they own, in order to provide their employees with retirement benefits.		Profits taxed under normal corporate tax regime at 29.63% plus annual 0.5% Net Wealth Tax (on unitary value of the company). Capital duty of 1% is levied upon incorporation. The management company of a sole FCP could benefit from an exemption from income tax and net wealth tax.
Malta	Maltese licensed hedge funds would typically have more than 15% of their investments situated overseas. Such funds are not taxed in Malta on their income or capital gains. Separate rules apply for funds having at least 85% of their investments situated in Malta.		Fund managers managing non-resident funds and / or local funds are subject to tax at the normal corporate rate of 35% (although effective tax leakage upon distributions to non-resident shareholders could be minimal due to local imputation system which would result in a refund of most of the tax paid on distributed profits).
Netherlands, The	Dutch funds are either transparent or subject to a special tax regime (0% corporate income tax and profits distributions are subject to 15% dividend withholding tax). As per October 2007 a new special regime came into force for investment funds. This regime provides for a full exemption from Corporate income tax, capital gains tax and dividend withholding tax.		Income and capital gains taxed at normal corporate rates (25.5%; 2008 rate).
Netherlands Antilles, The	0%		Taxed at 34.5%.
Norway	N/A		Subject to corporate income tax at the rate of 28%.
Portugal	Domestic hedge funds that qualify as mutual funds are subject to taxation at rates that vary from 10% to 25% depending on type of income received by the fund.	Domestic hedge funds that qualify as mutual funds are exempt on distributions or redemption from underlying funds. Other income is subject to taxation at rates that vary from 10% to 25% depending on type of income received by the fund.	Taxed at normal corporate rate of 25% plus 1.5% (maximum) municipal surcharge on taxable income.
Singapore	0% or 18%		10% or 18%
South Africa	Fund is tax transparent.		Corporate managers taxed at 28%.
Spain	Corporate Tax on net profits at a 1% rate (for CII incorporated under Law 35/2003 – Real Estate funds have to comply with additional tax rules).		Corporate Tax on net profits at 30% rate in 2008.
Sweden	Realised income taxed with the exception of capital gains on shares and share-based derivatives. Profit distributions to shareholders are deductible. Any excess income is taxed at 30%.		Taxed at 28% on an accrued income/loss basis.
Switzerland	Can be either tax transparent or opaque depending on form. If opaque, taxed as a corporate and if transparent, no tax at fund level.		13–25% taxed on income depending on the canton in which the Hedge Fund Manager is domiciled.
Taiwan	Fund is tax transparent.		Subject to corporate income tax at the rate of 25%.

Country	Single-strategy fund	Funds-of-hedge funds	Hedge fund manager
Turkey	i. **Taxation of Turkish hedge funds ("FIFs")** There is no clear and specific regulatory guidance. However, it is widely accepted in practice that analogous to other types of investment funds, effective rate of taxation at the FIF level is 0%. ii. **Taxation of Foreign Hedge Funds** Generally, the taxation of portfolio investment income (e.g. capital gains, interest and dividends) derived in Turkey by foreign hedge funds changes depending on various factors, such as the residence status of the fund, the legal status of the hedge fund in its country of domicile, whether or not the foreign hedge fund has a permanent establishment (fixed place of business or a representative) in Turkey, type of income, the type of assets and the specifications of the assets (e.g., for securities, the issuance date, date of acquisition, type etc.). Moreover, Turkish sourcing rules which determine when an income of a non-resident is subject to Turkish taxation rules, set out different standards for various sources of income (e.g., income from real property, securities, etc.).		Turkish resident fund manager is subject to ordinary corporate income taxation at the rate of 20%. In addition, certain transactional taxes may apply as a result of the operational activities (such as Banking and Insurance Transactions Tax ("BITT") at the rate of 5% over management income).
United Kingdom	Funds organised as OEICs/AUTs taxed on income at 20% with capital gains exempt from tax. Unauthorised unit trusts are taxed at 22%.		Corporate managers taxed at 30%. Fund (28% from 1 April 2008) managers organised as Limited Liability Partnerships are tax transparent. Income tax at Partner's marginal tax rate (up to 40% plus self-employed NI) paid by partners.
USA	Hedge funds marketed to US investors are structured through a parallel or master-feeder structure. Under a parallel structure, a separate fund in the form of an offshore (e.g. Cayman or B.V.I corporation) is set up for US tax-exempt investors such as pension funds and not-for-profit entities and a US limited partnership ("LP") or a US limited liability company ("LLC") fund is set up for US taxable investors, such as US individuals and corporations. Under the master-feeder structure the two funds invest in an offshore corporate vehicle (the "master fund") which holds the investments and which makes an election to be treated as a partnership for US tax purposes. While the parallel structure normally allows for more flexibility with respect to structuring of the investments, a master-feeder structure can reduce administration costs as all the investments are held through a single vehicle.		

05

Contacts

Global Alternative Investment Management Industry Group – our services and contacts

PricewaterhouseCoopers' Global Alternative Investment Management Industry Group comprises a team of industry specialists who advise alternative investment managers in all aspects of the development of their businesses.

Our team of specialists serve 70 of the top 100 asset managers around the world.[1]

We serve as trusted business advisers to investment managers, distributors and other sponsors of investment partnerships, offshore funds and structured vehicles covering hedge funds and other alternative investment products.

PricewaterhouseCoopers provides the following services to hedge funds and other alternative investment strategy managers:

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Global Leader

Anthony Artabane
New York
+1 646 471 7830
anthony.artabane@us.pwc.com

European Leader

Graham Phillips
London
+44 20 7213 1719
graham.p.phillips@uk.pwc.com

1. Source: P&I Watson Wyatt World 500, ranked by AUMs at 31/12/2006 (published October 2007)

Australia

David Prothero
+61 2 8266 2916
david.prothero@au.pwc.com

Austria

Dieter Habersack
+43 1 501 88 3626
dieter.habersack@at.pwc.com

Thomas Strobach
+43 1 501 88 3640
thomas.strobach@at.pwc.com

Bahamas

Dawn Jones
+1 242 302 5304
dawn.jones@bs.pwc.com

Belgium

Olivier Hermand
+32 2 710 4416
olivier.hermand@pwc.be

Bermuda

Andrew Brook
+1 441 299 7126
andrew.brook@bm.pwc.com

Canada

Rajendra Kothari
+1 416 869 8678
rajendra.k.kothari@ca.pwc.com

Cayman Islands

Noel Reilly
+1 345 914 8600
noel.t.reilly@ky.pwc.com

Channel Islands/Guernsey

Simon Perry
+44 1481 719357
simon.p.perry@gbg.pwc.com

Channel Islands/Jersey

David Pirouet
+44 1534 838 302
david.pirouet@gbj.pwc.com

Denmark

Mikael Sørensen
+45 3945 9102
mikael.sorensen@dk.pwc.com

France

Laurent Fredrigo
+33 1 56 57 69 30
laurent.fredrigo@fr.pwc.com

Virginie Louvel
+33 1 56 57 40 80
virginie.louvel@fr.landwellglobal.com

Finland

Tuukka Lahkela
+358 9 2280 1333
tuukka.lahkela@fi.pwc.com

Germany

Joachim Kayser
+49 69 9585 6758
joachim.kayser@de.pwc.co

Gibraltar

Edgar Lavarello
+350 73520
edgar.c.lavarello@gi.pwc.com

Greece

Nicos Komodromos
+30 210 6874 671
nicos.komodromos@gr.pwc.com

Hong Kong

Robert Grome
+852 2289 1133
robert.grome@hk.pwc.com

Florence Yip
+852 2289 1833
florence.kf.yip@hk.pwc.com

Ireland

Damian Neylin
+353 1 792 6551
damian.neylin@ie.pwc.com

Olwyn Alexander
+353 1 792 8719
olwyn.m.alexander@ie.pwc.com

Ken Owens
+353 1 792 8542
ken.owens@ie.pwc.com

Andrea Kelly
+353 1 792 8540
andrea.kelly@ie.pwc.com

Isle of Man

Mike Simpson
+44 1624 689 689
mike.simpson@iom.pwc.com

Italy

Elisabetta Caldirola
+39 02 7785 380
elisabetta.caldirola@it.pwc.com

Lia Turri
+39 02 7785 356
lia.turri@it.pwc.com

Japan

Takeshi Sasaki
+81 90 6490 9333
takeshi.sasaki@jp.pwc.com

Liechtenstein

Patrick Helg
+41 58 792 7450
patrick.helg@ch.pwc.com

Luxembourg

Didier Prime
+352 49 48 48 2127
didier.prime@lu.pwc.com

Laurent de la Mettrie
+352 49 48 48 3204
laurent.de.la.mettrie@lu.pwc.com

Kees Hage
+352 49 48 48 2059
kees.hage@lu.pwc.com

Malta

Joseph Camilleri
+356 2564 7603
joseph.camilleri@mt.pwc.com

Middle East

Ashruff Jamall
+971 4 304 3105
ashruff.jamall@ae.pwc.com

Netherlands, The

Frank van Groenestein
+31 10 407 6622
frank.van.groenestein@nl.pwc.com

Martin Vink
+31 20 568 6445
martin.vink@nl.pwc.com

Clark Noordhuis
+31 20 568 6717
clark.noordhuis@nl.pwc.com

Netherlands Antilles, The

Cees Rokx
+599 9 430 0000
cees.f.rokx@an.pwc.com

Norway

Petra Liset
+47 95 26 01 52
petra.liset@no.pwc.com

Portugal

António Assis
+351 213 599 172
antonio.assis@pt.pwc.com

Singapore

Justin Ong
+65 6236 3708
justin.ong@sg.pwc.com

South Africa

Pierre de Villiers
+27 11 797 5368
pierre.e.de.villiers@za.pwc.com

Spain

Antonio Greño
+34 91 568 46 36
antonio.greno@es.pwc.com

Pedro Olmedilla
+34 91 568 5506
pedro.olmedilla@landwellglobal.com

Sweden

Sussanne Sundvall
+46 8 555 33273
sussanne.sundvall@se.pwc.com

Switzerland

Thomas Huber
+41 58 792 2436
thomas.huber@ch.pwc.com

Victor Meyer
+41 58 792 4340
victor.meyer@ch.pwc.com

United Kingdom

Graham Phillips
+44 20 7213 1719
graham.p.phillips@uk.pwc.com

Robert Mellor
+44 20 7804 1385
robert.mellor@uk.pwc.com

Jerry Dawson
+44 20 7804 2624
jerry.dawson@uk.pwc.com

Roger Turner
+44 20 7804 3246
roger.turner@uk.pwc.com

Debbie Payne
+44 20 7213 5443
debbie.a.payne@uk.pwc.com

Lachlan Roos
+44 20 7213 1309
lachlan.j.roos@uk.pwc.com

USA*

Anthony Artabane
+1 646 471 7830
anthony.artabane@us.pwc.com

Mark Casella
+1 646 471 2500
mark.j.casella@us.pwc.com

William Taggart Jr
+1 646 471 2780
william.taggart@us.pwc.com

Barry Knee
+1 646 471 5898
barry.m.knee@us.pwc.com

* Hedge fund specialists in all major US cities – only main New York contacts listed

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06

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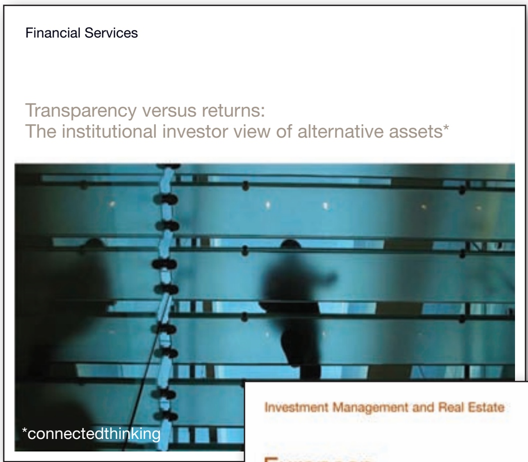

If you would like to receive any of these publications, or be added to our distribution list, please contact:

Denise Cook Global FS Marketing
PricewaterhouseCoopers (UK)
Tel: +44 20 7212 4952
Email: denise.cook@uk.pwc.com

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