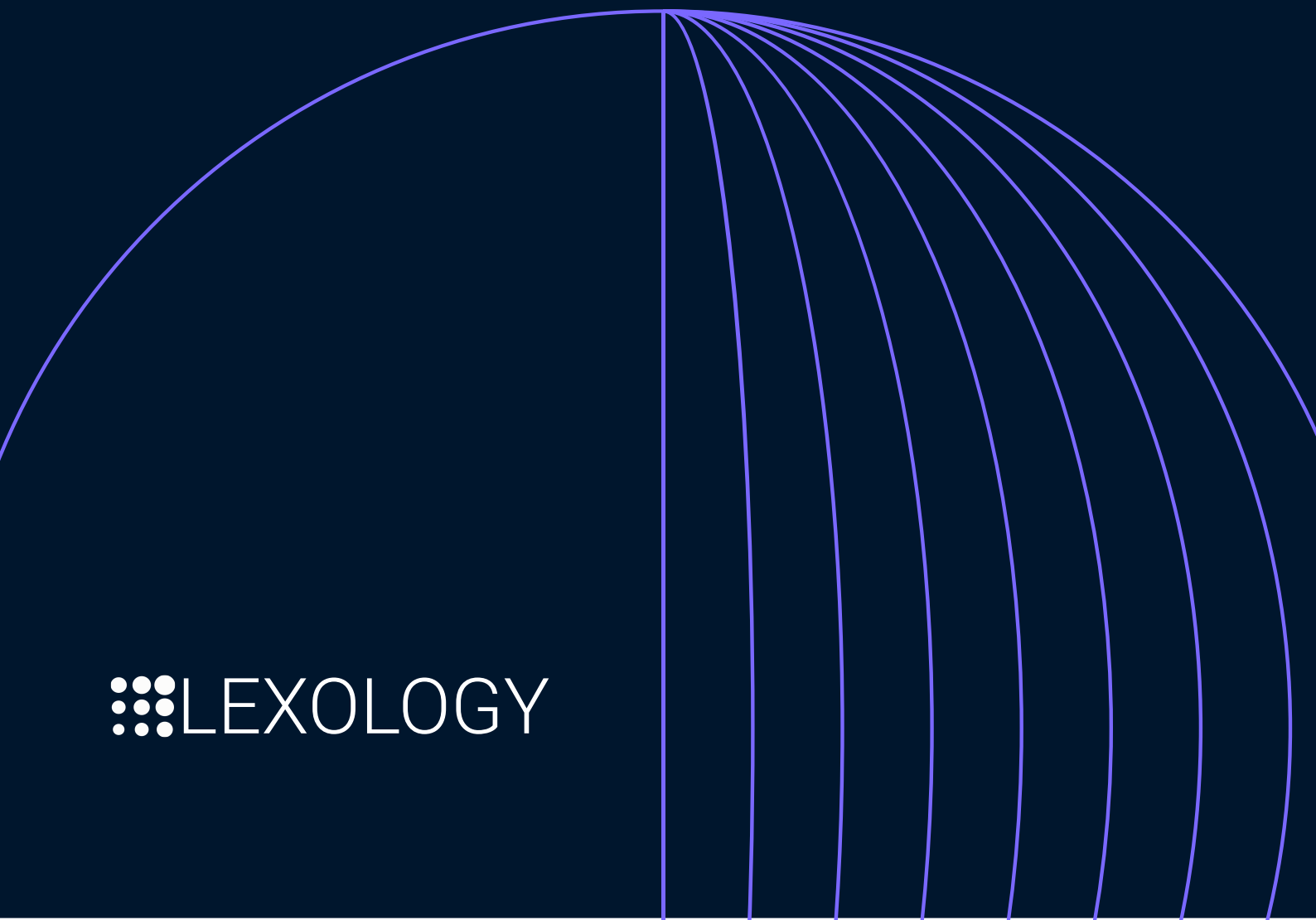
PANORAMIC

FUND MANAGEMENT 2025

Contributing Editors

Philip Morgan, **Kai Zhang**, **Andrew Massey** and **Zainab Kuku**

K&L Gates LLP



LEXOLOGY

Fund Management 2025

Contributing Editors

Philip Morgan, Kai Zhang, Andrew Massey and Zainab Kuku

K&L Gates LLP

Panoramic guide (formerly Getting the Deal Through) enabling side-by-side comparison of local insights into fund management issues, including regulatory framework and authorities; regulation of fund administration; fund authorisation and licensing; territorial scope of regulations; acquiring a stake in a fund manager; restrictions on compensation and profit sharing; fund marketing, including rules on commission payments; legal vehicles available for retail funds and non-retail pooled funds; investment, borrowing ownership, management and operating restrictions; tax, asset protection, governance, reporting, issue, transfer and redemption issues; separately managed accounts; re-domiciliation of funds; listing funds; foreign investor participation rules; funds investing in derivatives; hot topics, such as treatment of strategic industries, high-frequency trading, commodity position limits, capital adequacy for investment firms and 'shadow banking'; and other recent trends.

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Global overview

Philip Morgan, Kai Zhang, Andrew Massey and Zainab Kuku

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The 2025 edition of *Lexology: Panoramic - Fund Management* provides an overview of the main legal, tax and regulatory requirements in a number of key jurisdictions for the fund management industry. Management and operation of investment funds often involves multiple jurisdictions. It is therefore important for industry participants to understand the global landscape from both a regulatory compliance perspective and a commercial/operational perspective. This guide is intended to facilitate that understanding and is presented in a digestible question-and-answer format.

Across our international fund management practice we have observed a number of key themes and trends in 2025 and discuss these briefly below by way of a general introduction to the detailed jurisdiction-by-jurisdiction content in this guide.

Encouragement of retail investment

There are increasing efforts to make investment strategies that have traditionally been the preserve of institutional investors available to an expanding scope of retail investors through new product types or innovations, such as the long-term asset fund in the United Kingdom, European Long-Term Investment Fund Regulation 2.0 in the European Union, and interval funds and tender offer funds in the United States. In the United States, increasing retail investor access to alternative products is expected to be a priority of the new administration at the Securities and Exchange Commission (SEC). Relatedly, regulators are increasing their scrutiny of distribution activities and investor protection, such as the Consumer Duty regime in the United Kingdom which looks through the entire distribution chain for a product to the ultimate retail investor. Similarly, the European Union is continuing to develop its 'Retail Investment Strategy' to further increase investor protection with the ultimate aim of encouraging increased retail investment in EU capital markets.

Liquidity remains a priority

Liquidity remains one of the supervisory priorities of regulators for the fund management industry in many jurisdictions including the United Kingdom and the European Union. These continue to be progressed in the context of the International Organization of Securities Commissions recommendations on liquidity risk management, and the Financial Stability Board recommendations to address the risks associated with liquidity mismatches in open-ended funds. Amongst other factors, these efforts are at least partly driven by the increasing interest of policymakers in encouraging retail investment in less-liquid asset classes as well as by observations following periods of market volatility, such as the turbulence related to the prominence of liability driven investments in 2022.

Some slowdown in ESG rules development

Developments in environmental, social and governance-related rules (together, ESG) for fund managers are being heavily influenced by the political environment in each jurisdiction. While ESG remains a hot topic, priorities seem to be changing in some parts of the world. For example, the European Union has recently delayed the implementation of certain aspects of the Corporate Sustainability Reporting Directive and the Corporate Sustainability Due Diligence Directive, and is proposing to narrow the scope of their application. The United Kingdom has also delayed the extension of its Sustainability Disclosure Regime for asset managers providing individual portfolio management services, and there is no indication on when the proposal may be revived. In the United States, there are significant headwinds to the adoption and implementation of ESG initiatives – at the federal level, the SEC has signalled that it will be reconsidering its most significant ESG-related rulemaking, which would have required public issuers to make certain climate risk disclosures, including on greenhouse gas emissions. Many US states are adopting 'anti-ESG' legislation, although some are currently continuing to legislate to further ESG-related goals, for example, California climate risk reporting laws.

Moves to facilitate asset tokenisation continue

Asset digitisation and tokenisation continue to be themes that cut across jurisdictions with their promise of greater efficiency and potential ability to reach a broader spectrum of investors, and regulators are actively working through the challenges of making this a reality. For example, the UK Financial Conduct Authority is working with the Monetary Authority of Singapore, the Financial Services Agency of Japan and the Swiss Financial Markets Supervisory Authority to share knowledge and examine the benefits and use cases of asset/fund tokenisation. In the United States, digital assets are expected to be a priority of the SEC, and while no specific actions have been proposed, the idea of a regulatory 'sandbox' for tokenisation initiatives has recently been discussed.

Growth of private funds

The private funds sector, particularly private credit funds, has seen significant growth in recent years and the trend appears to be continuing. One estimate predicts the global private credit assets under management to jump to US$3 trillion by 2028. While private credit's growth remains concentrated in direct lending, managers are increasingly diversifying into other asset classes such as asset-based financing. Managers have also been bringing to market innovative structures such as private credit exchange traded funds.

ETFs continue upwards

Exchange traded funds (ETFs) continue to experience rapid growth, fuelled by investors looking for low cost returns. One estimate expects the global ETF assets under management to reach at least US$26 trillion by 2029. Within that, there is greater diversification in the types of strategies being made available through ETFs. This includes active ETFs, which combine an 'active' investment management strategy within an ETF product.

Geopolitical events fuel volatility

Significant geopolitical events continue to impact global markets, including the recent proliferation of trade tariffs, the ongoing conflict in Ukraine, and changing international dynamics. These have had repercussions both politically and economically, and have contributed to market volatility.

With the international order at a geopolitical level in a state of flux, cross-border business is carrying increased risk. However, whilst some jurisdictions are increasingly looking inwards, others are trying to take the opportunity to increase cross-border activity, for example by increasing interoperability of regulation between jurisdictions. In the United Kingdom and European Union, the Common Understanding and agreement announced at the UK-EU Summit is indicative of a desire to improve collaboration going forwards, though it remains to be seen what the substantive changes will be for asset managers and broader financial services sector.

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We are delighted to bring you this comprehensive publication that explores these and other themes for fund managers on a global scale. We also add our thanks to the authors of the following jurisdictional reports.

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Summary

SEPARATELY MANAGED ACCOUNTS

GENERAL

UPDATE AND TRENDS

FUND MANAGEMENT REGULATION

Regulatory framework and authorities

1 How (in very general terms) is fund management regulated in your jurisdiction? Which authorities have primary responsibility for regulating funds, fund managers and those marketing funds?

In 2018, China's central banking, securities, insurance and foreign exchange authorities collectively introduced the 'Guiding Opinions on Regulating Asset Management Business of Financial Institutions' (New Asset Management Regulations) to regulate the asset management business of financial institutions (including commercial banks, trust companies, insurance asset management institutions, securities firms, fund management companies, futures companies, and financial asset investment companies). The new regulation aims to unify regulatory standards for asset management products of the same type and reshape the regulatory landscape of China's asset management industry. Various financial regulatory authorities have issued corresponding implementation rules. Some rules of the New Asset Management Regulations also apply to private funds managed by non-financial institutions.

The management, operation and sales activities of investment funds are mainly regulated by the China Securities Regulatory Commission (CSRC). Managers of public funds must obtain approval from the CSRC, and public funds must be registered with the CSRC after obtaining its approval. The CSRC authorises the Asset Management Association of China (AMAC) to oversee the registration of private fund managers and filing of private funds, as well as carrying out industry self-disciplinary supervision functions. Securities companies, fund management companies and futures companies must obtain approval from the CSRC before they can be engaged in private fund management business, while other private fund managers must register with AMAC. Private funds must complete filing with AMAC.

In addition, wealth management subsidiaries under commercial banks, trust companies and insurance asset management institutions can also engage in the management of certain asset management products. These financial institutions (including their subsidiaries) must obtain approval from their authority, the National Financial Regulatory Administration, and are subject to its supervision when engaging in the aforementioned business.

Law stated - 26 May 2025

Fund administration

2 Is fund administration (support services provided to funds such as book-keeping, preparing reports, trade settlement, etc) regulated in your jurisdiction?

In China, fund managers are ultimately responsible for all fund management and operation-related matters, such as fund unit registration, accounting, valuation and reporting.

Fund managers can delegate certain fund administration matters to qualified fund service providers. Public fund managers can outsource certain fund administration work, such as unit registration, accounting, valuation and information technology system services to fund administration service providers. These fund service providers must register or file with the CSRC under CSRC regulations. Private fund managers can also engage fund administration service providers to provide these fund administration services. These service providers for private funds must register with AMAC and become AMAC members.

Law stated - 26 May 2025

Authorisation

3 What is the authorisation or licensing process for funds? What are the key requirements that apply to managers and operators of investment funds in your jurisdiction?

In China, public funds must be registered with the CSRC before they can be offered to the public. The fund applying for registration must comply with the CSRC's regulatory requirements in terms of investment direction, operation mode, fund type, subscription and redemption rules, etc. After a public fund is approved and registered, it can be offered to the public within a specified time frame. Upon the expiration of the offering period, an accounting firm is engaged to conduct capital verification, and then the fund should be filed with the CSRC. Once the CSRC provides its written confirmation of the filing, the fund contract becomes effective.

Private funds must file with AMAC after the fundraising is completed before they can commence investment activities. To complete filing with AMAC, the private fund must comply with AMAC's self-regulatory rules in terms of investment scope, initial capital contribution, fund duration, fund contract, etc. Currently, except for certain special products, the initial capital contribution of private funds shall not be less than 10 million yuan. The duration of private equity funds shall not be less than five years.

Public fund managers and private fund managers are subject to different regulatory requirements when obtaining business qualifications. Generally speaking, they must satisfy regulatory requirements in aspects such as the qualifications of shareholders and actual control persons, capital contribution, senior management and employees, business premises and facilities, internal management systems, etc.

Law stated - 26 May 2025

Territorial scope of regulation

4 What is the territorial scope of fund regulation? Can an overseas manager perform management activities or provide services to clients in your jurisdiction without authorisation?

In China, except as otherwise specifically provided, fundraising and management activities must be conducted by entities registered in mainland China and approved by financial regulatory authorities such as the CSRC or registered with AMAC.

Under the provisions of the CSRC's 'Interim Provisions on Administration of Recognised Hong Kong Funds' (effective on 1 July 2015), public funds established in Hong Kong in accordance with Hong Kong laws that satisfy the conditions stipulated by the CSRC can be registered with the CSRC by Hong Kong fund managers. These fund managers can engage mainland institutions as agents to sell the funds in mainland China (known as 'Recognised Hong Kong Funds'). Hong Kong fund managers can also engage mainland service providers to handle matters such as product registration, information disclosure, sales arrangements, data exchange, fund clearing, regulatory reporting, communication, customer service and monitoring on their behalf. However, Hong Kong managers are still legally responsible to the mainland investors who subscribe to the Recognised Hong Kong Funds.

On 19 April 2024, the CSRC announced five measures for capital market cooperation with Hong Kong. One of the measures proposes allowing Recognised Hong Kong Funds to delegate investment management functions to overseas asset management institutions within the same group as the Hong Kong manager.

Law stated - 26 May 2025

Acquisitions

5 Is the acquisition of a controlling or non-controlling stake in a fund manager in your jurisdiction subject to prior authorisation by the regulator? (Restrict your answers to the regulator with responsibility for oversight of fund management. Do not answer with respect to other agencies, such as the merger control authorities.)

Approval from CSRC is required in China when a public fund manager changes its actual control person, major shareholders, non-major shareholders holding 5 per cent or more of the shares, or shareholders holding less than 5 per cent but having a significant impact on corporate governance.

Private fund managers must promptly file with AMAC with respect to changes as to equity holding. Changes in the control of private fund managers are subject to stricter restrictions. In principle, such changes shall not occur within three years from the date of registration (or change of registration). After the change, the private fund manager will be subject to an AMAC inspection to determine whether the private fund manager fully satisfies the registration requirements.

For financial institutions managing private funds, changes in their equity holding will be subject to the relevant regulations of their competent authorities.

Law stated - 26 May 2025

Restrictions on compensation and profit sharing

6 | Are there any regulatory restrictions on the structuring of the fund manager's compensation and profit-sharing arrangements?

In China, the main compensation for public fund managers is a management fee. Since the second half of 2023, the CSRC has begun promoting reforms to public fund fee rates. It has implemented a unified upper limit standard for actively managed public equity funds and adjusted the fee rates of existing products according to the same standard. At the same time, the CSRC has introduced pilot floating fee rate public fund products, where the management fee rate is linked to factors such as fund size, fund performance or holding period.

The main compensation for private fund managers includes management fees and performance-based carried interest (Carry). If private fund managers also make capital contributions to the fund, they can receive profit distributions as investors according to the fund agreement. Common management fee rates range between 0.5 per cent and 2 per cent, while common Carry percentages range between 10 per cent and 30 per cent. There are no specific regulatory restrictions on the percentages of management fees and Carry, but they need to be clearly stipulated in the fund agreement.

Law stated - 26 May 2025

FUND MARKETING

Authorisation

7 | Does the marketing of investment funds in your jurisdiction require authorisation?

In China, the sale of public funds should be conducted by either the fund management companies or the fund sales agencies entrusted by the fund management companies. The fund sales agencies must register with the China Securities Regulatory Commission (CSRC) or its local offices and obtain the qualification for fund sales business (Qualified Sales Agencies). A public fund must be registered with the CSRC before sales of fund interests. After the offering period expires, a capital verification institution must be engaged to verify the raised funds, and the fund must be filed with the CSRC. Once written confirmation is obtained from the CSRC, the fund agreement becomes effective.

For private funds, private fund managers can promote fund products and raise funds by themselves, or engage Qualified Sales Agencies for sales of fund interests. After completion of fundraising, the fund should be filed with the Asset Management Association of China (AMAC).

Law stated - 26 May 2025

8 | What marketing activities require authorisation?

In China, public offering refers to raising funds from non-specific targets or raising funds from specific targets with a cumulative number exceeding 200 people.

For private placement, the target investors must be specifiedqualified investors, and the offering must be conducted in a private manner. This means that it is not allowed to promote or advertise to non-specific targets through mass media such as newspapers, radio, television and the Internet, or through means such as telephone, text messages, instant messaging tools, emails, leaflets, lectures, seminars or analysis sessions. The total number of investors should not exceed the number stipulated by law (which varies depending on the organisational form of the fund).

Public funds should complete registration with the CSRC before any marketing or sales activities. After the fundraising period expires, capital verification and filing with the CSRC should be conducted. On the other hand, private funds should file with AMAC after the fundraising is completed.

Law stated - 26 May 2025

Territorial scope and restrictions

9 What is the territorial scope of your regulation? May an overseas entity perform fund marketing activities in your jurisdiction without authorisation?

Unless otherwise clearly stipulated by Chinese law, entities conducting fundraising and sales activities within China must be legally registered in mainland China and obtain corresponding approval or qualifications from the CSRC and AMAC. Foreign institutions are not allowed to directly raise funds from domestic investors to establish funds in mainland China.

Pursuant to the Interim Provisions on Administration of Recognised Hong Kong Funds, Recognised Hong Kong Funds can be registered with the CSRC by its Hong Kong fund manager. The Hong Kong fund manager can then entrust a mainland institution as an agent, and either the Hong Kong fund manager or its mainland agent can sign a fund sales agreement with mainland fund sales agencies to sell the funds to mainland investors. On 19 April 2024, the CSRC released five measures for capital market cooperation with Hong Kong. One of these measures proposed appropriately relaxing the restrictions on the proportion of sales of mutually recognised funds in the Chinese mainland.

Law stated - 26 May 2025

10 If a local entity must be involved in the fund marketing process, how is this rule satisfied in practice?

Foreign institutions shall not directly, or indirectly through sales agencies, engage in fund sales or marketing activities in China. To market funds in China, overseas fund managers must register a domestic entity in China. To market its own funds, a fund manager should obtain approval from the CSRC and other financial regulatory authorities or complete registration with AMAC, depending on whether it is a public or private fund. The fund sales institutions entrusted by fund managers should be registered with the CSRC or its local offices and obtain the qualification for fund sales business. Among them, those entrusted by the private fund managers to raise private funds must also become members of AMAC.

Law stated - 26 May 2025

Commission payments

11 What restrictions are there on intermediaries earning commission payments in relation to their marketing activities in your jurisdiction?

In China, fund sales agencies can receive commission payments, but they must obtain the relevant qualifications from the CSRC.

Starting from July 2023, the CSRC has begun to promote reforms in the fee structure of public funds. The reform aims to gradually reduce the overall fee level of public funds in three steps: management fees and custody fees, transaction fees, and sales fees. As of now, reform measures regarding management fees and custody fees, and transaction fees have been introduced, specific reform measures for sales fees are expected to be introduced within 2025.

Law stated - 26 May 2025

RETAIL FUNDS

Available vehicles

12 What are the main legal vehicles used to set up a retail fund? How are they formed?

Public funds in China are often established on the basis of a contractual scheme. Contractual funds can be formed by fund managers with the investors through the execution of an investment contract. Under such investment schemes, the investors and the fund managers form a trust relationship without establishing a legal entity.

Law stated - 26 May 2025

Laws and regulations

13 What are the key laws and other sets of rules (regulatory and self-regulatory) that govern retail funds?

The regulatory framework for public funds in China is mainly based on the Securities Investment Funds Law of the PRC (Securities Investment Funds Law), and consists of specific departmental rules and regulations issued by the China Securities Regulatory Commission (CSRC), including:

- Administrative Measures for the Supervision and Regulation of Managers of Public Investment Funds (regulating public fund managers);
- Administrative Measures for the Operation of Public Investment Funds (regulating the operation of public funds);

- Administrative Measures for Securities Investment Fund Custody Business (regulating public fund custody);
- Administrative Measures for the Supervision and Administration of Public Investment Fund Sales Agencies (regulating public fund sales agencies);
- Administrative Measures for Information Disclosure for Public Investment Funds (regulating public fund information disclosure); and
- Administrative Measures for the Supervision and Regulation of the Directors, Supervisors, Executives and Practitioners of Securities Fund Operators (regulating the management personnel and practitioners of public fund managers).

Law stated - 26 May 2025

Authorisation

14 | Must retail funds be authorised or licensed to be established or marketed in your jurisdiction?

Yes, public funds can only start sales after completing registration with the CSRC. After the sale of fund units is completed, capital verification should be conducted and then the fund should be filed with the CSRC. After obtaining written confirmation from the CSRC, the fund contract takes effect and the fund can begin operation.

Law stated - 26 May 2025

Marketing

15 | Who can market retail funds? To whom can they be marketed?

The following entities can raise public funds:

- financial institutions approved to manage publicly offered asset management products, such as fund management companies approved by the CSRC; and
- qualified fund sales institutions. Fund sales institutions should be registered with the CSRC or its local offices and obtain the qualification for fund sales business.

There are no qualification requirements for investors in public funds. However, fund managers and fund sales agencies should make sure that fund interests are only sold or marketed to investors with a suitable risk profile and tolerance.

Law stated - 26 May 2025

Managers and operators

16 | Are there any special requirements that apply to managers or operators of retail funds?

Public fund managers are subject to the regulatory approval requirements of the CSRC. Only fund management companies and other asset management institutions approved by the CSRC can conduct public fund management activities. The Administrative Measures for the Supervision and Regulation of Managers of Public Investment Funds provide regulations on the entry requirements, registered capital, internal control, governance and operation, personnel, and business premises, along with other requirements on public fund managers, specifically:

- shareholders and actual control persons should meet the specified conditions;
- managers of public investment funds should have articles of association that comply with the regulations;
- the registered capital should be no less than 100 million yuan, and shareholders must make capital contributions of their own from legitimate sources; foreign shareholders should contribute in freely convertible currencies;
- managers of public investment funds should have directors, supervisors and senior management personnel, as well as personnel responsible for research, investment, operation, sales, compliance and other positions that meet the requirements of laws, administrative regulations and CSRC regulations. In principle, there should be no fewer than 30 personnel who have obtained the qualification for engaging in fund-related businesses;
- managers of public investment funds should have internal management systems, business premises, safety and security facilities, system equipment and other facilities related to the business that meet the requirements; and
- managers of public investment funds should establish an organisational structure and work positions with reasonable division of labour and clear responsibilities.

Other asset management institutions applying for public fund management qualifications should mainly meet the following requirements:

- sound corporate governance, internal control and risk; business status, management capabilities, asset quality and financial status in good standing; capital strength suitable to the public fund management business;
- in good standing with respect to credibility and compliance; the main regulatory indicators in compliant with regulatory requirements;
- having more than three years of experience in securities asset management, in good standing without major violations or risk incidents;
- with the requisite internal management systems, business premises, safety and security facilities, system equipment and other facilities related to the business that meet the requirements;
- having directors, supervisors, senior management personnel and personnel responsible for research, investment, operation, sales, compliance and other positions that meet the requirements of laws, administrative regulations and CSRC regulations. In principle, there should be no fewer than 30 personnel who have obtained the qualification for engaging in fund-related businesses; the organisational structure and division of positions are established clearly with clear responsibilities; and

- established clear and effective control mechanisms for maintaining the independence of the public fund management business, risk prevention and prevention of inappropriate transfer of benefits.

Law stated - 26 May 2025

Investment and borrowing restrictions

17 | What are the investment and borrowing restrictions on retail funds?

Based on the different types of investments, public funds in China can be classified into equity funds, bond funds, monetary market funds, funds of funds and hybrid funds. The fund type and investment type must be specified in the fund contract, and the investment operation should be carried out strictly according to the agreement.

In addition, the investment restrictions on public funds are mainly imposed on investment concentration. For example, a single fund holding securities issued by one company should not exceed 10 per cent of the fund's net asset value.

There are express restrictions on the leverage ratios of public funds. Generally speaking, the total assets of a fund should not exceed 140 per cent of the fund's net assets. For closed-ended funds and principal-guaranteed funds, the leverage ratio can be up to 200 per cent. There are no clear restrictions for leveraged funds, but the fund name should include the words ‘leveraged fund’.

Law stated - 26 May 2025

Tax treatment

18 | What is the tax treatment of retail funds? Are exemptions available?

Individual investors are exempt from taxation on any gain made from buying and selling public funds, but they are subject to 20 per cent income tax on the distributions received from public funds (withheld by the public funds). Corporate investors are subject to enterprise income tax on the gains made from buying and selling public funds, but are exempt from taxation on the distributions received from public funds.

For individual investors, the price difference income generated from buying and selling public funds is not subject to individual income tax and the dividend and bonus income from stocks and the interest income from corporate bonds obtained from the distribution of public funds are subject to an actual individual income tax rate of 20 per cent (withheld by the stock and bond issuers). Interest from national bonds, interest from savings deposits, and income from price differences in buying and selling stocks obtained from fund distribution are not subject to individual income tax.

For corporate investors, the price difference income generated from buying and selling public funds is subject to enterprise income tax, with a general tax rate of 25 per cent but

the income obtained from the distribution of public funds is not subject to enterprise income tax.

Law stated - 26 May 2025

Asset protection

19 Must the portfolio of assets of a retail fund be held by a separate local custodian? What regulations are in place to protect the fund's assets?

Yes, public funds must be held in custody by a fund custodian. Fund custodians should be a legally established commercial bank or other financial institution (including foreign bank branches) that are approved by the CSRC as fund custodians.

In addition, public fund managers should take the following measures to protect fund assets:

- establish sound investment management policies and process, as well as mechanisms for preventing conflicts of interest such as management of related-party transactions; and
- ensure fair treatment of different fund assets and client assets managed by the company, and fully protect the interests of fund unitholders.

Law stated - 26 May 2025

Governance

20 What are the main governance requirements for a retail fund formed in your jurisdiction (registration, record-keeping, filings, officers)?

There are specific requirements for fund governance in the following aspects:

- subscription, redemption and trading of fund units;
- fund investment strategies and income distribution;
- change of fund form or type, merger and change of registration; and
- general meeting of fund unitholders.

After a public fund is registered, if it needs to make substantive changes to the original registered matters, it should follow the relevant procedures in accordance with laws and regulations, and the fund contract. If it continues to publicly raise funds, it should apply to the CSRC for changes to the registered matters.

Fund managers should take proper bookkeeping measures in relation to the sales materials and investor suitability management materials of the fund.

The CSRC imposes certain requirements on the qualifications of public fund managers. Public fund managers are required to have personnel responsible for research, investment,

operation, sales, compliance and other positions related to public fund management business, and should have in principle, no fewer than 30 people who have obtained the qualification for engaging in fund-related business.

Law stated - 26 May 2025

Reporting

21 | What are the periodic reporting requirements for retail funds?

The information disclosure rules for public funds are mainly stipulated by the CSRC departmental rules such as the Administrative Measures for Information Disclosure for Public Securities Investment Funds. A public manager should prepare quarterly reports within 15 working days after the end of each quarter, prepare interim reports (ie, semi-annual reports) within two months after the end of the first half of the year and prepare annual reports within three months after the end of each year. A public fund manager should publish the periodic reports on the website designated by the CSRC and publish the indicative announcements of the periodic reports in the designated newspapers.

Law stated - 26 May 2025

Issue, transfer and redemption of interests

22 | Can the manager or operator place any restrictions on the issue, transfer and redemption of interests in retail funds?

Public funds fall into two categories: open-ended funds and the closed-ended funds. Closed-ended funds cannot be redeemed within the term of the fund contract. For open-ended funds, redemption can be conducted on the 'open day' when redemption is allowed. Fund managers can choose an open-ended or closed-ended strategy as they set up their funds.

For open-ended funds, managers can also impose restrictions on subscription and redemption in the following aspects:

- Setting of open days. Pursuant to the Public Securities Investment Funds Law, fund managers have the discretion to set open days in the fund contract. In practice, the open-ended funds are categorised as daily open funds and periodically open funds. With daily open funds, the fund units can be subscribed and redeemed on every working day (trading day), while with periodically open funds, subscription and redemption are only open on specific open days after the end of the closed period, and then enter into the closed period again after the end of the open day(s).
- Management of the subscription process. After the fund reaches a certain size, the fund manager may no longer accept subscriptions. The fund manager may set restrictions on the proportion or number of fund units held by a single investor. If the manager believes that the subscription will harm the interests of existing investors, it may refuse or suspend the subscription. However, the fund contract and promotional

materials should stipulate the circumstances under which the manager restricts subscription.

- Restriction on large redemption. If a large redemption event occurs in the fund (usually a single day's redemption exceeds 10 per cent of the total fund units), the large redemption can be postponed in accordance with the specific provisions of the fund contract.

Pursuant to the Public Securities Investment Funds Law, investors in public securities funds have the right to transfer their fund units. However, as most public funds can provide liquidity through redemption, there is a lack of demand to obtain liquidity through transfer of public fund units, and a large-scale fund transfer market has not yet been formed. Among them, closed-ended funds, exchange-traded funds and other funds that meet the listing requirements can be listed and traded on stock exchanges in China.

Law stated - 26 May 2025

NON-RETAIL POOLED FUNDS

Available vehicles

23 What are the main legal vehicles used to set up a non-retail fund? How are they formed?

Although there are three organisational form choices – limited partnerships, limited liability companies and contractual schemes – private funds that invest in assets such as stocks, bonds, depositary receipts, asset-backed securities, futures contracts, option contracts, swap contracts, forward contracts and securities investment fund interests primarily adopt the contractual form. Private funds that invest in unlisted company equities, unlisted public company stocks, stocks issued by listed companies to specific investors, listed company stocks traded through block trades and agreement transfers, non-publicly issued or traded convertible bonds and exchangeable bonds, market-oriented and rule-of-law-based debt-to-equity swaps and equity investment fund interests primarily adopt the form of limited partnership.

Limited partnership funds are established in accordance with the Partnership Enterprise Law of the PRC (revised in 2006, hereinafter the Partnership Law). Investors act as limited partners, while the fund manager or its affiliates act as general partners. The rights and obligations of general partners and limited partners are stipulated in the limited partnership agreement. Partnership funds are registered with the Administration for Market Regulation and are considered non-legal person entities.

Whether a fund is open-ended or closed-ended depends on the specific investment targets of the fund. Funds that directly or indirectly invest in unlisted equities (or their beneficiary rights or rights to returns) are usually closed-ended, and subsequent additional fundraising is only allowed to a certain extent when specified conditions are met.

Law stated - 26 May 2025

Laws and regulations

24 What are the key laws and other sets of rules (regulatory and self-regulatory) that govern non-retail funds?

Regardless of the legal form of a private fund, the qualifications of its manager and the fundraising and investment operations of the fund are all subject to the Securities Investment Funds Law, the Regulations on the Supervision and Management of Private Investment Funds and a series of self-regulatory rules issued by the Asset Management Association of China (AMAC). If the manager is a financial institution or its subsidiary, the applicable rules should be determined based on the specific type of the financial institution, its subsidiary or the fund it manages. It may be necessary to specifically apply relevant departmental rules or normative opinions issued by its competent authority, or to apply them in conjunction with the aforementioned relevant rules. Regulations in relation to foreign investment in private funds include the Administrative Measures for Domestic Securities and Futures Investment Made by Qualified Foreign Institutional Investors and RMB Qualified Foreign Institutional Investors (with respect to Qualified Foreign Institutional Investors and RMB Qualified Foreign Institutional Investors) and pilot policies issued by different provinces (with respect to foreign investors participating as limited partners in domestic limited partnership funds, ie Qualified Foreign Limited Partners).

In addition to the aforementioned provisions on the fundraising, management and investment operations of private funds, if a private fund is established in the form of a company, it should also comply with the Company Law. If it is established in the form of a limited partnership, it should comply with the Partnership Law.

Law stated - 26 May 2025

Authorisation

25 Must non-retail funds be authorised or licensed to be established or marketed in your jurisdiction?

Private funds must be managed by qualified managers. The business qualifications of financial institutions that manage private funds (including wealth management subsidiaries of commercial banks, trust companies, securities companies and their subsidiaries, fund management companies and their subsidiaries, futures companies and their subsidiaries, insurance asset management institutions, and financial asset investment companies) should be authorised by their competent authorities. Other managers should register with AMAC as private fund managers before conducting business.

The above-mentioned qualified managers can raise funds by themselves or entrust private fund sales institutions that are registered with the China Securities Regulatory Commission (CSRC) and have obtained fund sales qualifications to raise funds. Except for some private funds managed by financial institutions or their subsidiaries, which must complete registration before fundraising in accordance with the special regulations of their competent authorities, a private fund manager should make filings with AMAC of its funds after the fundraising is completed and before starting investment.

Law stated - 26 May 2025

Marketing

26 | Who can market non-retail funds? To whom can they be marketed?

The following types of entities can market non-retail funds in China:

- Financial institutions (including wealth management subsidiaries of commercial banks, trust companies, securities companies and their subsidiaries, fund management companies and their subsidiaries, futures companies and their subsidiaries, insurance asset management institutions, and financial asset investment companies) can raise non-retail funds (usually called private asset management products) managed by them in accordance with their respective applicable rules.
- Private fund managers registered with AMAC can raise non-retail funds managed by themselves.
- Commercial banks, securities companies, futures companies, insurance companies, insurance brokerage companies, insurance agents, securities investment consultancies and independent fund sales agencies that are registered with the CSRC and have obtained business licences can engage in fund sales as engaged by fund managers. Among them, those entrusted by the private fund managers mentioned above to raise private funds must also become members of AMAC. In addition, independent fund sales agencies can only engage in the sales of public funds and private securities investment funds.

Private funds can only be marketed to qualified investors, and the total number of investors in a single private fund shall not exceed the number specified by law.

The criteria for qualified investors include:

- having suitable risk identification and risk-bearing capabilities;
- investing no less than a certain amount in a single fund;
- natural persons must have certain investment experience and meet certain asset or income criteria. Legal persons must meet certain net asset requirements; and
- other circumstances that financial regulatory authorities may deem as qualified investors.

Different types of managers may have slightly different specific criteria for qualified investors based on the regulations of their competent authorities.

Law stated - 26 May 2025

Ownership restrictions

27 |

Do investor-protection rules restrict ownership in non-retail funds to certain classes of investor?

Yes. The managers and fund sales agencies should conduct 'suitability matching' between investors and funds based on the risk tolerance of investors and funds' risk levels, and market appropriate funds to suitable investors.

Investors are categorised as general investors and professional investors. General investors enjoy special protection in terms of information disclosure, risk disclosures and suitability matching.

If investors request to invest in funds with a risk level higher than their risk tolerance, they must go through special risk disclosure procedures. Moreover, investors at the lowest risk tolerance level cannot invest in funds with a risk level higher than their risk tolerance.

The additional subsequent fundraisings of private funds are subject to certain fund size restrictions. However, if the investors participating in such subsequent fundraisings are certain specified types of investors, such as social securities funds, corporate pension funds and insurance funds, certain exceptions will apply to the fund size restrictions.

Law stated - 26 May 2025

Managers and operators

28 Are there any special requirements that apply to managers or operators of non-retail funds?

Currently, foreign institutions are not allowed to directly raise funds from domestic investors to establish private funds. To engage in private fund business in China, the entity must be registered and established within China.

Financial institutions or their subsidiaries engaging in private fund business should meet the conditions required by the regulatory rules issued by their competent authorities and obtain permission.

Other private fund managers should register as private fund managers with AMAC before conducting business. Private fund managers should meet certain specific requirements in terms of financial status, capital contribution and personnel composition. To summarise:

- the private fund managers should have a good financial status and meet the minimum capital contribution requirement;
- the private fund managers should have a clear and stable capital contribution structure, with shareholders, partners and actual control persons having a good credit record, and controlling shareholders, actual control persons and general partners having the required relevant experience;
- the legal representative, executive partner or their appointed representative, and senior management responsible for investment management should directly or indirectly hold a certain proportion of the equity or property shares of the private fund manager;

- the private fund manager should have senior management personnel in specific positions, such as the main person in charge of business management, senior management responsible for investment management, compliance and risk control officer, etc. Private securities fund managers should also designate investment managers for the funds they manage. The senior management of the managers of private securities funds should have a good credit record, possess professional competence corresponding to their positions and have the required relevant work experience. The fund manager should also have a certain number of full-time employees;
- the private fund managers should have a sound internal governance structure, and complete risk control and compliance systems and conflict of interest prevention mechanisms; and
- the private fund managers should have a name, business scope, business premises and facilities related to fund management business that meet the requirements of AMAC or CSRC.

Law stated - 26 May 2025

Tax treatment

29 | What is the tax treatment of non-retail funds? Are any exemptions available?

Private funds of different forms have different tax treatments:

- Private funds established in contractual form do not have an independent legal entity. Therefore, at the fund level, there is no enterprise income tax. Instead, tax will pass through to investors after investors receive fund distributions.
- Limited partnerships are not subject to enterprise income tax at the partnership level. The investment income obtained by the limited partnership will be passed to the partners of the fund and will be taxed separately at each partner's level.
- Companies are subject to enterprise income tax. The investment income obtained by a company is subject to enterprise income tax. For the after-tax profit distribution received by shareholders, if the shareholder is also an enterprise income taxpayer, there is no need to pay income tax again. If the shareholder is a natural person, the distribution will be subject to individual income tax.

For foreign investors, investment income from domestic private funds in China is subject to a 25 per cent enterprise income tax if the foreign investor has an establishment or place of business in China. Otherwise, they should pay a 10 per cent withholding tax and may enjoy applicable tax treaty benefits.

Law stated - 26 May 2025

Asset protection

30 |

Must the portfolio of assets of a non-retail fund be held by a separate local custodian? What regulations are in place to protect the fund's assets?

In certain circumstances, the assets of the fund should be independently held by a qualified third-party custodian in China (for example, private asset management products managed by financial institutions; private funds investing through special purpose vehicles). The fund custodian is a commercial bank or other financial institution that is established in accordance with the law and has obtained the qualification for fund custody. Custodians should set up separate accounts for different fund assets under their custody, such as capital accounts and securities accounts necessary for investment transactions. For fund assets other than cash and securities, such as unlisted company equity, there is no requirement to appoint a separate local custodian to hold the assets, but the custodian needs to perform its duties in accordance with the law to ensure the independence and security of private fund assets.

If the fund is not subject to mandatory custody requirements, and the fund contract clearly stipulates that there are no third-party custody requirements, then the assets of the private fund do not have to be held in custody. However, the fund contract should clearly specify the measures to ensure the safety of private fund assets and the dispute resolution mechanism.

Aside from fund custody requirements, according to regulatory requirements, private fund managers should take the following measures to better protect fund assets. The manager should:

- open a special fundraising supervision account (Special Fundraising Account). The investment funds paid by fund investors should be remitted into the Special Fundraising Account;
- establish a sound internal risk control and asset segregation system. The assets of private funds should be operated independently and accounted for separately from the assets of the private fund manager and between different private funds; and
- clearly stipulate related party transaction and conflict of interests provisions in the fund contract to prevent insider trading or other inappropriate transactions, and ensure the independent operation of private funds.

Law stated - 26 May 2025

Governance

31 What are the main governance requirements for a non-retail fund formed in your jurisdiction (registration, record-keeping, filings, officers)?

For private asset management products managed by financial institutions and their subsidiaries, the managers should fulfil their reporting, compliance and internal governance obligations in accordance with the applicable regulatory requirements of their respective competent supervising authorities.

For funds raised and established by private fund managers of non-financial institutions, the managers should file with AMAC after the fundraising is completed. Their internal governance is mainly stipulated in the fund contract. Pursuant to the applicable regulations, private fund contracts should include:

- the meeting mechanism, agenda items and voting methods of the shareholders, partners or the fund unitholders;
- mechanisms for identifying related party transactions, transaction decision-making and information disclosure;
- fund disclosure and reporting schedule and investors' rights for information;
- arrangements when the fund assets are not held in custody; and
- the decision-making mechanism, meeting and voting mechanism and procedure, and voting ratio for changing the fund manager and liquidation when the private fund manager is unable to perform or neglects to perform management duties due to reasons such as loss of contact, cancellation of private fund manager registration, bankruptcy, etc.

When there are changes in matters in relation to registration and filing of the private fund manager and private funds, the manager should promptly file the update with AMAC in accordance with regulations.

Private fund managers should back up various types of information disclosure reports on the private fund information disclosure backup platform designated by AMAC in accordance with regulations, and fulfil the responsibilities of opening, maintaining, and managing investor inquiry accounts; they should report relevant information to AMAC in accordance with regulations.

Private fund managers should properly keep records, books, statements, and other relevant materials of private fund asset management business activities, as well as relevant materials such as investor suitability management business materials, information disclosure materials, and investment decision-making materials involved in the operation of the fund.

Private fund managers should continuously meet the manager qualification requirements, including having at least a certain required number of employees and senior management with professional competence and relevant work experience.

Law stated - 26 May 2025

Reporting

32 | What are the periodic reporting requirements for non-retail funds?

For private asset management products managed by financial institutions and their subsidiaries, they should fulfil their information disclosure obligations in accordance with the applicable regulatory requirements.

For private funds managed by non-financial institutions:

- Private equity funds: private fund managers should file semi-annual reports before the end of September each year and file annual reports within six months after the end of each year. Quarterly reports are not mandatory.
- Private securities funds: Quarterly reports should be filed within one month from the end of each quarter, and annual reports should be filed within four months from the end of each year. For a single private securities investment fund with assets under management of 50 million yuan or more, monthly reports should also be submitted within five working days from the end of each month.

Law stated - 26 May 2025

SEPARATELY MANAGED ACCOUNTS

Structure

33 How are separately managed accounts (ie, accounts through which investor funds are segregated – not pooled – and the investor owns the underlying assets, which are managed at the investment manager's discretion) typically structured in your jurisdiction?

Non-financial private fund managers can set up private funds with only a single investor, adopting different legal structures based on the different investment scopes of the fund. Most often, private equity funds adopt the form of a limited partnership, while private securities funds that mainly invest in public securities usually adopt a contractual form.

For separately managed accounts managed by financial institutions and their subsidiaries, the accounts are normally set up in a contractual form.

In recent years, more and more institutional investors in China have chosen separately managed accounts to meet their personalised asset allocation needs and investment preferences. Separately managed accounts usually have more flexible arrangements in respect of management fees, performance sharing, fund operation and governance.

Law stated - 26 May 2025

Key legal issues

34 What are the key legal issues (eg, standard of care, indemnification) to be determined when structuring a separately managed account?

From a regulatory perspective, currently there is no substantial difference between separately managed accounts and other collective investment schemes with multiple investors. Managers should follow the principles of voluntariness, fairness, honesty and putting clients' interests first, and diligently and prudently safeguard the rights and interests of investors. Managers have the right to make investment decisions independently according to the provisions of the fund contract.

Separately managed accounts managed by financial institutions or their subsidiaries have greater flexibility in terms of investment diversification, capital contribution and liquidation distribution methods (cash or other financial assets), and capital contribution in instalments, compared to pooled investment funds under the management of these managers. All of these terms and arrangements can be negotiated between the manager and investors and stipulated in the contract, subject to the specific regulatory requirements of the competent authorities.

Law stated - 26 May 2025

Regulation

35 Is the management or marketing of separately managed accounts regulated in your jurisdiction? (If so, how does this operate? Is this the same regime for fund management?)

Marketing and management of separately managed accounts are regulated businesses. There is no substantial difference with regard to the qualifications of managers and requirements for fund registration and filing between separately managed funds and pooled investment vehicles. Except that separately managed accounts should meet the minimum capital contribution requirement to file with the Asset Management Association of China, there are no other special requirements for investors in separately managed funds.

Law stated - 26 May 2025

GENERAL

Proposed reforms

36 Are there proposals for further regulation of funds, fund managers or marketers of funds in your jurisdiction?

After the promulgation of the Regulations on the Supervision and Management of Private Investment Funds, the China Securities Regulatory Commission (CSRC) revised the Interim Measures for the Supervision and Administration of Private Investment Funds to form the Measures for the Supervision and Regulation of Private Investment Funds (Draft for Comment) (Private Funds Draft Measures) and solicited public opinions.

Compared with the current rules, the main changes in the Private Funds Draft Measures are as follows:

- Further adjustments and restrictions are made to the criteria for qualified investors, specifically for the minimum investment amount for a single fund made by an individual qualified investor and the look-through verification requirement of an individual qualified investor. Further adjustments and restrictions are made to the rules for additional subsequent fundraising, mainly reflected in the limitation of additional fundraising targets to qualified investors of specific types that meet the

regulations, or other qualified investors with a single investment amount of more than 10 million yuan.

- For the first time, 'fund of funds' is introduced as a concept parallel to private equity investment funds and private securities investment funds, with several relevant provisions for fund of funds proposed.
- Requirements are put forward for single investor funds, with investors limited to specific types such as financial institutions and social security funds, and the capital contribution shall not be less than 100 million yuan.
- Stricter requirements are proposed for private funds that primarily invest in a single target, mainly including capital contribution requirements for individual investors, mandatory custody, and restrictions on additional fundraising targets.
- Compared with the current regulations, the administrative penalty measures have been increased in relation to the scope of subjects and the number of penalties.

At the time of writing, the official version of the Measures for the Supervision and Regulation of Private Investment Funds has not yet been released.

In terms of the supervision of publicly offered funds, the CSRC issued the Provisions on the Administration of Investment Advisory Business for Public Securities Investment Funds (Draft for Comment) and the Provisions on Strengthening the Management of Securities Trading of Public Securities Investment Funds (Draft for Comment) in 2023, further stipulating the business norms of investment advisors for publicly offered funds, the management of securities trading of public funds, and the management of securities trading commissions and distribution. However, the specific implementation time of these two draft provisions for comment has not yet been determined.

In March 2024, the CSRC issued the Opinions of the China Securities Regulatory Commission on Strengthening the Supervision of Securities Companies and Public Funds and Accelerating the Construction of First-class Investment Banks and Investment Institutions (for Trial Implementation), which proposed phased general objectives for the development of the securities and fund industry.

Law stated - 26 May 2025

Public listing

37 Outline any specific requirements for stock-exchange listing of retail and non-retail funds.

For public funds (including closed-end funds, exchange-traded funds and other funds) to be listed on a stock exchange, they generally should meet regulatory requirements in terms of the fund term, fund size, number of fund unitholders, etc. For example, the Rules Governing the Listing of Securities Investment Funds on Shanghai Stock Exchange (amended) provide the following requirements for listing of a public fund:

- the fund has been approved for sale by the CSRC and the fund contract has taken effect;

- the duration of the fund contract is more than five years;
- the fund has raised no less than 200 million yuan;
- there are no fewer than 1,000 fund unitholders; and
- the fund has an approved fund manager and an approved fund custodian.

Only public funds that meet these conditions can be listed and traded on the stock exchange.

After a fund is listed, it needs to continuously fulfil its information disclosure obligations (including periodic reports and disclosure of major events).

Furthermore, specific types of products should comply with special regulations. For example, public infrastructure securities investment funds (Publicly Offered Real Estate Investment Trusts) that primarily invest their fund assets in infrastructure asset-backed securities should also comply with relevant stock exchange rules, such as the Applicable Guidelines of the Shanghai Stock Exchange for the Rules for Public Offered Infrastructure Securities Investment Funds Business, which require the examination of underlying investment projects and the qualifications of relevant stakeholders.

Since 2020, the CSRC has successively approved pilot programs for the transfer of equity investment fund interests and venture capital fund interests in certain regions. These regional pilot programs provide certain liquidity in the secondary market to the private funds. However, private fund shares cannot be publicly traded on stock exchanges.

Law stated - 26 May 2025

Overseas vehicles

38 | Is it possible to redomicile an overseas vehicle in your jurisdiction?

No, an overseas vehicle cannot be redomiciled to China.

Law stated - 26 May 2025

Foreign investment

39 | Are there any special rules relating to the ability of foreign investors to invest in funds established or managed in your jurisdiction or domestic investors to invest in funds established or managed abroad?

As an important exploration of foreign exchange management policies under capital accounts, China has been promoting the implementation of pilot policies for cross-border private equity funds, such as Qualified Foreign Limited Partners (QFLP) and Qualified Domestic Limited Partners (QDLP), in Beijing, Shanghai, Shenzhen and other regions.

QDLP allows domestic fund managers that have obtained pilot qualifications to raise funds within China and invest in overseas equity capital markets.

On the other hand, QFLP allows domestic fund managers that have obtained pilot qualifications to raise funds from foreign investors and invest in Chinese equity capital markets.

The specific requirements and supporting policies for QDLP and QFLP vary to a certain extent across different pilot regions.

Currently, both QFLP and QDLP are promoting reforms in the foreign exchange management system to further facilitate the cross-border flow of capital.

Law stated - 26 May 2025

Funds investing in derivatives

40 Are there any special requirements in your jurisdiction relating to funds investing in derivatives?

For public funds, when fund managers use the fund's assets to invest in securities derivatives they should follow the principles of risk management and establish strict authorisation management systems and investment decision-making processes. They should also fully disclose information such as the product's position, risk control measures and other arrangements. If there is a grading arrangement, the classification ratio of priority units and posterior units of financial derivative products should be subject to certain restrictions.

Private securities funds that mainly invest in derivatives should also apply restrictive regulations on the grading ratio. When private fund managers and fund sales agencies raise funds from investors, they should provide special risk disclosures to investors in relation to the investment targets in the fund promotional materials, risk disclosure statements and other documents.

Private equity funds are not allowed to invest in financial derivatives.

Law stated - 26 May 2025

UPDATE AND TRENDS

Recent developments

41 Are there any other current developments or emerging trends in your jurisdiction that should be noted? Please include reference to world-wide regulatory concerns, such as restrictions on foreign ownership in strategic industries, high-frequency trading, commodity position limits, capital adequacy for investment firms and 'shadow banking'.

The Chinese government has introduced relevant action plans to attract and utilise foreign investment with greater efforts through a series of measures such as reasonably shortening the negative list for foreign investment access, carrying out pilot programs to relax foreign investment access in the field of scientific and technological innovation and implementing supportive tax policies. In March 2024, the Chinese Ministry of Commerce

issued the ‘Several Policy Measures on Further Supporting Overseas Institutions to Invest in Domestic Technology-Based Enterprises’, which clearly proposed several measures to facilitate and encourage overseas institutions to invest in domestic technology-based enterprises. These measures include supporting foreign investors to invest in domestic technology-based enterprises in aspects of entry approval, foreign exchange management and ongoing supervision processes, as well as through the Qualified Foreign Limited Partnership program.

To establish a more scientific and efficient management system for government investment funds and promote their high-quality development, the General Office of the State Council issued the 'Guidelines on Promoting High-Quality Development of Government Investment Funds' (hereinafter referred to as the Guidelines) in January 2025. The Guidelines cover the entire lifecycle of fund establishment, fundraising, operation and exit, proposing 25 specific measures across eight sections, such as optimising exit mechanisms for sustainable investment cycles, strengthening internal controls to mitigate risks, etc.

Law stated - 26 May 2025

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Summary

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FUND MANAGEMENT REGULATION

Regulatory framework and authorities

1 How (in very general terms) is fund management regulated in your jurisdiction? Which authorities have primary responsibility for regulating funds, fund managers and those marketing funds?

Fund management is regulated in Germany by the German Capital Investment Code (KAGB). The KAGB implements the EU Undertakings for Collective Investment in Transferable Securities (UCITS) Directive (2009/65/EC) and the Alternative Investment Fund Managers Directive (AIFMD).

The Federal Financial Supervisory Authority (BaFin) is responsible for regulating funds, fund managers and those marketing funds.

For supporting information and publications on the following answers see BaFin – ; and the Federal Ministry of Finance – .

Law stated - 18 June 2025

Fund administration

2 Is fund administration (support services provided to funds such as book-keeping, preparing reports, trade settlement, etc) regulated in your jurisdiction?

Fund administration is not regulated per se in Germany. The regulation depends on whether the services fall within a specifically regulated environment.

As a rule, general assistance in fund administration is not regulated, such as the preparation of reports or distribution notices.

Certain administrative services are regulated by professional services laws. Before offering bookkeeping services on the market, a minimum of three years' professional experience is required. Trade settlement is typically licensable as the financial service of the execution of orders on behalf of clients or the banking activity of trading on behalf of others.

Law stated - 18 June 2025

Authorisation

3 What is the authorisation or licensing process for funds? What are the key requirements that apply to managers and operators of investment funds in your jurisdiction?

Regulation of funds is primarily exercised through regulation of managers. It requires that the manager is either fully licensed or registered with BaFin under the KAGB. If a fund is internally managed it needs a licence or registration.

Additionally, the European Venture Capital Funds regime and European Social Entrepreneurship Funds regime are directly applicable in Germany, as well as the European Long-Term Investment Funds (ELTIF) regime. The ELTIF Regime was recently amended by EU legislature (ELTIF 2.0 – see 'Trends', 7.1.)

Registration process for registered managers

Availability

The registration process is only available to certain small or medium-sized managers, the most important category of which is 'sub-threshold managers' under the AIFMD and KAGB. In practice, most German fund managers fall within this category.

Sub-threshold managers, under the KAGB, are managers with assets of not more than €100 million (in the case of leverage) or not more than €500 million (no leverage) and who only manage special alternative investment funds (AIFs). These are AIFs whose interests or shares may only be acquired according to the fund documents by professional investors or semi-professional investors (ie, non-retail funds).

Professional investors are defined in the AIFMD and in the Markets in Financial Instruments Directive II (MiFID II).

A semi-professional investor is a person who:

- commits to invest at least €200,000;
- confirms in writing that it is aware of the risks; and
- has the expertise, experience and knowledge to participate in the investment opportunity. This must be assessed and confirmed by the manager.

In addition, senior management, risk-takers and other staff of the manager within the meaning of article 13 of the AIFMD are considered semi-professional. A person with a minimum commitment of €10 million is also considered semi-professional.

Besides the requirements mentioned above, special AIFs managed by sub-threshold managers are in principle not regulated.

Registration procedure

The registration procedure is comparatively simple. It requires the submission of an informal registration request together with certain corporate documents concerning the manager and the managed funds (such as the fund's limited partnership agreement and the manager's articles of association). In addition to being a special AIF, the fund may not require the investors to pay in additional capital beyond the investor's original commitment.

BaFin must make its decision for approval within certain statutory deadlines, which begin with the date of receipt of the complete documents required for the approval. The deadline for registration of a sub-threshold manager is two weeks. As it is at the sole discretion of BaFin when the documents required for the approval of the respective licence are complete, the usual time frame for obtaining the registration is two to four weeks in practice.

Ongoing issues

An advantage of the registration is that only a few provisions of the KAGB apply to a registered-only manager; mainly the provisions on the registration requirements, ongoing reporting requirements and the general supervisory powers of BaFin. However, fund-specific requirements do not apply to registered-only managers and their funds. In particular, the depositary requirements and marketing requirements, as well as the additional requirements of the KAGB for fully licensed managers, do not apply. However, since August 2021, section 45a of the KAGB requires sub-threshold alternative investment fund managers (AIFMs) to instruct a qualified independent third party (eg, an auditor) as well to audit how funds are being managed and whether the sub-threshold AIFM adheres to applicable notification obligations and anti-money laundering laws. The AIFM must notify BaFin of the appointed auditor.

On the downside, the registration restricts the manager to the type of funds and investors for which the registration was obtained (ie, only special AIFs and professional or semi-professional investors). Furthermore, a registered manager does not benefit from the European marketing passport under the AIFMD. A registered manager can, however, opt in to become a fully licensed manager.

Licensing process for fully licensed managers

Availability

Fund managers that do not qualify for registration or opt out of registration must apply for a full fund-management licence with BaFin under the KAGB.

A full fund-management licence opens the door for a manager to market funds to retail investors as well as to the marketing passport under the AIFMD or UCITS Directive. Retail investors are neither professional nor semi-professional.

Licensing procedure

The licensing procedure is a fully fledged authorisation process with requirements equivalent to those for granting permission under article 8 of the AIFMD or article 6 of the UCITS Directive. The licensing procedure checks requirements such as sufficient initial capital or own funds, sufficiently good repute of the directors and shareholders and the manager's organisational structure.

The statutory deadline for BaFin's approval of a fully licensed manager is six months (three months base timeframe plus an extension of up to an additional three months). In practice, however, approval can usually be expected within nine to 12 months (in certain cases even longer) as it is at the sole discretion of BaFin when the documents required for the approval are complete.

Ongoing issues

The licensing of the manager results in the manager being subject to the entirety of the KAGB, in particular:

- the required appointment of a depositary for the funds;
- access to setting up contractual funds;
- adherence to the corporate governance rules for funds set up as investment corporations or investment limited partnerships (investment KGs);
- adherence to the fund-related requirements of the KAGB;
- adherence to the marketing rules of the KAGB;
- access to the marketing passport under the AIFMD or UCITS Directive;
- access to the managing passport under the AIFMD or UCITS Directive; and
- adherence to the reporting requirements of the KAGB.

Law stated - 18 June 2025

Territorial scope of regulation

4 What is the territorial scope of fund regulation? Can an overseas manager perform management activities or provide services to clients in your jurisdiction without authorisation?

EU fund managers

EU fund managers are allowed to perform fund management services under the passport regime of the AIFMD or UCITS Directive. In addition, EU fund managers may use the EU passport regime to provide other services and ancillary services (such as investment advice or discretionary individual portfolio management).

Non-EU managers

Non-EU managers are currently not allowed to perform fund management services in Germany. This will change for AIFMs in countries where the passporting regime under the AIFMD for third-country managers will eventually become effective.

Non-EU managers can provide regulated services outside of fund management (such as investment advice or discretionary individual portfolio management), but only if there is an existing relationship with a German client or if the relationship is established at the initiative of the German client.

Law stated - 18 June 2025

Acquisitions

5 Is the acquisition of a controlling or non-controlling stake in a fund manager in your jurisdiction subject to prior authorisation by the regulator? (Restrict your answers to

the regulator with responsibility for oversight of fund management. Do not answer with respect to other agencies, such as the merger control authorities.)

The acquisition of a material stake in a UCITS management company requires prior clearance by BaFin. The threshold for a material stake is 10 per cent of the capital or voting rights of the management company. The threshold also applies in the case of an indirect acquisition (eg, through acquiring a controlling stake in a financial holding company).

There is no prior clearance procedure with BaFin for the acquisition of a material stake in an AIFM placed on the potential acquirer. However, BaFin can take measures if shareholders with a material stake are not of sufficiently good repute or are otherwise not reliable enough to hold a stake in an AIFM. In practice, prior pre-clearance and coordination with the AIFM is therefore advisable.

Law stated - 18 June 2025

Restrictions on compensation and profit sharing

6 Are there any regulatory restrictions on the structuring of the fund manager's compensation and profit-sharing arrangements?

Germany follows the remuneration requirements of the European Securities and Markets Authority's Guidelines on Sound Remuneration under the UCITS Directive and the AIFMD.

Law stated - 18 June 2025

FUND MARKETING

Authorisation

7 Does the marketing of investment funds in your jurisdiction require authorisation?

The marketing of investment funds requires authorisation by the Federal Financial Supervisory Authority (BaFin) or at least a European marketing passport under the Alternative Investment Fund Managers Directive (AIFMD) or the Undertakings for Collective Investment in Transferable Securities (UCITS) Directive (2009/65/EC) (the UCITS Directive). A private placement regime is no longer available in Germany.

The only exception available applies to German-registered sub-threshold managers. German-registered sub-threshold managers can market their funds on a private placement basis.

The German funds marketing regime distinguishes between domestic funds, EU funds and non-EU funds, as well as between domestic fund managers, EU fund managers and non-EU fund managers. It further distinguishes between UCITS and alternative investment funds (AIFs), as well as – for AIFs – whether the funds are marketed to professional investors, semi-professional investors or retail investors.

Marketing of UCITS

The marketing of non-German UCITS in Germany follows the passporting regime of the UCITS Directive. In addition to the standard notification procedure, the marketing of UCITS must comply with the German implementation of the UCITS passporting rules (articles 91 to 95 of the UCITS Directive). For instance, there must be a financial institution in Germany for making payments to unitholders, repurchasing or redeeming units and for making available the information that UCITS are required to provide under Chapter IX of the UCITS Directive.

UCITS can be marketed under the passport to professional, semi-professional and retail investors.

Marketing of EU AIFs by EU AIFMs

A passport is available for the marketing of non-German EU AIFs by EU alternative fund managers (AIFMs) under article 32 of the AIFMD. The AIFMD marketing passport allows for the marketing of EU AIFs to professional and semi-professional investors in Germany.

EU sub-threshold AIFMs

EU sub-threshold AIFMs may use a simplified marketing notification procedure with BaFin. This notification procedure requires, among other things, confirmation of the registration status of the AIFM in its home member state and reciprocity. 'Reciprocity' means that the home member state must allow the marketing of AIFs managed by a German sub-threshold manager without imposing stricter requirements than Germany. Such reciprocity is currently recognised, for instance, with regard to the UK and Luxembourg, but not with regard to Austria, Denmark or France. As of 1 January 2023, reciprocity was also recognised regarding the Netherlands.

Marketing of EU AIFs or non-EU AIFs to retail investors

The AIFMD deals only with the marketing of AIFs to professional investors. For non-professional investors, EU member states are free to impose stricter requirements (article 43, paragraph 2 of the AIFMD). Germany has introduced a strict retail marketing regime for EU and non-EU AIFs. The regime is based on the retail marketing regime of German AIFs. It requires full AIFMD compliance as well as full compliance with the German Products Regulation. Because of these strict requirements, marketing an AIF to retail investors only makes sense if the relevant AIF is already set up with German retail investors in mind. A 're-tailoring' of an existing AIF is cost-prohibitive.

Law stated - 18 June 2025

8 | What marketing activities require authorisation?

The key trigger of an authorisation is the term 'marketing'.

Marketing means the direct or indirect offering or placement of units or shares in an investment fund.

In 2021, the German parliament passed the Act to Strengthen Germany as a Fund Jurisdiction to improve Germany as a fund jurisdiction. The Act has been effective from 2 August 2021 and implemented the cross-border marketing amendments of the AIFMD (Directive (EU) 2019/1160 on cross-border marketing).

The implementation provides some guidance on the meaning of the term 'pre-marketing'.

Pre-marketing takes place if information presented:

- is not sufficient to allow investors to commit to acquiring units or shares of a particular AIF;
- does not amount to subscription forms or similar documents whether in a draft or a final form; and
- does not amount to constitutional documents, a prospectus or offering documents of a not-yet-established AIF in a final form.

Where a draft prospectus or offering documents are provided, they must not contain information sufficient to allow investors to make an investment decision and must clearly state that:

- they do not constitute an offer or an invitation to subscribe to units or shares of an AIF; and
- the information presented therein should not be relied upon because it is incomplete and may be subject to change.

In addition, BaFin provides some guidance on pre-marketing activities in its FAQs about the marketing and acquisition of investment funds (the FAQs on Marketing). BaFin revised its FAQs in 2022 and implemented a partly stricter pre-marketing regulation in Germany compared to the prior regulation on pre-marketing. According to the FAQs on Marketing:

- pre-marketing and, in principle, not-yet-marketing is providing information or notices on investment strategies or concepts by an AIFM or third parties appointed by it to potential professional or semi-professional investors domiciled or resident in the European Union or an EEA state with the aim of determining the extent to which the investors are interested in a participation in an AIF or sub-investment assets not yet authorised for cross-border marketing in the investor's country of residence;
- pre-marketing only triggers the obligation to notify and does not require a completed marketing notification procedure. AIFs that are mentioned in pre-marketing information provided by AIFMs (or third parties) on or after 2 August 2021, or whose investment strategies appear in pre-marketing, must complete the relevant marketing notification procedure if units or shares in the AIF are subscribed to within a period of 18 months from the start of pre-marketing; and
- pre-marketing activities do not cross the line to marketing as long as the fund is not yet established (ie, no investor has been admitted to the fund) and only incomplete draft fund documents are distributed or available in Germany. The draft status of the documents must be clearly indicated. In addition, it must be communicated to the investor that a subscription is currently not possible and no offers for a subscription are sought, and that the documents are still subject to change (eg, in a presentation or correspondence disclaimer).

Unlike the Directive on cross-border marketing, the Act to Strengthen Germany as a Fund Jurisdiction extends the new EU pre-marketing regime to non-EU AIFMs seeking to pre-market in Germany. In line with the Directive, the Act restricts the firms entitled to pre-market on behalf of the AIFM to Markets in Financial Instruments Directive (MiFID) investment firms, AIFMs and UCITS management companies.

However, the German pre-marketing regime does not apply to EU sub-threshold AIFMs.

Reverse solicitation

Germany recognises reverse solicitation, albeit in a rather strict form. It requires that the offer or placement is genuinely initiated by the investor. In addition, the prospective investor must be a professional or semi-professional investor. The exact scope of the reverse solicitation concept as understood by BaFin is still not clear. However, since the implementation of the new regime, the scope for reverse solicitation has become very limited. Any subscription made by an investor within 18 months of the commencement of pre-marketing is considered a result of pre-marketing or marketing activities in Germany. Therefore, pre-marketing activities will preclude the AIFM from being able to rely on reverse solicitation for a period of 18 months.

If the investor is a retail investor, the requirements on reverse solicitation are even less clear. It is therefore advisable to exercise considerable restraint regarding reverse solicitation in connection with retail investors. If a retail investor's initiation is not considered a real case of reverse solicitation, the fund manager would be subject to the more cumbersome retail marketing regime in Germany. Nevertheless, some legal commentators argue in favour of the possibility of reverse solicitation, because the underlying principle of passive freedom to provide services – anchored in European law – is in principle also applicable to retail investors.

In the case of reverse solicitation, the fund manager must have documentary evidence of how the relationship with the investor started and seek a confirmation from the investor that the contact was initiated solely by the investor.

Generally, the requirements for reverse solicitation are fulfilled only in limited instances.

Law stated - 18 June 2025

Territorial scope and restrictions

9 What is the territorial scope of your regulation? May an overseas entity perform fund marketing activities in your jurisdiction without authorisation?

Marketing of EU AIFs by EU AIFMs

The AIFMD marketing passport allows non-German EU AIFs by EU alternative fund managers (AIFMs) to market EU AIFs to professional and semi-professional investors in Germany (article 32 of the AIFMD).

Marketing of non-EU AIFs or EU AIFs by non-EU AIFMs

Germany allows the marketing of non-EU AIFs managed by non-EU AIFMs under the regime of article 42 of the AIFMD to professional investors. The same regime applies to the marketing of EU AIFs managed by non-EU AIFMs to professional investors. Germany also applies the article 42 regime to non-EU sub-threshold managers.

Germany has implemented the article 42 regime in a rather cumbersome way. Compared with some other EU member states, the process is lengthy and costly. BaFin has two months (in some cases even longer) to review once documents have been filed, and as of April 2024 it charges a fee of €1,641 for the review per AIF to be marketed. The set of documents to be submitted to BaFin is quite extensive and includes the private placement memorandum, the fund limited partnership agreement and certain constitutional documents.

There are also some additional requirements not readily discernible from the reading of article 42, which go beyond the minimum requirements of the AIFMD (gold-plating). For instance, Germany requires a 'depositary-lite' and applies the article 42 regime to non-EU sub-threshold managers.

To ensure that the article 42 requirement of cooperation agreements between the relevant competent authorities is effective, BaFin requires, as part of the marketing authorisation procedure, an express declaration from the non-EU AIFM that:

- the non-EU AIFM is registered with the competent authority with which BaFin has entered into a cooperation agreement or that the non-EU AIFM is registered in another register to which the competent authority has access; and
- the competent authority has information rights in relation to the non-EU AIFM.

Concerning the depositary-lite, the AIFM must appoint a depositary to perform the three functions listed in articles 21(7) to 21(9) of the AIFMD, namely, cash monitoring, safekeeping of assets and a general oversight over the AIFM and the AIF. The depositary can be located outside Germany. A depositary confirmation must be submitted to BaFin.

The article 42 regime is also available for marketing to semi-professional investors. However, in such cases, the non-EU AIFM and the management of the AIF must fully comply with the AIFMD.

Marketing of EU AIFs or non-EU AIFs to retail investors

Regarding the marketing of AIFs to retail investors, there is a stricter retail marketing regime for EU and non-EU AIFs. The regime is based on the retail marketing regime of German AIFs. It requires full AIFMD compliance as well as full compliance with the German Products Regulation. Because of these strict requirements, marketing an AIF to retail investors only makes sense if the relevant AIF is already set up with German retail investors in mind. A 're-tailoring' of an existing AIF is cost-prohibitive.

Law stated - 18 June 2025

If a local entity must be involved in the fund marketing process, how is this rule satisfied in practice?

A local entity is only involved in the process concerning UCITS (paying and information agent) or if AIFs are marketed to retail investors (paying agent and representative of the AIFM). The role of the local entity is usually performed by a German credit institution.

Local bodies used to be involved in processes concerning UCITS (paying agent and information agent) and in the marketing of AIFs to retail investors (paying agent and representative of the AIFM). However, this practice has been abolished and these tasks can now be performed by entities domiciled outside Germany.

Law stated - 18 June 2025

Commission payments

11 What restrictions are there on intermediaries earning commission payments in relation to their marketing activities in your jurisdiction?

Germany follows the MiFID inducement rules on commission payments received by intermediaries. In practice, this means that the commission needs to be disclosed to the prospective client. In cross-border services without a German branch, the supervision of the German MiFID rules of good conduct is primarily carried out by the home country regulator.

In January 2022, the German Lobbying Register for the Representation of Special Interests regarding the German Bundestag and the Federal Government entered into force. Individuals and legal entities involved in lobbying activities face extensive registration and financial disclosure obligations.

Law stated - 18 June 2025

RETAIL FUNDS

Available vehicles

12 What are the main legal vehicles used to set up a retail fund? How are they formed?

The fund-related requirements of the German Capital Investment Code (KAGB) distinguish between undertakings for collective investment in transferable securities (UCITS), special alternative investment funds (AIFs) and public AIFs. UCITS are funds within the meaning of the Undertakings for Collective Investment in Transferable Securities Directive (2009/65/EC) (the UCITS Directive). Retail funds are UCITS funds and public AIFs. Public AIFs can be subscribed to by retail investors as well as professional and semi-professional investors. Retail investors are investors that are neither professional nor semi-professional.

Arrangements and vehicles for open-ended funds

For open-ended funds, contractual funds and investment corporations with variable capital structures are available. They can have different classes of units or shares. They can also establish sub-funds (an umbrella structure).

The open investment limited partnership structure is only available to semi-professional or professional investors.

A contractual fund is established by the fund manager on a contractual basis with the investor. The contractual fund is a pool of assets separated by statute and contract from the other assets of the fund manager. The investment guidelines for contractual funds set out the details of the relationship between the fund manager and the investors, in particular the applicable investment restrictions. The investment guidelines of retail funds require the approval of the Federal Financial Supervisory Authority (BaFin).

Investment corporations and limited partnerships are modified according to investment law, but are otherwise established in accordance with the applicable procedures for establishing corporations and partnerships. In addition to the articles of incorporation or the limited partnership agreement (LPA), separate investment guidelines are necessary.

Vehicles for closed-ended funds

For closed-ended funds, the only available vehicles for retail funds are the investment corporation with fixed capital and the closed-ended investment limited partnership.

Both vehicles can issue different classes of shares or interests, but they cannot establish sub-funds (no umbrella structures).

In addition to the articles of incorporation and the LPA, separate investment guidelines are necessary.

Law stated - 18 June 2025

Laws and regulations

13 What are the key laws and other sets of rules (regulatory and self-regulatory) that govern retail funds?

The main law governing retail funds is the KAGB. The KAGB is supplemented by several ordinances (ie, the Derivative Ordinance, the Organisational and Rules of Conduct Ordinance and the Mediation Ordinance). In addition, the Alternative Investment Fund Managers Directive (AIFMD) Level II Regulation applies to retail AIFs.

This set of laws is supplemented by self-regulatory standards, mainly the Rules of Good Conduct issued by the German Investment Funds Association and its sample investment guidelines.

Law stated - 18 June 2025

Authorisation

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14 | Must retail funds be authorised or licensed to be established or marketed in your jurisdiction?

The investment guidelines of retail funds and the marketing of retail funds need BaFin approval. In addition, BaFin must approve the selection of the depositary for the respective fund. The approvals are usually obtained in parallel with each other.

Law stated - 18 June 2025

Marketing

15 | Who can market retail funds? To whom can they be marketed?

Retail funds can be marketed to any investor in Germany (regardless of whether the investor is professional, semi-professional or retail).

Retail funds can be marketed only by the following three categories of marketers:

- the fund manager itself can always market its 'own' funds and, if fully licensed (ie, not only registered as a sub-threshold manager), may also market investment funds of other managers;
- Markets in Financial Instruments Directive (MiFID) firms are entitled to market investment funds (provided they have a MiFID licence or passport for investment advice and the transmission or receipt of orders); and
- firms or individuals with a financial intermediary licence under the German Industrial Code may also market retail funds. The financial intermediary licence is a non-MiFID licence and is based on the optional exemption from MiFID II in accordance with article 3 of the same.

Law stated - 18 June 2025

Managers and operators

16 | Are there any special requirements that apply to managers or operators of retail funds?

The special requirements for retail funds are not applicable to managers. The requirements applicable to managers of retail funds are broadly similar to the requirements for managers of non-retail funds. The main differences between retail and non-retail funds are the stricter statutory investment guidelines (product regulation) and marketing rules.

Also, the special regulations according to which sub-threshold alternative investment fund managers (AIFMs) were allowed to manage retail funds have been abolished. Thus, all AIFMs must be fully licensed to manage retail funds.

Law stated - 18 June 2025

Investment and borrowing restrictions

17 | What are the investment and borrowing restrictions on retail funds?

Germany offers different types of retail funds (eg, UCITS, real estate funds, fund of funds, hedge funds and closed-ended funds). The fund types are based on the UCITS investment and borrowing restrictions as the default rules. The investment and borrowing restrictions are then modified to fit each fund type. For instance, real estate funds may only invest in real estate, but can also invest up to 49 per cent of the net asset value in money market instruments or investment funds. The borrowing limits are increased for real estate funds from the UCITS' short-term borrowing of 10 per cent of the net asset value to a long-term borrowing for investment of 30 per cent of the net asset value.

Law stated - 18 June 2025

Tax treatment

18 | What is the tax treatment of retail funds? Are exemptions available?

The German Investment Tax Act generally applies to UCITS and AIFs (both retail and special AIFs).

The revised Investment Tax Act has been in effect since 2018. The scope of application has been slightly reduced as partnerships (and their separately treated sub-funds, if any) are no longer covered. Instead, the general rules of German taxation for partnerships are applicable. However, the German tax treatment of such funds effectively remains the same as under the previous law (prior to 2018).

Thus, only funds in the form of a corporation (eg, a German stock corporation, Luxembourg SA or SCA SICAV or Irish PLC) or of a contractual type (eg, a German *Sondervermögen*, Luxembourg *fonds commun de placement*, French FCPI or FCPR, Spanish FCR or Italian *fondo chiuso*) are now covered by the German Investment Tax Act. Also covered are certain other entities that do not qualify as investment funds under the KAGB (in particular, single-investor funds). One major conceptual change is that the principle of 'restricted transparency' has been replaced by a newly introduced opaque tax regime where there are two levels of taxation: the fund and the investors. This tax regime was designed for retail funds but is applicable to all investment funds (including non-retail funds) that do not satisfy the specific criteria for specialised investment funds under the new law or specialised investment funds that do not use the transparency option.

Under the opaque regime, the fund is now subject to taxation in respect of certain domestic German income (in particular, dividends and real estate income, but not capital gains from the sale of securities unrelated to real estate and unrelated to a permanent establishment in Germany) at fund level (15 per cent corporate tax rate). The exemption for dividends (section 8b of the German Corporate Income Tax Act) is not applicable at fund level even if the relevant threshold (ie, 10 per cent) is exceeded. In addition, German trade tax may be triggered at fund level if it is engaged in trade or business in Germany (subject to a

potential exemption if the fund does not engage in 'active entrepreneurial management' in relation to its assets).

At the investor level, there is a lump-sum taxation (which is designed for the needs of retail funds with many investors, but applicable to all funds covered). In particular, distributions from the fund, predetermined tax bases and capital gains realised upon sale or redemption of fund interests are covered. The objective of the predetermined tax base is to subject retained income of the investment fund to tax. For individual investors, the actual rate of investor level taxation depends on whether the investor holds the fund interests as part of their non-business or business assets. Individuals who hold their investment fund interests as part of their non-business assets are subject to a flat income tax. For individuals who hold their investment fund interests as part of their business assets, principally, the full amount of such items is subject to income tax at a personal rate.

For corporate investors, the full amount of such assets is subject to corporate tax. In addition, the German trade tax may be triggered. The partial income taxation and the exemption pursuant to section 8b of the German Corporate Income Tax Act do not apply. In return, investment fund proceeds (ie, distributions, predetermined tax bases and capital gains from dispositions or redemptions) are subject to partial exemptions depending on the respective fund type. For equity funds, the partial exemption is:

- 30 per cent of such proceeds for individuals who hold their investment fund interests as part of their non-business assets;
- 60 per cent for individuals who hold their investment fund interests as part of their business assets; and
- 80 per cent for corporate investors.

For mixed funds, half of the applicable partial exemption rate applicable to equity funds is available. For real estate funds, the partial exemption is 60 or 80 per cent of the proceeds, depending on whether the fund invests at least 51 per cent of its value in German or non-German real estate and real estate companies. In return, income-related expenses and operating expenses may not be deducted to the extent of the available partial exemption percentage. Half of the applicable partial exemption rate applies to trade tax.

Law stated - 18 June 2025

Asset protection

19 Must the portfolio of assets of a retail fund be held by a separate local custodian? What regulations are in place to protect the fund's assets?

Germany requires a depositary or custodian for both UCITS and AIFs. The rules for custodians for AIFs implement the rules of article 21 of the AIFMD. Germany has made use of the option in article 21(3) of the AIFMD to provide for a special custodian for private equity funds. The requirements for UCITS custodians are based on the UCITS Directive.

A custodian is not required for funds managed by AIFMs who are only registered with BaFin (in particular, sub-threshold managers).

There are rules in place to protect a fund's assets from liability incurred by the manager or by the activities of managing the fund (in the case of an internally managed fund). For instance, a manager can, as a basic rule, not directly act on behalf of a contractual fund and bind that fund. Any arrangement a manager enters into on account of a contractual fund is binding only on the manager. The contractual fund will then indemnify the manager, but only to the extent allowed by law and the rules of the contractual fund. The contractual fund is therefore protected from claims of third parties unrelated to the management of the contractual fund. In the case of an internally managed investment limited partnership (KG), the KG must have two types of assets: administrative and investment assets. Investment assets are financed by the capital of the investors and are used for making investments. Administrative assets serve to finance the general operations of the investment KG. Administrative assets may not be financed by the investors' capital.

Law stated - 18 June 2025

Governance

20 What are the main governance requirements for a retail fund formed in your jurisdiction (registration, record-keeping, filings, officers)?

The governance requirements distinguish between the fund vehicle and the fund manager.

Several governance requirements apply to the manager. An external manager can only be set up in a corporate or corporate-like legal form (stock corporation (AG), limited liability company (GmbH) and GmbH & Co KG). As a result, the basic governance rules of the respective legal form apply (such as registration requirements and rules for shareholders' meetings). To adapt these governance rules to a fund management environment, the KAGB supplements these rules with specific requirements. For instance, the manager must have at least two executive directors (officers) of good repute and with sufficient knowledge. In addition, there must be a supervisory board. Further, the KAGB requires a manager to obey several duties of good conduct, such as a duty of care, a duty to act in the best interests of the funds and the investors, a duty to avoid conflicts of interest and a duty to treat investors fairly. These duties are reinforced by organisational requirements on the manager, such as a duty to have adequate risk management or rules for personal transactions of employees in place.

The governance requirements applicable to the fund manager are the main governance protection rules applicable to contractual funds.

For a fund set up as an investment corporation with fixed or variable capital (an investment AG) or an investment KG, the fundamental layer of governance is based on the governance of the legal forms these funds are based on (eg, registration requirements). In addition, the KAGB sets out fund-specific requirements, such as the appointment of at least two executive directors at fund level.

Law stated - 18 June 2025

Reporting

21 | What are the periodic reporting requirements for retail funds?

Managers must report annually. Semi-annual reports are required for contractual funds and investment AGs with variable capital.

Law stated - 18 June 2025

Issue, transfer and redemption of interests

22 | Can the manager or operator place any restrictions on the issue, transfer and redemption of interests in retail funds?

Managers can restrict the issue, transfer and redemption of interests if there is a basis in the fund's investment guidelines. For instance, investment guidelines typically empower the manager to suspend redemption in extraordinary circumstances.

Law stated - 18 June 2025

NON-RETAIL POOLED FUNDS

Available vehicles

23 | What are the main legal vehicles used to set up a non-retail fund? How are they formed?

For vehicles used for non-retail funds (ie, professional or semi-professional investors only), Germany distinguishes between funds managed by fully licensed managers and funds managed by registered managers (sub-threshold managers). Non-retail funds are typically called special alternative investment funds (AIFs).

The following fund types are available to a fully licensed manager:

- contractual fund;
- investment limited partnership (KG); and
- investment corporation with fixed or variable capital (AG).

In our experience, the contractual fund is the most common vehicle used for non-retail investors by fully licensed managers.

The vehicle of choice for registered managers is a simple limited partnership with a company with limited liability (GmbH) as the only general partner (GmbH & Co KG). However, the legal forms of an investment KG and an investment AG are also available.

Law stated - 18 June 2025

Laws and regulations

24 What are the key laws and other sets of rules (regulatory and self-regulatory) that govern non-retail funds?

The same key rules that apply to managers managing retail funds apply to fully licensed managers managing non-retail funds.

Managers who are only registered benefit from very light regulation. Apart from the limit of €500 million under management without leverage, and €100 million under management with leverage, non-retail funds managed by sub-threshold managers are, in principle, not regulated. In consequence, they can only market the fund to professional and semi-professional investors.

Law stated - 18 June 2025

Authorisation

25 Must non-retail funds be authorised or licensed to be established or marketed in your jurisdiction?

In contrast to retail funds, the investment guidelines of non-retail funds only need to be submitted to the Federal Financial Supervisory Authority (BaFin) without BaFin having to approve the guidelines. The investment guidelines of non-retail funds can either mirror the investment guidelines of retail funds or can be freely specified as long as a fair market value of the assets can be determined. The marketing of non-retail funds requires BaFin approval.

No investment guidelines are necessary for registered managers. BaFin has established in its practice a requirement to submit a commercial register excerpt of the fund once the fund is established. Once the manager is registered, the marketing of a fund does not need BaFin approval.

Law stated - 18 June 2025

Marketing

26 Who can market non-retail funds? To whom can they be marketed?

Non-retail funds can, in general, be marketed by the same players as retail funds. An exception applies to funds managed by registered managers. Such funds cannot be marketed by firms with a financial intermediary licence under the Industrial Code.

Non-retail funds may only be marketed to professional or semi-professional investors.

Law stated - 18 June 2025

Ownership restrictions

27 | Do investor-protection rules restrict ownership in non-retail funds to certain classes of investor?

Only professional or semi-professional investors may invest in non-retail funds.

Law stated - 18 June 2025

Managers and operators

28 | Are there any special requirements that apply to managers or operators of non-retail funds?

The distinction between retail and non-retail lies in stricter investment guidelines and stricter marketing rules, at least regarding funds managed by fully licensed managers.

Only a regulation-lite regime applies to registered managers.

Law stated - 18 June 2025

Tax treatment

29 | What is the tax treatment of non-retail funds? Are any exemptions available?

The tax treatment of retail funds is generally also applicable to non-retail funds. Certain qualifying non-retail funds, however, have a second option available.

Funds in the form of a partnership are outside the scope of the Investment Tax Act. In effect, there is no change compared to the previous law (prior to 2018) for most non-retail AIFs, as they are often structured as limited partnerships. Thus, the German Investment Tax Act only applies to non-retail funds if they are structured in a corporate or contractual form. Under this law, there is an option for certain qualifying specialised investment funds to opt out of the opaque regime and, instead, to apply the restricted transparency regime (ie, the tax regime for investment funds under the previous law, which was in force until the end of 2017, but with certain amendments).

Specialised investment funds may only have a maximum of 100 investors (as was the case previously). Unlike the previous law (in force until the end of 2017), there is a look-through approach towards partnerships as investors (ie, each partner of such partnership is counted as one investor of the fund). However, individuals may now invest directly in a specialised investment fund, provided they hold these fund interests as part of their business assets (previously, only indirect participation by investors was allowed).

To qualify as a specialised investment fund, a fund must satisfy certain criteria with respect to regulation, redemption rights, eligible assets and investment restrictions. These are substantially similar to the criteria under the previous law (although certain changes with respect to the definition of ‘securities’ apply).

If the specialised fund opts to apply the restricted transparency regime, at fund level there is no taxation for domestic participation income and domestic real estate income.

At the investor level, special investment income is subject to tax (ie, distributed income, deemed distributed income and capital gains realised upon the dispositions or redemption of investment fund interests). The flat income tax is not applicable, even if an individual holds its investment fund interests as part of its non-business assets. Foreign withholding tax is still creditable.

Fund manager taxation

A 40 per cent exemption from German income tax applies to the carried interest received by managers of a private equity fund structured as a partnership (including limited partnerships) if certain cumulative criteria are fulfilled; in particular, the fund must qualify for asset management status and the carried interest must be paid only after the investors have had all their invested capital paid back. Otherwise, such income is fully taxable at normal German income tax rates. These rules are generally not affected by the revision of the German Investment Tax Act.

Law stated - 18 June 2025

Asset protection

30 | Must the portfolio of assets of a non-retail fund be held by a separate local custodian? What regulations are in place to protect the fund's assets?

A separate custodian is necessary if the non-retail fund is managed by a fully licensed manager. A custodian is not necessary in the case of a registered manager.

Law stated - 18 June 2025

Governance

31 | What are the main governance requirements for a non-retail fund formed in your jurisdiction (registration, record-keeping, filings, officers)?

The governance requirements for non-retail funds managed by fully licensed managers are similar to those applying to retail funds.

There are no special requirements on the governance of non-retail funds managed by registered managers.

Law stated - 18 June 2025

Reporting

32 | What are the periodic reporting requirements for non-retail funds?

Managers must report annually.

Law stated - 18 June 2025

SEPARATELY MANAGED ACCOUNTS

Structure

33 How are separately managed accounts (ie, accounts through which investor funds are segregated – not pooled – and the investor owns the underlying assets, which are managed at the investment manager's discretion) typically structured in your jurisdiction?

Managed accounts are often structured as contractual funds provided by a fully licensed manager as the investment platform. The portfolio management is then typically delegated to a specialist portfolio manager.

Law stated - 18 June 2025

Key legal issues

34 What are the key legal issues (eg, standard of care, indemnification) to be determined when structuring a separately managed account?

Managing a separate account is usually deemed discretionary portfolio management in Germany. As a result, the Markets in Financial Instruments Directive II (MiFID II) rules of conduct apply. If a sub-delegation structure is used for the managed account, the sub-delegation must comply with delegation rules of the German Capital Investment Code (KAGB). This means that, effectively, the rules of conduct under the KAGB and the other provisions of the KAGB also apply to the delegate manager. Also, the sub-delegate's staff remuneration needs to be included in the Alternative Investment Fund Managers Directive remuneration disclosures of the alternative investment fund manager.

Law stated - 18 June 2025

Regulation

35 Is the management or marketing of separately managed accounts regulated in your jurisdiction? (If so, how does this operate? Is this the same regime for fund management?)

Managing a separate account is usually deemed discretionary portfolio management in Germany and therefore regulated under the German MiFID II implementation. If the account is managed in the form of a contractual fund, the manager must be a fully licensed manager under the KAGB.

Law stated - 18 June 2025

GENERAL

Proposed reforms

36 Are there proposals for further regulation of funds, fund managers or marketers of funds in your jurisdiction?

Growth Opportunities ActAct to Strengthen the German Funds Market (*Fondsmarktstärkungsgesetz***)**

The German implementation law for AIFMD II is expected to be re-introduced in the German parliament by mid 2025.

Law stated - 18 June 2025

Public listing

37 Outline any specific requirements for stock-exchange listing of retail and non-retail funds.

The specific requirements for stock-exchange listing of funds depend on each exchange. For instance, there are exchanges that allow for the trading of closed-ended funds, whereas other exchanges permit only open-ended funds.

Law stated - 18 June 2025

Overseas vehicles

38 Is it possible to redomicile an overseas vehicle in your jurisdiction?

This is currently not possible in the context of funds.

Law stated - 18 June 2025

Foreign investment

39 Are there any special rules relating to the ability of foreign investors to invest in funds established or managed in your jurisdiction or domestic investors to invest in funds established or managed abroad?

There are, in general, no special rules applicable. However, some investors, such as German insurance companies, are restricted to a certain extent by regulatory law when investing in overseas or offshore vehicles to invest only in certain Organisation for Economic Co-operation and Development or EU-based funds.

Law stated - 18 June 2025

Funds investing in derivatives

40 Are there any special requirements in your jurisdiction relating to funds investing in derivatives?

UCITS investing in derivatives must comply with requirements on derivatives in accordance with articles 50 and 51 of the UCITS Directive. Requirements for non-UCITS (ie, AIFs) depend on the type of fund. For instance, an open-ended real estate fund may invest in derivatives only for hedging purposes. Other funds, such as special funds, have no restrictions on the use of derivatives except their own investment guidelines. If a fund invests in derivatives, they must in general comply with the Derivatives Regulation. The Derivatives Regulation sets out detailed rules for the use of derivatives and risk measurements. In addition, management companies are subject to the EU-wide regulations on derivatives transactions, such as Regulation (EU) 2015/2365 on transparency of securities financing transactions, Regulation (EU) No. 648/2012 on market infrastructure and Regulation (EU) No. 600/2014 on markets in financial instruments.

Law stated - 18 June 2025

UPDATE AND TRENDS

Recent developments

41 Are there any other current developments or emerging trends in your jurisdiction that should be noted? Please include reference to world-wide regulatory concerns, such as restrictions on foreign ownership in strategic industries, high-frequency trading, commodity position limits, capital adequacy for investment firms and 'shadow banking'.

VAT exemption for all German alternative investment funds

At the end of 2023, the Act on Financing of the Future was finally passed by the German legislature and entered into force on 1 January 2024. The management of all alternative investment funds (AIFs) will now be exempt from VAT under German tax law. German VAT treatment is now in line with the legal situation in other EU member states, such as Luxembourg, eliminating competitive disadvantages for Germany in a consistent continuation of the objective of the Act to Strengthen Germany as a Fund Jurisdiction.

Germany has long been at a disadvantage compared to other EU jurisdictions when it comes to the VAT treatment of fund management fees. Prior to this latest legislative change, the Act to Strengthen Germany as a Fund Jurisdiction had already expanded the VAT exemption for venture capital funds. However, uncertainties remained and have not been fully clarified by the supplement to the German VAT Regulations published by the Federal Ministry of Finance in June 2022.

The new legal framework is welcome and means that the management of AIFs will now be exempt from VAT regardless of the asset class (ie, expanding the exemption from private equity or venture capital funds to also encompass debt funds, real estate

funds, infrastructure funds, project development funds, crypto funds, litigation funds, funds of funds and so on). The type of regulation of the AIF or its alternative investment fund manager (AIFM) will no longer be relevant, nor will the qualification of the investors. Accordingly, the management of all AIFs (special AIFs and retail investment funds) managed by fully authorised AIFMs, European Venture Capital Funds (EuVECA) managers and nationally registered sub-threshold AIFMs is now exempt from VAT.

German Act to Modernise the Law on Partnerships (MoPeG)

After the first proposal in April 2020 and a transition period of around two-and-a-half years, a comprehensive reform of the German Law of Partnerships came into force on 1 January 2024. The reform adapts German partnership law to the requirements of modern, diverse economic life, and codifies certain legal developments of the past decades that have already been carried out in case law, legal commentaries and practice. Among other important innovations (eg, a special new register for a standard German partnership), the law also has certain implications for German limited partnerships (eg, the rules governing legal challenges to partnership resolutions).

Corporate Income Tax Modernisation Act

The Corporate Income Tax Modernisation Act entered into force on 1 January 2022. The main development is to offer an irrevocable option for partnerships to be treated as corporates for tax purposes. This effectively results in a third form of tax treatment for alternative investment funds (AIFs) under German tax laws. There is now the option to treat an AIF formed as a partnership like a taxable corporate entity without falling within the scope of the German Investment Tax Act. While new and largely untested, this might help foreign investors to avoid tax declaration obligations in Germany and retain the possible application of the taxation privilege for capital gains under section 8b of the German Corporate Income Tax Act (KStG) for German corporate investors as well as the fund entity itself. This could potentially limit tax leakage at fund level. However, certain withholding tax issues likely make this option less attractive. It remains to be seen if, and in which scenarios, this third option will be adopted in practice.

New structuring options for domestic funds

The Act to Strengthen Germany as a Fund Jurisdiction expanded the options available to fund managers for permissible structuring options. The new range of permitted products includes, for instance, a master-feeder structure for closed-ended funds, the introduction of an open-ended infrastructure AIF in the form of a contractual fund and the new option to use a contractual fund, which is opaque for tax purposes and subject to the German Investment Tax Act, as a closed-ended fund vehicle.

Return of capital contributions under the KStG

With the Annual Tax Act 2022, the legislator amended section 27, paragraph 8 of the German Corporate Income Tax Act to the effect that foreign corporations outside the EU (third-country corporations) are now expressly able to make a tax-neutral return of contributions. This is in line with the basic idea that the return of capital contribution should

generally not be seen as a taxable event. Pursuant to the old version section 27, paragraph 8 of the German Corporate Income Tax Act, only corporations and associations of persons that were subject to unlimited tax liability in another member state of the European Union were able to perform a tax-neutral return of capital contributions to their respective shareholders. While certain case law exists concerning third-country corporations and the relevant criteria accepted by courts to allow for a tax-neutral return of contributions, some German tax authorities have challenged such case law. Thus, the new law provides for greater certainty and uniformity, albeit at the price of a more formal process. To exclude a return of capital contribution from taxation, the respective domestic shareholders (the German investor of the AIF treated as an indirect shareholder of the respective third-country corporations) will be forced to file a 'separate determination of return of capital contributions' with the Federal Central Tax Office (BZSt), namely, the same filing required for EU corporations under the existing law. The new law modified the deadline for filing with the BZSt and now it must be made by the end of the 12th month following the fiscal year in which the return of capital contribution took place. Non-domestic AIFs treated as partnerships for German tax purposes must especially be aware of side-letter requests regarding this topic when targeting German investors.

Anti-Tax Avoidance Directives

Following the implementation of the first two Anti-Tax Avoidance Directives into German law, the European Commission presented a draft of a new directive on 22 December 2021. This was intended to adapt the Anti-Tax Avoidance Directive and thus prevent the abuse of letterbox companies (shell companies) for tax purposes.

Due to difficulties in reaching a political agreement on ATAD III, the Unshell Directive, which was originally scheduled to come into force in 2024, was provisionally suspended. A majority of EU member states reportedly support a change to the proposal that would see it implemented by way of an amendment to the Directive on Administrative Cooperation (DAC). It remains to be seen whether the original proposal of an ATAD III will be continued at the EU level, or the new regulations implemented as an amendment to the DAC. However, it can be assumed that the substantial requirements for EU company entities will not become less stringent.

SFDR and taxonomy regulation

Furthermore, Regulation (EU) 2019/2088 on sustainability-related disclosures in the financial services sector (SFDR) and Regulation (EU) 2020/852 on the establishment of a framework to facilitate sustainable investment (the Taxonomy Regulation) challenge participants on the financial market to assess the sustainability of their business and investments.

Since 1 January 2022, funds that either seek to contribute to the achievement of an environmental goal (article 9 of the SFDR) or advertise environmental features (article 8 of the SFDR) are subject to further disclosure obligations according to the Taxonomy Regulation. In principle, these funds must disclose to which environmental objectives the respective fund contributes and (what is likely to be even more difficult to implement) to what extent the fund invests in sustainable economic activity within the meaning of the Taxonomy Regulation.

The regulatory technical standards (RTS) for the SFDR and the disclosure obligations of the Taxonomy Regulation were adopted by the European Commission on 6 April 2022 and have been in force from 1 January 2023. The RTS provide templates – similar to Regulation (EU) No. 1286/2014 on key information documents for packaged retail and insurance-based investment products – that the financial market participants, such as fund managers, must use to fulfil their disclosure obligations.

In September 2023 the European Commission started a comprehensive assessment of the SFDR to assess potential shortcomings. The consultation focuses on legal certainty, the usability of the SFDR and its ability to play its part in tackling greenwashing.

Based on the first consultation that mainly focused on the level 1 of the SFDR, the EU published a summary report containing the main findings received from market participants.

In mid-2024, the European Supervisory Authorities (ESAs) published a joint opinion on the assessment of the SFDR. One of ESAs' key concerns is the complexity of the current SFDR disclosure requirements. This is why ESAs propose to simplify the current disclosure requirements by implementing aspects of a product classification for all financial products. The joint opinion therefore proposes the introduction of an actual product categorisation of the respective financial product. The product categorisation consists of two voluntary categories (sustainable and transitional products) that are evaluated based on the investment strategy of the respective financial product. In addition, ESAs propose to introduce a sustainability indicator for financial products (comparable to the indicator used in the PRIIP-KID). In addition, ESAs discuss to uniform the definition of sustainable investments. It remains to be seen if the consultation might lead to significant changes in the disclosure requirements for issuers of financial products.

As at January 2025, uncertainty remains as to certain aspects of the application of the SFDR and the Taxonomy Regulation. The Federal Financial Supervisory Authority has not issued guidelines on all aspects of sustainable investment funds, despite publishing a Q&A in September 2022, which most notably clarified the much-debated German translation of ‘promote’ in article 8 SDFR.

European Securities Markets Authority final report on guidelines on funds’ names using ESG Or sustainability-related terms

In mid-May 2024, the European Securities Markets Authority (ESMA) published its final report on the guidelines on funds´ names using ESG or sustainability-related terms. The guidelines are one further step of the EU´s initiative to address greenwashing. In order to reach this goal, ESMA links the use of certain terms associated to ESG or sustainable investments in fund names to an actual ESG implementation in the investment strategy of the respective product.

ELTIF 2.0

Regulation (EU) 2023/606 (the ELTIF 2 Regulation) amending Regulation (EU) 2015/760 of April 2015 on European Long-Term Investment Funds (ELTIFs) entered into force on 10 January 2024, with the goal to open the private capital market to retail investors by, among other things, broadening the scope of eligible assets and investments.

The revised regime will become more attractive for professional investors due to the elimination of portfolio composition, diversification and concentration provisions, for example by raising the leverage limitation of 30 per cent of the fund's capital to 100 per cent for ELTIFs marketed solely to professional investors.

At the same time, the scope of eligible assets and investments has been extended and diversification and borrowing rules have been softened for retail ELTIFs. Among other things, borrowing limits have been raised up to 50 per cent of the ELTIF's NAV and eligible assets must now represent at least 55 per cent of ELTIF's net assets instead of 70 per cent.

Additionally, with regard to indirect strategies, an ELTIF can now be a feeder to another master ELTIF and fund-of-funds structures are now possible with any type of European underlying fund (up to 100 per cent of the assets and a maximum of 20 per cent exposure to the same fund) allowing managers to offer retail investors indirect access to funds that were previously only eligible for professional investors or not available at all.

Following its adoption by the European Commission on 19 July 2024, the Commission Delegated Regulation (Regulation (EU) 2024/2759) on the ELTIF Regulation entered into force on 26 October 2024. This delegated regulation comprises the regulatory technical standards for European long-term investment funds (ELTIFs), which in particular define the requirements for the redemption policy and liquidity management instruments of an ELTIF.

Markets in Crypto-Assets Regulation (MiCAR)

The Markets in Crypto-Assets Regulation (MiCAR) entered into force on 20 April 2023 as part of a new regulatory framework for EU crypto-assets. The regulation covers the authorisation and supervision of both issuers of crypto-assets and their service providers. It also covers and defines the corresponding obligations concerning certain tokens (ie, value-referenced tokens – stablecoins, e-money tokens and, as a catch-all, crypto-assets). The main feature of the new legislation is a comprehensive consumer protection regime for the issuance and trading of crypto-assets, such as, in the case of cross-border EU distribution of crypto-assets, notification requirements or the mandatory publication of a prospectus-resembling crypto information sheet (white paper). At the same time, issuers and service providers of crypto-assets are to benefit from an EU passporting regime. While some regulations of the MiCAR have been applicable since June 2023, other provisions have been applicable since June or December 2024.

At present, Germany provides a legal framework for crypto commerce under national law as different types of crypto token are classified as financial instruments. However, the legal texts differ in their definition of crypto-assets; changes are thus to be expected for the German market.

In February 2025, BaFin published a draft circular on the duties of custodians and AIFMs for investment funds investing in crypto assets.

AIFMD II

In November 2021, the EU Commission published a proposal for a directive amending the AIFMD and the UCITS Directive (AIFMD II). Two years later, the final compromise text (Final Text) of the political agreement between representatives of the Council and the EU Parliament was published as the result of trilogue negotiations. As of March 2024, the text has finally been formally approved by both EU institutions and subsequently published in the EU's Official Journal.

The amendments contained in AIFMD II will supplement the existing AIFMD selectively. The key developments under AIFMD II are, among other things:

- a new regulatory regime for loan origination activities;
- additional substance requirements for managers (ie, two senior AIF managers resident in the EU committed full-time);
- introduction of Liquidity Management Tools for open-ended AIFs;
- implementation of the ability of an AIFM to appoint a depositary outside of the home member state of an AIF;
- inclusion of delegation and sub-delegation reporting requirements;
- the extension of ancillary services, enabling AIFMs to now administer benchmarks and credit servicing; and
- additional reporting requirements of AIFs on all fees, charges and expenses.

The adopted amendments were anticipated to will be implemented into German law until March 2025, coming into force in April, 2026.

The German legislator discussed the AIFMD II key developments in a first draft of an Act to Strengthen the German Funds Market (*Fondsmarktstärkungsgesetz*) to transpose the requirements of the AIFMD II into national law. Due to the snap election in the German parliament that took place in February 2025 and the principle of discontinuity in the German constitution, the legislative proposal is currently on hold. The draft needs to be re-introduced by the new parliament to pass. As a result, the date and the details of the actual transposition of the AIFMD II into the updated in the German Capital Investment Act cannot currently be predicted.

Substance requirements

The EU Parliament and the Council saw a need for additions to the substance requirements for alternative investment fund managers (AIFMs). From now on, the competent supervisory authorities must be provided with more detailed information on the AIFMs' human and technical resources during the licensing procedure. It is required that:

- at least two natural persons decide on the management of the AIFM's business who are on a full-time basis either employed by the AIFM or executive members or members of the governing body of the AIFM; and
- they are domiciled, in the sense of having their habitual residence, in the EU. Regardless of this statutory minimum, more resources may be necessary depending on the size and complexity of the AIF.

Implementation of Liquidity Management Tools

The implementation of the Liquidity Management Tools (LMTs) simplifies liquidity management for open-ended funds. The LMTs contain mandatory rules as to how AIFMs of open-ended funds must ensure sufficient liquidity. It is now necessary to select at least two appropriate tools within the meaning of Annex V of the Amending Directive. The selection should be in line with the investment strategy, liquidity profile and redemption policy.

Reporting

The aim is to harmonise different reporting regimes through 'Level 2' measures, which the Commission will adopt at the proposal and elaboration of the European Securities and Markets Authority (ESMA). To better protect investors, the final version of the Amending Directive includes obligations to regularly disclose fees, charges and expenses that are borne by the AIFM and that are subsequently directly or indirectly allocated to the AIF or to any of its investments. AIFMs are also required to disclose all fees and expenses that were borne directly or indirectly by investors on an annual basis.

Delegation

A key development in the Final Text is the inclusion of delegation and sub-delegation reporting requirements for alternative AIFMs. In future, the competent national authorities need to be informed by the AIFM about delegation and sub-delegation arrangements as part of licence applications and regulatory reporting requirements. The information to be reported includes the total amount and the percentage of delegated assets under management (AuM), the organisational structure of the delegation and sub-delegation, and details of the delegates and their functions.

Loan-originating funds

Some changes provided by the Amending Directive will apply to all AIFs that grant loans, regardless of whether a specific threshold is reached. These include organisational requirements regarding the risk management of the AIFM, the ban on granting loans to governing bodies, a credit limit in relation to certain borrowers and the risk retention of the AIF.

Other, stricter rules will only apply to loan-originating funds (LOF), which are being comprehensively regulated and harmonised for the first time in AIFMD II. A LOF has been defined as an AIF whose investment strategy is primarily aimed at granting loans or where the loans granted by the AIF account for at least 50 per cent of the net asset value of the AIF. LOF should generally be structured as closed-ended funds to avoid maturity mismatches and reduce credit default risks. AIFMs that wish to manage a lending AIF in an open-ended structure must be able to prove to the competent national supervisory authority that the AIF has liquidity management tools that are in line with its investment strategy and ensure fair treatment of investors. In the future, LOFs are subject to a leverage limit of 175 per cent for open-ended funds and 300 per cent for closed-ended funds. This is intended to safeguard the stability and integrity of the financial system. The only exceptions apply to AIFs that exclusively grant shareholder loans.

Given the already rather strict German rules for LOFs, we expect that amendments will only have a limited practical effect on domestic AIFs.

Ancillary services

The list of ancillary services that can be provided by AIFMs has been extended by the final version. It now also includes administration of benchmarks, credit servicing and any other function or activity that is already provided by an AIFM in relation to an AIF that it manages, provided that any potential conflicts of interest are appropriately regulated. Contrary to the existing rules, ancillary services such as investment advice may even be provided in future if the AIFM does not engage in discretionary portfolio management.

German Secondary Credit Market Act

In December 2023, the German Secondary Credit Market Act – which is the German implementation law in relation to Directive 2021/2167/EC – was published in the German federal gazette. The law is primarily targeting the regulation of certain activities in connection with non-performing loans (NPLs) of banks and other credit institutions. As the law also intends to enable NPLs to be sold to a loan buyer with the necessary risk propensity while establishing an efficient and transparent secondary market for those non-performing loans, it will impact the distribution channels for credit funds.

Regulation on Digital Operational Resilience in the Financial Sector

Since 17 January 2025, the Regulation on Digital Operational Resilience in the Financial Sector (DORA) is fully applicable in the EU and Germany. The Regulation establishes a legal framework to strengthen the stability, security and resilience of digital services in order to protect consumers and the financial sector from cyber threats. The main goal of DORA is to protect the digital operational stability and IT security of entities within the financial sector from serious disruptions that may occur in the context of information and communication technologies (ICT). In particular, DORA aims to enable entities within the financial sector to (1) defend against cyber-attacks; (2) mitigate structural risks such as the concentration of ICT in the hands of third-party providers; and (3) address technical complications that may affect operational stability of a financial entity. As the Regulation is applicable to almost all participants of the financial sector, it applies also to fully licensed AIFMs under the AIFMD. Registered sub-threshold AIFMs are excluded from the scope of the Regulation

New infrastructure quota for German regulated investors

On 6 February 2025, another amendment to the German Investment Ordinance (*Anlageverordnung*) was promulgated. That increase the allocation capacity for infrastructure investments by German institutional investors.

The changes also provide greater flexibility for other alternative asset classes. The amended German Investment Ordinance provisions are a welcome development, enhancing investment flexibility for German institutional investors. By encouraging allocations to infrastructure – both directly and through funds, and across equity and debt –

the reform supports private capital inflows into critical infrastructure and renewable energy initiatives, helping to bridge public funding shortfalls.

The new rules present a timely opportunity to attract fresh institutional capital in a challenging fundraising environment.

Law stated - 18 June 2025

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Summary

SEPARATELY MANAGED ACCOUNTS

GENERAL

UPDATE AND TRENDS

FUND MANAGEMENT REGULATION

Regulatory framework and authorities

1 How (in very general terms) is fund management regulated in your jurisdiction? Which authorities have primary responsibility for regulating funds, fund managers and those marketing funds?

Fund management in Hong Kong is primarily regulated by the Securities and Futures Commission (SFC). The SFC is the key regulatory authority responsible for overseeing the licensing and conduct of fund managers, authorising collective investment schemes for distribution to the public, and supervising activities related to the marketing and distribution of funds within Hong Kong. As the securities regulator, the SFC sets regulatory standards and enforces rules to ensure investor protection, market integrity, and transparency in the fund management industry. This includes authorising funds that are offered to retail investors, licensing fund managers under the Securities and Futures Ordinance (SFO), and supervising the conduct of intermediaries involved in fund marketing and capital market activities.

Law stated - 20 May 2025

Fund administration

2 Is fund administration (support services provided to funds such as book-keeping, preparing reports, trade settlement, etc) regulated in your jurisdiction?

No.

Law stated - 20 May 2025

Authorisation

3 What is the authorisation or licensing process for funds? What are the key requirements that apply to managers and operators of investment funds in your jurisdiction?

The SFC must authorise a fund before it can be offered to the public in Hong Kong. The requirements for authorisation, including the obligations of the fund manager, the trustee or custodian, are set out in the Code on Unit Trusts and Mutual Funds (the UT Code).

For a fund to be offered in Hong Kong without the pre-authorisation of the SFC, the offering must fall within a valid statutory exemption, such as by private placement.

The statutory exemption most relied upon is an offer to 'professional investors' only. There are various definitions of professional investor including institutional investors, financial institutions, corporations (with assets of at least HK$40 million and individuals who can satisfy at least HK$8 million in net asset value.

The obligations that a licensed fund manager must comply with include:

- codes and guidelines issued by the SFC, including the Code of Conduct for Persons Licensed by or Registered by the Securities and Futures Commission (the Code of Conduct), the Fund Manager Code of Conduct (FMCC) and the Management, Supervision and Internal Control Guidelines for Persons Licensed by or Registered with the Securities and Futures Commission;
- anti-money laundering obligations under the Anti-Money Laundering and Counter-Terrorist Financing Ordinance;
- the SFC's Guideline on Anti-Money Laundering and Counter-Financing of Terrorism; and
- anti-bribery obligations under the Prevention of Bribery Ordinance.

Law stated - 20 May 2025

Territorial scope of regulation

4 What is the territorial scope of fund regulation? Can an overseas manager perform management activities or provide services to clients in your jurisdiction without authorisation?

Specifically, if a person actively markets or offers fund management services to the public in Hong Kong, whether the marketing is conducted within Hong Kong or from overseas and such services constitute regulated activities under the SFO, that person must obtain the appropriate licence from the SFC before conducting those activities. This licensing requirement applies regardless of whether the manager is based in Hong Kong or overseas.

An overseas fund manager cannot perform fund management activities or provide regulated services to clients in Hong Kong without SFC licence if those activities constitute regulated activities under the SFO. The territorial scope of fund regulation extends to activities carried out in Hong Kong as well as activities targeting the Hong Kong public from outside the jurisdiction. This approach ensures investor protection and maintains the integrity of Hong Kong's financial markets.

Law stated - 20 May 2025

Acquisitions

5 Is the acquisition of a controlling or non-controlling stake in a fund manager in your jurisdiction subject to prior authorisation by the regulator? (Restrict your answers to the regulator with responsibility for oversight of fund management. Do not answer with respect to other agencies, such as the merger control authorities.)

Prior approval of the SFC is required for any person to become a substantial shareholder in a licensed corporation. A substantial shareholder is defined as any person, whether alone or together with the person's associates, who has more than 10 per cent of the direct interest in the licensed corporation or more than 35 per cent indirect interest in the licensed corporation.

Law stated - 20 May 2025

Restrictions on compensation and profit sharing

6 | Are there any regulatory restrictions on the structuring of the fund manager's compensation and profit-sharing arrangements?

The structuring of a fund manager's internal compensation and profit-sharing arrangements is not subject to specific regulatory restrictions. However, there are other regulatory requirements related to fees, charges and benefits received by the fund manager in connection with the funds they manage, particularly for retail funds marketed to the public. Such aspects include the general principle of avoiding conflicts, the requirement to disclose fees and charges and the basis of its fees and charges.

Law stated - 20 May 2025

FUND MARKETING

Authorisation

7 | Does the marketing of investment funds in your jurisdiction require authorisation?

Under Part IV of the Securities and Futures Ordinance (SFO), it is an offence to issue advertisements or invitations to the public in Hong Kong to acquire interests in collective investment schemes unless the fund is authorised or an exemption applies. Advertisements targeted at professional investors or issued outside Hong Kong may be exempted.

Law stated - 20 May 2025

8 | What marketing activities require authorisation?

Some general marketing activities such as brand awareness, publishing articles, or speaking at finance-related events may be permissible without triggering licensing requirements, provided there is no implication of carrying on regulated activities. However, active marketing or solicitation to the public typically requires compliance with authorisation and licensing rules.

Law stated - 20 May 2025

Territorial scope and restrictions

9 What is the territorial scope of your regulation? May an overseas entity perform fund marketing activities in your jurisdiction without authorisation?

An entity must be licensed or registered for Type 1 (Dealing in Securities) regulated activity to conduct fund marketing activities in Hong Kong.

For any overseas entity, there is a general prohibition on marketing fund products to the public. Certain marketing activities for professional investors only, on a discrete one-off basis and on private placement, may be considered exempt from the marketing prohibition.

Law stated - 20 May 2025

10 If a local entity must be involved in the fund marketing process, how is this rule satisfied in practice?

An overseas fund manager who wishes to market its fund product may do so provided it appoints a suitably licensed corporation with a Type 1 licence.

Law stated - 20 May 2025

Commission payments

11 What restrictions are there on intermediaries earning commission payments in relation to their marketing activities in your jurisdiction?

There are generally no restrictions on the amount of commission payments to intermediaries in relation to marketing activities.

Law stated - 20 May 2025

RETAIL FUNDS

Available vehicles

12 What are the main legal vehicles used to set up a retail fund? How are they formed?

The main legal vehicles used to set up a retail fund in Hong Kong are the unit trust and the open-ended fund company (OFC) structure.

Here is how they are formed:

- Unit trust: a Hong Kong-domiciled open-ended fund can be set up by way of a trust deed governed by Hong Kong law. Unit trusts are established by a trust deed, typically made between the trustee and the manager. The trust deed is one of the principal documents governing the formation of the scheme.

- Open-ended fund company (OFC): it has been possible since 2018 to establish a Hong Kong-domiciled open-ended fund in the form of an open-ended fund company structure with variable capital. OFCs are formed under the Securities and Futures Ordinance (SFO). An OFC must be registered with the Securities and Futures Commission (SFC) and incorporated with the Registrar of Companies. The constitution of an OFC is set out in its instrument of incorporation. A retail fund structured as an OFC must comply with the SFO, the Securities and Futures (Open-ended Fund Companies) Rules (the OFC Rules), and the SFC's Code on Open-ended Fund Companies (the OFC Code).

It is also worth noting that the SFC Code on Unit Trusts and Mutual Funds (the UT Code) does not restrict the authorisation of retail funds solely to Hong Kong-domiciled funds. Funds established outside Hong Kong may also be authorised for sale to the public in Hong Kong.

Law stated - 20 May 2025

Laws and regulations

13 What are the key laws and other sets of rules (regulatory and self-regulatory) that govern retail funds?

- SFO: this is the primary legislation under which fund management in Hong Kong is regulated. The SFO empowers the SFC to regulate fund management activities, authorise collective investment schemes (funds) and regulate offers of securities, including collective investment schemes. The SFO governs fund products offered in Hong Kong, those targeted at the Hong Kong public, or the conduct of regulated activities in securities or futures carried out in Hong Kong. It also provides the framework for open-ended investment funds structured in corporate form.
- SFC Handbook on Unit Trusts and Mutual Funds, Investment-Linked Assurance Schemes and Unlisted Structured Products (the Handbook): this handbook contains important regulatory requirements, including the SFC Code on Unit Trusts and Mutual Funds (UT Code).
- The UT Code: this is the main code governing the authorisation and ongoing requirements applicable to retail funds. It sets out requirements for authorisation, including obligations for the fund's manager and trustee or custodian. It also contains specific requirements for managers and trustees/custodians to qualify for retail funds, investment and borrowing restrictions, rules for asset protection by the trustee/custodian, governance requirements, reporting requirements, and rules regarding issue, transfer, and redemption of interests. The UT Code does not restrict authorisation to Hong Kong-domiciled funds; it also applies to non-Hong Kong-domiciled funds or schemes, including recognised jurisdiction schemes.
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The OFC Rules: these rules are subsidiary legislation of the SFO and apply to retail funds structured as Hong Kong OFCs with variable capital. An OFC must be registered with the SFC and incorporated with the Registrar of Companies.

- The OFC Code: issued by the SFC, this code applies to retail funds structured as Hong Kong open-ended fund companies. It sets out requirements for OFCs regarding the manager, directors, custodian, and other governance matters.
- Rules Governing the Listing of Securities on the Stock Exchange of Hong Kong Limited (the Listing Rules): for retail funds listed on the Hong Kong stock exchange, Chapter 20 of the Listing Rules is applicable to SFC-authorised collective investment schemes (including exchange-traded funds).
- SFC Code of Conduct for Persons Licensed by or Registered with the SFC (the Code of Conduct): licensed fund managers and other intermediaries or market participants involved with retail funds are subject to this code, which sets out requirements and expected standards of conduct. For instance, it includes suitability and know-your-customer requirements for persons offering fund products, restrictions on intermediaries earning commission payments, and requirements for investment management agreements for separately managed accounts.
- SFC Fund Manager's Code of Conduct (FMCC): licensed fund managers are also subject to this code. The FMCC provides minimum standards of conduct specifically applicable to fund managers. For Hong Kong-licensed managers responsible for the overall operation of a fund, it includes specific requirements in areas like securities lending, custody, liquidity management, risk management and valuation. It also sets requirements for the selection, appointment, and monitoring of custodians.
- Constitutive documents: these are the principal documents governing the formation of the scheme, such as the trust deed for a unit trust or the instrument of incorporation/articles of association for a corporate fund. They set out the fund's structure, investment objectives, policies and restrictions, and are binding on the holders. Changes to these documents, or other matters materially prejudicing holders' rights, need to be notified to the SFC.

In addition to the above, other guidelines and frequently asked questions (FAQs) issued by the SFC contain requirements and expected standards of conduct for licensed fund managers and other market participants.

Law stated - 20 May 2025

Authorisation

14 Must retail funds be authorised or licensed to be established or marketed in your jurisdiction?

A Retail fund must be authorised by the SFC before it can be offered to the public in Hong Kong. Retail fund products marketed and offered to the Hong Kong public must be

authorised by the SFC in accordance with the UT Code. Schemes established in Hong Kong or elsewhere are normally expected to comply with the Handbook and UT Code requirements for authorisation. It is a criminal offence to offer a fund that has not been authorised by the SFC to the public in Hong Kong. The maximum penalty for this offence is a fine of HK$500,000 and imprisonment for three years.

Law stated - 20 May 2025

Marketing

15 | Who can market retail funds? To whom can they be marketed?

The marketing of investment funds, including retail funds, constitutes a regulated activity. Only persons licensed with the Securities and Futures Commission (SFC) to conduct the Type 1 regulated activity of dealing in securities can carry out such activities. An entity must be licensed or registered for Type 1 regulated activity (dealing in securities) to conduct fund marketing activities in Hong Kong.

A holder of a license to conduct Type 9 regulated activity in asset management may market the funds under its management as an incidental exemption or unless other exemptions apply, subject to relevant conditions. The manager of the fund, if licensed for Type 9 regulated activity, can market retail funds, provided there are no conditions imposed to only deal with Professional Investors.

Retail funds can be marketed to the public in Hong Kong. However, when an intermediary makes a recommendation or solicitation in respect of a fund, the intermediary must ensure the suitability of that recommendation or solicitation for its client. This is a requirement set out in the Code of Conduct.

Law stated - 20 May 2025

Managers and operators

16 | Are there any special requirements that apply to managers or operators of retail funds?

Yes, there are indeed special requirements that apply to managers and operators of retail funds in Hong Kong

For the manager:

- SFC acceptability and licensing: a manager of a retail fund must be acceptable to the SFC. a Hong Kong fund manager must hold an SFC licence for conducting the Type 9 regulated activity of asset management.
- Primary business focus: the management company must be engaged primarily in the business of fund management.
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Financial resources: the manager must have sufficient liquid capital as required under the Securities and Futures (Financial Resources) Rules. In addition, under the revised UT Code effective from 1 January 2019, the paid-up share capital and non-distributable capital reserves for the management company are HK$10 million (or equivalent). They must not lend to a material extent and must maintain a positive net asset position at all times.

- Key personnel experience: the manager is expected to have at least two key personnel, each with at least five years of investment experience managing public funds with reputable institutions. This experience should be in the same or similar type of investments as those proposed for the fund. For established fund management groups, group-wide experience and resources may be considered to meet this requirement.
- Acceptable inspection regime: if the manager is based outside Hong Kong, or if the investment management function is delegated, the manager or the investment delegate must be regulated in a jurisdiction with an acceptable inspection regime (AIR). The current AIR list includes jurisdictions like Australia, France, Germany, Hong Kong, Ireland, Luxembourg, the United Kingdom and the United States. Delegation to non-AIR entities is possible with prior SFC approval.
- Compliance with FMCC and Code of Conduct: licensed fund managers are subject to the FMCC and the Code of Conduct. The FMCC sets out comprehensive requirements for fund managers covering areas such as organisation and management structure, financial and human resources, internal controls, risk management, segregation of duties, conflicts of interest, staff ethics, investment management processes (including climate-related risks, best execution, insider dealing prevention, order allocation, cross trades, liquidity management, valuation), custody oversight, dealing with funds and investors (including marketing and fees), and reporting obligations. The Code of Conduct sets out general requirements and expected standards of conduct for licensed persons, which include suitability and know-your-customer requirements for offering fund products.
- Responsibility for fund operations: the manager is responsible for managing the fund in accordance with its constitutive documents and in the best interests of the holders.

For the trustee or custodian:

- SFC acceptability: the trustee or custodian of a retail fund must be acceptable to the SFC.
- Eligible categories: they must fall into one of the SFC's eligible categories of institutions. These include banking institutions, or a trust company incorporated outside Hong Kong that is acceptable to the SFC and subject to ongoing prudential regulation or authorised/prudentially regulated by an acceptable overseas authority, or a depositary licensed or registered to carry on Type 13 regulated activity.
-

Asset protection: the trustee or custodian must take into its custody or under its control all the property of the retail fund and register assets in its name or order. They are liable for the acts and omissions of their nominees or agents. There is no requirement for a separate local custodian if the trustee or custodian is an acceptable overseas institution.

- Oversight role: the trustee or custodian has obligations to take reasonable care to ensure that the sale, issue, repurchase, redemption, cancellation and valuation of units or shares are performed in accordance with the fund's constitutive documents.

For OFC directors:

- Number and independence: An OFC must have at least two individual directors. At least one director must be independent (not an employee or director of the custodian).
- SFC approval: director appointments are subject to SFC approval, requiring directors to be of good repute, appropriately qualified, experienced and proper for carrying out the OFC's business.
- Duties: OFC directors have fiduciary and statutory duties, including a duty of care, skill and diligence. They are responsible for overseeing the OFC's operations, including the activities of the manager and custodian, and ensuring regulatory compliance by the OFC. Non-resident directors must appoint a local process agent.

These requirements ensure that retail funds, which are marketed to the public, are managed and overseen by qualified and acceptable entities with appropriate governance, risk management and asset protection measures in place, providing a level of investor protection.

Law stated - 20 May 2025

Investment and borrowing restrictions

17 | What are the investment and borrowing restrictions on retail funds?

In Hong Kong, retail funds authorised by the SFC are subject to specific investment and borrowing restrictions designed to protect retail investors. These restrictions are set out primarily in the UT Code and related guidelines.

Law stated - 20 May 2025

Tax treatment

18 | What is the tax treatment of retail funds? Are exemptions available?

Retail funds authorised by the SFC in Hong Kong are exempt from Hong Kong profits tax under the Inland Revenue Ordinance. This exemption means that such funds are not required to file Hong Kong profits tax returns. However, stamp duty may still be payable on transfers of Hong Kong registered stock, subject to certain exemptions.

Law stated - 20 May 2025

Asset protection

19 Must the portfolio of assets of a retail fund be held by a separate local custodian? What regulations are in place to protect the fund's assets?

Yes, in Hong Kong, the assets of a retail fund must be held by a custodian that meets specific regulatory requirements to ensure the safekeeping and protection of the fund's portfolio.

Law stated - 20 May 2025

Governance

20 What are the main governance requirements for a retail fund formed in your jurisdiction (registration, record-keeping, filings, officers)?

In Hong Kong, retail funds authorised by the SFC must comply with comprehensive governance requirements designed to ensure proper management, transparency and investor protection. These requirements are primarily set out in the SFO, the UT Code, and the Code of Conduct.

Registration and authorisation:

- Retail funds must obtain authorisation from the SFC before being offered to the public in Hong Kong. The authorisation process requires submission of detailed information and documents about the fund's structure, investment strategy, risk management and compliance arrangements.
- The fund must appoint a management company (fund manager) licensed by the SFC to conduct regulated activities such as asset management and marketing.
- A custodian or trustee, meeting SFC eligibility criteria, must be appointed to safeguard the fund's assets separately from those of the manager or other parties.

Record-keeping and filings:

- Fund managers and trustees are required to maintain accurate and comprehensive records of all transactions, holdings, and investor information to ensure transparency and accountability.
-

Regular financial reporting and disclosure are mandatory. Authorised retail funds must prepare audited financial statements annually and submit periodic reports to the SFC and investors, including updates on fund performance, fees and material changes.

- Managers must comply with ongoing disclosure obligations, including timely notification to the SFC of any material events affecting the fund or its operation.

Governance and officers:

- Senior management of the licensed fund manager bears primary responsibility for ensuring compliance with regulatory requirements and the Code of Conduct, including maintaining adequate internal controls, risk management and supervision of staff.
- Fund managers must ensure that key personnel are fit and proper, possessing the necessary expertise and experience to manage the fund effectively.
- The fund's constitution and offering documents must clearly define the roles and responsibilities of officers, including the management company, custodian, auditor, and any advisory committees.
- Conflicts of interest must be identified, managed, and disclosed in accordance with the SFC's principles to protect investors' interests.

Law stated - 20 May 2025

Reporting

21 | What are the periodic reporting requirements for retail funds?

Annual reports must be published and made available to holders within four months of the end of the fund's financial year. Interim reports must be published and made available to holders within two months of the end of the period it covers. These reports need to be filed with the SFC.

Law stated - 20 May 2025

Issue, transfer and redemption of interests

22 | Can the manager or operator place any restrictions on the issue, transfer and redemption of interests in retail funds?

There must be at least one regular dealing day per month for retail funds, except for closed-ended funds authorised under the UT Code.

Law stated - 20 May 2025

NON-RETAIL POOLED FUNDS

Available vehicles

23 What are the main legal vehicles used to set up a non-retail fund? How are they formed?

Main legal vehicles used to set up a non-retail fund include:

- open-ended fund company (OFC);
- private funds or unit trusts (usually domiciled in Cayman Islands or the British Virgin Islands); and
- limited partnership fund (LPF).

An OFC is formed under the Securities and Futures Ordinance (SFO) and must be registered with the Securities and Futures Commission (SFC) and incorporated with the Registrar of Companies.

An LPF is established under the Limited Partnership Fund Ordinance (Cap. 637) and is a partnership-based investment vehicle, consisting of at least one general partner and at least one limited partner who contributes capital. An LPF must be incorporated with the Registrar of Companies.

Law stated - 20 May 2025

Laws and regulations

24 What are the key laws and other sets of rules (regulatory and self-regulatory) that govern non-retail funds?

An OFC must comply with the SFO, the Securities and Futures (Open-ended Fund Companies) Rules and the SFC's Code on Open-Ended Fund Companies.

An LPF must comply with the Limited Partnership Fund Ordinance.

A Hong Kong manager of a non-retail fund must comply with the Fund Manager Code of Conduct.

Law stated - 20 May 2025

Authorisation

25 Must non-retail funds be authorised or licensed to be established or marketed in your jurisdiction?

Non-retail funds are not subject to authorisation or registration requirements to be established or marketed in Hong Kong. However, a fund structured as a Hong Kong OFC must be registered with the SFC and comply with the SFO.

Law stated - 20 May 2025

Marketing

26 | Who can market non-retail funds? To whom can they be marketed?

An entity may market a non-retail fund in Hong Kong if it holds a Type 1 (Dealing in Securities) licence or a Type 9 (Asset Management) licence (only if the marketing is incidental to the asset management activities).

A non-retail fund should not be offered to the retail public in Hong Kong but can be offered under statutory exemptions to professional investors. In brief, professional investors are defined within the SFO and refers to institutional investors or individuals or corporates that meet the relevant minimum net-worth or net assets requirements (broadly, individuals with a portfolio of at least HK$8 million or a corporation or partnership with a portfolio of at least HK$8 million or net assets of at least HK$40 million.

Law stated - 20 May 2025

Ownership restrictions

27 | Do investor-protection rules restrict ownership in non-retail funds to certain classes of investor?

No, however, a licensed entity should ensure the suitability of the fund to its investor.

Law stated - 20 May 2025

Managers and operators

28 | Are there any special requirements that apply to managers or operators of non-retail funds?

Fund managers should be appropriately licensed in Type 9 (Asset Management) regulated activity and must comply with the Fund Manager Code of Conduct (FMCC).

Law stated - 20 May 2025

Tax treatment

29 | What is the tax treatment of non-retail funds? Are any exemptions available?

Non-retail funds that qualify as collective investment schemes (CIS) and meet the conditions under the Inland Revenue Ordinance are typically exempt from Hong Kong profits tax on their profits derived from the fund's investment activities in Hong Kong. This exemption applies to profits arising from the fund's investments rather than the fund manager's fees or other income streams.

Law stated - 20 May 2025

Asset protection

30 | Must the portfolio of assets of a non-retail fund be held by a separate local custodian? What regulations are in place to protect the fund's assets?

Under the FMCC, a fund manager is required to select and arrange for the appointment of, and entrust the fund assets to, a custodian that is functionally independent from it and that meets the eligibility requirements as set out in the FMCC. Most fund managers of non-retail funds will be imposed a licensing condition not to hold its client assets.

Law stated - 20 May 2025

Governance

31 | What are the main governance requirements for a non-retail fund formed in your jurisdiction (registration, record-keeping, filings, officers)?

An OFC must appoint a board of directors with at least two directors, at least one who is independent, meaning the director cannot be an employee or director of the custodian. Such appointments of the board of directors are subject to SFC approval. The OFC must be registered with the SFC and comply with the SFO.

An LPF is formed by registration with the Hong Kong Companies Registry under the Limited Partnership Ordinance. Basic fund information such as the fund name, registered office and general partner details must be filed with the Registrar and made publicly available.

Law stated - 20 May 2025

Reporting

32 | What are the periodic reporting requirements for non-retail funds?

The FMCC requires annual audits of the financial statements of the fund. These financial reports must comply with applicable accounting standards and be audited by an independent auditor.

There are additional risk management reporting requirements for fund managers who are responsible for the overall operation of the fund ('ROOF' managers). Such reporting requirements pertain to liquidity, valuation and leverage risk management policies.

Law stated - 20 May 2025

SEPARATELY MANAGED ACCOUNTS

Structure

33 How are separately managed accounts (ie, accounts through which investor funds are segregated – not pooled – and the investor owns the underlying assets, which are managed at the investment manager's discretion) typically structured in your jurisdiction?

Separately managed accounts in Hong Kong are structured as individually segregated client accounts where investors retain direct ownership of underlying assets managed at the discretion of a licensed or registered investment manager. The structure requires strict segregation of client assets, clear client agreements, adherence to discretionary account rules, and compliance with regulatory standards on client protection, record-keeping, and reporting.

This structure contrasts with pooled investment funds where investors hold units or shares in a collective investment scheme rather than direct ownership of securities. Separately managed accounts provide investors with tailored portfolio management and direct asset ownership under a regulated framework ensuring transparency and asset protection.

Law stated - 20 May 2025

Key legal issues

34 What are the key legal issues (eg, standard of care, indemnification) to be determined when structuring a separately managed account?

For institutional professional investors and certain corporate professional investors, separately managed accounts are described as 'discretionary accounts' and require Type 9 (Asset Management) licensing. The minimum content of the client agreement is not prescribed other than that the investment management agreement must not include any clause that is inconsistent with the manager's obligations under the Securities and Futures Commission's (SFC) Code of Conduct.

For clients that are classified as individual professional investors, the investment management agreement must contain certain minimum content that is set out in the SFC's Code of Conduct. These include such areas as: a description of the services to be provided, a statement of the client's investment policy and objectives, the clients' rights and obligations, fees and charges including all commissions and charges payable by the client (ensuring they are fair and reasonable), risk disclosures, instructions and authority,

disclosure of any potential or actual conflicts of interest and a confirmation of compliance with the laws.

Law stated - 20 May 2025

Regulation

35 Is the management or marketing of separately managed accounts regulated in your jurisdiction? (If so, how does this operate? Is this the same regime for fund management?)

The marketing of separately managed accounts is the same as for marketing of a pooled investment vehicle (both requiring Type 9 Asset Management licence).

Law stated - 20 May 2025

GENERAL

Proposed reforms

36 Are there proposals for further regulation of funds, fund managers or marketers of funds in your jurisdiction?

The latest regulatory developments relate to the over the counter (OTC) derivatives regime effective mainly from 29 September 2025. These updates align Hong Kong with international standards. Reporting of all OTC derivatives transactions to the Hong Kong Trade Repository is mandatory from 29 September 2025, with no minimum threshold. The scope of the regime has been expanded including interest rate, credit, equity, foreign exchange and commodity derivatives.

Law stated - 20 May 2025

Public listing

37 Outline any specific requirements for stock-exchange listing of retail and non-retail funds.

The specific requirements are governed by the Securities and Futures Commission (SFC) and Listing Rules of the Stock Exchange. Chapter 20 of the Listing Rules is applicable to SFC-authorised collective investment schemes (including exchange-traded funds), and Chapter 21 is applicable to investment companies.

Law stated - 20 May 2025

Overseas vehicles

I

38 | Is it possible to redomicile an overseas vehicle in your jurisdiction?

An overseas vehicle in corporate form can be redomiciled in Hong Kong as an open-ended fund company under the Securities and Futures Ordinance.

Law stated - 20 May 2025

Foreign investment

39 | Are there any special rules relating to the ability of foreign investors to invest in funds established or managed in your jurisdiction or domestic investors to invest in funds established or managed abroad?

No.

Law stated - 20 May 2025

Funds investing in derivatives

40 | Are there any special requirements in your jurisdiction relating to funds investing in derivatives?

Retail funds are subject to the restrictions on the use of derivatives as set out in the SFC Code on Unit Trusts and Mutual Funds.

Law stated - 20 May 2025

UPDATE AND TRENDS

Recent developments

41 | Are there any other current developments or emerging trends in your jurisdiction that should be noted? Please include reference to world-wide regulatory concerns, such as restrictions on foreign ownership in strategic industries, high-frequency trading, commodity position limits, capital adequacy for investment firms and 'shadow banking'.

In its latest thematic inspections, the Securities and Futures Commission (SFC) has focused on risk management and in particular, liquidity stress testing. The SFC has focused on enhanced stress testing frameworks to cover a wide range of scenarios, including severe but plausible shocks to better capture vulnerabilities in the financial sector. This is largely due to the recent market volatility in the geopolitical landscape. Stress testing methodologies should evolve to reflect current market structures, including the increasing role of international investors and cross-border financial linkages that characterise Hong Kong's financial markets.

The SFC also introduced updated Guidelines for Market Soundings in May 2025, refining the regulatory framework for confidential information disclosure during pre-transaction communications. The guidelines represent a tightening of Hong Kong's regulatory regime, prioritising transparency, accountability and well as harmonising the guidelines with EU Market Abuse Regulation and the US Securities and Exchange Commission's Rule 10b5-1 requirements.

Law stated - 20 May 2025

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Summary

SEPARATELY MANAGED ACCOUNTS

GENERAL

UPDATE AND TRENDS

FUND MANAGEMENT REGULATION

Regulatory framework and authorities

1 How (in very general terms) is fund management regulated in your jurisdiction? Which authorities have primary responsibility for regulating funds, fund managers and those marketing funds?

In Japan, fund management is primarily regulated as one type of investment management business under the Financial Instruments and Exchange Act of Japan (Act No. 25 of 1948, as amended) (the FIEA) and the Financial Services Agency of Japan (the JFSA) has the primary responsibility for regulating funds, fund managers and distributors of funds.

Under the FIEA, the investment management business covers the management of customer assets on behalf of the customer (discretionary investment management business), the management of investment corporations (eg, Japanese real estate investment trusts), the management of investment trusts (investment trust management business) and the management of certain collective investment schemes (such as partnership-type funds).

The FIEA also regulates the investment advisory and agency business. The main difference between an investment management business and an investment advisory and agency business is whether the authority to make investment decisions is fully delegated by a customer to a financial instruments business operator (FIBO). If authority is fully delegated, it is an investment management business.

While those who wish to conduct an investment management business are, in principle, required to be registered as FIBOs with the financial regulatory authority, there are several exemptions from the registration requirement under the FIEA.

For example, the QII-Targeted Fund Exemption is available to the general partner of a partnership-type fund for investment management as well as for the solicitation of interests in the partnership-type fund itself (ie, a self-offering). If the general partner relies on this exemption, it is able to conduct those activities by filing a notification with the authority without registration as a FIBO.

Law stated - 9 May 2025

Fund administration

2 Is fund administration (support services provided to funds such as book-keeping, preparing reports, trade settlement, etc) regulated in your jurisdiction?

At present, providing fund administration services itself is not regulated in Japan. Registered FIBOs are required to have appropriate governance arrangements in place for bookkeeping, preparation of reports, compliance with laws and regulations, and other fund administration. Even if they delegate these functions to third parties, they are still responsible for supervising the delegate's operations.

However, a voluntary registration regime for the calculation of funds' value and/or compliance function services was introduced in May 2025. If an investment management business operator delegates such services to registered service providers, the governance requirements are partly relaxed.

Law stated - 9 May 2025

Authorisation

3 What is the authorisation or licensing process for funds? What are the key requirements that apply to managers and operators of investment funds in your jurisdiction?

An entity intending to engage in certain regulated activities that are considered to be a financial instruments business under the FIEA is required by the FIEA to register as a FIBO.

Registration requires, among other things, that the applicant have in place the necessary governance arrangements to conduct a financial instruments business in an appropriate manner. The governance arrangements must include a compliance officer with sufficient knowledge and experience to conduct a financial instruments business. In addition, an applicant for an investment management business is subject to the organisational requirement that it be a Japanese joint stock company or an equivalent non-Japanese company with a board of directors and an office in Japan, and at least ¥50 million in capital. However, if the applicant does not provide custody services for customers' funds or securities, the minimum capital requirement can be lowered to ¥10 million.

On the other hand, if the investment manager provides management services only to certain qualified investors, and all managed assets do not exceed ¥2 million in total, the requirement is relaxed to some extent. For example, the capital requirement is at least ¥10 million, a board of directors is not mandatory and the compliance function can be outsourced.

Law stated - 9 May 2025

Territorial scope of regulation

4 What is the territorial scope of fund regulation? Can an overseas manager perform management activities or provide services to clients in your jurisdiction without authorisation?

If the fund management business is related to Japan, fund managers are subject to the FIEA. Therefore, an overseas manager performing management activities or providing services to customers in Japan is, in principle, required to be registered under the FIEA.

However, there is an exemption from the registration requirement for non-Japanese investment managers. For example, non-Japanese investment management firms conducting a discretionary investment business in a foreign jurisdiction may provide

services without registering under the FIEA if such services are rendered to registered financial institutions conducting an investment management business under the FIEA. This exemption allows Japanese investment managers to delegate their investment management functions to non-Japanese investment managers.

Law stated - 9 May 2025

Acquisitions

5 Is the acquisition of a controlling or non-controlling stake in a fund manager in your jurisdiction subject to prior authorisation by the regulator? (Restrict your answers to the regulator with responsibility for oversight of fund management. Do not answer with respect to other agencies, such as the merger control authorities.)

Under the FIEA, the acquisition of a controlling interest in a registered investment manager is subject to ex-post notification rather than prior authorisation. However, the supervisory guideline published by the JFSA (the JFSA Guideline) indicates that the regulatory authority shall review the adequacy of the governance arrangements of FIBOs following the acquisition, in the same manner as in a new registration. If the regulatory authority considers the governance arrangements to be inappropriate, they may take the necessary administrative actions such as an order to improve operations and a suspension order.

In addition, shareholders holding at least 20 per cent (or in exceptional cases 15 per cent) of voting rights of a registered investment manager (major shareholders) are subject to the shareholding regulations under the FIEA. For example, major shareholders are required to notify the regulatory authority of their holding of voting rights. Furthermore, a shareholder holding at least 50 per cent of voting rights of a registered investment manager is defined as a 'specified major shareholder', which is also subject to the notification requirement and measures to improve the investment manager's operations (if necessary).

Law stated - 9 May 2025

Restrictions on compensation and profit sharing

6 Are there any regulatory restrictions on the structuring of the fund manager's compensation and profit-sharing arrangements?

While there are no regulatory restrictions on the structuring of the fund manager's compensation and profit-sharing arrangements under the FIEA, information on the fund manager's compensation and profit-sharing arrangements is disclosed in disclosure documents or management reports.

Law stated - 9 May 2025

FUND MARKETING

Authorisation

7 | Does the marketing of investment funds in your jurisdiction require authorisation?

Under the Financial Instruments and Exchange Act of Japan (FIEA), the licence required to market investment funds in Japan depends on the type of investment funds. For example, to market units of investment trusts, solicitors must be registered as Type I Financial Instruments Business Operators. On the other hand, to market interests in partnership-type funds, solicitors must be registered as Type II Financial Instruments Business Operators. Regarding the marketing of interests in partnership-type funds, the QII-Targeted Fund Exemption is available to the general partner of a partnership-type fund for the solicitation of interests in the partnership-type fund itself (ie, a self-offering). If the general partner relies on this exemption, it may conduct these activities by filing a notification with the regulatory authority without registration as a financial instruments business operator (FIBO).

In May 2025, a new regime was introduced to relax the registration requirements for Type I Financial Instruments Business (capital requirement, capital adequacy ratios, concurrent business restrictions, etc) dealing in unlisted securities (including units of non-Japanese investment trusts) and targeting professional investors in order to promote new entrants into the intermediary business for unlisted securities issued by start-ups and other similar entities, as well as stimulate the trading of such unlisted securities.

Law stated - 9 May 2025

8 | What marketing activities require authorisation?

While there is no statutory definition of ‘solicitation’ that triggers licensing requirements under the FIEA, it is generally understood that encouraging others to invest in securities is considered to be solicitation.

According to the Financial Services Agency of Japan (JFSA) Guideline, the posting of advertisements on websites by foreign securities dealers in connection with a securities-related business constitutes, in principle, ‘solicitation’. However, the JFSA Guideline states that, as long as the advertisement includes a specific disclaimer, and transaction prevention measures and other reasonable measures are taken to ensure that the transactions do not lead persons located in Japan to foreign securities dealers, this type of advertising will not be deemed solicitation.

Law stated - 9 May 2025

Territorial scope and restrictions

9 | What is the territorial scope of your regulation? May an overseas entity perform fund marketing activities in your jurisdiction without authorisation?

Soliciting to customers located in Japan triggers registration requirements. Under the FIEA, in principle, foreign securities dealers may not conduct fund marketing activities to those located in Japan without registering as a FIBO.

However, if foreign securities dealers, for example, solicit to specified professionals (eg, the government, registered investment managers) from overseas and transact without solicitation from overseas, they may conduct securities-related businesses without registration.

Law stated - 9 May 2025

10 If a local entity must be involved in the fund marketing process, how is this rule satisfied in practice?

Local entities performing fund marketing are required to be registered as a Type I or Type II Financial Instruments Business Operator, depending on the type of security, and are subject to conduct regulations, such as marketing rules, conflict of interest prevention obligations and customer reporting obligations under the FIEA. However, exemptions from certain regulations including the provision of information are available if their services are provided to professional investors.

In addition, it is common for local FIBOs to be members of self-regulatory organisations. For example, Type I FIBOs generally join the Japanese Securities Dealer Association (JSDA) and must comply with the rules of the JSDA. Similarly, Type II Financial Instruments Business Operators are generally members of the Type II Financial Instruments Firms Association and conduct the marketing process in accordance with the rules of the association.

Law stated - 9 May 2025

Commission payments

11 What restrictions are there on intermediaries earning commission payments in relation to their marketing activities in your jurisdiction?

There are no regulatory restrictions on intermediaries earning commission payments in relation to their marketing activities in Japan.

Law stated - 9 May 2025

RETAIL FUNDS

Available vehicles

12 What are the main legal vehicles used to set up a retail fund? How are they formed?

In Japan, investment trusts and investment corporations are the main legal vehicles, formed under the Act on Investment Trusts and Investment Corporations of Japan (Act No. 198 of 1951, as amended) (ITICA), and are used to set up retail funds. In particular, investment trusts are generally used to invest in securities, while investment corporations

are, in practice, established as Japanese real estate investment trusts (J-REITs) or infrastructure funds in Japan.

Investment trusts are generally formed as open-ended vehicles, while there are both open-ended and closed-ended J-REITs in Japan. However, listed J-REITs are required to take the form of closed-ended vehicles under the listing rules.

Foreign investment trusts and investment corporations are also subject to the regulations under the ITICA if solicitation to Japanese investors will be made for their units or shares.

Hereinafter, we mainly refer to open-ended investment trusts, which are popular in Japan.

Law stated - 9 May 2025

Laws and regulations

13 What are the key laws and other sets of rules (regulatory and self-regulatory) that govern retail funds?

Retail funds are regulated by the ITICA and the Financial Instruments and Exchange Act of Japan (FIEA). The ITICA sets out requirements for setting up investment trusts and conduct regulations for management companies, including management reports to investors and notifications to the regulatory authority.

For soliciting to retail investors, management companies must comply with the disclosure regulations under the FIEA. For example, prior to the public offering in Japan, management companies are required to file a securities registration statement with the regulatory authority in accordance with the FIEA and disclosure regulations thereunder.

Regarding investment trusts, related parties are also subject to the rules of self-regulatory organisations. Management companies that are members of the Investment Trusts Association of Japan (JITA) need to comply with the rules of the JITA regarding, for example, the management of investment trusts and the preparation of management reports. Securities companies that join the JSDA are required to distribute units of investment trusts in accordance with the rules of the JSDA.

Law stated - 9 May 2025

Authorisation

14 Must retail funds be authorised or licensed to be established or marketed in your jurisdiction?

When establishing investment trusts, management companies are required to enter into a trust deed with a trustee in accordance with the ITICA and submit a notification to the regulatory authority.

Regarding foreign investment trusts established outside Japan, when marketing units to Japanese investors management companies are required to submit a notification to the

regulatory authority with the details of the investment trusts and offering, prior to the marketing activity.

Law stated - 9 May 2025

Marketing

15 | Who can market retail funds? To whom can they be marketed?

If management companies market units of investment trusts to investors, they are required to be a Type II Financial Instruments Business Operator (FIBO) and comply with the marketing regulations under the FIEA and the rules of the JITA.

Management companies may also delegate marketing activities to security companies that are Type I FIBOs. Security companies conduct marketing activities in accordance with the marketing regulations under the FIEA and the rules of the JSDA.

Law stated - 9 May 2025

Managers and operators

16 | Are there any special requirements that apply to managers or operators of retail funds?

Under the ITICA, management companies must be an investment manager registered under the FIEA. Therefore, management companies need to comply not only with the regulations under the ITICA, but also with the regulations under the FIEA.

Management companies may delegate their management functions over investment trusts under their management to those who are authorised to conduct an investment management business in Japan or overseas, except for trustees. Previously, they were prohibited by the ITICA from delegating the management functions of all investment trusts they are managing to others. However, in May 2025, this prohibition was lifted, and delegating management companies are required instead to supervise the investment managers to whom they delegate these functions.

Regarding foreign investment trusts, management companies who conduct an investment management business in accordance with foreign laws and regulations are exempted from the requirement to register as an investment manager under the FIEA. However, they are required to comply with rules under the ITICA, such as notifying the regulatory authority prior to marketing activities and providing investors with information on the management of foreign investment trusts.

Law stated - 9 May 2025

Investment and borrowing restrictions

17 What are the investment and borrowing restrictions on retail funds?

Under the ITICA, investment trusts are required to invest mainly in specified statutory assets (Specified Assets). Specified Assets include securities, rights with respect to derivative transactions, real estate, real estate leasehold rights, monetary claims, equity interests in anonymous associations, commodities, renewable energy power generation facilities and management rights of public facilities. For example, cryptoassets and emission credits are considered to be outside the scope of Specified Assets, and the Financial Services Agency of Japan Guideline requires investment companies and security companies not to establish or sell investment trusts whose investment purpose is to invest in non-Specified Assets. As such, it is impractical to form and sell investment trusts targeting emission credits under the current regulatory regime.

In addition to this statutory restriction, publicly offered investment trusts are subject to investment and borrowing restrictions under the rules of the JITA. For example, publicly offered investment trusts (excluding funds of funds) may invest up to 5 per cent of their total net assets in units of other investment trusts. In addition, these investment trusts are subject to investment restrictions on derivative transactions and for the avoidance of concentration of credit risk.

The regulations of the JITA were revised in 2024 to clarify the rules for investment trusts to invest in unlisted stocks and somewhat relax the requirements for non-Japanese investment trusts making alternative investments to be invested in by publicly offered Japanese investment trusts.

Regarding foreign investment trusts, while they need to mainly invest in Specified Assets to ensure parity with domestic investment trusts required under the ITICA, they are not directly subject to the rules of the JITA. However, the JSDA sets out investment and borrowing restrictions, which are imposed on security companies that distribute units to Japanese investors.

Law stated - 9 May 2025

Tax treatment

18 | What is the tax treatment of retail funds? Are exemptions available?

Under Japanese tax law, the management of the investment trust's assets is not subject to any tax at the retail fund level. On the other hand, at the investor level, distributions and proceeds from repurchase paid to investors are taxable.

Law stated - 9 May 2025

Asset protection

19 | Must the portfolio of assets of a retail fund be held by a separate local custodian? What regulations are in place to protect the fund's assets?

The assets of investment trusts are held by trustees, who are regulated under the Trust Business Act (Act No. 154 of 2004). Trustees are required to have a governance arrangement in place to manage trust assets separately from their own assets.

Law stated - 9 May 2025

Governance

20 What are the main governance requirements for a retail fund formed in your jurisdiction (registration, record-keeping, filings, officers)?

Management companies are required to have in place governance arrangements to conduct an investment management business as an investment manager registered under the FIEA.

When forming investment trusts, management companies are required to notify the contents of the trust deed to the regulatory authority prior to entering into a trust deed. Prior notice to the regulatory authority of any proposed amendment to the trust deed is also required, and if the amendment is material, the written resolution of the unitholders (ie, the consent of unitholders holding at least two-thirds of the voting rights) is required to amend the trust deed.

Management companies are required to prepare and store records regarding the management of investment trusts under the ITICA. They must also prepare and store the records regarding their investment management business under the FIEA.

Law stated - 9 May 2025

Reporting

21 What are the periodic reporting requirements for retail funds?

Under the ITICA, management companies are required to provide unitholders in Japan with information on the management of investment trusts for each financial period and to submit them to the regulatory authority without delay. Management companies are also required to provide unitholders in Japan with simplified information on the management of investment trusts.

In addition, under the FIEA, management companies are required to prepare business reports regarding their investment management business for each financial period and submit them to the regulatory authority.

Law stated - 9 May 2025

Issue, transfer and redemption of interests

22 Can the manager or operator place any restrictions on the issue, transfer and redemption of interests in retail funds?

Management companies may place restrictions on the issuance, transfer and redemption of units of investment trusts under the ITICA.

Law stated - 9 May 2025

NON-RETAIL POOLED FUNDS

Available vehicles

23 What are the main legal vehicles used to set up a non-retail fund? How are they formed?

An Investment Limited Partnership (LPS) formed under the Investment Limited Partnership Act of Japan (Law No. 90 of 1998, as amended) (the LPS Act) is the legal vehicle mainly used to set up a non-retail fund in Japan. The LPS is formed by executing a limited partnership agreement by and between a general partner, which operates the LPS and bears unlimited liability to third parties in respect of the liabilities of the LPS, and each limited partner, which does not participate in the operation of the LPS, but whose liability is limited to the extent of its capital contribution to the LPS. Registration is required in the commercial registry within two weeks after its formation.

Law stated - 9 May 2025

Laws and regulations

24 What are the key laws and other sets of rules (regulatory and self-regulatory) that govern non-retail funds?

The LPS is formed in accordance with the LPS Act, and the LPS Act provides limits on the business that the LPS may engage in. Most of the business conducted by a typical private equity fund can be conducted by the LPS under the LPS Act; however, the LPS may not invest 50 per cent or more of its assets in certain non-Japanese corporations. Also, the LPS Act requires a general partner to prepare, within three months after the end of each financial year, the financial statements of the LPS for such financial year. Such financial statements must be audited by either a certified public accountant or an audit corporation.

Also, as the interests of the LPS fall under the category of 'securities' under the Financial Instruments and Exchange Act of Japan (FIEA), the FIEA and regulations thereunder are an important law that governs the LPS. In particular, both the marketing activities of interests of the LPS and the investment management activities of the LPS are regulated activities that require licences under the FIEA unless exemptions are available.

Law stated - 9 May 2025

Authorisation

25

Must non-retail funds be authorised or licensed to be established or marketed in your jurisdiction?

As a general rule, offers and solicitations of interests of the LPS require a Type II Financial Instruments Business Licence under the FIEA. As the registration process is document-intensive and time-consuming, it is difficult for a general partner of the LPS or non-Japanese entity to obtain a Type II Financial Instruments Business Licence in Japan. Therefore, in many cases, the following approaches are used to offer and solicit interests of the LPS.

The most common exemption available for the general partner of an LPS to offer and solicit interests is the Exemption for Special Business Activities for Qualified Institutional Investors (the QII-Targeted Fund Exemption, or the article 63 Exemption). If the general partner relies on this exemption, it is able to conduct offers and solicitations by filing Form 20, together with certain supporting documents, with the Japanese authority pursuant to the FIEA. However, any entity other than the general partner cannot rely on the QII-Targeted Fund Exemption.

The other approach is to delegate to a Type II Financial Instruments Business Operator (FIBO). By delegating offers and solicitations of interests of the LPS, if a general partner or any other related entity does not conduct offers and solicitations, it is not subject to the FIEA with respect to offers and solicitations.

Law stated - 9 May 2025

Marketing

26 | Who can market non-retail funds? To whom can they be marketed?

Generally speaking, entities conducting offers and solicitation of interests of the LPS are required to hold a Type II Financial Instruments Business Licence or, with respect to a general partner of the LPS, to rely on the QII-Targeted Fund Exemption under the FIEA.

If an entity conducts offers and solicitation of interests of the LPS holding a Type II Financial Instruments Business Licence, there are no restrictions on the categories of investors who may be offered and solicited. However, if a general partner relies on the QII-Targeted Fund Exemption with respect to its investment management activities, as a result of complying with restrictions on categories of investors for such investment management activities the same restrictions on categories of investors as in the case of solicitation relying on the QII-Targeted Fund Exemption described below are applied.

On the other hand, if the general partner conducts offers and solicits interests of the LPS relying on the QII-Targeted Fund Exemption, there are restrictions on the categories of investors who may be offered and solicited. To rely on this exemption, at least one investor must be a Qualified Institutional Investor (QII) under the FIEA, which is a professional investor, such as a bank or an insurance company. Also, the number of Japanese non-QIIs should not be more than 49 and each Japanese non-QII must be an Eligible Non-QII, which is an investor who meets certain requirements, such as a company with a paid-in capital of ¥50 million or more or an individual whose financial assets are reasonably expected to

be no less than ¥100 million and who opened his or her securities account more than one year prior.

Law stated - 9 May 2025

Ownership restrictions

27 Do investor-protection rules restrict ownership in non-retail funds to certain classes of investor?

If an entity conducts offers and solicitation of interests of an LPS holding the Type II Financial Instruments Business Licence, there are no restrictions on categories of investors who may be offered and solicited. On the other hand, if the general partner conducts offers and solicitation of interests of the LPS relying on the QII-Targeted Fund Exemption, there are restrictions on categories of investors who may be offered and solicited.

Law stated - 9 May 2025

Managers and operators

28 Are there any special requirements that apply to managers or operators of non-retail funds?

As a general rule, an entity conducting the investment management activities of the LPS is required to hold an Investment Management Licence. As such licence requires the entity conducting investment management activities to be registered with the Financial Services Agency of Japan, and as the registration is document-intensive and time-consuming, it is usually difficult for a general partner of the LPS or non-Japanese entity to obtain an Investment Management Licence in Japan. Therefore, in many cases, the following approaches are used to conduct the investment management activities of the LPS.

The most common exemption available for the general partner of the LPS for investment management activities is the QII-Targeted Fund Exemption. If the general partner relies on this exemption, it is able to conduct investment management activities by filing Form 20, together with certain supporting documents, with the Japanese authority pursuant to the FIEA. However, any entity other than the general partner cannot rely on the QII-Targeted Fund Exemption. In this case, there are restrictions on categories of investors who may invest in the LPS.

The other approach is to delegate the investment management activities of the LPS to an investment manager holding an Investment Management Licence in Japan. By delegating the investment management activities of the LPS, if a general partner or any other related entity does not conduct investment management activities it is not subject to the FIEA with respect to investment management activities.

Law stated - 9 May 2025

Tax treatment

29 | What is the tax treatment of non-retail funds? Are any exemptions available?

The LPS is generally treated as a pass-through entity for Japanese tax purposes, and as a result, any filing, disclosure and associated tax charges would generally be imposed directly on partners of the LPS and not on the LPS.

The non-Japanese investors of an LPS are considered to have a permanent establishment (PE) in Japan. However, tax will not be imposed on the income attributed to the PE subject to the submission of certain documents if:

- it is a limited partner of the LPS;
- it does not participate in the management of the LPS;
- it has less than 25 per cent of the interests in the LPS;
- it does not have a special relationship with the general partner; and
- it does not have a PE in Japan for a business other than the business of the LPS.

Non-Japanese investors to which the abovementioned treatment applies are subject to tax on capital gains from the disposition of shares in Japanese companies in certain cases. For example, if the investor, together with its special related parties, owns or has owned 25 per cent or more of the shares in the Japanese company at any time during the fiscal year of deposition or during the prior two fiscal years and disposes of 5 per cent or more of the shares in the Japanese company in any given fiscal year, capital gains tax will be imposed on such disposition (the 25/5 Rule). In general, If the non-Japanese investor is a limited partner and does not participate in the management of the LPS, subject to the submission of certain documents, other partners of the LPS are not regarded as 'special related parties' when determining whether the 25/5 Rule applies or not.

Applicable tax treaties may override and modify the abovementioned domestic tax rules.

Law stated - 9 May 2025

Asset protection

30 | Must the portfolio of assets of a non-retail fund be held by a separate local custodian? What regulations are in place to protect the fund's assets?

A Type II FIBO and a general partner relying on the QII-Targeted Fund Exemption may not solicit acquisitions of interests of the LPS unless an agreement regarding the LPS stipulates that assets of the LPS are managed separately from the general partner's own assets and other assets pertaining to other businesses conducted by the general partner (if any). This segregation obligation may be fulfilled, for example, by depositing funds with a financial instruments firm or commercial bank.

Law stated - 9 May 2025

Governance

31 What are the main governance requirements for a non-retail fund formed in your jurisdiction (registration, record-keeping, filings, officers)?

Registration is required in the commercial registry within two weeks after its formation. Also, if there is a change in the registered matters, the change must be registered within two weeks from the date of such change.

Under the LPS Act, a general partner must prepare, within three months after the end of each financial year, the financial statements of the LPS for such financial year. Such financial statements must be audited by either a certified public accountant or an audit corporation. The general partner must maintain such financial statements along with a partnership agreement at a principal business office for five years.

If a general partner of the LPS wishes to conduct offers and solicitations of interests of the LPS or investment management activities of the LPS relying on the QII-Targeted Fund Exemption, it must file Form 20 with an applicable Japanese authority prior to commencing such activities. If there is any change in the items written in Form 20, the general partner must file an amendment notification without delay. The general partner who filed Form 20 to rely on the QII-Targeted Fund Exemption must file a business report with an applicable Japanese authority within three months after the end of each business year of the general partner. Also, the general partner who filed Form 20 to rely on the QII-Targeted Fund Exemption is subject to bookkeeping obligations under the FIEA.

The LPS is operated by the general partner, and limited partners do not participate in the operation of the LPS.

Law stated - 9 May 2025

Reporting

32 What are the periodic reporting requirements for non-retail funds?

Under the LPS Act, a general partner must prepare, within three months after the end of each financial year, financial statements of the LPS for such financial year. Such financial statements must be audited by either a certified public accountant or an audit corporation. Also, under the FIEA, the general partner who filed Form 20 to rely on the QII-Targeted Fund Exemption must file a business report with an applicable Japanese authority within three months after the end of each business year of the general partner.

Law stated - 9 May 2025

SEPARATELY MANAGED ACCOUNTS

Structure

33

How are separately managed accounts (ie, accounts through which investor funds are segregated – not pooled – and the investor owns the underlying assets, which are managed at the investment manager's discretion) typically structured in your jurisdiction?

In Japan, separately managed accounts are often structured using discretionary investment management agreements. In other words, an investment manager and a client enter into a discretionary investment management agreement, and in such agreement, the investment manager and the client agree and define investment guidelines, and the investment manager manages the assets in accordance with the investment guidelines.

Law stated - 9 May 2025

Key legal issues

34 What are the key legal issues (eg, standard of care, indemnification) to be determined when structuring a separately managed account?

When separately managed accounts are structured as discretionary investment management agreements, a manager must hold an Investment Management Licence under the Financial Instruments and Exchange Act of Japan (FIEA). Therefore, as an investment manager, the manager has a duty of loyalty and a duty of care to its clients. Also, except in limited cases, such as 'accidents', the manager is not allowed to compensate clients for losses. In addition, the manager is not permitted to favour only particular clients' investment assets, and as a general rule, it is not allowed to conduct cross-trading investment transaction among assets managed by the same manager.

Law stated - 9 May 2025

Regulation

35 Is the management or marketing of separately managed accounts regulated in your jurisdiction? (If so, how does this operate? Is this the same regime for fund management?)

When separately managed accounts are structured as discretionary investment management agreements, the manager conducting investment management activities must hold an Investment Management Licence under the FIEA. On the other hand, the marketing of SMAs (ie, solicitation of discretionary investment management agreements) is basically considered to be included in the scope of the Investment Management Licence.

Law stated - 9 May 2025

GENERAL

Proposed reforms

36 Are there proposals for further regulation of funds, fund managers or marketers of funds in your jurisdiction?

On 10 April 2025, the JFSA published a discussion paper regarding the consideration of an appropriate regulatory regime for cryptoassets. Currently, cryptoassets are regulated as a means of payment under the Payment Services Act (PSA). However, the use of cryptoassets for investment purposes has grown, and a significant number of domestic and foreign investors view cryptoassets as investment targets. The JFSA is aware of the challenges for the investment of cryptoassets such as sufficient disclosure, user protection, appropriate investment management and fairness in price formation and trading. As these challenges are closely related to issues traditionally addressed by the Financial Instrument and Exchange Act (FIEA), the JFSA is considering applying the FIEA's regulatory framework and enforcement mechanisms. If regulated under the FIEA, cryptoassets can be positioned as one alternative asset for fund managers, and this regulatory scheme might facilitate the establishment of, for example, cryptoasset exchange traded funds (ETFs), which have been already introduced in the United States and other jurisdictions, through adding cryptoassets into the scope of specified statutory assets.

Law stated - 9 May 2025

Public listing

37 Outline any specific requirements for stock-exchange listing of retail and non-retail funds.

In Japan, ETFs are listed retail funds, that, similar to ordinary retail funds, are structured as investment trusts and are subject to disclosure requirements under the FIEA. In addition, unlike ordinary retail funds, ETFs are required to comply with the rules and regulations applicable to the financial instruments exchanges on which they are listed. The Tokyo Stock Exchange has its rules, such as the initial listing criteria, continued listing criteria, delisting criteria and rules for timely disclosures. Previously, only ETFs that aim to achieve investment results linked to a specific index, such as a stock price index, were permitted; however, from 2023, the Tokyo Stock Exchange permits ETFs that do not have an index to be linked to.

On the other hand, there is no stock exchange listing of a non-retail fund, such as the LPS, in Japan.

Law stated - 9 May 2025

Overseas vehicles

38 Is it possible to redomicile an overseas vehicle in your jurisdiction?

There is no mechanism in place to redomicile an overseas fund vehicle in Japan.

Law stated - 9 May 2025

Foreign investment

39 Are there any special rules relating to the ability of foreign investors to invest in funds established or managed in your jurisdiction or domestic investors to invest in funds established or managed abroad?

Although not a special rule applicable specifically to fund management, certain investments in Japan made by non-residents of Japan and certain investments outside Japan made by residents of Japan may be subject to the Foreign Exchange and Foreign Trade Act of Japan. Therefore, it is necessary to confirm for each individual investment whether notification or reporting is required.

Law stated - 9 May 2025

Funds investing in derivatives

40 Are there any special requirements in your jurisdiction relating to funds investing in derivatives?

A fund manager of a retail fund structured as an investment trust under the Investment Trust and Investment Corporation Act of Japan is prohibited from conducting derivative transactions with respect to a publicly offered investment trust that would cause the amount calculated by a reasonable method determined in advance by the fund manager to exceed the net asset value of the assets of the investment trust. Specific provisions regarding the amount calculated by a reasonable method are set forth in the rules of the Investment Trusts Association, Japan.

Law stated - 9 May 2025

UPDATE AND TRENDS

Recent developments

41 Are there any other current developments or emerging trends in your jurisdiction that should be noted? Please include reference to world-wide regulatory concerns, such as restrictions on foreign ownership in strategic industries, high-frequency trading, commodity position limits, capital adequacy for investment firms and 'shadow banking'.

The Japanese government and the Financial Services Agency of Japan (JFSA) have recently launched an initiative to promote Japan as an international financial centre in an effort to attract non-Japanese asset managers. For example, in 2021, the JFSA established a Financial Market Entry Office to support foreign asset managers seeking to enter the Japanese asset management market. In addition, in 2023, the JFSA established the Asset Management Task Force, which reviewed the barriers to the efficient conduct of an asset management business in Japan. The Asset Management Task Force convened four times between October and November and on 12 December 2023 published its report outlining

specific proposals for regulatory amendments in line with the conclusions of the Asset Management Task Force.

The report proposes the promotion of New Entry into Asset Management Business through relaxing the entry requirements based on the outsourcing of middle and back office operations, including compliance and accounting functions. Specifically, it concluded that it is appropriate to relax the entry requirements for the investment management business by allowing the outsourcing of middle and back office operations to firms that ensure appropriate quality.

Resulting from discussion at the Asset Management Task Force, an amendment to the Financial Instrument and Exchange Act (FIEA) was enforced on 1 May 2025 to introduce a new regime to lower the hurdle for entry into the Japanese asset management business by relaxing entry requirements for investment managers delegating back office operations to registered service providers.

As an aside, discussion surrounding how to regulate cryptoassets is ongoing, and the transition of cryptoassets regulations from the Payment Services Act to the FIEA would impact cryptoasset fund management in Japan.

Law stated - 9 May 2025

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Summary

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GENERAL

UPDATE AND TRENDS

FUND MANAGEMENT REGULATION

Regulatory framework and authorities

1 How (in very general terms) is fund management regulated in your jurisdiction? Which authorities have primary responsibility for regulating funds, fund managers and those marketing funds?

There are two types of funds in Luxembourg: regulated funds (ie, authorised and supervised by the Financial Sector Supervisory Commission (CSSF)) and unregulated funds. Regulated funds are governed by one of the following (product) laws, each as amended from time to time:

- the Law of 17 December 2010 on undertakings for collective investment (the UCI Law);
- the Law of 15 June 2004 on the investment company in risk capital (the SICAR Law); and
- the Law of 13 February 2007 on specialised investment funds (the SIF Law).

Unregulated funds may be governed by the Law of 23 July 2016 on reserved alternative investment funds, as amended (the RAIF Law) to the extent that they qualify as alternative investment funds (AIFs) within the meaning of the Law of 12 July 2013 on alternative investment fund managers, as amended (the AIFM Law).

Luxembourg funds may in addition opt for one of the European labels, each as amended from time to time, offering a marketing passport to the fund's manager, provided that the relevant regulatory requirements are complied with:

- the European long-term investment fund (ELTIF) label subject to the ELTIF Regulation (EU) No. 2015/760;
- the European venture capital fund (EuVECA) label subject to the EuVECA Regulation (EU) No. 345/2013; and
- the European social entrepreneurship fund (EuSEF) label subject to the EuSEF Regulation (EU) No. 346/2013.

Regulated and unregulated funds are also governed by the Law of 10 August 1915 on commercial companies (the Companies Law) to the extent that the above (product) laws (including the RAIF Law) do not derogate from the Companies Law.

Fund managers are subject to the UCI Law or the AIFM Law, or both.

Law stated - 8 May 2025

Fund administration

2 Is fund administration (support services provided to funds such as book-keeping, preparing reports, trade settlement, etc) regulated in your jurisdiction?

Fund administration is a regulated activity in Luxembourg and performed by either an authorised Luxembourg management company or an alternative investment fund manager, or delegated to an administrative agent authorised by the CSSF under the Law of 5 April 1993 on the financial sector (the Financial Sector Law).

Law stated - 8 May 2025

Authorisation

3 What is the authorisation or licensing process for funds? What are the key requirements that apply to managers and operators of investment funds in your jurisdiction?

When setting up a regulated fund, a prior application for authorisation must be filed with the CSSF. Following the review of the application file, the CSSF usually asks additional questions or makes comments (or both) and, to the extent that the review phase is successfully completed, informs the applicant that the fund may be established.

Once the regulated fund is established (before a Luxembourg notary or, depending on the legal form of the fund, under private deed) and all agreements with the service providers have been executed, copies of the fund's constitutive document and fully executed agreements must be filed with the CSSF, together with the final version of the offering document, which shall be submitted to the CSSF for visa. Subject to the satisfactory receipt of all required documents, the CSSF will register the fund on the relevant official list of supervised entities and issue the visa-stamped offering document.

The CSSF supervises regulated funds on a continuous basis. Regulated funds must apply for prior approval for each change in their fund documentation (ie, constitutive and offering documents) or governance (eg, appointment of a new board member or replacement of administrative agent, depositary or portfolio manager).

Unregulated funds do not require prior CSSF authorisation. Once the unregulated fund is established, the Luxembourg manager must inform the CSSF about its appointment as manager of the relevant fund.

A Luxembourg manager must obtain prior authorisation from the CSSF and comply with certain minimum requirements, including for:

- own funds;
- appropriate infrastructure and internal governance;
- authorised shareholding and management; and
- external audit.

The central administration of a Luxembourg manager must be in Luxembourg. Managers who wish to provide discretionary management services, besides collective portfolio management, must participate in an investor compensation scheme.

Law stated - 8 May 2025

Territorial scope of regulation

4 What is the territorial scope of fund regulation? Can an overseas manager perform management activities or provide services to clients in your jurisdiction without authorisation?

Luxembourg law applies when the fund or the manager, or both, are established in Luxembourg, and when investors to whom a fund is marketed are domiciled in Luxembourg.

When management of a regulated fund is delegated to a non-Luxembourg EU manager, prior CSSF approval is required. The same will apply to unregulated funds once the Alternative Investment Fund Managers Directive (Directive 2011/61/EU) (AIFMD) third-country passport under article 38 of the AIFM Law is made available to non-EU AIFMs. A prior notification to the CSSF is required (pursuant to the procedure under article 45 of the AIFM Law) prior to any marketing of a foreign or Luxembourg fund by a non-EU manager to Luxembourg investors.

Law stated - 8 May 2025

Acquisitions

5 Is the acquisition of a controlling or non-controlling stake in a fund manager in your jurisdiction subject to prior authorisation by the regulator? (Restrict your answers to the regulator with responsibility for oversight of fund management. Do not answer with respect to other agencies, such as the merger control authorities.)

Yes. The identity of the shareholders directly or indirectly having a qualifying holding in the manager (ie, any direct or indirect holding that represents at least 10 per cent of the capital or of the voting rights or that makes it possible to exercise a significant influence over the management of the company in which that holding subsists), as well as the amount of such holding, must be communicated to the CSSF.

When assessing the application, the CSSF takes into consideration the following criteria:

- professional standing and financial soundness of the applicant shareholder;
- professional standing and experience of each person responsible for managing the activities of the manager as a result of the acquisition transaction;
- compliance with prudential and supervisory requirements at group level; and
- risk of money laundering and financing of terrorism.

Both natural and legal persons are eligible to become shareholders of a Luxembourg manager.

Law stated - 8 May 2025

Restrictions on compensation and profit sharing

6 | Are there any regulatory restrictions on the structuring of the fund manager's compensation and profit-sharing arrangements?

Yes. Managers must comply with the European Securities and Markets Authority (ESMA) Guidelines on sound remuneration policies under the Undertakings for Collective Investment in Transferable Securities Directive (Directive 2009/65/EC) (UCITS Directive) and the AIFMD, as applicable. In addition, each manager must comply with CSSF Circular 10/437, which applies to all entities subject to CSSF prudential supervision.

The key principles are that the remuneration policy must:

- promote sound and effective risk management and must not induce excessive risk-taking;
- be drawn up in such a way as to create an appropriate balance between fixed and variable remuneration components; and
- when the variable component represents a significant part of remuneration, the payment of a considerable portion of this variable component must be deferred for a minimum period.

Remuneration rules apply to members of the board and staff whose professional activities have a material impact on the risk profile of the firm. Certain information must be made public.

Law stated - 8 May 2025

FUND MARKETING

Authorisation

7 | Does the marketing of investment funds in your jurisdiction require authorisation?

Active marketing of funds to investors in Luxembourg is subject to a prior notification to the Financial Sector Supervisory Commission (CSSF).

Law stated - 8 May 2025

8 | What marketing activities require authorisation?

Any provision of information or communication, direct or indirect, on investment strategies or ideas by an EU manager or on its behalf by a regulated third party, to potential Luxembourg-domiciled professional investors to test their interest in a not-yet-established alternative investment fund (AIF), or in an established but not yet notified for marketing AIF, and that in each case does not amount to an offer or placement to the potential investors to invest in the units or shares of that AIF (pre-marketing), requires a prior notification to the CSSF.

Any direct or indirect offering or placement at the initiative of a manager or on its behalf of units, shares or interests of a fund it manages for or with investors domiciled in Luxembourg requires a prior notification to the CSSF.

Managers authorised under the Law of 17 December 2010 on undertakings for collective investment (the UCI Law) or the Law of 12 July 2013 on alternative investment fund managers, as amended (the AIFM Law), or both, may perform marketing activities without requiring an additional authorisation from the CSSF.

A Luxembourg investment firm (which is not a manager under the UCI Law or the AIFM Law) that intends to distribute units, shares or interests of funds, must request prior CSSF authorisation under the Financial Sector Law.

Law stated - 8 May 2025

Territorial scope and restrictions

9 What is the territorial scope of your regulation? May an overseas entity perform fund marketing activities in your jurisdiction without authorisation?

If investors are in Luxembourg, the non-EU manager must file a prior notification with the CSSF before pre-marketing or marketing its fund in Luxembourg.

Law stated - 8 May 2025

10 If a local entity must be involved in the fund marketing process, how is this rule satisfied in practice?

In principle, no local entity must be involved in the fund marketing process, except in relation to retail funds.

Law stated - 8 May 2025

Commission payments

11 What restrictions are there on intermediaries earning commission payments in relation to their marketing activities in your jurisdiction?

Luxembourg investment firms are subject to inducement rules of Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments (MiFID II), as transposed into Luxembourg law. In short, a distributor placing a fund with its clients may receive a commission from the manager or the fund only if:

- the relevant payment is designed to enhance the quality of the service to the clients;
- the relevant payment does not impair compliance with the distributor's duty to act honestly, fairly and professionally in accordance with the best interests of its clients; and

- the commission is clearly disclosed to the clients.

A distributor that also provides independent investment advice to its clients is, in principle, prohibited from receiving a commission from the fund or its manager.

Law stated - 8 May 2025

RETAIL FUNDS

Available vehicles

12 | What are the main legal vehicles used to set up a retail fund? How are they formed?

There are two types of regulated funds that can be sold to retail investors in Luxembourg:

- undertakings for collective investment in transferable securities (UCITS) governed by Part I of the Law of 17 December 2010 on undertakings for collective investment (the UCI Law); and
- undertakings for collective investment (UCI) governed by Part II of the UCI Law (Part II UCI).

Foreign unregulated funds qualifying as alternative investment funds (AIFs) may also be marketed to retail investors in Luxembourg, subject to certain conditions set out in the CSSF Regulation No. 15-03.

Managers of AIFs opting-in for the European long-term investment fund (ELTIF) label benefit of the European passport for retail investors.

Both UCITS and Part II UCI may be structured as:

- an investment company with variable capital (SICAV);
- an investment company with fixed capital (SICAF); or
- a common fund (FCP).

The share capital of a SICAV is always equal to its net assets and hence no formalities are required to increase or decrease the share capital. The decrease and increase of share capital of a SICAF is subject to formalities laid down in the Companies Law. A SICAV UCITS must take the form of a public limited company (SA) and be formed before a Luxembourg notary. Pursuant to the Law of 21 July 2023 amending, interalia, the UCI Law, the legal forms available to a SICAV Part II UCI have been extended and now include, in addition to the public limited company (SA), the corporate partnership limited by shares (SCA), the common and special limited partnerships (SCS/SCSp), the private limited liability company (SARL) and the cooperative organised as a public company limited by shares (SCoSA).

An FCP is a co-ownership whose joint owners are only liable up to the amount they have contributed and whose ownership rights are represented by units. An FCP has no legal personality and must be managed by a management company, which will draw up and execute the fund's management regulations.

A retail fund can be set up as a single fund or as an umbrella fund consisting of multiple compartments, each with a different investment policy. The fund and compartments may have an unlimited number of share classes, depending on the needs of the investors. Under certain conditions, cross-investments between compartments are allowed.

Law stated - 8 May 2025

Laws and regulations

13 What are the key laws and other sets of rules (regulatory and self-regulatory) that govern retail funds?

The key laws and regulations applicable to retail funds are, each as may be amended from time to time:

- the UCI Law;
- the Companies Law;
- the Law of 12 July 2013 on alternative investment fund managers (the AIFM Law);
- the Financial Sector Law;
- the Luxembourg Civil Code;
- Luxembourg laws, regulations and circulars issued by the Financial Sector Supervisory Commission (CSSF) regarding anti-money laundering and counter-terrorist financing;
- the EU Packaged Retail and Insurance-based Investment Products Regulation (Regulation (EU) No. 1286/2014) (the PRIIPs Regulation);
- the ELTIF Regulation (Regulation (EU) No. 2015/760) if the AIF has opted-in to the ELTIF label;
- the European General Data Protection Regulation (Regulation (EU) No. 2016/679);
- CSSF Regulation No. 16-07 regarding out-of-court complaint resolution (if the fund is regulated);
- the European Sustainable Finance Disclosure Regulation (Regulation (EU) No. 2019/2088) and related European legislation; and
- various guidelines issued by the European Securities and Markets Authority (ESMA) and CSSF regulations and circulars.

Law stated - 8 May 2025

Authorisation

14 Must retail funds be authorised or licensed to be established or marketed in your jurisdiction?

Regulated retail funds must be authorised and supervised by the CSSF.

Unless they opt in for the ELTIF label, unregulated retail funds qualifying as AIFs do not require the approval of the CSSF. Their alternative investment fund manager (AIFM) is subject to the supervision of the CSSF or the supervisory authority of its home member state.

Law stated - 8 May 2025

Marketing

15 | Who can market retail funds? To whom can they be marketed?

A retail fund may be marketed in Luxembourg to retail investors by its manager or by an authorised distributor.

While UCITS avail of the EU marketing passport and can be marketed to retail investors throughout the European Union, Part II UCI can be marketed to retail investors in the European Union only in compliance with article 43 of the Alternative Investment Fund Managers Directive (Directive 2011/61/EU) (AIFMD). Funds opting in for the ELTIF label can be marketed to retail investors in the European Union only in compliance with strict restrictions on eligible assets, borrowing and rules on diversification as set out under the ELTIF Regulation.

Law stated - 8 May 2025

Managers and operators

16 | Are there any special requirements that apply to managers or operators of retail funds?

Managers of Luxembourg UCITS and Part II UCI must be authorised by the CSSF (or any other EU regulator) before commencing their activity in Luxembourg. EU managers benefit from the EU management passport under the UCITS and AIFMD regimes.

Where a manager envisages marketing the units, shares or interests of the AIFs it manages to retail investors in the territory of Luxembourg, the following restrictions or additional conditions apply:

- compliance with article 46 of the AIFM Law;
- compliance with articles 59, 100 and 129 of the UCI Law, if the fund is an open-ended non-Luxembourg EU AIF;
- compliance with CSSF Regulation No. 15-03 and certain risk-spreading obligations set forth therein; and
- issuance of a key information document in accordance with the PRIIPs Regulation.

Law stated - 8 May 2025

Investment and borrowing restrictions

17 | What are the investment and borrowing restrictions on retail funds?

UCITS and ELTIFs marketed to retail investors are subject to strict rules laid down in, respectively, the UCI Law and specified in various CSSF and ESMA guidelines, and in the ELTIF Regulation, on:

- eligible assets;
- diversification requirements;
- borrowing, granting loans and short selling; and
- for UCITS, techniques and instruments relating to transferable securities and money market instruments (MMI).

The UCI Law contains no provisions regarding investment and borrowing rules in respect of Part II UCI. Such rules are specified in CSSF Circulars 91/75, as amended, and 02/80. There are no restrictions on eligible assets for Part II UCI. The ELTIF Regulation contains restrictions on eligible assets, borrowing and rules on diversification applicable to ELTIFs marketed to retail investors.

	UCITS	**Part II UCI**	**ELTIF**
Eligible assets	Restricted to transferable securities admitted or dealt in on a regulated market, certain investment funds, deposits with a credit institution, financial derivative instruments, cash and MMI, subject to compliance with article 41 of the UCI Law. Prohibited from investing in real estate, commodities and loans. UCITS may not acquire control over an issuing body. Eligibility of the asset must be	Unrestricted by law. Certain limitations are applied by the CSSF.	Same restrictions as set out under article 50(1) of the UCITS Directive. Additional restrictions specific to ELTIFs are: • equity or quasi - equity instruments; • debt instruments issued by qualifying portfolio undertakings; • loans granted to qualifying portfolio undertakings with a

	assessed on a case - by - case basis.		maturity no longer than the life of the ELTIF; • units or shares of other ELTIFs, European venture capital funds (EuVECAs), European social entrepreneurship funds (EuSEFs), UCITS and EU AIFs managed by EU AIFMs provided they invest in eligible investments and do not invest more than 10 per cent of their capital in other UCIs – this limit does not apply to feeder ELTIFs; • master/feeder structures where a feeder invests at least 85 per cent of its assets in a master, and both feeder

			and master structures must be ELTIFs; • real assets; • simple, transparent and standardised securitisations (STS); and • green bonds.
Risk diversification	Strict risk diversification rules are laid down in the UCI Law, such as (non - exhaustive list): • maximum 10 per cent in transferable securities issued by the same body; • maximum 20 per cent in deposits made with the same body; • total value of transferable securities held in the issuing bodies in each of which the UCITS invests	The CSSF imposes the following (less stringent) risk diversification requirements (unless a derogation is granted by the CSSF during the approval process) (non - exhaustive list): • maximum 20 per cent in securities issued by one issuer; and • maximum 20 per cent in one real estate property.	An ELTIF must invest at least 55 per cent of its capital in eligible investment assets and maximum 45 per cent in liquid investments (UCITS - eligible assets), whether marketed to retail investors or professional investors, (or both). For ELTIFs marketed to retail investors: • maximum 20 per cent in a single qualifying portfolio undertaking, real asset or units or shares of a single ELTIF, EuVECA, EuSEF, UCITS or

	more than 5 per cent must not exceed 40 per cent of the value of its assets; • maximum 20 per cent in one other fund and maximum 30 per cent in funds other than UCITS; and • global exposure relating to derivative instruments may not exceed the total net value of the UCITS portfolio.		EU AIF managed by an EU AIFM; • maximum 25 per cent in bonds issued by a single EU credit institution; • aggregate value of STS limited to 20 per cent of the value of the capital of the ELTIF; and • aggregate risk exposure to a counterparty from over - the - counter derivative transactions, repurchase agreements or reverse repurchase agreements limited to 10 per cent of the value of the capital of the ELTIF.
Borrowing	Not permitted (unless on a temporary basis and subject to restrictions laid down in the UCI Law).	Permitted. Certain restrictions apply (non - exhaustive list): • maximum 300 per cent of the value	Permitted. Certain restrictions apply (non - exhaustive list): • maximum 100 per cent of the value

		of net assets; and • in relation to real estate, maximum 50 per cent of the value of the property.	of net assets for ELTIFs solely marketed to professional investors; and • maximum 50 per cent of the value of net assets for ELTIFs marketed to retail investors.

Law stated - 8 May 2025

Tax treatment

18 | What is the tax treatment of retail funds? Are exemptions available?

Retail funds are subject to an annual subscription tax of 0.05 per cent (or, to the extent that money market funds are concerned or that the retail fund is reserved to institutional investors, 0.01 per cent) of their net asset value, subject to certain exemptions (such as investments in other collective investment vehicles subject to subscription tax). A reduced subscription tax rate applies to the portion of net assets constituted by investments in sustainable activities: the reduced rate ranges from 0.04 per cent when at least 5 per cent of the fund's assets are sustainable activities to 0.01 per cent when at least 50 per cent of the fund's assets are sustainable activities. An auditor's report certifying the percentage of investments in sustainable activities is required. Funds subject to the ELTIF Regulation are also exempt from subscription tax.

Retail funds are exempt from income taxes and net wealth tax, and distributions they make to investors are exempt from withholding tax. A retail fund is not expected to be in scope of the Pillar Two global minimum taxation rules. A retail fund set up as a fiscally transparent entity (rather than a corporate entity) in principle may be subject to the reverse hybrid rules; however, the carve-out for collective investment vehicles should typically apply to these funds. Foreign investors disposing of their interest in a retail fund having a corporate legal form are exempt from non-resident capital gains taxation in Luxembourg.

Participants in fund structures, like in any other industry, may have reporting obligations to the Luxembourg tax authorities under the Luxembourg implementation of the Directive (EU) No. 2018/822 of 25 May 2018 (DAC 6) if they are involved in a reportable cross-border arrangement and there is no EU intermediary involved in designing or assisting with setting

up the arrangement, or all intermediaries involved are exempt from the obligation to report the arrangement.

Law stated - 8 May 2025

Asset protection

19 Must the portfolio of assets of a retail fund be held by a separate local custodian? What regulations are in place to protect the fund's assets?

Yes. The assets of a retail fund must be entrusted to a local depositary and segregated from the depositary's assets. The depositary will be liable to the fund and its investors for the loss by the depositary or by a delegate of financial instruments held in custody. In the case of loss of a financial instrument held in custody, the depositary must return a financial instrument of an identical type or the corresponding amount to the fund without undue delay. There is no possibility for the depositary to discharge its liability.

The Law of 27 February 2018 on interchange fees and amending several laws relating to the financial sector provides for the following depositary regime with respect to Part II UCI:

- Part II UCI marketed to retail investors on Luxembourg territory must appoint a UCITS-compliant depositary, regardless of whether they are managed by a Luxembourg or EU-authorised or registered AIFM or a non-EU manager;
- Part II UCI managed by a Luxembourg-authorised AIFM whose offering documents expressly forbid marketing to retail investors on Luxembourg territory may appoint a depositary compliant with the AIFM Law; and
- Part II UCI managed by a Luxembourg or EU-registered AIFM or by a non-EU manager and whose offering documents explicitly forbid the marketing to retail investors on Luxembourg territory must appoint a depositary bank compliant with the Law of 13 February 2007 on specialised investment funds.

ELTIFs marketed to retail investors on the Luxembourg territory must appoint a UCITS-compliant depositary in accordance with the ELTIF Regulation.

Law stated - 8 May 2025

Governance

20 What are the main governance requirements for a retail fund formed in your jurisdiction (registration, record-keeping, filings, officers)?

Regulated retail funds, following the successful completion of the CSSF examination phase, must be registered on the relevant official list of supervised entities held by the CSSF. ELTIFs additionally must be registered on the central public register held by the ESMA.

Regulated retail funds must apply for prior CSSF approval with respect to certain changes to their fund documentation (ie, constitutive documents) or governance (eg, appointment

of a new board member or replacement of depositary or auditor). The CSSF has recently updated its approval process with respect to regulated retail funds' changes and issued a guide on 20 March 2025 providing a list of changes requiring its prior approval.

For a retail fund structured as a company, as well as for a management company or an AIFM, there must be a board of directors composed of at least three members, half of which are recommended to be Luxembourg residents.

For externally managed funds, administrative tasks such as accounting, record-keeping, net asset value calculation and the keeping of a register of shareholders or limited partners are in general entrusted to an administrative agent (established in Luxembourg and subject to supervision by the CSSF).

Retail funds must produce key information documents (key investor information document for UCITS and key information document for AIFs) to be provided to retail investors before they invest in the fund. Essential elements of the key information document must be kept up to date.

Law stated - 8 May 2025

Reporting

21 | What are the periodic reporting requirements for retail funds?

UCITS and Part II UCI must produce annual and semi-annual reports, in addition to ongoing reporting to the CSSF.

Law stated - 8 May 2025

Issue, transfer and redemption of interests

22 | Can the manager or operator place any restrictions on the issue, transfer and redemption of interests in retail funds?

The rules governing the redemption of interests vary depending on the type of fund and its regulatory status. UCITS are obliged to redeem their shares or units at the investor's request. Part II UCI can, on the other hand, be established as closed-ended vehicles or otherwise restrict the terms on which interests can be redeemed.

Transfer restrictions (including, but not limited to, in respect of the transferee meeting certain eligibility criteria for a certain class of shares) may also be provided for in the fund's constitutive document. The circumstances for any suspension of share or unit issuances or redemptions (or both) must be provided for in the fund's constitutive document.

Law stated - 8 May 2025

NON-RETAIL POOLED FUNDS

Available vehicles

23 What are the main legal vehicles used to set up a non-retail fund? How are they formed?

Non-retail funds can be organised as:

- specialised investment funds (SIFs) governed by the Law of 13 February 2007 on SIFs, as amended (the SIF Law);
- reserved alternative investment funds (RAIFs) governed by the Law of 23 July 2016 on RAIFs, as amended (the RAIF Law);
- investment companies in risk capital (SICARs) governed by the Law of 15 June 2004 on SICARs, as amended (the SICAR Law);
- unregulated alternative investment funds (AIFs) governed by the Companies Law and the Law of 12 July 2013 on alternative investment fund managers, as amended (the AIFM Law); or
- AIFs opting-in for the European long-term investment fund (ELTIF) label and marketed solely to professional investors governed by the ELTIF Regulation.

Law stated - 8 May 2025

Laws and regulations

24 What are the key laws and other sets of rules (regulatory and self-regulatory) that govern non-retail funds?

The key laws and regulations applicable to non-retail funds are:

- the SIF Law;
- the RAIF Law; and
- the SICAR Law.

In addition, the following key laws and regulations may apply, each as may be amended from time to time:

- the AIFM Law if the fund qualifies as an AIF;
- the ELTIF Regulation if the AIF has opted in to the ELTIF label;
- the Companies Law;
- the Financial Sector Law;
- the Luxembourg Civil Code;
- Luxembourg laws, regulations and circulars issued by the Financial Sector Supervisory Commission (CSSF) regarding anti-money laundering and counter-terrorist financing;
- the General Data Protection Regulation;

- CSSF Regulation No. 16-07 regarding out-of-court complaint resolution (if the fund is regulated); and
- various guidelines issued by the European Securities and Markets Authority and CSSF regulations and circulars.

Law stated - 8 May 2025

Authorisation

25 | Must non-retail funds be authorised or licensed to be established or marketed in your jurisdiction?

SIFs, SICARs and other funds opting in for the ELTIF label require prior CSSF approval. RAIFs and unregulated AIFs may be established and marketed without prior CSSF approval. If marketing or pre-marketing is intended to be performed based on the Alternative Investment Fund Managers Directive (Directive 2011/61/EU) (AIFMD) passport, notification requirements must be met prior to commencing any marketing or pre-marketing activity.

Law stated - 8 May 2025

Marketing

26 | Who can market non-retail funds? To whom can they be marketed?

Non-retail funds may be marketed by authorised alternative investment fund managers based on the AIFMD passport or by authorised distributors based on the Markets in Financial Instruments Directive (MiFID) passport. Investors in SIFs, SICARs and RAIFs must qualify as well-informed investors. In the EEA, non-retail funds may be marketed to professional investors within the meaning of the AIFM Law.

Law stated - 8 May 2025

Ownership restrictions

27 | Do investor-protection rules restrict ownership in non-retail funds to certain classes of investor?

SIFs, SICARs and RAIFs are reserved to well-informed investors only. Unregulated AIFs may only be marketed under the AIFMD passport in the EEA to professional investors. ELTIFs may be marketed under the AIFMD passport in the EEA solely to professional investors or both retail and professional investors under certain conditions.

Well-informed investors are institutional investors, professional investors or any other investor that:

- has confirmed in writing that it adheres to the status of well-informed investor; and
- either invests a minimum of €100,000 in the fund or obtains an assessment certifying its expertise, experience and knowledge in adequately appraising an investment in the fund, made by:
    - a credit institution within the meaning of Regulation (EU) No. 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms;
    - an investment firm within the meaning of MiFID II;
    - a management company within the meaning of the Undertakings for Collective Investment in Transferable Securities Directive (Directive 2009/65/EC); or
    - an authorised AIFM.

Directors and other persons who are involved in the management of the fund do not need to qualify as well-informed to invest in the fund.

Professional investors within the meaning of the AIFMD or the ELTIF Regulation are investors who are professional clients (or eligible, upon request, to be treated as such) within the meaning of Annex II of MiFID.

Law stated - 8 May 2025

Managers and operators

28 | Are there any special requirements that apply to managers or operators of non-retail funds?

Managers of non-retail funds qualifying as AIFs must be either authorised or registered as AIFMs in the EEA or meet the requirements of a third-country AIFM. ELTIFs may only be managed by EU-authorised AIFMs.

Although registered AIFMs are not subject to authorisation under the AIFM Law, they are not entirely exempt from the AIFM Law requirements. They must be registered with the CSSF, disclose the AIFs they manage (including their investment strategies) and regularly report to the CSSF the principal instruments in which they trade and related investment exposures. Registered AIFMs may nonetheless elect to subject themselves to the AIFM Law (especially if they want to benefit from the AIFMD passport).

Law stated - 8 May 2025

Tax treatment

29 | What is the tax treatment of non-retail funds? Are any exemptions available?

SIFs and RAIFs (except for RAIFs investing exclusively in risk capital) are subject to an annual subscription tax of 0.01 per cent, subject to certain exemptions (eg, on the portion of net assets invested in another UCI already subject to subscription tax). The subscription tax is payable quarterly; the taxable basis of the subscription tax is the fund's aggregate net assets as valued on the last day of each quarter. SIFs and RAIFs are exempt from taxes on income or capital gains (in principle subject to the reverse hybrid rules), as well as from net wealth tax. Distributions (including dividends and liquidation surpluses) made by a SIF or RAIF to investors are not subject to withholding tax in Luxembourg.

A SICAR must be dedicated to risk capital investment only (most notably a classic private equity strategy of 'buy, develop and sell'). A SICAR that is structured as a tax-opaque entity is subject to the ordinary income tax regime. However, income from transferable securities representing risk capital, as well as income derived from the transfer, contribution or liquidation thereof is exempt. All other income (eg, the income from risk capital not represented by a security) is fully subject to ordinary Luxembourg direct taxes. From a Luxembourg tax perspective, a SICAR organised as an opaque entity should qualify as a resident company for domestic and Luxembourg tax-treaty purposes and should benefit from the parent-subsidiary directive, but other jurisdictions may take a different stance (see, eg, the Court of Justice of the European Union's judgments in the 'Danish cases').

Fiscally, opaque SICARs are subject to a minimum net wealth tax. A SICAR formed as a fiscally transparent common limited partnership (SCS) or a special limited partnership (SCSp) is itself not liable for income taxes, (possibly) subject to the application of the reverse hybrid rules, nor net wealth tax. Neither dividends nor liquidation proceeds distributed by a SICAR (whether fiscally opaque or transparent) to investors are subject to withholding tax.

RAIFs investing exclusively in risk capital assets can elect to be subject to the same tax rules as those applicable to SICARs.

The tax treatment of unregulated AIFs depends on the legal form of the fund.

An SCS or SCSp is tax transparent for corporate income tax (subject to the reverse hybrid rules) and net wealth tax purposes. It is normally also not subject to municipal business tax, provided its Luxembourg general partner does not hold an interest of 5 per cent or more in the partnership (and taking into account the fact that AIFs should not be conducting a commercial activity). However, these entities may become subject to corporate income tax if they fall within the scope of the reverse hybrid rules. These rules would result in the partnership becoming (partly or fully) subject to corporate income tax if associated investors, who hold in aggregate at least 50 per cent of the interests, voting rights or rights to profits in the partnership, are resident in jurisdictions that treat the (Luxembourg) partnership as opaque for tax purposes and the investors are not taxed on their share of the partnership's income because of the mismatch (as opposed to other reasons such as being tax exempt). Investors holding less than 10 per cent of interests and rights to profits in an AIF are deemed not to act together and should accordingly, in general, not qualify as associated with the partnership for purposes of the reverse hybrid rules. For genuine fund structures, the reverse hybrid rules should not apply easily, as the threshold for triggering the rules is high and several exemptions are available. It is, however, important to monitor the threshold and potential impact of these rules continuously, depending on the investors' base. Distributions by an SCS or SCSp are not subject to withholding tax.

Funds set up under other corporate forms are subject to the general tax regime. The consolidated corporate tax rate (corporate income tax, municipal business tax and solidarity surcharge) for companies in Luxembourg City was 23.87 per cent in 2025. The interest deduction limitation rule does not apply to financial undertakings, which includes AIFs. Net wealth tax is levied annually on the fair market value of the net assets of the company at a rate of 0.5 per cent for net assets up to €500 million, and 0.05 per cent for the portion of net wealth exceeding €500 million. There is a minimum net wealth tax. Distributions by an unregulated company are, in principle, subject to 15 per cent dividend withholding tax, unless a treaty or domestic rule allows for a reduction in the withholding tax rate or exemption from withholding tax.

Participants in fund structures, like in any other industry, may have reporting obligations to the Luxembourg tax authorities under the Luxembourg implementation of Directive (EU) No. 2018/822 of 25 May 2018 (DAC6), if they are involved in a reportable cross-border arrangement and there is no EU intermediary involved in designing or assisting with setting up the arrangement, or all intermediaries involved are exempt from the obligation to report the arrangement.

Since 1 March 2021, the deduction of interest (and royalties) paid or owed to related enterprises (which are beneficial owners of the payment) established in a jurisdiction that is on the EU blacklist of non-cooperative jurisdictions is in principle denied. The rule does not affect Luxembourg funds that are not subject to income taxes, as they do not take deductions in the first place.

Investment funds that are ultimate parent entities of a consolidated group are excluded entities for Pillar Two purposes and thus not subject to top-up tax. Pillar Two rules do not often apply in a fund structure context; situations where they may apply are (1) where an investor consolidates (its share of) the fund and its subsidiaries; or (2) an SPV below the fund consolidates its subsidiaries.

Law stated - 8 May 2025

Asset protection

30 Must the portfolio of assets of a non-retail fund be held by a separate local custodian? What regulations are in place to protect the fund's assets?

The appointment of a Luxembourg-based depositary is required for SIFs, SICARs, RAIFs and unregulated AIFs that are managed by authorised AIFMs, and the fund's assets must be segregated from the depositary's assets. Unregulated AIFs that are managed by a registered AIFM are not required to appoint a depositary. ELTIFs are required to appoint a UCITS-compliant depositary.

The depositary will be liable to the fund and its investors for the loss of financial instruments held in custody either by itself or any third party to whom custody was delegated. In the case of such a loss of a financial instrument held in custody, the depositary must return a financial instrument of identical type or the corresponding amount to the fund without undue delay. The depositary may contractually discharge itself of its liability under certain circumstances, except when acting as depositary of ELTIFs.

There are two types of depositaries for private funds in Luxembourg (excluding ELTIFs): regulated banks and professional depositaries of assets other than financial instruments. A professional depositary may only be appointed by a fund that is closed for redemption for five years as from the date of the initial investments and that, pursuant to its main investment policy, generally does not invest in assets that must be held in custody pursuant to the AIFM Law or invests in non-listed companies to eventually acquire their control.

Law stated - 8 May 2025

Governance

31 What are the main governance requirements for a non-retail fund formed in your jurisdiction (registration, record-keeping, filings, officers)?

Regulated funds, such as SIFs or SICARs, following the successful completion of the CSSF examination phase, must be registered on the relevant official list of supervised entities held by the CSSF, and, with respect to ELTIFs, the central public register held by the European Securities and Markets Authority.

For unregulated funds, such as RAIFs and unregulated AIFs, no prior authorisation from the CSSF is required before their setting-up and there is no direct ongoing supervision by the CSSF.

A fund organised as a common fund (FCP) must be managed by a management company or AIFM, which is in charge of the governance of the FCP, under the oversight of the depositary in respect of certain aspects.

If organised as a SICAV or SICAR, the fund is managed by its governing body (ie, the board of directors or a general partner). In this case, the fund may either appoint a management company or AIFM (ie, externally managed) or manage itself (ie, internally managed AIF).

Luxembourg funds must have their central administration in Luxembourg.

Law stated - 8 May 2025

Reporting

32 What are the periodic reporting requirements for non-retail funds?

Both SICARs and SIFs must comply with certain disclosure requirements. They must, among other things, produce an offering document and an annual report that they also need to communicate to the CSSF and to investors. These documents must include the information necessary for investors to be able to make an informed assessment on the proposed investment and the related risks. The annual report must be finalised within six months of the end of the financial period to which it pertains. Although the annual reporting obligations are in line with the common reporting obligations of commercial companies, neither the SICAR nor the SIF are subject to consolidated reporting.

The annual accounts must be audited, furthermore, by a certified Luxembourg independent auditor, which must inform the CSSF of serious violations of the applicable legal provisions or of any facts or decisions that could potentially threaten the continuity of the SICAR or SIF. A SICAR must submit half-yearly financial information to the CSSF. A SIF must submit yearly and monthly financial information to the CSSF.

Although a RAIF is neither subject to any prior regulatory approval nor to any ongoing direct supervision, it must qualify as an AIF and be managed by an authorised AIFM. It must also produce an offering document and an audited annual report.

In terms of reporting requirements, the AIFM Law contains obligations applicable to the manager of any AIF in scope. For SIFs and SICARs, those requirements will apply alongside the specific reporting rules of the SIF Law or SICAR Law that, to a large extent, are in line with the reporting rules of the AIFM Law. The AIFMD reporting framework mainly consists of annual reporting, disclosure to investors and regulators' requirements. Annual reports must be prepared at least once a year and within six months following the end of the financial year for each Luxembourg AIF managed or marketed in the European Union. The annual reports will be audited and provided to investors upon request and to the CSSF. Disclosure requirements entail communication of certain information to be provided to investors before they invest in the fund (generally contained in an offering document). This information relates, among other things, to the AIF's investment strategy and objectives, techniques it may employ and associated risks, the use of leverage and collateral and the procedures for issue and sale of shares, units or interests. Further aspects that need to be disclosed are as follows:

- the AIF's valuation procedure and pricing methodology;
- a description of liquidity risk management and redemption arrangements;
- a description of all fees, charges and expenses and maximum amounts thereof, which are directly or indirectly borne by the investors;
- the policy on ensuring fair treatment of investors; and
- a description of any preferential treatment of investors.

In respect of reporting to the CSSF, a Luxembourg AIFM must regularly report on the principal markets and instruments in which its AIFs trade, and is required to disclose certain additional information encompassing, among other things, the following:

- the percentage of the AIF's assets that are subject to special arrangements arising from their illiquid nature;
- any new liquidity management arrangements;
- the AIF's risk management systems;
- information on the AIF's main categories of assets; and
- the results of any stress tests.

Frequency of reporting depends on the amount of assets under management.

Unregulated funds must report certain financial information to the Central Bank of Luxembourg in accordance with the BCL Circular 2018/241.

SIFs, SICARs and Luxembourg-authorised AIFMs (among other entities) are required to complete a self-assessment questionnaire on a yearly basis regarding their compliance with the applicable legal and regulatory requirements in accordance with CSSF Circulars 21/789, as amended, and 21/790.

Law stated - 8 May 2025

SEPARATELY MANAGED ACCOUNTS

Structure

33 How are separately managed accounts (ie, accounts through which investor funds are segregated – not pooled – and the investor owns the underlying assets, which are managed at the investment manager's discretion) typically structured in your jurisdiction?

Separately managed accounts may be structured as funds of one, or via discretionary investment management agreements with an investment firm.

In practice, funds of one would, in the context of separately managed accounts, be structured either as a single-investor unregulated special limited partnership (SCSp) or as a dedicated compartment of a specialised investment fund or a reserved alternative investment fund.

Law stated - 8 May 2025

Key legal issues

34 What are the key legal issues (eg, standard of care, indemnification) to be determined when structuring a separately managed account?

The terms for an SCSp, including the duties and indemnification obligations of the manager, are set out in a partnership agreement and, for a separately managed account, in an investment management agreement, which may both be negotiated by the investor.

The manager of a separately managed account is an agent. In addition to any specific financial regulations applicable depending on the status of the manager (the Law of 12 July 2013 on alternative investment fund managers, as amended (the AIFM Law), the Financial Sector Law and so on), the agency is subject to articles 1984 to 2010 of the Luxembourg Civil Code, and the agent must act strictly within the scope of its appointment and report to the principal on a regular basis.

Law stated - 8 May 2025

Regulation

35

Is the management or marketing of separately managed accounts regulated in your jurisdiction? (If so, how does this operate? Is this the same regime for fund management?)

A regulated fund with a dedicated compartment for each investor will usually fall under the scope of the Alternative Investment Fund Managers Directive (Directive 2011/61/EU) (AIFMD). A single-investor SCSp will, in principle and except when the vehicle is formed as a fully AIFMD-compliant alternative investment fund (AIF), not qualify as an AIF, subject to a condition that the vehicle has been formed at the express request of the investor (ie, reverse solicitation) and its constitutive document precludes the admission of other investors.

The marketing of funds of one will depend on the AIF status of the relevant fund, the licence and the country of origin of the manager.

The management of separately managed accounts is usually deemed discretionary portfolio management, except for funds qualifying as AIFs and in respect of which the portfolio management carried out by the relevant fund's alternative investment fund manager is a regulated activity falling within the scope of the Financial Sector Law, implementing Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments rules.

Law stated - 8 May 2025

GENERAL

Proposed reforms

36 Are there proposals for further regulation of funds, fund managers or marketers of funds in your jurisdiction?

On 28 July 2023, a new draft bill of reshaping the Luxembourg accounting law was published, the main driver of which is to cover all accounting obligations in a single accounting law and broaden its scope of application by including additional types of undertakings, including investment funds formed as common funds (FCPs). The legislative process in respect of the draft bill is expected to be completed by end of 2025.

On 28 March 2024, the Financial Sector Supervisory Commission (CSSF) published Circular CSSF 24/856 on investor protection in the event of a net asset value calculation error, non-compliance with investment rules and other errors. The new circular, which replaces Circular CSSF 02/77 and has taken effect as from 1 January 2025, applies to undertakings for collective investment in transferable securities (UCITS), Part II undertakings for collective investment (UCIs), specialised investment funds (SIFs) and investment companies in risk capital (SICARs) as well as to European Long-Term Investment Funds (ELTIF), MMF (being money market funds under Regulation (EU) 2017/1134), European Venture Capital Funds (EuVECA) and European Special Entrepreneurship Funds (EuSEF) (which are not UCITS, Part II UCIs, SIFs and SICARs) for which the CSSF is the competent authority in accordance with the applicable regulations. The new circular sets guidelines to be followed by investment management professionals

in case of errors in the administration or management of a UCI. More particularly, it covers, in addition to net asset value calculation errors and non-compliance with the investment rules applicable to UCIs, also other errors (eg, errors at the level of the payment of costs and fees, swing pricing) that may occur at the level of a UCI. The new circular also defines a dedicated approach for the different types of funds concerning the tolerance thresholds governing net asset value calculation errors.

In 2025, the CSSF introduced lighter requirements applicable to prospectus amendments of UCITS, Part II UCIs, SIFs and SICARs, with the introduction in February 2025 of a simplified procedure for creating new share classes without requiring a prospectus update when their characteristics are already defined in the prospectus, and the update in April 2025 of the CSSF VISA 'stamp' procedure, which no longer requires the CSSF approval to implement non material changes to prospectus of regulated funds.

Following the entry into force of the Digital Operational Resilience Act (DORA) on 17 January 2025, the CSSF published on 9 April 2025 CSSF Circular 25/883 amending CSSF Circular 22/806 on outsourcing arrangements with a view to harmonise requirements and remove overlapping obligations applicable to ICT outsourcing notably by alternative investment fund managers and management companies falling under the CSSF supervision. The new requirements applicable to fund managers under the CSSF supervision and falling in-scope of DORA are now centralised in CSSF Circular 25/882 published on 9 April 2025, providing further guidance in particular on reporting obligations with respect to ICT outsourcing.

Law stated - 8 May 2025

Public listing

37 Outline any specific requirements for stock-exchange listing of retail and non-retail funds.

The Luxembourg Stock Exchange (LuxSE) operates the following two trading venues:

- the regulated market, within the meaning of Directive 2014/65/EU on markets in financial instruments, as amended (MiFID II); and
- the Euro MTF market, which is a multilateral trading facility (within the meaning of MiFID II) and provides an alternative market to the regulated market (the Euro MTF).

Moreover, within the framework of Regulation (EU) No. 2017/1129 of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, as amended (the Prospectus Regulation), the LuxSE has established a professional segment for each of the two trading venues it operates. The professional segments are specifically designed for issuers targeting professional clients (within the meaning of MiFID II), qualified investors (within the meaning of the Prospectus Regulation) and well-informed investors (withing the meaning of Luxembourg legislation on alternative investments funds). Securities admitted to the professional segments are not accessible to retail investors. Trading on the professional segments is only allowed between professional investors.

The LuxSE also recently launched a new professional segment on the Euro MTF: the Specialist Securities Segment (EM3S), which provides an alternative trading venue for issuers who wish to protect commercially sensitive information about their financial instruments. The EM3S is only accessible to professional clients (within the meaning of MiFID II), qualified investors (within the meaning of the Prospectus Regulation) and well-informed investors (withing the meaning of Luxembourg legislation on alternative investments funds). The EM3S is opened to a broad range of securities with special features which may include in particular, proprietary information, confidential and commercially sensitive intellectual property information. It offers a streamlined listing process with limited disclosure obligations (in particular, no prospectus approval is required for the listing process). All securities on the EM3S are admitted to trading on Euro MTF. While public disclosure is limited in the listing onboarding phase, ongoing disclosure obligations remain the same as for Euro MTF, including market abuse related obligations.

Issuers of securities on the regulated market are subject to the obligations of various European regulations and directives that have been implemented in Luxembourg law, in terms of prospectus approval and ongoing disclosure obligations.

The CSSF is responsible for approving prospectuses for admission to trading on the regulated market. Unless any exemptions applies, listing of securities on the regulated market is subject to the approval and publication of a prospectus in accordance with the provisions of the Prospectus Regulation. However, the requirements of the Prospectus Regulation and the obligation to publish a prospectus do not apply to open-ended funds that are expressly excluded from the scope of the Prospectus Regulation.

Issuers whose prospectuses have been approved in accordance with the Prospectus Regulation may benefit from the European passport regime for the admission to trading of their securities on one or more regulated markets operated in any member states.

The Euro MTF was launched to offer an alternative market to issuers. Listing on the Euro MTF does not require the publication of a Prospectus Regulation-compliant prospectus. Prospectuses for an admission to trading on the Euro MTF must be drawn up in accordance with the rules and regulations of the LuxSE (the Rules and Regulations). The LuxSE is responsible for approving prospectuses listed on the Euro MTF. The only exemption from this rule applies to open-ended funds that are accepted by the CSSF for distribution in Luxembourg. The reason for that is that these types of issuers are already required, for the purposes of the distribution, to draw up a prospectus and have it approved by the CSSF under the relevant sector-specific legislation. Furthermore, issuers are not required to submit a prospectus to list their securities on the EM3S. The required information is provided by way of an application form. The LuxSE does not issue a formal approval as part of the listing process.

The ongoing and periodic disclosure requirements applicable to issuers of securities depend on the trading venue where the securities are admitted to trading.

For issuers whose securities are admitted to trading on the regulated market, these obligations mainly arise from the Luxembourg law of 11 January 2008 on transparency requirements for issuers of securities, as amended (the Transparency Law), the Rules and Regulations and Regulation (EU) No. 596/2014 on market abuse, as amended (MAR) and the Corporate Sustainability Reporting Directive (EU) 2022/2464 (CSRD) to the extent applicable. Open-ended funds are, however, excluded from the scope of the Transparency

Law. Furthermore, issuers whose securities are admitted to trading on the Euro MTF do not fall within the scope of the Transparency Law. However, they must comply with the ongoing and periodic disclosure obligations detailed in the Rules and Regulations and the MAR.

Ongoing and periodic disclosure obligations include, for instance, the provision of annual reports and interim financial statements as well as the disclosure of all other important information affecting the securities or the issuer. The ongoing disclosure obligations applicable to issuers whose securities are admitted to trading on the regulated market are more stringent than those applicable to issuers whose securities are admitted to trading on the Euro MTF.

The LuxSE also offers the possibility for issuers to list their securities on its Securities Official List (SOL) without admission to trading. The SOL is designed for issuers looking for visibility without the possibility of having their securities traded. Securities listed on the SOL are not subject to the extensive regulatory framework applicable to securities admitted to trading on the regulated market and the Euro MTF. Ongoing disclosure obligations will, in this case, be limited to certain communication requirements to the LuxSE as set out in the SOL Rulebook.

Law stated - 8 May 2025

Overseas vehicles

38 | Is it possible to redomicile an overseas vehicle in your jurisdiction?

It is possible to redomicile an overseas vehicle into Luxembourg if this is allowed under the law of the country where the overseas vehicle is domiciled.

Law stated - 8 May 2025

Foreign investment

39 | Are there any special rules relating to the ability of foreign investors to invest in funds established or managed in your jurisdiction or domestic investors to invest in funds established or managed abroad?

Other than certain marketing restrictions, and international financial sanctions, prohibitions and restrictive measures on the fight against terrorist financing, there are no special rules in this regard.

Law stated - 8 May 2025

Funds investing in derivatives

40 | Are there any special requirements in your jurisdiction relating to funds investing in derivatives?

Funds may invest in derivatives subject to compliance with the following provisions:

- article 41 of the Law of 17 December 2010 on undertakings for collective investment (the UCI Law) for UCITS;
- CSSF Circulars 91/75, as amended and 02/80 for Part II of the UCI Law; and
- CSSF Circular 07/309 for non-retail funds organised as specialised investment funds (SIFs) and SIF-like reserved alternative investment funds.

Investment companies in risk capital and AIFs opting in for the ELTIFs label may only use derivative financial instruments for hedging purposes.

Funds investing in derivatives must comply with the clearing obligations, reporting obligations and risk and mitigation techniques set out in Regulation (EU) No. 648/2012 of the European Parliament and of the Council of 4 July 2012 on over-the-counter derivatives, central counterparties and trade repositories (EMIR). As from 29 April 2024, EMIR technical standards have become applicable (EMIR REFIT), imposing new reporting obligations to in-scope entities, including funds investing in derivatives.

CSSF Circular 18/698 includes detailed information on the obligations of the Luxembourg managers to monitor compliance with their obligations under EMIR.

Credit institutions, investments firms and trading venue operators must comply with the provisions set out in Regulation (EU) No. 600/2014 on markets in financial instruments.

Law stated - 8 May 2025

UPDATE AND TRENDS

Recent developments

41 Are there any other current developments or emerging trends in your jurisdiction that should be noted? Please include reference to world-wide regulatory concerns, such as restrictions on foreign ownership in strategic industries, high-frequency trading, commodity position limits, capital adequacy for investment firms and 'shadow banking'.

For many years, Luxembourg has built up its position as the largest single domicile for alternative funds in Europe, attracting some of the most sophisticated asset managers in the alternative space and largest institutional investors in the world. To cater for growing private fund managers' demand to tap into the retail and private wealth market, Luxembourg has taken a leadership role in the democratisation of private markets, particularly with the adoption of the European long-term investment fund (ELTIF) 2.0 applicable as from 10 January 2024. Thanks to a regulatory modernisation in 2023 having aligned its national legal framework with ELTIF 2.0 and broader international developments, Luxembourg has become the European domicile of choice for ELTIFs, with more than 60 per cent of all ELTIFs being domiciled in Luxembourg as of today.

In this context, Luxembourg is experiencing a notable rise in evergreen funds driven by a growing demand for liquidity and long-term investment horizons from both institutional and retail investors. Part II undertakings for collective investment have regained momentum as

the vehicle of choice for evergreen funds, offering a wide range of structuring options (ie, as feeders, fund-of-funds, or umbrella structures), a lower minimum investment ticket and a more flexible distribution regime to retail or semi-professional investors across Europe, in particular when paired with the ELTIF regime, the latter availing of the EU distribution passport to retail investors. Regulatory modernisation in 2023 has expanded the structural options available, catalysing renewed interest in particular in umbrella fund platforms that combine various strategies under a single legal entity.

As global private equity giants continue to establish complex fund ecosystems in Luxembourg, the jurisdiction is reinforcing its position as a versatile, efficient, and investor-friendly environment for scaling private capital across all investor types.

At the European level, the Alternative Investment Fund Managers Directive (Directive 2011/61/EU) (AIFMD) has been amended by Directive (EU) 2024/827 published in the official journal of the European Union on 26 March 2024 (AIFMD II). The AIFMD II contains five key developments in the areas of delegation, loan origination, liquidity management tools, depositaries and alternative investment fund managers (AIFMs). EU member states have until 16 April 2026 to transpose the AIFMD II into their national legislation, to the exclusion of certain provisions regarding reporting obligations of management companies and AIFMs, which shall be transposed by 16 April 2027.

On the tax side, the European Commission's initiative against shell entities may, if adopted, indirectly affect investment funds, as certain special purpose vehicles that lack sufficient substance could possibly face higher withholding tax or non-resident capital gains taxation in investment jurisdictions. No progress has been registered.

Very large funds and asset managers should also continue to closely monitor international developments around the implementation of global minimum taxation (Pillar Two workstream of the Organisation for Economic Co-operation and Development), as there is no absolute carve-out for investment fund structures. In particular, managers of separately managed accounts and funds-of-one should check potential consolidation of the fund at investor level to assess whether there is a risk of top-up tax on the fund's income. Also, while an investment fund is typically exempt from consolidation obligations, the need to consolidate (or apply a 'deemed consolidation' rule) below the fund should be monitored.

Law stated - 8 May 2025

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Summary

SEPARATELY MANAGED ACCOUNTS

GENERAL

UPDATE AND TRENDS

FUND MANAGEMENT REGULATION

Regulatory framework and authorities

1 How (in very general terms) is fund management regulated in your jurisdiction? Which authorities have primary responsibility for regulating funds, fund managers and those marketing funds?

The Malta Financial Services Authority (MFSA) regulates funds, fund managers and those marketing funds in Malta.

The Maltese regulatory regime for funds, fund managers and entities marketing funds was enacted on 19 September 1994 with the adoption of the Investment Services Act, CAP 370 of the Laws of Malta (the ISA), which introduced the concept of a collective investment scheme (CIS) into Maltese law as well as a licensing requirement for CISs and their service providers on the basis of the nature of the services provided in respect of specific classes of financial instruments.

Over the years, the ISA has been significantly revised and supplemented to transpose relevant EU legislation, including the Alternative Investment Fund Managers Directive (AIFMD), the Undertakings for the Collective Investment in Transferable Securities (UCITS) Directive and the Markets in Financial Instruments Directive (MiFID II). The ISA remains, however, the cornerstone of fund regulation in Malta.

Fund managers are all required to hold a Fund Management licence. However, they may be classified as alternative investment fund managers (AIFMs) in terms of AIFMD, de minimis AIFMs, being under-threshold fund managers and UCITS management companies established under the UCITS Directive. On the other hand, funds may take the form of UCITS Funds, alternative investment funds (AIFs), notified alternative investment funds (NAIFs), professional investor funds (PIFs)or notified professional investor funds (NPIFs). NAIFs and NPIFs are not regulated by the MFSA. Regulatory responsibility for their operations and oversight is shifted to the AIFMs.

The establishment or appointment of a regulated investment management entity separate from the fund is possible but not obligatory, as funds incorporated in Malta can opt to be self-managed. In such cases, the fund takes responsibility for the investment management structure internally through the establishment of the appropriate internal mechanisms.

Law stated - 6 May 2025

Fund administration

2 Is fund administration (support services provided to funds such as book-keeping, preparing reports, trade settlement, etc) regulated in your jurisdiction?

Yes. The statutory basis for regulating the provision of fund administration is detailed through the ISA, which states that any person who, in or from Malta, provides to licence holders in Malta, or to equivalent authorised persons and schemes overseas – administrative services that do not themselves constitute a licensable activity under the ISA

– requires MFSA recognition. Therefore, an application for prior recognition would need to be submitted to the MFSA.

Law stated - 6 May 2025

Authorisation

3 What is the authorisation or licensing process for funds? What are the key requirements that apply to managers and operators of investment funds in your jurisdiction?

Licensing process

The licensing process for a fund in Malta is overseen by the MFSA and differs depending on the type of fund being established. During the pre-licensing phase, the appropriate fund type and structure are determined based on factors such as the investor base, investment strategy, and applicable regulatory requirements. Relevant service providers – such as the fund manager, administrator, depository, money laundering reporting officer, and compliance officer – are appointed, and the required documentation (such as the constitutional documents, offering documentation, and relevant forms etc) is prepared.

Once the application package is complete, it is submitted to the MFSA for a preliminary review. The MFSA then assesses the proposed structure, strategy and risk profile to ensure alignment with regulatory standards. Fitness and propriety checks are also undertaken on promoters and management.

Any feedback or requests for amendments will be communicated to the applicant. Upon satisfactory review, the MFSA issues an in-principle approval subject to specific conditions. Once these conditions are met, the MFSA grants the formal licence, allowing the fund to commence operations, market to investors and begin accepting subscriptions.

Key requirements

A Maltese management company or operator of a fund (to the extent that the services provided to the fund qualify as investment services in terms of the ISA) must be licensed by the MFSA. Such licence is subject to a number of requirements, including:

- a place of business in Malta from where the activities are carried out;
- sufficient financial resources and liquidity to be able to conduct its business effectively and meet its liabilities when they fall due; and
- compliance with MFSA requirements applicable to the licence holder, which mainly relate to business organisation, systems, experience and expertise.

Upon licensing, fund managers and operators of funds are required to comply with the ongoing regulatory obligations set out in applicable MFSA rulebooks and the anti-money laundering and counter-terrorist financing obligations emanating from applicable legislation and the Financial Intelligence Analysis Unit Implementing Procedures.

Law stated - 6 May 2025

Territorial scope of regulation

4 What is the territorial scope of fund regulation? Can an overseas manager perform management activities or provide services to clients in your jurisdiction without authorisation?

The general principle is that the management of local CIS is subject to licensing in terms of the ISA, unless a specific exemption applies or the overseas fund manager is able to avail itself of EU passporting rights. Indeed, the management company passport under the UCITS IV Directive (Directive 2009/65/EC) ended the requirement that the investment fund management company needs to be established in the same country in which the UCITS is established. Additionally, the adoption of the AIFMD meant that the investment fund management company need not be established in the same country in which the AIF is established.

Management company established in another EU/EEA member state	
UCITS management company	Prior to providing services in Malta or performing management activities in Malta, the EU fund manager will need to exercise its passport rights under the relevant EU directive.
AIFM	Prior to providing services in Malta or performing management activities in Malta, the overseas fund manager will need to exercise its management passport under the relevant EU directive. Authorisation requirements apply in respect of non - EU AIFMs managing an EU AIF.

Law stated - 6 May 2025

Acquisitions

5 Is the acquisition of a controlling or non-controlling stake in a fund manager in your jurisdiction subject to prior authorisation by the regulator? (Restrict your answers to the regulator with responsibility for oversight of fund management. Do not answer with respect to other agencies, such as the merger control authorities.)

Yes. The acquisition of a qualifying shareholding in a fund manager is subject to prior authorisation. The ISA defines qualifying shareholding as ‘a direct or indirect holding in a company which represents 10% or more of the share capital or of the voting rights …

or which makes it possible to exercise a significant influence over the management of the company in which that holding subsists'.

Law stated - 6 May 2025

Restrictions on compensation and profit sharing

6 | Are there any regulatory restrictions on the structuring of the fund manager's compensation and profit-sharing arrangements?

With respect to the payment of performance fees to fund managers of UCITS funds or retail AIFs, the Investment Services Act (Performance Fees) Regulations sets out the rules to be followed for the adoption, payment and disclosure of performance fees.

Law stated - 6 May 2025

FUND MARKETING

Authorisation

7 | Does the marketing of investment funds in your jurisdiction require authorisation?

The general principle enshrined in the Investment Services Act (the ISA) is that the units in a collective investment scheme (CIS) may not be marketed in Malta unless the CIS is authorised by the Malta Financial Services Authority (MFSA). This principle is, however, subject to the applicability of EU passporting rights. In fact, the Alternative Investment Fund Managers Directive (AIFMD) grants EU alternative investment fund managers (AIFMs) managing EU alternative investment funds (AIFs) a marketing passport, enabling the former to market that EU AIF in another EU member state to professional investors. The AIFM must submit a notification of its intention to market to the competent authority of the other EU member state where the units of the AIF will be marketed. However, any AIFM wishing to market AIFs to retail investors in Malta must obtain prior authorisation from the MFSA.

Non-EU AIFMs marketing AIFs in Malta would need to comply with the Maltese National Private Placement Regime prior to the marketing of such funds.

Likewise, the Undertakings for the Collective Investment in Transferable Securities (UCITS) Directive provides for a harmonised passporting regime whereby a UCITS authorised in any EU member state may be marketed to investors in another member state following notification of intention being submitted to the host member state's competent authority.

Law stated - 6 May 2025

8 | What marketing activities require authorisation?

Investment funds that do not benefit from EU passporting rights, and whose activities are not otherwise exempt, are required to hold a collective investment scheme licence prior to marketing their units in Malta, whether directly or indirectly through intermediaries.

Law stated - 6 May 2025

Territorial scope and restrictions

9 What is the territorial scope of your regulation? May an overseas entity perform fund marketing activities in your jurisdiction without authorisation?

Any entity performing fund marketing activities in respect of funds established in Malta would be subject to licensing, to the extent that such activities constitute investment services in terms of the ISA and unless the relevant entity can rely on an exemption in terms of the law that is applicable to its operations.

Law stated - 6 May 2025

10 If a local entity must be involved in the fund marketing process, how is this rule satisfied in practice?

Not applicable.

Law stated - 6 May 2025

Commission payments

11 What restrictions are there on intermediaries earning commission payments in relation to their marketing activities in your jurisdiction?

In accordance with the Conduct of Business Rulebook, where a manufacturer distributes its products to clients through a distributor and pays a commission to a distributor based on levels of business introduced, the manufacturer must be able to demonstrate that these arrangements:

- do not impair the distributor's duty to act in the best interest of the client; and
- do not give rise to a conflict of interest between the distributor and the client.

The Markets in Financial Instruments Directive, AIFMD and the UCITS Directive also contain similar rules on inducements.

Law stated - 6 May 2025

RETAIL FUNDS

Available vehicles

12 | What are the main legal vehicles used to set up a retail fund? How are they formed?

The definition of a collective investment scheme under the Investment Services Act (the ISA) is vehicle agnostic. Under Maltese law, a fund may be established as:

- a company – namely, an investment company with fixed share capital or an investment company with variable share capital (SICAV);
- a limited partnership;
- a unit trust;
- a foundation; or
- a contractual fund.

However, the most common legal vehicle used to establish funds, both retail and professional, is the SICAV.

The absolute majority of collective investment schemes (CISs) in Malta are established as SICAVs. The rules relating to the manner in which a SICAV's share capital is calculated, the possibility of establishing it as a multi-fund or multi-class structure, in addition to the legal ring-fencing of assets between share classes makes it one of the most flexible legal vehicles available.

A SICAV is constituted through the registration of its memorandum and articles of association with the Malta Business Registry (MBR), together with the submission of supporting documentation.; *i*

Law stated - 6 May 2025

Laws and regulations

13 | What are the key laws and other sets of rules (regulatory and self-regulatory) that govern retail funds?

The key laws and regulations regulating retail funds are the following:

- the Companies Act and subsidiary legislation;
- the ISA and subsidiary legislation;
- the Undertakings for the Collective Investment in Transferable Securities (UCITS) V Directive as transposed into local laws and regulations;
- the Alternative Investment Fund Managers Directive and Regulation, as transposed into local laws and regulations;
- the Rules for Retail Collective Investment Schemes issued by the Malta Financial Services Authority (MFSA), including:
    - Part A: Application Process for Retail Collective Investment Schemes;
    -

Part BI: Standard Licence Conditions applicable to Malta based Retail Non-U
CITS Collective Investment Schemes; and

- Part BII: Standard Licence Conditions applicable to Malta based Retail UCIT S Collective Investment Schemes;

- the Rules for Alternative Investment Funds issued by the MFSA and providing the regulatory framework for retail alternative investment funds (AIFs), including:
  - Part A: Application Process for Alternative Investment Funds; and
  - Part B: Standard Licence Conditions applicable to Alternative Investment Fu nds;
- the Listing Rules (admissibility requirements for CISs) issued by the MFSA and applicable to collective investment schemes listed on the Malta Stock Exchange.

Law stated - 6 May 2025

Authorisation

14 | Must retail funds be authorised or licensed to be established or marketed in your jurisdiction?

The ISA provides the statutory basis for the licensing and regulation of funds. It establishes that any collective investment scheme that does the following must first be licensed by the MFSA:

- issues or creates units or carries on any activity in or from Malta; or
- is formed in accordance with or exists under the laws of Malta, which issues or creates any units or carries on any activity in or from a country, territory or other place outside Malta.

Thus, the licensing requirement applies to funds established and marketed in Malta, funds established in Malta but marketed outside Malta and funds established outside of Malta but marketed in Malta.

Foreign funds that do not benefit from EU passporting rights are required to obtain a collective investment scheme licence prior to marketing their units in Malta, whether directly or indirectly through intermediaries.

Law stated - 6 May 2025

Marketing

15 | Who can market retail funds? To whom can they be marketed?

The Maltese regulatory regime establishes two main categories of retail collective investment schemes, namely:

- UCITS; and
- non-UCITS funds that target retail investors.

Retail funds marketed to retail investors target investors who do not qualify as professional investors as defined in the Markets in Financial Instruments Directive. Reference should be made to the fund's offering documents in this regard. Both open-ended retail funds and closed-ended retail funds can market their units to the general public in Malta, subject to any applicable provisions of the Prospectus Regulation in respect of the offer of units issued by closed-ended funds.

Open-ended and closed-ended retail funds can be marketed by the fund itself or by its fund manager.

Law stated - 6 May 2025

Managers and operators

16 | Are there any special requirements that apply to managers or operators of retail funds?

The requirements that apply to managers or operators of retail funds stem from the ISA, the subsidiary legislation issued thereunder and the relevant MFSA rulebooks. A retail fund can be externally managed or authorised as a self-managed fund (provided it adopts a corporate structure). A third-party manager can qualify as a de minimis fund manager, an AIFM or a UCITS management company. If the fund manager is established outside Malta, before it can manage funds established in Malta it must determine whether it is exempt from licensing in Malta or whether it can avail itself of European passporting rights.

Law stated - 6 May 2025

Investment and borrowing restrictions

17 | What are the investment and borrowing restrictions on retail funds?

The investment restrictions generally applicable to retail funds are listed below.

UCITS

- Cannot invest more than 10 per cent of their assets in transferable securities (TS) and money market instruments (MMI) other than those admitted to a stock exchange or that are dealt in on a regulated market.
- Cannot invest more than 5 per cent of their assets in TS or MMI issued by the same body. The 5 per cent limit can be raised to a maximum of 10 per cent of the fund's assets if the total value of securities held in bodies in which it invests more

than 5 per cent is less than 40 per cent. This limit does not apply to deposits and over-the-counter derivative transactions made with financial institutions subject to prudential supervision.

- Cannot invest more than 20 per cent of the fund's assets with the same institution.
- Cannot invest more than 20 per cent of their assets in units of other CISs.
- Can only transact using financial derivative instruments if the transaction in the financial derivative instrument does not cause them to diverge from the investment objectives set out in the constitutional documents or prospectus, or both.

Non-UCITS retail funds

- Cannot invest more than 10 per cent of their assets in securities that are not traded in or dealt on a market that the depositary and manager of the scheme have agreed between themselves as being appropriate for the fund, is listed in the prospectus of the fund, is regulated, operates regularly, is recognised and is open to the public, has adequate liquidity and adequate arrangements in respect of the transmission of income and capital and is not the subject of an MFSA restriction.
- Cannot hold more than 10 per cent of any class of security issued by any single issuer.
- Cannot hold more than 10 per cent of its assets in securities issued by the same body.
- Can invest in nil paid or partly paid shares and subscribe for placing or underwriting provided the amount to be paid does not exceed 5 per cent of the value of the scheme.
- The CIS and its manager, considering all of the schemes that the latter manages, cannot acquire sufficient instruments to give it the right to exercise control over 20 per cent or more of the share capital or votes of a company or sufficient instruments to enable it to exercise significant influence over the management of the issuer.
- Cannot deposit more than 10 per cent of its assets with the same credit institution.
- Cannot invest more than 20 per cent of its assets with any one CIS.
- May only invest in FDI for efficient portfolio management purposes. Maximum exposure limits apply.

Retail AIFs

- May not invest more than 10 per cent of their assets in securities that are not traded in or dealt on a market.
- Cannot invest more than 10 per cent of their assets in securities issued by the same body or hold more than 10 per cent of any class of security issue by any single issuer.
- No more than 10 per cent of the AIF's assets can be kept on deposit with any one body. However, this limit can be increased to 30 per cent for money deposited with a

credit institution licensed in Malta or in any other EEA state, or with any other credit institution approved by the MFSA.

- No more than 20 per cent of the AIF's assets can be invested in any one CIS.
- Can invest in nil paid or partly paid shares and subscribe for placing or underwriting provided the amount to be paid does not exceed 5 per cent of the value of the scheme.
- The CIS and its manager, considering all of the schemes that the latter manages, cannot acquire sufficient instruments to give it the right to exercise control over 20 per cent or more of the share capital or votes of a company, or sufficient instruments to enable it to exercise significant influence over the management of the issuer.
- May only invest in FDI for efficient portfolio management purposes. Maximum exposure limits apply.

The borrowing restrictions applicable to retail funds are listed below.

UCITS

When structured as an investment company it cannot borrow funds. However, it can acquire foreign currency by means of a 'back-to-back' loan. By way of derogation, the MFSA provides that a UCITS fund can borrow if the borrowing is either:

- on a temporary basis and represents, no more than 10 per cent of its assets (for an investment company) or no more than 10 per cent of the value of the fund (for a common fund); or
- to enable the acquisition of immovable property that is essential for the direct pursuit of its business and represents, in the case of an investment company, no more than 10 per cent of its assets.

In such cases, the fund cannot borrow more than 15 per cent of its total asset value.

Non-UCITS retail funds

- Can only borrow up to a maximum of 10 per cent of: its assets, when set up as an investment company or limited partnership; and the value of the fund, when set up as a unit trust or a common contractual fund.
- Borrowing can only be made on a temporary basis and the scheme's overall risk exposure must not exceed 110 per cent of its assets under any circumstances.

Retail AIFs

See non-UCITS retail fund restrictions above.

Law stated - 6 May 2025

Tax treatment

18 | What is the tax treatment of retail funds? Are exemptions available?

Maltese tax legislation does not distinguish between retail and professional investor funds. The key distinction that determines the Maltese tax treatment of a fund is whether the collective investment scheme is classified as a 'prescribed' or 'non-prescribed' fund.

A fund (or a sub-fund if the scheme is divided into sub-funds) is treated as a prescribed fund if:

- it is a fund of a CIS formed in accordance with the laws of Malta;
- the value of its assets situated in Malta amounts to at least 85 per cent of the value of the total assets of the fund; and
- it has so declared in writing to the Commissioner for Revenue.

Maltese funds that do not have such an exposure to Maltese assets and have made a declaration to that effect are classified as non-prescribed funds.

A non-prescribed fund is exempt from Maltese income tax on any income and capital gains, other than income derived from immovable property situated in Malta. A prescribed fund is also exempt from tax in Malta except for income derived from immovable property situated in Malta, bank interest (which is subject to a 15 per cent withholding tax) and other types of investment income (which are subject to a withholding tax of 10 per cent).

Any income or capital gains derived by non-resident investors from a Maltese fund are not subject to withholding tax so long as they are not owned and controlled by, directly or indirectly, nor act on behalf of, an individual who is ordinarily resident and domiciled in Malta.

Distributions made to recipients who are resident individuals or persons owned and controlled by, directly or indirectly or acting on behalf of individuals ordinarily resident and domiciled in Malta out of untaxed profits are subject to a 15 per cent withholding tax.

Law stated - 6 May 2025

Asset protection

19 | Must the portfolio of assets of a retail fund be held by a separate local custodian? What regulations are in place to protect the fund's assets?

The custodian must be separate and independent from the fund manager and must act independently and solely in the interests of the unit holders. The custodian of a UCITS and a retail AIF fund must have an established place of business in Malta and be in possession of an investment services licence issued by the MFSA. Such local presence and authorisation requirements do not apply in the context of a non-EU AIF managed by a Maltese AIFM.

The following regulations apply to the protection and safekeeping of the funds' portfolio assets:

- Investment Services Act (Custodians of Collective Investment Schemes) Regulations (Subsidiary Legislation 370.32, Laws of Malta); and

- the MFSA's Standard Licence Conditions applicable to Investment Services Licence Holde
rs which qualify as Depositaries.

Law stated - 6 May 2025

Governance

20 What are the main governance requirements for a retail fund formed in your jurisdiction (registration, record-keeping, filings, officers)?

Retail funds established in Malta are subject to various governance requirements that are conventional in the context of the regulated investment funds industry. The below is a non-exhaustive summary of the general governance requirements common to all retail funds.

Registration and authorisation

Retail funds operating from Malta are typically established as SICAVs. Their registration in Malta requires the filing of the memorandum and articles of association with the MBR, together with supporting documentation as required in terms of the Companies Act.

Furthermore, all funds would only be able to operate from Malta if they are in possession of a licence issued by the MFSA under the terms of the ISA.

Corporate governance

A retail fund established in Malta is required to implement a robust corporate governance structure. The governing body is legally bound to promote the best interest of the fund and its investors and is responsible for the good governance of the fund, its proper administration and management, and the general supervision of its affairs.

In practical terms, the MFSA typically requires that the board of directors of funds be composed of at least three individuals having the skills required to be able to direct and monitor the operations of the fund. In particular, at least one of the directors must be independent of the service providers to the fund, including the management function. The board of directors is expected to appoint service providers to the fund having the knowledge, skill and competence required to be able to provide the services they are engaged to perform.

As authorised entities, retail funds are expected to endeavour to adhere to the MFSA's Corporate Governance Code, on a 'best-effort basis' and in a manner that is commensurate with the nature, size and complexity of the fund. The Corporate Governance Code provides a list of guiding principles that are designed to enhance the existing legal, institutional and regulatory framework for good governance.

Officers and service providers

CISs are also required to appoint a secretary to the governing body (to the extent that the legal structure of the fund necessitates the secretary's appointment), a compliance officer and a money laundering reporting officer. While the compliance officer is responsible for assisting the fund in complying with any conditions attached to its CIS licence, and the relevant rules and regulations, the money laundering reporting officer assists the fund in complying with its anti-money laundering and counter-terrorist financing obligations as a 'subject person' under the applicable laws.

As noted above, depending on the nature of the CIS in question, a CIS may, and in certain cases is required to, appoint a number of service providers, including an investment manager, investment advisor, fund administrator, registrar and transfer agent, and a custodian or prime broker, as applicable.

Record-keeping

Retail funds established in Malta are subject to numerous record-keeping obligations that stem from distinct pieces of local legislation and regulation.

Law stated - 6 May 2025

Reporting

21 | What are the periodic reporting requirements for retail funds?

The table below sets out the list of external reports that retail funds are expected to prepare.

Reporting requirement	**Reportable to**
Annual return	MBR
Beneficial ownership information	MBR
Audited financial statements	MBR, MFSA and tax authorities
Annual fund return	MFSA
Central Bank of Malta returns	MFSA
Income tax return	Tax authorities
Value added tax return	Tax authorities
Anti - money laundering and counter - terrorist financing risk evaluation questionnaire	Financial Intelligence Analysis Unit

UCITS are also required to publish half-yearly reports.

Law stated - 6 May 2025

Issue, transfer and redemption of interests

22 Can the manager or operator place any restrictions on the issue, transfer and redemption of interests in retail funds?

In the case of UCITS, any restrictions on the issue, transfer or redemption of interests must be disclosed in the scheme's prospectus. If set up as an investment company and provided for in their constitutional documents, UCITS funds can temporarily suspend the repurchase or redemption of units, provided the suspension is exceptional, justified and in the interests of the investors.

In the case of retail AIFs, any restrictions on the issue, transfer and redemption of interests must be in line with the provisions of the fund's prospectus. AIFMs of open-ended retail AIFs can also place restrictions on the redemption of interests to manage liquidity risk. AIFMs can employ tools such as gates, partial redemptions and notice periods provided they are disclosed to investors before they invest and periodically if there are any material changes.

Law stated - 6 May 2025

NON-RETAIL POOLED FUNDS

Available vehicles

23 What are the main legal vehicles used to set up a non-retail fund? How are they formed?

Non-retail funds may be established as companies, limited partnerships, unit trusts, foundations or mere contractual arrangements. Nevertheless, the investment company with variable share capital (SICAV) remains the main vehicle used to establish a non-retail fund.

Law stated - 6 May 2025

Laws and regulations

24 What are the key laws and other sets of rules (regulatory and self-regulatory) that govern non-retail funds?

The Investment Services Act (the ISA) is the cornerstone of fund regulation in Malta. The legislature in Malta has also published various subsidiary legislation under the ISA relevant to the regulation of non-retail collective investment schemes (CISs) in Malta. Each non-retail fund that may be set up in Malta is also governed by a dedicated set of rules

published by the Malta Financial Services Authority (MFSA). The MFSA rulebooks are, in turn, supplemented by additional guidance, circulars and other material published by the MFSA from time to time.

A CIS that is available for distribution to professional clients under the terms of the Markets in Financial Instruments Directive (MiFID) (professional clients) may be authorised as:

- a professional investor fund (PIF), being a non-EU harmonised CIS that may be established in Malta; or
- an alternative investment fund (AIF) – as defined under the Alternative Investment Fund Managers Directive (AIFMD).

Each of these non-retail funds may be externally managed or self-managed. Additionally, EU alternative investment fund managers (AIFMs) have an alternative option: the notified alternative investment fund (NAIF), which is an AIF that is not authorised by the MFSA, but whose existence must merely be notified by the AIFM to the MFSA; and the notified professional investment fund (NPIF), which is a PIF that is not authorised by the MFSA, but whose existence must merely be notified by the de minimis AIFM to the MFSA. It therefore follows that a NAIF and an NPIF must be externally managed.

Law stated - 6 May 2025

Authorisation

25 | Must non-retail funds be authorised or licensed to be established or marketed in your jurisdiction?

Under the ISA, without a valid licence, a CIS is prohibited from:

- issuing or creating any units, or carrying on any activity in or from Malta; or
- issuing or creating any units or carrying on any activity in or from a country, territory or other place outside Malta, while being formed in accordance with or existing under the laws of Malta.

Accordingly, regardless of where it is established, a CIS that intends to market (including through intermediaries) its units or shares in Malta is, unless specifically exempted, entitled to exercise EU passporting rights or, without prejudice to the provisions of the ensuing paragraph, required to obtain authorisation.

While the above prohibition applies without limitation in respect of PIFs and AIFs, it is not relevant in the context of NAIFs and NPIFs. As noted above, and, in terms of the Investment Services Act (List of Notified CISs) Regulations (Subsidiary Legislation 370.34, Laws of Malta) (the Notified CISs Regulations), NAIFs and NPIFs are subject to a notification, as opposed to a fully-fledged authorisation process with the MFSA.

The Notified CISs Regulations specify that the inclusion of a NAIF in the List of NAIFs and the inclusion of a PIF in the List of NPIFS maintained by the MFSA pursuant to the Notified CISs Regulations does not imply that the NAIF/NPIF is in possession of a licence granted under the terms of the ISA.

Law stated - 6 May 2025

Marketing

26 | Who can market non-retail funds? To whom can they be marketed?

The Maltese regime that regulates the marketing of units or shares in a CIS (including the MFSA's guidance on what constitutes marketing) differs according to whether the CIS qualifies as an AIF or a UCITS.

The following table summarises the non-retail fund marketing options presently available in Malta and the marketing and investment eligibility criteria.

CIS type	Eligible to market	Eligible investors
AIF	• AIF (if self - managed) • AIFM (if appointed) • Intermediaries (if appointed)	• Professional clients • Qualifying investors – non - retail funds may only be subscribed to by professional clients (as defined under MiFID) or qualifying investors (as defined under the relevant MFSA rulebooks)
NAIF	• AIFM • Intermediaries (if appointed)	• Professional clients • Qualifying investors
PIF	• PIF (if self - managed) • Investment manager (if appointed) • Intermediaries (if appointed)	• Qualifying investors
NPIF	• AIFM • Intermediaries (if appointed)	• Professional clients • Qualifying investors

The CISs referred to above may be marketed subject to, and in accordance with, applicable laws and regulation. Even though intermediaries may be appointed to undertake marketing, responsibility for same is vested in the manager, which then delegates this to intermediaries.

Law stated - 6 May 2025

Ownership restrictions

27 | Do investor-protection rules restrict ownership in non-retail funds to certain classes of investor?

Non-retail funds may only be subscribed to by professional clients (as defined under MiFID) or qualifying investors (as is defined under the relevant MFSA rulebooks).

Law stated - 6 May 2025

Managers and operators

28 | Are there any special requirements that apply to managers or operators of non-retail funds?

The requirements that apply to managers or operators of non-retail funds stem from the ISA, the subsidiary legislation issued thereunder and the relevant MFSA rulebooks. While the local regime regulating the management and operation of AIFs largely mirrors the AIFMD framework, the NAIF regime imposes 'special' requirements on the NAIF's AIFM. Such requirements feature in the NAIF Regulations and Part B of the MFSA's Investment Services Rules for NAIFs. No special or additional requirements apply to managers or operators of PIFs; rather, considering that the PIF is a local, non-EU harmonised product, the legal and regulatory framework applicable to managers or operators of PIFs is generally more flexible.

Law stated - 6 May 2025

Tax treatment

29 | What is the tax treatment of non-retail funds? Are any exemptions available?

Maltese tax legislation does not distinguish between retail and professional investment funds. The key distinction that determines the Maltese tax treatment of a fund is whether the collective investment scheme is classified as a prescribed or non-prescribed fund.

A fund (or a sub-fund if the scheme is divided into sub-funds) is treated as a prescribed fund if:

- it is a CIS fund formed in accordance with the laws of Malta;

- the value of its assets situated in Malta amounts to at least 85 per cent of the value of the total assets of the fund; and
- it has so declared in writing to the Commissioner for Revenue.

Maltese funds that do not have such an exposure to Maltese assets and have made a declaration to that effect are classified as non-prescribed funds.

A non-prescribed fund is exempt from Maltese income tax on any income and capital gains, other than income derived from immovable property situated in Malta. A prescribed fund is also exempt from tax in Malta except for income derived from immovable property situated in Malta, bank interest (which is subject to a 15 per cent withholding tax) and other types of investment income (which are subject to a withholding tax of 10 per cent).

Any income or capital gains derived by non-resident investors from a Maltese fund are not subject to any withholding tax so long as they are not owned and controlled by, directly or indirectly, nor act on behalf of, an individual who is ordinarily resident and domiciled in Malta.

Distributions made to recipients who are resident individuals or persons owned and controlled by, directly or indirectly, or acting on behalf of individuals ordinarily resident and domiciled in Malta out of untaxed profits are subject to a 15 per cent withholding tax.

Law stated - 6 May 2025

Asset protection

30 Must the portfolio of assets of a non-retail fund be held by a separate local custodian? What regulations are in place to protect the fund's assets?

AIFs and NAIFs established in Malta are required to entrust the safekeeping of their assets to a custodian, which must, among others, have an established place of business in Malta and be in possession of an investment services licence issued in its favour by the MFSA. Such local presence and authorisation requirements do not apply in the context of a non-EU AIF managed by a Maltese AIFM, in which case the custodian may be established in Malta or in the third country where the non-EU AIF is established. While PIFs and NPIFs are also subject to asset protection rules, the nature and extent of such rules differ from those applicable to AIFs and NAIFs.

The primary sources of local legislation and regulation in this regard are the Investment Schemes Act (Custodians of Collective Investment Schemes) Regulations (Subsidiary Legislation 370.32, Laws of Malta) and the MFSA's Part BIV: Standard Licence Conditions applicable to Investment Services Licence Holders which qualify as Depositaries.

Law stated - 6 May 2025

Governance

31

What are the main governance requirements for a non-retail fund formed in your jurisdiction (registration, record-keeping, filings, officers)?

The general governance requirements common to non-retail funds, among others, include the following.

Registration and authorisation

This includes the filing of the memorandum and articles of association with the Malta Business Registry (MBR), together with supporting documentation as required by the Companies Act. The information provided to the MBR upon incorporation is to be kept updated, in the event of any changes to the corporate structure or the constitutional documents. For a fund to operate in Malta it must have a licence issued by the MFSA under the terms of the ISA.

Corporate governance

A non-retail fund established in Malta is required to implement a robust corporate governance structure. The governing body is legally bound to promote the best interest of the fund and its investors and is responsible for the good governance of the fund, its proper administration and management, as well as for the general supervision of its affairs.

As authorised entities, non-retail funds are expected to endeavour to adhere to the MFSA's Corporate Governance Code, on a 'best-effort basis' and in a manner that is commensurate with the nature, size, and complexity of the fund. The Corporate Governance Code provides a list of guiding principles that are designed to enhance the existing legal, institutional and regulatory framework for good governance.

Officers and service providers

Officers and service providers include the appointment of a company secretary, a compliance officer and a money laundering reporting officer. Depending on the nature of the fund in question, a CIS may, and in certain cases is required to, appoint a number of service providers, including an investment manager, investment adviser, fund administrator, registrar and transfer agent, and a custodian or prime broker, as applicable.

Record-keeping

Non-retail funds established in Malta are subject to numerous record-keeping obligations that stem from distinct pieces of local legislation and regulation.

Law stated - 6 May 2025

Reporting

32 What are the periodic reporting requirements for non-retail funds?

Non-retails funds established in Malta are subject to various external reporting requirements. Below is a non-exhaustive summary of the main reporting requirements applicable to non-retail funds in Malta.

Reporting requirement	**Reportable to**
Annual return	MBR
Beneficial ownership information	MBR
Audited financial statements	MBR, MFSA and tax authorities
Annual fund return	MFSA
Central Bank of Malta returns	MFSA
Income tax return	Tax authorities
Value added tax return	Tax authorities
Anti - money laundering and counter - terrorist financing risk evaluation questionnaire	Financial Intelligence Analysis Unit

The service providers of non-retail funds established in Malta are also subject to separate periodic reporting requirements, including, without limitation, in terms of the AIFMD.

Law stated - 6 May 2025

SEPARATELY MANAGED ACCOUNTS

Structure

33 How are separately managed accounts (ie, accounts through which investor funds are segregated – not pooled – and the investor owns the underlying assets, which are managed at the investment manager's discretion) typically structured in your jurisdiction?

In a managed account relationship, the client appoints a licensed portfolio management company to hold the client's assets in a designated segregated management account, which is subject to discretionary portfolio management. Thus, the portfolio management company is granted discretion to acquire and dispose of assets in the account subject to, and in accordance with, applicable laws and regulation.

Law stated - 6 May 2025

Key legal issues

34 What are the key legal issues (eg, standard of care, indemnification) to be determined when structuring a separately managed account?

The functions, powers and duties of the portfolio manager and the client, establishment and operation of the managed account, client classification, assets' valuation policy, transparency and record-keeping requirements, fee structure (including the regulation of inducements), confidentiality, data protection, liability, investor compensation scheme coverage and complaints handling policies and procedures are among the key legal and regulatory considerations to be analysed when structuring a separately managed account. Such matters are generally formalised and documented in the form of a written agreement that is entered into by the portfolio manager and the client.

Law stated - 6 May 2025

Regulation

35 Is the management or marketing of separately managed accounts regulated in your jurisdiction? (If so, how does this operate? Is this the same regime for fund management?)

The provision of portfolio management services is regulated under the terms of the Investment Services Act (the ISA), the subsidiary legislation issued thereunder and the relevant Malta Financial Services Authority (MFSA) rulebooks. Subject to certain exemptions provided for under the Investment Services Act (Exemption) Regulations (Subsidiary Legislation 370
.02, Laws of Malta), no natural or legal person may provide, or hold itself out as providing, the service of investment management in respect of the financial instruments listed in the Second Schedule to the ISA, in or from Malta, unless in possession of a valid investment services licence.

While local discretionary portfolio managers and investment managers of alternative investment funds, notified alternative investment funds and professional investor funds are required, subject to the applicability of any exemption, to obtain the same category of investment services licence from the MFSA to provide the desired management services, the legal and regulatory framework applicable to each would be dependent on the nature and extent of investment services in respect of which authorisation is sought.

Law stated - 6 May 2025

GENERAL

Proposed reforms

36 Are there proposals for further regulation of funds, fund managers or marketers of funds in your jurisdiction?

Malta is currently in the process of implementing legislative and regulatory enhancements impacting the local financial services sector; while a number of such changes are directly targeted at the asset management industry, others affect the industry indirectly.

In its 2025 Supervisory Priorities, the Malta Financial Services Authority (MFSA) emphasised key areas relevant to fund operations and management:

- governance, risk, and compliance: strengthening the governance structures and compliance frameworks of supervised entities.
- sustainable finance: encouraging the integration of environmental, social, and governance (ESG) considerations into investment processes.
- digital finance: adapting to technological advancements and ensuring the digital resilience of financial services.
- financial crime compliance: enhancing measures to prevent money laundering and terrorist financing.
- consumer protection and education: promoting transparency and safeguarding investor interests.

These priorities reflect the MFSA's commitment to aligning with EU strategic objectives and international standards.

The MFSA has launched two new initiatives under the Investment Services Act (ISA) to broaden the options for non-retail collective investment schemes (CISs) and support ongoing innovation in asset management:

- Special Limited Partnership Funds (SLPFs): a new CIS structure introduced as a limited partnership without separate legal personality. The SLPF offers an alternative to existing limited partnership models and will be regulated by the MFSA.
- Self-Managed Notified Professional Investor Funds (NPIFs): the NPIF regime has been extended to allow for self-managed structures, previously limited to externally managed funds. This update enhances flexibility while maintaining a streamlined regulatory approach.

During 2025, the MFSA will continue to assess the adequacy of the governance structures and the effectiveness of control functions, including compliance, risk management and anti-money laundering through onsite inspections and off-site supervisory engagements of investment firms.

Law stated - 6 May 2025

Public listing

37 Outline any specific requirements for stock-exchange listing of retail and non-retail funds.

In addition to abiding by the legal and regulatory framework applicable to the particular CIS, retail and non-retail funds that intend to admit their securities to trading or listing on a regulated market would be required to comply with any additional requirements imposed by the relevant regulated market. By way of example, a CIS that intends to list its securities on the Malta Stock Exchange would also be required to comply with the dedicated chapter of the Listing Rules applicable to CISs issued by the MFSA as listing authority under the Financial Markets Act (Chapter 345, Laws of Malta).

Law stated - 6 May 2025

Overseas vehicles

38 | Is it possible to redomicile an overseas vehicle in your jurisdiction?

Yes; the ISA and the Directive (EU) 2019/2121 (the "Mobility Directive") permit the migration or re-domiciliation of funds in the form of a body corporate into and out of Malta. In those instances in which a company wishes to continue into or out of Malta from or to an EU/EEA member state that has not, as yet, transposed the Mobility Directive it would be possible to carry out the continuation process in terms of the Continuation of Companies Regulations (Subsidiary Legislation 386.05, Laws of Malta).

Law stated - 6 May 2025

Foreign investment

39 | Are there any special rules relating to the ability of foreign investors to invest in funds established or managed in your jurisdiction or domestic investors to invest in funds established or managed abroad?

Other than the applicable marketing restrictions, there are no special statutory restrictions in this regard. That said, the ability of foreign investors to invest in domestic funds may be limited by the applicable fund regulations.

Law stated - 6 May 2025

Funds investing in derivatives

40 | Are there any special requirements in your jurisdiction relating to funds investing in derivatives?

None other than those in respect of retail investment funds.

Law stated - 6 May 2025

UPDATE AND TRENDS

Recent developments

41 Are there any other current developments or emerging trends in your jurisdiction that should be noted? Please include reference to world-wide regulatory concerns, such as restrictions on foreign ownership in strategic industries, high-frequency trading, commodity position limits, capital adequacy for investment firms and 'shadow banking'.

In 2025, Malta is expected to align with EU policies that aim to protect critical sectors from foreign control, reflecting the global trend of increasing scrutiny and regulation regarding foreign ownership in strategic industries such as technology and infrastructure. Regulatory bodies worldwide are focusing on the implication of high frequency trading (HFT), including market stability and fairness, and Malta is likely to adopt similar measures to ensure that HFT practices do not undermine market integrity.

The regulation of commodity position limits continues to be a significant concern globally, and Malta is expected to implement stricter controls to prevent market manipulation and ensure transparency in commodity trading. Ensuring that investment firms maintain adequate capital levels to withstand financial shocks remains a priority, and Malta will continue to enforce stringent capital adequacy requirements in line with international standards.

Additionally, the regulation of shadow banking activities, which operate outside traditional banking regulations, is a growing concern and Malta is expected to enhance its oversight and regulatory framework to mitigate risks associated with shadow banking.

Law stated - 6 May 2025

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FUND MANAGEMENT REGULATION

Regulatory framework and authorities

1 How (in very general terms) is fund management regulated in your jurisdiction? Which authorities have primary responsibility for regulating funds, fund managers and those marketing funds?

Activity involving the management, investment and marketing of funds is mainly regulated by the relevant European regulations and by:

- the Asset Management Regime (AMR) enacted by Decree-Law No. 27/2023 of 28 April 2023, which implements and consolidates into one framework Directive 2009/65/EC on undertakings for collective investment in transferable securities (UCITS) (the UCITS Directive), and Directive 2011/61/EU on alternative investment fund managers (AIFMD), as amended from time to time;
- the Portuguese Securities Market Commission (CMVM) Regulation No. 7/2023- , which sets forth more specific rules regarding certain aspects of the AMR (CMVM Regulation); and
- the Portuguese Securities Code, enacted by Decree-Law No. 486/99 of 13 November 1999, as amended from time to time, which entered into force on 1 March 2000.

CMVM is the regulatory body for investment funds and fund managers.

Law stated - 31 May 2025

Fund administration

2 Is fund administration (support services provided to funds such as book-keeping, preparing reports, trade settlement, etc) regulated in your jurisdiction?

Fund administration activities, when not directly carried out by the fund managers, are generally undertaken by a depositary and are subject to specific legal provisions, including the duty of care, outsourcing and liability of the parties involved. In particular, the outsourcing of decision powers regarding the investment of the fund may only be carried out in relation to other fund managers or entities authorised to take up discretionary portfolio management, except for alternative investment funds targeting professional investors only, subject to specific authorisation by CMVM.

Furthermore, some support services, depending on their specific scope, may be deemed investment services or activities, or ancillary services, thus subject to authorisation by CMVM.

Law stated - 31 May 2025

Authorisation

3 What is the authorisation or licensing process for funds? What are the key requirements that apply to managers and operators of investment funds in your jurisdiction?

CMVM authorises the setting up of funds or proceeds to their registration in the case of closed-end, externally managed and privately subscribed funds, as applicable. When requesting authorisation or registration, the relevant fund manager must provide CMVM with the fund's documentation (notably, the key investor information document and the full prospectus of the fund or the fund's management regulations).

In addition, CMVM must also be given information on:

- the depositary of the fund (except for funds targeting professional investors only, which are managed by below-AIFMD thresholds fund managers, who are not required to appoint a depositary);
- the distributors or entities that will market the fund; and
- any other entities that will render services to the fund or fund manager.

Documents corroborating the acceptance of the services rendered by all entities involved in the fund's activities must also be delivered to CMVM.

Authorisation, whenever applicable, is issued within:

1. three months, extendable for one additional month by decision of CMVM, in the case of the incorporation of a self-managed collective investment company above AIFMD thresholds;
2. 30 days, in the case of the incorporation of a self-managed collective investment company below AIFMD thresholds; and
3. 15 days for the remaining funds, as from the date the file is deemed complete by CMVM.

If, at the end of the relevant period, the applicants have not yet been notified of the success of their application, they may resort to administrative procedure means and, in the case of item (3) above, the authorisation is considered to have been tacitly granted.

CMVM may refuse to grant authorisation if the applicant does not submit the required documentation or the fund manager in question engages in irregular management of other investment funds.

Once authorisation is granted, a fund will be fully set up from the moment the first subscription is settled in the case of funds; or from the date the by-laws are registered with the Commercial Companies Registry Office in the case of collective investment companies.

Privately subscribed alternative investment funds (AIFs) under contractual form or under company form but externally managed, as well as the respective subfunds, are merely subject to prior notice to the CMVM, being the registration typically granted by the regulator within a couple of days.

Law stated - 31 May 2025

Territorial scope of regulation

4 What is the territorial scope of fund regulation? Can an overseas manager perform management activities or provide services to clients in your jurisdiction without authorisation?

No. For fund managers to provide their services in Portugal they will need to be incorporated in Portugal or have an establishment opened herein or resort to the passport regime – notably, the freedom of services or the freedom of establishment under the UCITS Directive or the AIFMD.

Law stated - 31 May 2025

Acquisitions

5 Is the acquisition of a controlling or non-controlling stake in a fund manager in your jurisdiction subject to prior authorisation by the regulator? (Restrict your answers to the regulator with responsibility for oversight of fund management. Do not answer with respect to other agencies, such as the merger control authorities.)

In the case of fund managers authorised to manage UCITS, the AMR establishes that any entity or legal person wishing to acquire or raise a qualifying shareholding in a fund manager, to the extent that it surpasses the 10, 20, 33 or 50 per cent share capital thresholds, or if the fund manager becomes a subsidiary of the acquirer, will have to file a prior application with CMVM. If the fund manager is not authorised to manage UCITS, it must immediately notify CMVM of any change to the qualifying shareholding structure.

In the case of fund managers authorised to manage AIF, all changes in respect of qualifying shareholdings are filed with CMVM immediately, after such change.

Law stated - 31 May 2025

Restrictions on compensation and profit sharing

6 Are there any regulatory restrictions on the structuring of the fund manager's compensation and profit-sharing arrangements?

Article 68 of the AMR establishes that the fund manager is remunerated through a management fee, which may comprise a variable component calculated in accordance with the performance of the fund. The fixed or variable components of the management fee and its calculation methods must be clearly stipulated in the fund's constitutional documents.

The variable component of the management fee of open-ended funds:

- is proportional to the effective investment performance of the fund;
- depends on the valuation of the fund's assets;
- is calculated over periods of at least 12 months; and

- is set as a percentage of the positive difference in the valuation of the fund's assets in relation to the benchmark.

The variable component of the management commission may be its exclusive component.

Charging of the variable management commission depends on the increase in the value of the assets of the open-ended fund above that of the benchmark.

The collection of the variable component of the management commission may only take place after the effective quantification of the respective amount.

The instruments of incorporation of the fund shall identify the variable component of the management commission, the benchmark, the calculation method and the collection date.

Law stated - 31 May 2025

FUND MARKETING

Authorisation

7 | Does the marketing of investment funds in your jurisdiction require authorisation?

Yes. The marketing or distribution of funds is defined as the offer or placement of units or shares of a fund made directly or indirectly at the initiative of the management company or on its behalf.

The entities that are legally permitted to market funds are:

- fund managers, which may be represented by tied agents subject to the regime established in the Portuguese Securities Code;
- depositaries;
- financial intermediaries registered or authorised by the Portuguese Securities Market Commission (CMVM) to perform the relevant activities, namely those of placement (with or without guarantee) or the reception and transmission of orders on behalf of third parties; and
- other entities, as foreseen in CMVM regulations and subject to authorisation. As regards fund marketing, such entities must observe the same rules and are subject to the same supervision as that exercised over financial intermediaries.

Law stated - 31 May 2025

8 | What marketing activities require authorisation?

The AMR encompasses a narrower concept of marketing than the previous legal regime. Nevertheless, actively seeking investors and promoting the subscription of funds or directly assisting investors throughout the subscription process are usually deemed regulated activities.

Conversely, the mere referral of investors and the general presentation of the fund to potential investors or of the latter to a management company, without further steps being taken, is not considered a regulated activity.

Law stated - 31 May 2025

Territorial scope and restrictions

9 What is the territorial scope of your regulation? May an overseas entity perform fund marketing activities in your jurisdiction without authorisation?

No. Entities permitted to perform fund marketing activities in Portugal must be incorporated in Portugal or resort to the passport regime – notably, the freedom of services or establishment under Directive 2009/65/EC on undertakings for collective investment in transferable securities (UCITS), Directive 2011/61/EU on alternative investment fund managers or Directive 2014/65/EU on markets in financial instruments.

Law stated - 31 May 2025

10 If a local entity must be involved in the fund marketing process, how is this rule satisfied in practice?

There is no need to have a local entity involved, provided that the foreign marketing entity has a proper licence (eg, under the passport regime).

Law stated - 31 May 2025

Commission payments

11 What restrictions are there on intermediaries earning commission payments in relation to their marketing activities in your jurisdiction?

The conditions according to which fund marketing is rewarded should be defined in the marketing contract. It is admissible for the marketing agent to be paid through the total or partial amount of the subscription, redemption or transfer commission, provided that this option is foreseen in the constitutional documents of the funds.

Additionally, the marketing agent may be paid by the fund manager by splitting the management fee charged by the latter to the fund.

Law stated - 31 May 2025

RETAIL FUNDS

Available vehicles

12 What are the main legal vehicles used to set up a retail fund? How are they formed?

Despite the fact that the concept of a retail fund is not entirely applicable under Portuguese law, we use the term 'retail fund' here to refer to the Portuguese legal concept of undertakings for collective investment in transferable securities (UCITS), which are aimed at investing capital obtained from the public and are subject to a risk-sharing principle and the pursuit of the relevant participants' interest.

Alternative investment funds (AIFs), if publicly distributed, can to a certain degree be assimilated into the retail fund concept. Nonetheless, being subject to a specific framework and their regulation not yet being fully harmonised throughout the European Union hampers their qualification as retail funds.

A retail fund may take one of the following two forms or structures, both subject to the licensing procedures:

- a contractual structure with no legal personality. This is the classic structure and requires that the fund be managed by a separate fund manager. The investors' or participants' interests in these funds are called units; or
- a collective investment company endowed with legal personality. The incorporation of such entities is subject to the Portuguese Securities Market Commission's (CMVM) authorisation. They can be self-managed, in which case a minimum initial capital of €300,000 will be required, or managed by an appointed third party (ie, a duly authorised investment fund manager), in which case a minimum initial capital of €50,000 will be required. Participants in the collective investment company will hold shares.

Law stated - 31 May 2025

Laws and regulations

13 What are the key laws and other sets of rules (regulatory and self-regulatory) that govern retail funds?

These include:

- the Asset Management Regime (AMR) enacted by Decree-Law No. 27/2023 of 28 April 2023 that implements and consolidates into one framework Directive 2009/65/EC on undertakings for collective investment in transferable securities (the UCITS Directive), and Directive 2011/61/EU on alternative investment fund managers (AIFMD), as amended from time to time;
- the Portuguese Securities Market Commission (CMVM) Regulation No. 7/2023- , which sets forth more specific rules regarding certain aspects of the AMR (CMVM Regulation); and
- the Portuguese Securities Code, enacted by Decree-Law No. 486/99 of 13 November 1999, as amended from time to time, which entered into force on 1 March 2000.

CMVM authorises or registers the setting up of funds.

Law stated - 31 May 2025

Authorisation

14 Must retail funds be authorised or licensed to be established or marketed in your jurisdiction?

Yes.

Law stated - 31 May 2025

Marketing

15 Who can market retail funds? To whom can they be marketed?

The following can market retail funds:

- fund managers, which may be represented by tied agents subject to the regime established in the Portuguese Securities Code;
- depositaries;
- financial intermediaries registered or authorised by CMVM to perform the relevant activities, namely those of placement (with or without guarantee) or the reception and transmission of orders on behalf of third parties; and
- other entities, as foreseen in CMVM regulations and subject to its authorisation. As regards fund marketing, such entities must observe the same rules and are subject to the same supervision as that exercised over financial intermediaries.

There are no limitations as to whom retail funds may be marketed. Both natural and legal persons can invest in the units or shares of a retail fund.

Law stated - 31 May 2025

Managers and operators

16 Are there any special requirements that apply to managers or operators of retail funds?

Yes. The UCITS fund managers will need to abide by the UCITS Directive framework as implemented in Portugal by the AMR.

Law stated - 31 May 2025

Investment and borrowing restrictions

17 What are the investment and borrowing restrictions on retail funds?

The following investment limits apply to retail funds in relation to issuing entities:

1. no more than 10 per cent of a fund's global net value may be invested in securities and money market instruments of the same issuer;
2. no more than 20 per cent of a fund's global net value may be invested in deposits with the same entity;
3. exposure to a single counterparty in transactions involving derivatives outside a regulated market cannot exceed 5 per cent of the fund's global net value, or 10 per cent if the counterparty is a bank; and
4. the sum of the investments made in securities and money market instruments from the same issuer exceeding 5 per cent cannot exceed 40 per cent of a fund's global net value. This limit does not apply to deposits or transactions on derivatives performed over the counter where the fund's counterparty is an entity subject to prudential supervision.

There are a number of exceptions to these limits. For example, limit (1) rises to 35 per cent where:

- the issuer is an EU member state or one of its local or regional authorities;
- the issuer is a non-EU member state or an international organisation with at least one EU member state as a member; or
- one of these entities guarantees the securities or money market instruments.

Limits (1) and (4) rise to 25 and 80 per cent, respectively, if the investment is in covered bonds issued by a credit institution from an EU member state. However, such covered bond issuances must be backed by underlying assets that fully secure the amount due and any interest payment if the issuer defaults.

No more than 20 per cent of a fund's global net value can be invested with a single entity.

A fund can invest up to 100 per cent of its global net value in securities or money market instruments issued or guaranteed by an EU member state or its local or regional authorities, or by public international entities related to a member state or a third state, provided that the investment is made across six separate issues and the value invested in each issue never exceeds 30 per cent of the global net value of the fund.

No more than 20 per cent of a fund's global net value can be invested in securities and money market instruments of issuers belonging to the same corporate group.

The following borrowing restrictions apply:

- management companies may obtain loans on behalf of the funds they manage. Within a one-year period, the sum of all loan periods cannot exceed 120 days, consecutive or interpolated, and up to 10 per cent of the fund's global net value;
- collective investment companies may enter into loan facilities to acquire immovable assets indispensable to the direct exercise of their activities, in up to 10 per cent of the global net value of the fund; and
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if the incorporation documents of a collective investment company provide for the possibility of entering into loan facilities, the amounts specified cannot exceed 15 per cent of the fund's global net value.

Law stated - 31 May 2025

Tax treatment

18 | What is the tax treatment of retail funds? Are exemptions available?

Retail funds are subject to corporate income tax (CIT) at the general corporate tax rate (currently set at 21 per cent). No municipal tax or state surtax will apply.

The taxable income of retail funds corresponds to the net profit assessed in accordance with their respective accounting standards. However, investment income, rents and capital gains (except when sourced in a tax haven) are disregarded for profit assessment purposes; on the other hand, expenses related to this type of income (including funding costs), as well as non-deductible expenses under the CIT code, and income and expenses relative to management fees and other commission earned by retail funds, are also disregarded for profit assessment purposes.

The tax losses of these funds are entitled to be carried forward under the general terms. The income of retail funds is not subject to withholding tax.

Retail funds exclusively investing in money market instruments and bank deposits are subject to stamp duty calculated over their global net assets at the rate of 0.0025 per cent (per quarter), with the remaining retail funds subject to a 0.0125 per cent rate (per quarter).

However, at the investor level, income tax exemptions may be applicable to non-resident investors.

In this respect, income derived from retail funds, including capital gains resulting from the redemption of unit participations or their liquidation, will be exempt from income tax provided that:

- a maximum of 25 per cent of the share capital is not held, directly or indirectly, by Portuguese residents or by individuals resident in Portugal, except when the latter is resident in an EU member state or in a European Economic Area member state that is bound to cooperate with Portugal under an administrative cooperation arrangement in tax matters similar to the exchange of information schemes in relation to tax matters existing within the EU member states or in any country with which Portugal has a double tax treaty in force;
- proof of non-residence in Portugal is provided in due time;
- income is not paid or made available to accounts opened in the name of one or more accountholders acting on behalf of one or more unidentified third parties, unless the relevant beneficial owners of the income are identified; and
- investors are not domiciled in tax haven jurisdictions listed in Ministerial Order No. 150/2004 of 13 February 2004, as amended.

Non-residents that have failed to prove their non-residence on time may request a total or partial refund of the tax withheld during a two-year period (counted from the end of the year in which the event that generated the tax liability took place).

Moreover, income tax exemptions may be applicable to non-resident investors regarding retail funds that mainly invest in movable assets, or a reduced withholding tax rate of 10 per cent may be applicable to non-resident investors regarding retail funds that mainly invest in real estate assets.

In this respect, income derived from retail funds, including capital gains resulting from redemption of units or their liquidation, will benefit from income tax exemption or a reduced withholding tax rate, as the case may be.

For the purposes of this regime, income derived from retail funds that mainly acquire real estate assets, including capital gains from the sale or redemption of such units or from the liquidation of such funds, will be classified as income derived from immovable property (as a rule, under a double tax treaty, the right to tax immovable property income is attributed to the source state).

Law stated - 31 May 2025

Asset protection

19 Must the portfolio of assets of a retail fund be held by a separate local custodian? What regulations are in place to protect the fund's assets?

The assets of a retail fund must be entrusted to a single depositary, which must be a certain type of financial institution.

A depositary must have at least €5 million in own funds and its registered office must be located in Portugal or in another EU member state, although in the latter case it must also have a branch in Portugal. A fund must have different entities as fund manager and as depositary. A depositary can also be an investment company authorised to provide registration and deposit of financial instruments services, subject to compliance with the own funds requirements set out in the EU legislation and to possessing an adequate internal structure for such activity.

The depositary, like the management company, must act independently and exclusively in the interest of the fund's investors. It has three main responsibilities:

- the safekeeping of the fund's assets;
- carrying out acts related to the transfer or exercise of the rights over the assets, as instructed by the fund manager, as well as the payment to the investors of the proceeds of the redemption or liquidation of the assets; and
- monitoring and guaranteeing to investors that the investment policy, the use of proceeds and the calculation of the value of the units of the fund comply with the law, regulations and constitutive documents of the fund.

The depositary is responsible, under the general rules of civil liability, to the fund manager and the investors for compliance with the legal duties, regulations and constitutive documents of the fund, and for the loss of the financial instruments under its safekeeping.

Law stated - 31 May 2025

Governance

20 What are the main governance requirements for a retail fund formed in your jurisdiction (registration, record-keeping, filings, officers)?

The retail fund must be managed by a licensed fund manager and will have a board of directors or senior management comprising at least two members.

Moreover, the fund manager must also have an audit board comprising at least three members and a sole auditor, or it may have only a sole auditor depending on the supervision structure adopted by the fund manager.

The members of the fund manager's board of directors and audit board must be assessed by CMVM during the authorisation procedure of the fund manager, whenever the composition of the corporate bodies is changed or whenever CMVM becomes aware of supervening facts that may have an impact on the assessment previously made.

Furthermore, the fund manager must have several internal policies in place aimed at addressing the following:

- the risk of its activity;
- remuneration issues;
- outsourcing;
- internal control;
- evaluation of the assets pertaining to the funds under management;
- anti-money laundering;
- record-keeping; and
- selection of the members of the board of directors and audit board.

All of these are subject to the control of CMVM and, to a certain extent, of the depository.

Law stated - 31 May 2025

Reporting

21 What are the periodic reporting requirements for retail funds?

The fund manager must prepare and publish annual and biannual accounts. These must be made available free of charge on request by investors.

The marketing entity must send or make available to investors a statement informing them of the number of units held by the investor in question and their value and the aggregate value of the investment. In addition to this information, the marketing entity may provide further information regarding the investor's financial situation. For example, if the marketing entity is a bank and the investor is a client of that bank, it might provide the above information together with the investor's bank statement.

Any information published pursuant to the requirements set out below is available to investors, usually on CMVM's website. Moreover, the fund manager must publish and send the following to CMVM:

- the annual accounts within four months of the end of the financial year;
- the biannual accounts within two months of the end of the relevant semester; and
- an inventory of the fund's asset portfolio, its global net value, any responsibilities not found in the balance sheet and the number of units currently in circulation, on a monthly basis.

Lastly, the fund manager needs to provide CMVM with continuous regulatory reports on its activities and the funds under management, in accordance with CMVM's regulations.

Law stated - 31 May 2025

Issue, transfer and redemption of interests

22 Can the manager or operator place any restrictions on the issue, transfer and redemption of interests in retail funds?

There are generally no restrictions placed on the issue, transfer or redemption of interests in retail funds. However, considering that the AMR does not expressly forbid the establishment of such restrictions in the fund's prospectus, it is possible to set certain specific conditions in respect of the issuance, transfer and redemption of the aforementioned interests.

Moreover, pursuant to special circumstances, including liquidity shortage and if the interest of the investors so justifies, the subscription or redemption of interests in the fund may be suspended following a decision of the fund manager in accordance with CMVM regulations.

Law stated - 31 May 2025

NON-RETAIL POOLED FUNDS

Available vehicles

23 What are the main legal vehicles used to set up a non-retail fund? How are they formed?

A non-retail pooled fund may take one of the following two forms or structures:

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a contractual structure with no legal personality. This is the classic structure and requires that the fund be managed by a separate fund manager. The investors' or participants' interests in these funds are called units; or

- a collective investment company endowed with legal personality. The incorporation of such entities is subject to the Portuguese Securities Market Commission's (CMVM) authorisation or registration, as applicable. They can be self-managed, in which case a minimum initial capital of €300,000 will be required, or managed by an appointed third party (ie, a duly authorised investment fund manager), in which case a minimum initial capital of €50,000 will be required. Participants in the collective investment company will hold shares.

Law stated - 31 May 2025

Laws and regulations

24 What are the key laws and other sets of rules (regulatory and self-regulatory) that govern non-retail funds?

The Asset Management Regime (AMR) enacted by Decree-Law No. 27/2023 of 28 April 2023, which implements and consolidates into one framework Directive 2009/65/EC on undertakings for collective investment in transferable securities (UCITS) (the UCITS Directive), and Directive 2011/61/EU on alternative investment fund managers (AIFMD), as amended from time to time.

The Portuguese Securities Market Commission (CMVM) Regulation No. 7/2023, which sets forth more specific rules regarding certain aspects of the AMR (CMVM Regulation).

The Portuguese Securities Code, enacted by Decree-Law No. 486/99 of 13 November 1999, as amended from time to time, which entered into force on 1 March 2000 CMVM – Código dos Valores Mobiliários.

Law stated - 31 May 2025

Authorisation

25 Must non-retail funds be authorised or licensed to be established or marketed in your jurisdiction?

This varies, depending on the type of non-retail fund at stake.

Privately subscribed alternative investment funds (AIFs) under contractual form or under company form but externally managed, as well as the respective subfunds, are merely subject to prior notice to the CMVM, being the registration typically granted by the regulator within a couple of days.

As to the remaining cases, authorisation is issued within:

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three months, extendable for one additional month by decision of CMVM, in the case of the incorporation of a self-managed collective investment company above AIFMD thresholds;

- 30 days, in the case of the incorporation of a self-managed collective investment company below AIFMD thresholds; and
- 15 days for the remaining types of funds, as from the date the file is deemed complete by CMVM.

Law stated - 31 May 2025

Marketing

26 | Who can market non-retail funds? To whom can they be marketed?

Those who can market non-retail funds are:

- fund managers, which may be also represented by tied agents subject to the regime established in the Portuguese Securities Code;
- depositaries;
- financial intermediaries registered or authorised by CMVM to perform the relevant activities, namely those of placement (with or without guarantee) or the reception and transmission of orders on behalf of third parties; and
- other entities, as foreseen in CMVM regulations and subject to its authorisation. As regards fund marketing, such entities must observe the same rules and are subject to the same supervision as that exercised over financial intermediaries.

There are no express limitations as to whom non-retail funds may be marketed. Both natural and legal persons, professional and non-professionals, can invest in the units or shares of a non-retail fund, subject to the selling restrictions established in the fund's constitutional documents.

Nevertheless, typically, non-retail funds target professional and affluent investors, but there are cases where this type of fund is sold to retail investors as well, provided that the latter are willing and capable of sustaining the lack of liquidity of the invest.

Law stated - 31 May 2025

Ownership restrictions

27 | Do investor-protection rules restrict ownership in non-retail funds to certain classes of investor?

No. However, the constitutional documents of the non-retail fund may establish that the fund will only be placed with professional investors or those of a certain class. In such cases, the distribution of the fund's units or shares must comply with this restriction.

Law stated - 31 May 2025

Managers and operators

28 Are there any special requirements that apply to managers or operators of non-retail funds?

The AMR establishes a framework similar to fund managers of retail and non-retail funds.

Therefore, the requirements applicable to the licensing and development of fund management are identical for the most part, save for a few provisions only applicable to fund managers managing certain types of funds, owing to their specific nature (eg, retail funds, venture capital funds or real estate funds).

Law stated - 31 May 2025

Tax treatment

29 What is the tax treatment of non-retail funds? Are any exemptions available?

Non-retail funds are subject to corporate income tax (CIT) at the general corporate tax rate (currently set at 21 per cent). No municipal tax or state surtax will apply.

The taxable income of non-retail funds corresponds to the net profit assessed in accordance with their respective accounting standards. However, investment income, rents and capital gains (except when sourced in a tax haven) are disregarded for profit assessment purposes; on the other hand, expenses related to this type of income (including funding costs), as well as non-deductible expenses under the CIT code, and income and expenses relative to management fees and other commission earned by non-retail funds, are also disregarded for profit assessment purposes.

The tax losses of these funds are entitled to be carried forward under the general terms. The income of non-retail funds is not subject to withholding tax.

Non-retail funds exclusively investing in money market instruments and bank deposits are subject to stamp duty calculated over their global net assets at the rate of 0.0025 per cent (per quarter), with the remaining non-retail funds subject to a 0.0125 per cent rate (per quarter).

However, at the investor level, income tax exemptions may be applicable to non-resident investors.

In this respect, income derived from non-retail funds, including capital gains resulting from the redemption of units or their liquidation, will be exempt from income tax provided that:

- a maximum of 25 per cent of the share capital is not held, directly or indirectly, by Portuguese residents or by individuals resident in Portugal, except when the latter is resident in an EU member state or in a European Economic Area member state that is bound to cooperate with Portugal under an administrative cooperation arrangement in tax matters similar to the exchange of information schemes in

relation to tax matters existing within the EU member states or in any country with which Portugal has a double tax treaty in force;

- proof of non-residence in Portugal is provided in due time;
- income is not paid or made available to accounts opened in the name of one or more account holders acting on behalf of one or more unidentified third parties, unless the relevant beneficial owners of the income are identified; and
- investors are not domiciled in tax haven jurisdictions listed in Ministerial Order No. 150/2004 of 13 February 2004, as amended.

Non-residents that have failed to prove their non-residence on time may request a total or partial refund of the tax withheld during a two-year period (counted from the end of the year in which the event that generated the tax liability took place).

Moreover, income tax exemptions may be applicable to non-resident investors regarding non-retail funds that mainly invest in movable assets, or a reduced withholding tax rate of 10 per cent may be applicable to non-resident investors regarding non-retail funds that mainly invest in real estate assets.

In this respect, income derived from non-retail funds, including capital gains resulting from redemption of units or their liquidation, will benefit from income tax exemption or a reduced withholding tax rate, as the case may be.

For the purposes of this regime, income derived from non-retail funds that mainly acquire real estate assets, including capital gains from the sale or redemption of such units or from the liquidation of such funds, are classified as income derived from immovable property (as a rule, under a double tax treaty, the right to tax immovable property income is attributed to the source state).

Law stated - 31 May 2025

Asset protection

30 Must the portfolio of assets of a non-retail fund be held by a separate local custodian? What regulations are in place to protect the fund's assets?

The assets of a retail fund must be entrusted to a single depositary, which must be a certain type of financial institution, except for funds targeting professional investors only that are managed by below-AIFMD thresholds fund managers, which are not required to appoint a depositary.

A depositary must have at least €5 million in own funds and its registered office must be located in Portugal or in another EU member state, although in the latter case it must also have a branch in Portugal. A fund must have different entities as fund manager and as depositary. A depositary can also be an investment company authorised to provide registration and deposit of financial instruments services, subject to compliance with the own funds requirements set out in the EU legislation and to possessing an adequate internal structure for such activity.

The depositary, like the management company, must act independently and exclusively in the interest of the fund's investors.

Law stated - 31 May 2025

Governance

31 What are the main governance requirements for a non-retail fund formed in your jurisdiction (registration, record-keeping, filings, officers)?

The retail fund must be managed by a licensed fund manager and will have a board of directors or senior management comprising at least two members.

Moreover, the fund manager must have an audit board comprising at least three members and a sole auditor, or it may have only a sole auditor depending on the supervision structure adopted by the fund manager.

The members of the fund manager's board of directors and audit board must be assessed by CMVM during the authorisation procedure of the fund manager whenever the composition of the corporate bodies is changed or whenever CMVM becomes aware of supervening facts that may have an impact on the assessment previously made. Below-AIFMD thresholds fund managers are subject to a light-touch regime in this regard.

Furthermore, the fund manager must have several internal policies in place aimed at addressing the following:

- the risk of its activity;
- remuneration issues (save for below-AIFMD thresholds fund managers);
- outsourcing;
- internal control;
- evaluation of the assets pertaining to the funds under management;
- anti-money laundering;
- record-keeping; and
- selection of the members of the board of directors and audit board.

All of these are subject to the control of CMVM and, to a certain extent, of the depositary.

Law stated - 31 May 2025

Reporting

32 What are the periodic reporting requirements for non-retail funds?

The fund manager must prepare and publish annual. These must be made available free of charge on request by investors.

The marketing entity must send or make available to investors a statement informing them of the number of units held by the investor in question and their value and the aggregate value of the investment. In addition to this information, the marketing entity may provide further information regarding the investor's financial situation. For example, if the marketing entity is a bank and the investor is a client of that bank, it might provide the above information together with the investor's bank statement.

Any information published pursuant to the requirements set out below is available to investors, usually on CMVM's website. Moreover, the fund manager must publish and send the following to CMVM:

- the annual accounts within five months of the end of the financial year;
- an inventory of the fund's asset portfolio, its global net value, any responsibilities not found in the balance sheet, and the number of units currently in circulation, on a monthly basis; and
- in the case of venture capital funds, the manager must disclose to unitholders, at least on an annual basis, the value of the units held by them and the portfolio of the fund.

Lastly, the fund manager needs to provide CMVM with continuous regulatory reports on its activities and the funds under management, in accordance with CMVM's regulations.

Law stated - 31 May 2025

SEPARATELY MANAGED ACCOUNTS

Structure

33 How are separately managed accounts (ie, accounts through which investor funds are segregated – not pooled – and the investor owns the underlying assets, which are managed at the investment manager's discretion) typically structured in your jurisdiction?

Separately managed accounts are not specifically regulated for under Portuguese law within the scope of the AMR's framework, but correspond to portfolio management activity under the second Markets in Financial Instruments Directive (MiFID II) framework.

The structure of separately managed accounts is set up in Portugal through a discretionary mandate agreement between the client and the portfolio manager (a financial intermediary duly licensed to develop such activity or a fund manager duly authorised to provide this service), pursuant to which the portfolio manager is obliged, in respect of the client, to carry out all actions necessary to increase the value of the portfolio and to exercise all rights inherent to the financial instruments comprised in the portfolio.

Law stated - 31 May 2025

Key legal issues

34

What are the key legal issues (eg, standard of care, indemnification) to be determined when structuring a separately managed account?

The portfolio managers are subject to the obligations arising from the Portuguese Security Code, which are also generally applicable to fund managers providing separately managed account services. Both must record and segregate the client's assets in different accounts or sub-accounts and abide by the regulatory standards established under MiFID II.

The portfolio manager is subject to a strict duty of diligence when acting on behalf of the client; the former is required to act in the sole interest of the latter.

The portfolio management agreement must be entered into between the relevant parties and must determine the level of discretion exercised by the portfolio manager. Nonetheless, the client always has the right to issue binding orders to the portfolio manager regarding the transaction to be carried out, unless the portfolio management agreement contains a guaranteed minimum return undertaking by the portfolio manager.

Finally, this type of agreement always leaves room for the parties to regulate their contractual relationship as they see fit, provided that the principles and obligations of the financial intermediaries are not breached.

Law stated - 31 May 2025

Regulation

35 Is the management or marketing of separately managed accounts regulated in your jurisdiction? (If so, how does this operate? Is this the same regime for fund management?)

Yes. The legal framework applicable to separately managed accounts is different from the AMR framework, because separately managed accounts are subject to the provisions of the Portuguese Securities Code and MiFID II delegated acts, being a tailor-made contractual arrangement, rather than corresponding to the management of a collective investment portfolio.

Law stated - 31 May 2025

GENERAL

Proposed reforms

36 Are there proposals for further regulation of funds, fund managers or marketers of funds in your jurisdiction?

The AMR entered into effect on 28 May 2023 and completely reshaped the legal and regulatory framework applicable to investment funds in Portugal by streamlining and reorganising the legal landscape.

The AMR regime was complemented by the publication of the CMVM Regulation, which entered into effect from 1 January 2024 and detailed the second-level rules applicable to investment funds. This piece of regulation is important and needs to be fully adopted by the fund managers and funds until 30 June 2024. Considering the recent legal amendments, it is expected that Portuguese legislation will halt the production of new legal acts for the time being to allow the market to fully incorporate the new legal regime in its activities.

Law stated - 31 May 2025

Public listing

37 | Outline any specific requirements for stock-exchange listing of retail and non-retail funds.

The listing of retail funds and opened-ended non-retail funds on a regulated market depends on the daily tradability of these funds being guaranteed in said market, and on the execution of a market-maker contract between the fund manager and the market maker.

The market-maker contract must guarantee that the market price of the units and shares does not significantly diverge from the value of the units and shares or, when applicable, from their indicative value.

The fund's constitutional documents may establish that the units and shares acquired in the regulated market cannot be redeemed, but in such cases a warning must be inserted in the fund's prospectus and in all advertising material. Notwithstanding this, if the market value of the units and shares diverges significantly from the calculated and disclosed value of the units and shares, investors have the right to redeem their units and shares acquired in the regulated market. The redemption procedure is set out in the fund's prospectus.

Moreover, the fund manager must disclose to the market manager any changes to:

- the value of the units and shares calculated in accordance with the fund's updated portfolio;
- the number of units and shares issued; and
- the assets contained in the fund's portfolio.

Regarding closed-ended non-retail funds, no specific requirements are established in the Portuguese legal framework, but if they have an indefinite term, the respective constitutional documents must provide for the admission to trading of its units or shares within a period of three years after the constitution.

Law stated - 31 May 2025

Overseas vehicles

38 | Is it possible to redomicile an overseas vehicle in your jurisdiction?

There is no specific provision on this matter in the AMR and, to date, the redomiciliation of an overseas vehicle in Portugal has not been considered by CMVM. It is possible that CMVM may come to consider this possibility in the future, but we anticipate that redomiciliation, in practical terms, could entail a proceeding with CMVM similar to that required in setting up a new vehicle in Portugal.

Law stated - 31 May 2025

Foreign investment

39 Are there any special rules relating to the ability of foreign investors to invest in funds established or managed in your jurisdiction or domestic investors to invest in funds established or managed abroad?

No.

Law stated - 31 May 2025

Funds investing in derivatives

40 Are there any special requirements in your jurisdiction relating to funds investing in derivatives?

The fund's documentation must clearly set out the terms and limitations under which the fund manager may resort to derivatives.

In the case of real estate funds, it is expressly provided that the investment in derivatives, other than the ones aiming at risk coverage, is subject to authorisation by CMVM.

Law stated - 31 May 2025

UPDATE AND TRENDS

Recent developments

41 Are there any other current developments or emerging trends in your jurisdiction that should be noted? Please include reference to world-wide regulatory concerns, such as restrictions on foreign ownership in strategic industries, high-frequency trading, commodity position limits, capital adequacy for investment firms and 'shadow banking'.

The recent Portuguese golden visa regime amendments had an impact on the Portuguese investment funds market.

As such, hereinafter, funds investing (directly or indirectly) in real estate are no longer eligible to obtain a golden visa. Indeed, the use of investment funds to obtain a golden visa is limited to the investment of at least €500,000 in shares or units of non-real estate investment funds that are set up under Portuguese law, whose maturity, at the time of the

investment, is at least five years and at least 60 per cent of the value of the investments is realised in commercial companies based in Portugal.

The local market is still trying to accommodate and interpret the scope of the legal amendments and the consequences at the level of the investment policies pursued by eligible funds, but it is likely that the real estate market will be impacted by such legal amendments.

Law stated - 31 May 2025

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Summary

SEPARATELY MANAGED ACCOUNTS

GENERAL

UPDATE AND TRENDS

FUND MANAGEMENT REGULATION

Regulatory framework and authorities

1 How (in very general terms) is fund management regulated in your jurisdiction? Which authorities have primary responsibility for regulating funds, fund managers and those marketing funds?

There are two main pieces of legislation in Spain regulating fund management:

- Law 22/2014, of 12 November, regulating venture capital firms, other closed-ended collective investment schemes and closed-ended collective investment scheme management companies (Law 22/2014); and
- Law 35/2003, of 4 November, on collective investment schemes (Law 35/2003) and its Regulation 1082/2012, of 13 July.

The National Securities Market Commission (CNMV) is the authority responsible for regulating funds, fund managers and those marketing funds.

Law stated - 29 April 2025

Fund administration

2 Is fund administration (support services provided to funds such as book-keeping, preparing reports, trade settlement, etc) regulated in your jurisdiction?

No. Fund administration activities, that is, supporting services not including the core activities of a management company, are not regulated *per se* in Spain. Fund managers can delegate such supporting activities to specialised entities that, in general terms, are not subject to any licence or previous authorisation by the CNMV.

However, entities performing the valuation function may under certain circumstances by subject to registration by the CNMV.

Law stated - 29 April 2025

Authorisation

3 What is the authorisation or licensing process for funds? What are the key requirements that apply to managers and operators of investment funds in your jurisdiction?

The authorisation process for funds varies depending on the specific vehicle to be established. The CNMV adopts two approaches, depending on the type of vehicle:

- registration; or
- authorisation.

Closed-ended vehicles subject to Law 22/2014 undergo a more straightforward simple registration process, according to which they must submit certain documents (management regulations, prospectus and key investor information documents) to the CNMV together with an application file to be registered.

Vehicles (mainly open-ended) subject to Law 35/2003 undergo an authorisation process during which the CNMV verifies whether the vehicle's features and documentation comply with the applicable legislation.

Managers of both open- and closed-ended vehicles are required to be authorised (either as a closed-ended investment manager under Law 22/2014 or as an open-ended investment fund manager under Law 35/2003) by the CNMV.

Requirements for the authorisation of fund managers are in line with those established in article 8 of Directive 2011/61/EC on Alternative Investment Fund Managers (AIFMD) and article 6 of Directive 2009/65/EC on undertakings for collective investment in transferable securities (UCITS). Spain has transposed AIFMD by means of Law 22/2014 (for closed-end funds and managers) and Law 35/2003 (which regulates both UCITS and open-ended alternative investment funds and managers).

In this sense, the CNMV will verify the fulfilment of the initial capital requirements, reputation and experience of the directors and shareholders, internal structure of the company, relevant experience of the employees, that the human and technical means of the manager are enough to perform the intended activities and any expected delegation agreements.

Law stated - 29 April 2025

Territorial scope of regulation

4 What is the territorial scope of fund regulation? Can an overseas manager perform management activities or provide services to clients in your jurisdiction without authorisation?

EU-authorised managers seeking to manage Spanish vehicles are permitted to do so on a passported basis or through the establishment of a branch, or under the free provision of services principle.

Non-EU managers seeking to operate in Spain would be required to:

- establish a branch in Spain; or
- set up a Spanish alternative investment fund manager.

Both procedures require a formal authorisation and registration process with the CNMV. The grant of authorisation in either case is subject to the CNMV's criteria and may be denied for prudential, state reciprocity principle, investor protection and other reasons.

Non-EU managers could also provide regulated services (such as investment advice or discretionary individual portfolio management of a fund's portfolio) in Spain at the initiative of a Spanish client.

Law stated - 29 April 2025

Acquisitions

5 Is the acquisition of a controlling or non-controlling stake in a fund manager in your jurisdiction subject to prior authorisation by the regulator? (Restrict your answers to the regulator with responsibility for oversight of fund management. Do not answer with respect to other agencies, such as the merger control authorities.)

The acquisition of a material direct or indirect stake in an open-ended manager that results in a shareholder reaching, exceeding or falling below 20, 30 or 50 per cent of its share capital is subject to the prior approval of the CNMV. Acquisitions below those percentages but reaching or exceeding 5 per cent shall be notified to the CNMV.

There is no prior clearance procedure with CNMV for the acquisition of a material stake in a closed-ended manager although any modifications of the capital structure in the company must be notified to the CNMV.

Law stated - 29 April 2025

Restrictions on compensation and profit sharing

6 Are there any regulatory restrictions on the structuring of the fund manager's compensation and profit-sharing arrangements?

Vehicles established under Law 35/2003 are subject to certain restrictions, that may vary depending on the type of vehicle and other circumstances, but in general are the following.

Financial funds:

- fee calculated only over the fund's assets: max 2.25 per cent annual;
- fee calculated only on a success basis: max 18 per cent annual;
- fee calculated on both the fund's assets and on a success basis: max 1.35 per cent annual on the fund's assets and 9 per cent annual on results;
- redemption and subscription fees (together): max 5 per cent over the net asset value (NAV) of the units; and
- depositary fee: 2 per cent annual over the fund's assets.

However, *fondos de inversión libre*, which are financial funds primarily with a hedge fund strategy, are not subject to fee restrictions although, if marketed to retail investors, are subject to the calculation rules established by Law 35/2003.

Real estate funds:

- fee calculated only over the fund's assets: max 4 per cent annual;
- fee calculated only on a success basis: max 10 per cent annual;
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fee calculated on both the fund's assets and on a success basis: max 1.5 per cent annual on the fund's assets and 5 per cent annual on results;

- redemption and subscription fee: max 5 per cent each over the NAV of the units; and
- depositary fee: 4 per cent over the fund's assets.

A performance benchmark period shall be established so that fees calculated on a success basis shall only be paid when a positive performance has been accumulated during such period (which shall cover at least the last five years of the fund on a rolling basis).

Vehicles established under Law 22/2014 are not subject to any restrictions with respect to compensation and profit sharing and will be bound by provisions established in their prospectuses and management regulations.

Law stated - 29 April 2025

FUND MARKETING

Authorisation

7 | Does the marketing of investment funds in your jurisdiction require authorisation?

Yes. Marketing of any financial instrument in Spain must be performed exclusively by management companies, credit entities or entities authorised to provide investment services in Spain as defined by Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments (MiFID) or tied-agents to any of such entities.

Also, funds must be registered or authorised (depending on the type of fund) by the CNMV prior to being marketed.

Law stated - 29 April 2025

8 | What marketing activities require authorisation?

Marketing must be understood as targeting clients through advertising activity for their contribution of funds, assets or rights to an investment vehicle in Spain.

In this sense, advertising includes any form of communication aimed at potential investors to promote, directly or through third parties acting on behalf of the investment vehicle or its management company, the subscription or acquisition of shares or units in the vehicle. There is advertising activity when the means used to address the public is through telephone calls, visits, personalised letters, emails or any other telematic means that are part of a dissemination, marketing or promotion campaign.

The campaign is carried out in Spain when it is aimed at investors residing in Spain. In the case of emails or other telematic means, it is presumed that the offer is addressed to investors residing in Spain when the investment vehicle or its management company, or any person acting on their behalf, proposes the purchase or subscription of shares

or units or provides residents in Spain with the information necessary to appreciate the characteristics of the issue or offer.

Any activity within the scope described above is subject to authorisation.

According to the CNMV criteria, no marketing activity takes place when an entity authorised to render the service of discretionary portfolio management subscribes units or shares of a non-registered alternative investment fund on behalf of its clients so long as no advertising activity is performed.

Pre-marketing

Spain has implemented Directive (EU) 2019/1160 regarding cross-border distribution of collective investment undertakings providing the conditions and notifications procedures for pre-marketing activities carried out across EU member states by, or on behalf of, EU management companies.

Pre-marketing is defined as:

> the provision of information or communication, direct or indirect, about investment strategies or investment ideas by a management company authorised in Spain […] to potential professional investors domiciled or registered in the Union […] in order to verify their interest in a collective investment undertaking or a compartment not yet established or already established but whose marketing has not yet been notified in the Member State in which the potential investors are domiciled or have their registered office, and that in each case it is not equivalent to an offer or placement to the potential investor to invest in the units or shares of such collective investment undertakings or compartment.

According to the Directive and Spanish legislation, pre-marketing activities are not subject to authorisation but rather to prior notification. However, pre-marketing activities are only allowed to target professional investors.

Also, premarketing activities may only be performed by management companies, credit entities or entities authorised to provide investment services in Spain as defined by MiFID.

Reverse solicitation

The concept of reverse solicitation is recognised in Spain in both Law 22/2014 and Law 35/2003.

In this sense, the CNMV in its guidance has established that it is difficult to defend a massive subscription by investors on a reverse solicitation basis. The CNMV also considers that it is more likely that the initiative comes from the investor in the case of online subscriptions.

Law stated - 29 April 2025

Territorial scope and restrictions

9 What is the territorial scope of your regulation? May an overseas entity perform fund marketing activities in your jurisdiction without authorisation?

No. Marketing activities in Spain can only be performed by the management company or any other authorised financial intermediary with whom a marketing agreement has been entered into. This includes tied agents of such entities, provided they are performing their duties on behalf of an entity authorised in Spain.

Cross-border marketing of EEA funds benefits from the passporting rights only when marketed to professional investors. Marketing to retail investors of an EEA fund is subject to a prior registration procedure before the CNMV. For alternative investment funds, the passport regime is only available for the 'over-the-threshold' or opt-in alternative investment fund managers.

For cross-border marketing of non-EEA funds to professional investors, in general terms, previous authorisation by the CNMV is required, provided that:

- appropriate cooperation arrangements are in place with the supervisory authority in the jurisdiction where the non-EEA fund is located; and
- the jurisdiction is not listed as a non-cooperative country by Financial Action Task Force.

A non-EU manager is not allowed to market a fund directly in Spain, even if the fund has been authorised by the CNMV, if the manager itself has not previously been authorised in Spain.

Law stated - 29 April 2025

10 If a local entity must be involved in the fund marketing process, how is this rule satisfied in practice?

Since marketing activities must be performed exclusively by entities authorised to perform their activities in Spain (whether local or not), to market a previously authorised alternative investment fund in Spain non-EU managers would need either to:

- enter into a distribution agreement with entities established and authorised in Spain (banks, managers) or EU entities operating in Spain under the free rendering of services or the permanent establishment regimes; or
- ask for a passport in Spain to market the fund directly.

Law stated - 29 April 2025

Commission payments

11 What restrictions are there on intermediaries earning commission payments in relation to their marketing activities in your jurisdiction?

No particular restrictions are applicable according to Spanish legislation. However, the inducement rules established by MiFID legislation must be followed.

Law stated - 29 April 2025

RETAIL FUNDS

Available vehicles

12 | What are the main legal vehicles used to set up a retail fund? How are they formed?

Undertakings for collective investment in transferable securities (UCITS) are usually established under the form of investment funds, which are open-ended structures.

Alternative investment funds are most typically established in the form of:

- Spanish venture capital funds (FCRs), which are closed-ended structures whose units are intended to be held by investors until maturity, generally subject to investing the main part of their assets in securities issued by unlisted companies (although they can also adopt a fund of funds investment policy); and
- Spanish hedge funds (FILs), which are both open- or, under certain circumstances, closed-ended vehicles that invest mainly in financial instruments without the typical restrictions of UCITS.

Real estate investment funds, European Long Term Investment Funds, European Venture Capital Funds and European Social Entrepreneurship Funds are also available.

Finally, Spanish real estate investment trusts (SOCIMIs), which have a structure similar to real estate investment trusts, are also available in Spain and are listed as companies.

These are all subject to prior registration or authorisation by the National Securities Market Commission (CNMV) depending on the regulatory regime.

Law stated - 29 April 2025

Laws and regulations

13 | What are the key laws and other sets of rules (regulatory and self-regulatory) that govern retail funds?

Retail funds are mainly subject to Law 22/2014 or Law 35/2003 (and their respective regulations), depending on whether they are open- or closed-ended funds.

Law stated - 29 April 2025

Authorisation

14 |

Must retail funds be authorised or licensed to be established or marketed in your jurisdiction?

Yes. Prior registration or authorisation is required to establish and market a fund in Spain.

Law stated - 29 April 2025

Marketing

15 Who can market retail funds? To whom can they be marketed?

Marketing activities must only be performed by a management company or any other financial intermediary authorised in Spain with whom a marketing agreement has been entered into.

In general terms, UCITS and non-UCITS schemes (alternative investment funds) can be marketed to retail investors provided that:

- the investor undertakes to invest at least €100,000 and signs a risk acknowledgement declaration prior to the investment; or
- the investor makes the investment based on an advisory service, provided that, if their financial assets do not exceed €500,000, the investment is at least €10,000 and is maintained and does not represent more than 10 per cent of the assets.

For certain investment strategies or structures, however, marketing can be limited to professional investors.

Law stated - 29 April 2025

Managers and operators

16 Are there any special requirements that apply to managers or operators of retail funds?

In general terms, the requirements for managers operating retail funds are very similar to those applicable for managers of non-retail funds. The main differences will apply with regard to the marketing process and the fulfilment of Markets in Financial Instruments Directive rules, such as client categorisation, performance of the applicable tests and delivery of the relevant pre- and contractual documentation. During the registration process, the CNMV will verify that the manager has the proper means and internal procedures to comply with these requirements.

Law stated - 29 April 2025

Investment and borrowing restrictions

17 What are the investment and borrowing restrictions on retail funds?

Investment and borrowing restrictions vary significantly among different types of retail funds (UCITS, FCRs and FILs). In a nutshell:

- UCITS are subject to the general investment and borrowing restrictions applicable according to European Directives;
- FCRs must invest at least 60 per cent of their assets in unlisted companies (or other private equity funds) and certain debt instruments, and are in general subject to a 25 per cent diversification rule. No limitation on borrowing is established by law or regulation apart from those established in the fund's prospectus and management regulations; and
- FILs must follow an investment policy based on financial instruments without the diversification restrictions applicable to UCITS – it is, for instance, possible to establish a FIL that invests 100 per cent of its assets in one single investment (eg, as a feeder fund). As for borrowing restrictions, FILs may borrow up to five times their net asset value. There are, however, some exceptions to this general rule; for example, debt funds are not authorised to borrow any amount.

Law stated - 29 April 2025

Tax treatment

18 | What is the tax treatment of retail funds? Are exemptions available?

Generally, open-ended funds (such as UCITS or FILs) are not tax transparent and are subject to Spanish Corporate Income Tax (CIT) at a 1 per cent tax rate.

Closed-ended funds are not transparent for Spanish tax purposes, and are, therefore, subject to Spanish CIT. With respect to closed-ended funds, tax treatment varies depending on the specific type of fund.

Vehicles qualifying as Spanish private equity entities (ECRs) benefit from a special CIT regime that applies to dividends and gains obtained by an ECR from certain private equity investments:

- dividends obtained from a portfolio company (except if obtained through a tax haven) benefit from a 95 per cent tax exemption, regardless of the holding period and the percentage stake held in the portfolio company; and
- gains obtained by the ECR from the transfer of securities representing participation in the share capital of the portfolio company benefit from a 99 per cent CIT exemption (except if obtained through a tax haven), provided that the holding period is longer than one year and does not exceed 15 years (Spanish tax authorities may extend this term to up to 20 years in certain cases). Notwithstanding the above, the 99 per cent exemption will not apply in any of the following cases if:
    - the purchaser is resident in a tax haven jurisdiction or the gain is obtained through a tax haven;
    -

the purchaser is related to the ECR pursuant to the CIT Act (unless it is another ECR); or

- the participation was acquired by the ECR from a related person or entity pursuant to the CIT Act.

ECRs are subject to CIT with respect to interests and non-qualifying assets, at a 25 per cent rate, subject to the general participation exemption regime. In this respect, pursuant to the CIT general tax regime, entities subject to CIT benefit from a 95 per cent exemption on dividends and gains obtained from their participation in portfolio companies (other than companies resident in a tax haven) if the following requirements are met:

- if the participation is held for at least one year and represents at least 5 per cent of the capital of the portfolio company; and
- in the case of stakes in non-Spanish resident portfolio companies, if these companies are subject to a CIT that applies at least a 10 per cent tax rate (this requirement is presumed to be met for a portfolio company resident in a country that has a double tax treaty with Spain with an information exchange clause).

Other closed-ended vehicles such as*fondo de inversión colectiva de tipo cerrado* and *sociedad de inversión colectiva de tipo cerrado* are subject to the general CIT (25 per cent tax rate) and do not benefit from a special tax treatment.

Law stated - 29 April 2025

Asset protection

19 Must the portfolio of assets of a retail fund be held by a separate local custodian? What regulations are in place to protect the fund's assets?

Yes. Spanish legislation requires a depositary or custodian for both UCITS and alternative investment funds (AIFs). However, for under-the-threshold AIFs no depositary is required as long as they are not marketed to retail investors.

The main regulations for depositaries are contained in Law 35/2004, Law 22/2014 and CNMV's Circular 4/2016, of 29 June, regulating the functions of the depositaries of collective investment schemes.

Credit entities and portfolio managers may act as depositaries if they are participants in the clearing, settlement and registration systems in the markets in which they operate, either directly or indirectly.

Depositaries must be registered and authorised by the CNMV, which may deny authorisation only if the entity does not comply with regulatory requirements or does not have appropriate means to perform its functions.

Law stated - 29 April 2025

Governance

20 What are the main governance requirements for a retail fund formed in your jurisdiction (registration, record-keeping, filings, officers)?

Investment funds must be either registered or authorised in Spain by the CNMV. They can be established in the form of funds (separate entities without legal personality but subject to corporate tax and able to enter into contracts, own property, sue and be sued in their own name) or public limited companies.

Investment funds established in the form of funds can be privately established (ie, no notarisation or registration in the companies register is required) and must appoint an authorised management company.

Funds in the form of public limited companies must be constituted before a notary public and registered in the Spanish companies register. They can either be internally managed or can appoint a management company to perform management services.

The management company is entitled to represent the fund and make decisions about the financial management of the fund on a discretionary basis. For those funds established in the form of public limited companies, shareholders retain certain powers, such as the possibility of amending company by-laws (and hence, the investment strategy), appointment of the management company, appointment of directors and approval of the annual accounts. Shareholders' agreements and delegation of voting rights are commonly used.

Management companies can only be set up in the form of a corporation. Members of the board of directors of management companies (and self-managed investment companies) will be scrutinised by the CNMV who will evaluate their reputation, experience and suitability to perform the duties of a board of directors.

Management companies must have an organisational structure in place that allows them to guarantee the fulfilment of internal risk and liquidity control policies, valuation rules and risk management policies, as well as the avoidance of any potential conflicts of interest.

Also, management companies must have in place a sound remuneration policy.

Investment funds and management companies must comply with certain ongoing filing obligations, which will vary depending on the type of vehicle, before the CNMV, the Bank of Spain and, for those entities established as public limited companies, before the companies register.

Law stated - 29 April 2025

Reporting

21 What are the periodic reporting requirements for retail funds?

Investor disclosure

In respect of open-ended vehicles subject to Law 35/2003, managers are required to publish for distribution among unit-holders, shareholders and the general public an annual report, a semi-annual report, an information prospectus and a packaged retail and insurance-based investment products key information document (PRIIPs KID), to make known all circumstances likely to influence the value of the fund's assets and its characteristics – in particular, inherent risks and degree of compliance with applicable regulations.

In respect of closed-ended vehicles subject to Law 22/2014, managers are required to publish for distribution among unitholders and shareholders an annual report, an information prospectus and a PRIIPs KID.

Managers are also required to publish and deliver to unitholders and shareholders of open-ended and closed-ended vehicles the audited annual accounts. In addition, open-ended and closed-ended vehicles with corporate form must comply with information requirements applicable to companies under the Spanish Capital Companies Law.

Regulatory reporting

Furthermore, managers of harmonised open-ended vehicles are required to report to the CNMV on a quarterly basis, within a month following the end of the quarter, the identity of the shareholders or unitholders who directly or indirectly own a significant holding (20, 40, 60, 80 or 100 per cent) in the vehicles.

Lastly, Spanish retail funds are required to report, on a periodic basis, reserved information related to underlying assets, activities and transactions to the CNMV in the form required by the agency for supervisory purposes.

Law stated - 29 April 2025

Issue, transfer and redemption of interests

22 Can the manager or operator place any restrictions on the issue, transfer and redemption of interests in retail funds?

With respect to restrictions on issues and redemptions in open-ended vehicles subject to Law 35/2003, as a matter of general principle, and subject to the observance of applicable limits related to minimum or maximum stock capital or fund assets and applicable subscription and redemption procedures (eg, redemption gates and cutoff time for the placement of orders), restrictions are not intended to be permitted by law in normal market conditions prior to the initiation of the liquidation period.

Notwithstanding the above, Law 35/2003 contemplates the possibility for managers of certain open-ended vehicles investing in less liquid assets or strategies to implement measures that limit investor redemption rights (eg, extended lockup periods to ensure alignment between the fund's liquidity profile and its redemption policy).

With respect to closed-ended vehicles subject to Law 22/2014, as a general proposition, and subject to the observance of applicable limits (such as minimum size), voluntary redemptions by investors prior to liquidation or redemption gates are not permitted in

normal operating conditions unless otherwise provided in the management regulations and by-laws. Notwithstanding, managers may design a closed-ended vehicle's redemption policy with mandatory periodic redemptions.

Similarly, as a general proposition, and subject to the observance of applicable limits (such as maximum size and subscription periods), the issuing or subscription of new shares or units in closed-ended vehicles subject to Law 22/2014 is permitted, unless otherwise provided in the management regulations and by-laws.

With respect to restrictions on transfers, units and shares qualify as marketable securities and as such are freely transferable subject to compliance with investor eligibility and any other requirements set forth in the fund documents. Furthermore, units and shares of certain open-ended vehicles subject to Law 35/2003 and certain closed-ended vehicles subject to Law 22/2014 can be listed and traded on stock exchanges.

The CNMV may require, in the interest of the investors or in the public interest, the temporary suspension of the issuing, redemption or repurchase of open-ended vehicles subject to Law 35/2003 when it is not possible to determine their price or upon the occurrence of a *force majeure* cause.

Furthermore, in the case of exchange-traded vehicles, additional restrictions may apply in exceptional situations (eg, high volatility) where market makers may be exempted from acting.

Law stated - 29 April 2025

NON-RETAIL POOLED FUNDS

Available vehicles

23 What are the main legal vehicles used to set up a non-retail fund? How are they formed?

Spanish non-retail funds may be set up as either closed-ended vehicles subject to Law 22/2014 or open-ended alternative investment funds subject to Law 34/2003, which includes hedge funds, funds of hedge funds, real estate collective investment schemes, non-harmonised collective investment schemes and private equity and other closed-end collective investment entities (including the recently created loan funds). Each of these vehicles caters to a particular investment strategy and offers access to particular asset classes. They can be set up as corporate entities or contractual funds with no legal personality.

Other funds reserved predominantly for non-retail investors include securitisation funds and Bank Assets Funds (FAB) created to facilitate the Spanish Sareb's (ie, the management company of assets acquired in the restructuring of the Spanish banking sector) divestment of impaired assets resulting from the restructuring process of Spanish credit institutions.

The management and representation of securitisation funds is legally reserved for asset securitisation fund management companies authorised under Law 5/2015, of 27 April, on the promotion of business financing (SGFT). The management and representation of FABs

is legally reserved for SGFT and licensed under Law 9/2012, of 14 November, on the restructuring and resolution of credit institutions to carry out said activity.

Law stated - 29 April 2025

Laws and regulations

24 What are the key laws and other sets of rules (regulatory and self-regulatory) that govern non-retail funds?

The main rules that govern Spanish non-retail funds are provided in the following laws (including, for the avoidance of doubt, implementing regulations, ordinances and circulars) as well as in the relevant management regulations or corporate by-laws and information prospectuses:

- Law 35/2003, of 4 November, on collective investment schemes, as amended from time to time;
- Law 22/2014, of 12 November, which regulates private equity entities, other closed-end collective investment entities and their management companies;
- Law 15/2015, of 27 April, on the promotion of business financing;
- Regulation (EU) 2017/2402, of 12 December 2017, laying down a general framework for securitisation; and
- Law 9/2012, of 14 November, on the restructuring and resolution of credit institutions, as amended, revised or supplemented from time to time.

The National Securities Market Commission (CNMV) may also publish interpretative criteria with respect to compliance with the aforementioned laws by firms.

Law stated - 29 April 2025

Authorisation

25 Must non-retail funds be authorised or licensed to be established or marketed in your jurisdiction?

The establishment and marketing of closed-ended vehicles subject to Law 22/2014 does not require prior authorisation by or licensing with the CNMV; they are, however, subject to a registration obligation in the CNMV's official registries.

With respect to open-ended alternative investment funds subject to Law 35/2003, all such vehicles are required to obtain authorisation from the CNMV and must register in the CNMV's official registries.

Securitisation funds offered to the public require the CNMV's prior authorisation (approval and registration of the prospectus), while private securitisations that do not require the publication of a prospectus must only register with the CNMV.

Lastly, FABs are subject to CNMV registration in the relevant registry.

Law stated - 29 April 2025

Marketing

26 | Who can market non-retail funds? To whom can they be marketed?

Non-retail funds can be marketed by authorised financial intermediaries that include Markets in Financial Instruments Directive (MiFID) investment firms, credit institutions authorised to provide investment services and fund managers authorised under the Alternative Investment Fund Managers Directive (AIFMD).

As a general proposition, save for hedge funds authorised to invest in certain non-financial assets or with lengthened lock-in periods requiring special regulatory approval, open-ended vehicles subject to Law 35/2003 can be marketed to professional investors and, subject to specific requirements, to retail investors.

In the case of closed-ended vehicles subject to Law 22/2014, venture capital and private equity entities can be marketed to professional investors and, subject to specific requirements, they can also be marketed to retail investors. Other closed-ended vehicles subject to Law 22/2014 (including the recently created loan funds) can only be marketed to professional investors.

Lastly, securitisation funds can be marketed to professional investors and, subject to the specific requirements set forth in Regulation (EU) 2017/2402 of 12 December 2017 laying down a general framework for securitisation, they can be marketed to retail investors.

Law stated - 29 April 2025

Ownership restrictions

27 | Do investor-protection rules restrict ownership in non-retail funds to certain classes of investor?

Yes, MiFID II product governance rules require product manufacturers to identify the product's target market based on an assessment of end clients for whose needs and objectives the product is intended.

In addition, product manufacturers must communicate the target market information to distributors. In turn, distributors must further specify the target market within the parameters set by the manufacturer, integrating information about their own client base. The target market identification obligation is additional to the requirement to conduct an appropriateness test for clients falling within the target market.

Law stated - 29 April 2025

Managers and operators

28 Are there any special requirements that apply to managers or operators of non-retail funds?

Members of the board of managers, general directors and senior management conducting the business of a management company authorised as an AIFM are required to have sufficiently good repute and experience.

In addition, with respect to non-retail funds organised as corporate entities, the members of the board of directors are also required to have sufficiently good repute and experience.

Law stated - 29 April 2025

Tax treatment

29 What is the tax treatment of non-retail funds? Are any exemptions available?

As a matter of general principle, the tax regimes applicable to retail funds subject to Law 35/2003 and Law 22/2014 are equally applicable to non-retail funds.

Law stated - 29 April 2025

Asset protection

30 Must the portfolio of assets of a non-retail fund be held by a separate local custodian? What regulations are in place to protect the fund's assets?

Spanish legislation requires the appointment of a depositary for open-ended non-retail funds subject to Law 35/2003.

With respect to closed-ended vehicles subject to Law 22/2014, the depositary requirement will apply if the manager is fully licensed and regulated under AIFMD; the requirement does not apply to sub-threshold alternative investment fund managers.

Depositary entities are generally liable to unitholders or shareholders for damages caused by intentional or negligent breach of their legal duties. Depositaries are required under applicable law to invoke, on behalf of unitholders and shareholders, any liability against the management companies.

Law stated - 29 April 2025

Governance

31 What are the main governance requirements for a non-retail fund formed in your jurisdiction (registration, record-keeping, filings, officers)?

There are no requirements exclusive for non-retail funds. As a matter of general principle, the governance requirements applicable to retail funds subject to Law 35/2003 and Law 22/2014 are equally applicable to non-retail funds.

Law stated - 29 April 2025

Reporting

32 What are the periodic reporting requirements for non-retail funds?

As a matter of general principle, except for the key information document required under PRIIPs, the reporting requirements in respect of retail funds subject to Law 35/2003 and Law 22/2014 are equally applicable in non-retail funds.

Additional reporting requirements can be requested from managers by certain institutional investors, such as insurance companies and pension funds, in compliance with their own regulatory and reporting requirements.

Law stated - 29 April 2025

SEPARATELY MANAGED ACCOUNTS

Structure

33 How are separately managed accounts (ie, accounts through which investor funds are segregated – not pooled – and the investor owns the underlying assets, which are managed at the investment manager's discretion) typically structured in your jurisdiction?

Under Spanish legislation, an individual account (ie, not collective or pooled) where the client directly owns the portfolio assets that are managed at the investment manager's discretion amounts to the provision of a discretionary portfolio management (DPM) service subject to Markets in Financial Instruments Directive (MiFID), assuming the underlying assets qualify as MiFID financial instruments. Individual portfolios are managed in accordance with mandates given by clients, on a client-by-client basis.

Mandates are concluded between the client and the firm through a discretionary portfolio management contract subject to Spanish civil law and securities markets laws and regulations.

Law stated - 29 April 2025

Key legal issues

34 What are the key legal issues (eg, standard of care, indemnification) to be determined when structuring a separately managed account?

Prior to the provision of a DPM service, portfolio managers are required to assess whether the financial instruments and services are in line with the client's particular financial circumstances, sophistication and investment objectives. This may be determined through a suitability questionnaire.

When providing discretionary portfolio management services firms must comply with the Spanish securities rules of conduct and civil code.

Key legal issues to determine when structuring a separately managed account include civil and administrative liabilities resulting from potential client mandate breaches. Firms must be able to demonstrate that they have adequate procedures, arrangements, measures and resources in place to comply with the organisational requirements and rules of conduct. Furthermore, firms must be able to demonstrate that they have robust and effective control systems.

Law stated - 29 April 2025

Regulation

35 Is the management or marketing of separately managed accounts regulated in your jurisdiction? (If so, how does this operate? Is this the same regime for fund management?)

Generally speaking, where the underlying assets of the separately managed account include MiFID financial instruments, the service amounts to discretionary portfolio management and is hence regulated under the Spanish implementation of MiFID. Discretionary portfolio management services can only be provided by licensed MiFID investment firms, credit institutions and management companies authorised under undertakings for collective investment in transferable securities or Alternative Investment Fund Managers Directive.

Law stated - 29 April 2025

GENERAL

Proposed reforms

36 Are there proposals for further regulation of funds, fund managers or marketers of funds in your jurisdiction?

On 19 March 2025 the European Union adopted its Savings and Investment Union Strategy, an initiative to improve the way the financial system channels savings towards productive investments and to provide better financing options to businesses. The reforms pursued by the Savings and Investment Union are intended to foster the reduction of barriers to the access of capital markets and the simplification of the regulatory framework for issuers.

To this end, a revision of the Markets in Financial Instruments Directive II and Markets in Financial Instruments Regulation are underway to improve transparency and a level playing field in the markets, and to facilitate investor access to market data.

Law stated - 29 April 2025

Public listing

37 Outline any specific requirements for stock-exchange listing of retail and non-retail funds.

Financial funds subject to Law 35/2003 are predominantly listed in the exchange-traded fund (ETF) segment of the Spanish Continuous Market. While listing requirements depend on the rules of the stock exchange in question, one particular ETF requirement is the appointment of a specialist. Every security traded in this segment must have at least one specialist. Depending on the characteristics of each ETF, the requirements applicable to the specialist will be established. These requirements refer to the maximum spread between the buying and selling price of the positions that the specialist introduces in the market, the minimum effective amount associated with the aforementioned positions and their presence in the market throughout the session.

Spanish real estate investment trusts (SOCIMIs) governed by Law 11/2009 of 26 October, as amended from time to time, are usually listed on a specific segment of the Spanish alternative stock market (MAB). The MAB requires a minimum diffusion of the SOCIMI's shares at the time of their listing. SOCIMIs are required to have a number of shareholders with ownership stakes below 5 per cent of the share capital of the SOCIMI, which in addition are required to own shares that represent the lower of the following:

- an estimated market value of €2 million; or
- 25 per cent of the shares issued by the company.

Spanish venture capital entities subject to Law 22/2014 and financial investment companies subject to Law 35/2003 may be allowed to trade on regulated markets or multilateral trading facilities, such as the MAB. They are usually listed in specific market segments of the MAB (investment companies with variable capital and *entidades de capital-riesgo*) that have their own particular listing requirements.

Law stated - 29 April 2025

Overseas vehicles

38 Is it possible to redomicile an overseas vehicle in your jurisdiction?

Other than vehicles set up in the form of corporate entities which may follow the regime set out in Directive (EU) 2019/2121 of the European Parliament and of the Council of 27 November 2019 amending Directive (EU) 2017/1132 as regards cross-border conversions,

mergers and divisions, there is no specific regime in Spanish legislation setting out a redomiciliation process for overseas investment funds.

In any event, if the activities carried out by an overseas fund within Spanish territory are analogous to those of a Spanish investment fund subject to Law 35/2003 or Law 22/2014, it is likely that the overseas fund in question could be required to adopt the form of an investment vehicle regulated in Spanish legislation (internally managed unless an external manager licensed under UCITS is appointed), necessitating authorisation from the Spanish CNMV among numerous other matters.

Law stated - 29 April 2025

Foreign investment

39 Are there any special rules relating to the ability of foreign investors to invest in funds established or managed in your jurisdiction or domestic investors to invest in funds established or managed abroad?

As a general rule, foreign investment in Spain is free (ie, not subject to authorisation), based on the fundamental principle of total liberalisation of foreign direct investment and generally solely subject to a duty to file a statement of foreign direct investment with the Ministry of Economy, Commerce and Business Investment Register, on a post-investment basis, solely for administrative information and statistical purposes.

Notwithstanding the foregoing, on an exceptional basis, foreign investment regulations permit the adoption of restrictive measures under limited circumstances, such as investments by non-EU and non-EFTA residents; investments that affect strategic sectors closely related to public order, public safety or public health; or investments by certain investors whose operations are deemed subject to authorisation due to specific circumstances.

In addition, other administrative obligations may arise, such as the requirement to obtain a local tax identification number or filing administrative statements with local agencies.

Further, fund managers may have in place internal policies that restrict the ability of certain foreign investors to invest in their funds (ie, international sanctions, restricted or prohibited countries with which managers may not be allowed to establish business relations, tax residency, anti-money laundering and so on).

In addition to the foregoing, foreign investments whose immediate or ultimate source is located in a non-cooperative jurisdiction are additionally required to be filed via the Ministry of Economy, Commerce and Business Investment Register prior to the investment.

Similarly, concerning rules regulating domestic investors' ability to invest in funds established or managed abroad, there are no legal restrictions of general application; however, a number of administrative obligations may apply (solely for administrative information or statistical purposes). Certain regulated investors may, however, solely based upon their status as regulated entities, encounter restrictions to invest in some foreign jurisdictions.

Law stated - 29 April 2025

Funds investing in derivatives

40 Are there any special requirements in your jurisdiction relating to funds investing in derivatives?

For those vehicles allowed by the regulation to invest in derivatives (principally, financial funds), applicable requirements are related to disclosure obligations, mainly including in the relevant prospectus whether the use of derivatives is for hedging or investment purposes and the implications in terms of the risk profile of the vehicle and the leverage rate.

Depending on the type of vehicle (UCITS, non-UCITS, hedge funds and so on), certain limitations on the exposure to derivatives or the nature of the underlying of each derivative may apply; therefore, a case-by-case analysis would be required.

Law stated - 29 April 2025

UPDATE AND TRENDS

Recent developments

41 Are there any other current developments or emerging trends in your jurisdiction that should be noted? Please include reference to world-wide regulatory concerns, such as restrictions on foreign ownership in strategic industries, high-frequency trading, commodity position limits, capital adequacy for investment firms and 'shadow banking'.

Spanish fund managers are currently dealing with the operational complexities and challenges of implementing Regulation (EU) 2022/2554 of the European Parliament and of the Council of 14 December 2022 on digital operational resilience for the financial sector (commonly known as DORA). DORA purports to target information and communication technology (ICT) risks by introducing rules in connection with risk management, incident reporting, operational resilience testing, and oversight of third-party risks.

The National Securities Market Commission (CNMV) announced that while in the early stages of implementation of DORA, it will focus its oversight efforts on assessing whether firms have adopted and developed robust ICT risk management frameworks with an adequate level of governance, overtime its oversight activity will become more complex.

As regards Regulation (EU) 2024/1689 laying down harmonised rules on artificial intelligence (AI Regulation), the CNMV is called to play a relevant role in the supervision of artificial intelligence systems used by firms in the provision of investment services and asset management activities. Consequently, the CNMV is seeking to develop the necessary supervisory capabilities, in particular, with the Spanish Artificial Intelligence Supervisory Agency and the Bank of Spain.

Regarding supervisory trends in 2025, this year's oversight priorities affecting the investment management industry include the following key areas:

- Due to the increased number of closed-ended fund managers (SGEIC) and private equity funds in Spain and the growing presence of retail investors, the CNMV

understands that the rules governing management companies and investment firms' organisational requirements (CNMV Circular 6/2009 of 9 December) should be updated and revised. The CNMV intends to publish a prior public consultation document for the purposes of producing technical guidance addressed to SGEIC relating to internal control functions, which shall lay out SGEIC specific obligations related to that subject area.

- The CNMV will verify compliance with ESMA guidelines on the names of collective investments schemes that use the term ESG or terms related to sustainability. Currently, such collective investment schemes amount to more than 80 and management companies have until 21 May 2025, to comply with the provisions set out in the guidelines. The CNMV will monitor that they either change their name or adjust their investment policy to promote compliance with the guidelines.
- A supervisory review in connection with the use by investment firms and management companies of artificial intelligence in the conduct of their activities and provision of services.

Additionally, the CNMV intends to amend the CNMV Circular 1/2021 relating to accounting rules for investment firms, SGIIC and SGEIC which revision is underway and shall enter into force in June 2025. Finally, the CNMV Circular 5/2014 requiring collective investment schemes to file 'other financial intermediary' statements will be revised and updated due to the entry into force of the new Regulation (EU) 2024/1988 of the European Central Bank of 27 June 2024 concerning statistics on investment funds.

Separately, one must also keep in mind that the Commission Delegated Regulation (EU) 2024/2759 relating to European long-term investment funds entered into force in Q4 2024. The Delegated Regulation contains regulatory technical standards (RTS) on the application of requirements applicable to European long-term investment funds. The RTS deals in particular with the redemption policy and liquidity management tools, the use of derivatives, the circumstances for the matching of unit/share transfer requests, the disposal of assets and the disclosures on costs.

Law stated - 29 April 2025

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Summary

SEPARATELY MANAGED ACCOUNTS

GENERAL

UPDATE AND TRENDS

FUND MANAGEMENT REGULATION

Regulatory framework and authorities

1 How (in very general terms) is fund management regulated in your jurisdiction? Which authorities have primary responsibility for regulating funds, fund managers and those marketing funds?

Investment fund business in Switzerland is governed by:

- the Collective Investment Schemes Act (CISA);
- the Collective Investment Schemes Ordinance (CISO);
- the FINMA Collective Investment Schemes Ordinance (CISO-FINMA);
- the FINMA Collective Investment Schemes Bankruptcy Ordinance (CISBO-FINMA);
- the Financial Institutions Act (FinIA);
- the Financial Institutions Ordinance (FinIO);
- the FINMA Financial Institutions Ordinance (FinIO-FINMA);
- the Financial Services Act (FinSA);
- the Financial Services Ordinance (FinSO);
- the Anti-Money Laundering Act (AMLA);
- the Anti-Money Laundering Ordinance (AMLO); and
- the FINMA Anti-Money Laundering Ordinance (AMLO-FINMA).

In addition, the Swiss Financial Market Supervisory Authority (FINMA), as the competent regulatory body and supervisory authority, has published circulars addressing specific areas of collective investment schemes law.

Market participants must also comply with self-regulation of industry organisations recognised by FINMA as a minimum standard, namely the code of conduct and various guidelines of the Asset Management Association Switzerland (AMAS) – formerly Swiss Funds & Asset Management Association – and the guidelines of the Swiss Bankers Association.

The CISA contains product-specific rules for domestic and foreign funds and, as a framework law, leaves many matters to be regulated in detail to the implementing ordinances.

The licensing and supervision of fund management companies, managers of collective assets (including domestic and foreign funds as well as pension schemes), portfolio managers of individual assets and trustees are governed by the FinIA and its implementing ordinances.

The FinSA and its implementing ordinance are applicable across sectors and provide for a set of conduct rules at the point of sale covering all financial instruments and services, including funds and certain fund-related financial services. The FinSA also governs the prospectus and basic information sheet requirements for funds.

FINMA approves funds as products (in particular, contractual funds (FCP)) and is also responsible for the authorisation and supervision of the following institutions in charge of the management and safekeeping of assets of funds in Switzerland:

- fund management companies;
- investment companies with variable capital (SICAV);
- partnerships for collective investment (LP);
- investment companies with fixed capital (SICAF);
- custodian banks of domestic funds;
- managers of collective assets;
- portfolio managers; and
- representatives of foreign funds.

The day-to-day supervision of portfolio managers is conferred to supervisory organisations authorised by FINMA. Portfolio managers may be entrusted only with the asset management of domestic or foreign qualified investor funds below a defined de minimis threshold.

SICAVs, LPs and SICAFs require a twofold FINMA authorisation of the fund regulations (product approval) as well as of the fund vehicle (institution license).

The fund type Limited Qualified Investor Fund (L-QIF) is exempt from any authorisation, approval and product supervision by FINMA but has to be managed by a supervised Swiss fund management company or manager of collective assets.

Further, a 'dual supervisory regime' applies, which requires regulated entities to appoint a FINMA-recognised auditor to verify whether they comply with all applicable legal requirements.

The entity marketing funds to investors in Switzerland is not subject to a licensing requirement by FINMA. The marketing of funds to investors may, however, qualify as a financial service under the FinSA, requiring the marketing entity to comply with the rules for provision of financial services at the point of sale.

Law stated - 1 June 2025

Fund administration

2 Is fund administration (support services provided to funds such as book-keeping, preparing reports, trade settlement, etc) regulated in your jurisdiction?

Fund administration forms part of the main duties of a fund management company of an FCP or an externally managed SICAV, a self-managed SICAV, an LP or a SICAF, and is generally regulated and supervised as part of these licences.

The delegation of fund administration tasks to unregulated third-party providers is also permitted, provided that the delegation is in the interest of efficient management and that the persons appointed are properly qualified to execute the tasks. Furthermore, instruction,

monitoring and control of the agent must be ensured. The management of a fund and the related tasks, such as the valuation of investments or the decision on the issue of units, may not be outsourced.

The delegation of fund administration is subject to the prior authorisation of FINMA. For a delegation abroad, specific requirements apply.

Law stated - 1 June 2025

Authorisation

3 What is the authorisation or licensing process for funds? What are the key requirements that apply to managers and operators of investment funds in your jurisdiction?

Switzerland is a niche production market but ranks among the top distribution markets in Europe. As at the end of 2024, 10,552 funds were registered in Switzerland, of which only 1,988 were domiciled in the country. The majority of the fund assets under management in Switzerland are invested in funds for qualified investors.

The timing and process for approval and authorisation depend on whether a fund is organised under Swiss or foreign law.

Domestic funds

The CISA distinguishes between open-ended and closed-ended funds.

Open-ended funds may be structured in the form of an FCP or a SICAV. Investors have a direct or indirect legal entitlement to redeem their units at the net asset value.

In the case of an FCP, the fund management company and the custodian must be authorised by FINMA, and the fund contract, with the consent of the custodian, must be submitted to FINMA for approval. The FCP is the predominant legal form of collective investment scheme organised under Swiss law.

FINMA must authorise all SICAVs and approve their articles of association and investment regulations.

The timing and process of FINMA authorisation and approval largely depend on the complexity of the fund (investment policy, investment techniques and so on).

In closed-ended funds (LPs or SICAFs), investors have neither a direct nor an indirect legal entitlement to redeem their units at the net asset value.

Both the LP and the SICAF require authorisation by FINMA and their limited partnership agreement (for LPs) and the articles of association and investment regulations (for SICAFs) require FINMA's approval.

As of 1 March 2024, a new fund type open only to qualified investors, the Limited Qualified Investor Fund (L-QIF), which is exempt from any authorisation, approval and product supervision by FINMA and, therefore, significantly reduces setup costs and time to market, has been introduced in the CISA. The L-QIF must be managed by a

supervised Swiss fund management company or manager of collective assets and set up as one of the above-mentioned forms of Swiss funds, except for the SICAF which is not a permitted legal form for an L-QIF. While the L-QIF itself is not subject to FINMA's supervision it remains subject to essentially the same provisions under CISA and CISO as regulated funds with certain enumerated exceptions. In particular, the L-QIF regime provides for liberal investment rules and risk diversification requirements to encourage innovation, similar to unregulated fund structures in other jurisdictions, such as the Reserved Alternative Investment Fund (RAIF) in Luxembourg. To counterbalance the lack of prudential supervision on the level of the fund product, the CISA and CISO impose on the Swiss fund management company or manager of collective assets responsible for the administration and management of the L-QIF strict legal obligations to ensure compliance with all rules applicable to an L-QIF and also provide for a requirement for an additional audit of compliance with said rules.

Foreign funds

The majority of foreign funds approved for offer to non-qualified investors in Switzerland are undertakings for collective investment in transferable securities (UCITS). FINMA has standardised the approval process for UCITS over a number of years. The application is to be filed electronically by the Swiss representative together with the relevant fund documents for Switzerland.

As one of the very few non-UCITS funds, the first Hong Kong-based fund was approved for offer to non-qualified investors in Switzerland in 2017.

Managers and operators

Anyone applying for FINMA authorisation to operate as a financial institution must meet the following minimum authorisation requirements:

- persons responsible for the management and business operations must have a good reputation, guarantee proper management and possess the requisite specialist qualifications;
- significant equity holders must have a good reputation and not exert their influence to the detriment of prudent and sound business practice;
- compliance with the duties stemming from FinIA and CISA must be assured by internal regulations and an appropriate organisation;
- sufficient financial guarantees must be available; and
- any additional authorisation conditions set forth in FinIA and its implementing ordinances must be met.

Law stated - 1 June 2025

Territorial scope of regulation

> What is the territorial scope of fund regulation? Can an overseas manager perform management activities or provide services to clients in your jurisdiction without authorisation?

While the principle of territoriality applies to the CISA and FinIA, the FinSA has a certain extraterritorial scope. Accordingly, Swiss legislation governing fund management captures the following fund business activities.

The CISA concerns:

- domestic funds and persons responsible for the safekeeping of assets; and
- foreign funds offered or advertised in Switzerland and persons representing foreign funds in Switzerland.

The FinIA concerns persons managing domestic and foreign funds in or from Switzerland (fund management companies, managers of collective assets and portfolio managers).

The FinSA concerns persons providing the following financial services in Switzerland or (cross-border) to clients in Switzerland:

- sale or purchase of financial instruments (including interests in funds);
- receipt and transmission of orders of financial instruments;
- management of financial instruments (portfolio management);
- personal recommendations relating to transactions on financial instruments (investment advice); and
- granting of loans to finance transactions with respect to financial instruments.

Note that financial services rendered by a foreign financial service provider cross-border to clients in Switzerland within an existing client relationship requested by the explicit initiative of a client or individual financial services requested by the explicit initiative of clients from a foreign financial service provider are considered not performed in Switzerland and, therefore, are not captured by the FinSA.

All legal or natural persons permanently on the ground in Switzerland and engaging in an activity regulated under the CISA or FinIA require authorisation from FINMA. The rendering of financial services in Switzerland or (cross-border) to clients in Switzerland governed by the FinSA does not trigger a licensing requirement by FINMA but requires the financial service provider and client adviser to comply with certain duties and requirements.

A foreign fund management company cannot act as a fund management company for domestic funds. However, a Swiss fund management company may delegate specific tasks to a foreign fund management company provided this is in the interest of efficient management and the head office and main administration remain in Switzerland.

The asset management of a domestic fund may be delegated to overseas managers who are subject to a licensing and supervisory regime equivalent to that applicable to a Swiss manager of collective assets. In case of a domestic fund for non-qualified investors the overseas manager's licence must also include the management of assets of retail/mutual funds. Furthermore, FINMA may make a delegation to an overseas manager conditional on the conclusion of an agreement on cooperation and the exchange of information

between FINMA and the competent foreign regulator, in particular if foreign law requires the conclusion of such an agreement.

If the overseas manager is managed in Switzerland or conducts its business largely or exclusively in or from Switzerland, it must be organised in accordance with Swiss law. FINMA authorisation is required when an overseas manager employs persons who conduct, on a permanent commercial basis in or from Switzerland, asset management and certain other activities on its behalf (branch office) or forward client orders or represent the manager for marketing or other purposes (representative office). Branches of foreign fund management companies are prohibited; representative offices may only be established if the office's representative activities exclude the administration and management of funds.

Law stated - 1 June 2025

Acquisitions

5 Is the acquisition of a controlling or non-controlling stake in a fund manager in your jurisdiction subject to prior authorisation by the regulator? (Restrict your answers to the regulator with responsibility for oversight of fund management. Do not answer with respect to other agencies, such as the merger control authorities.)

The direct or indirect holding and acquisition of a qualified holding in a fund management company or a manager of collective assets or any change thereof requires the prior notification (and, as matter of practice, authorisation) of FINMA. However, there is no such requirement for a qualified holding in a portfolio manager or a trustee. A qualified holding is given if a person holds directly or indirectly at least 10 per cent of the share capital or votes or if a person can significantly influence the business activity of the financial institution in another manner.

All qualified equity holders (including qualified equity holders in a portfolio manager or a trustee) must provide proof that they have a good reputation and do not exert their influence to the detriment of prudent and sound business practice.

Law stated - 1 June 2025

Restrictions on compensation and profit sharing

6 Are there any regulatory restrictions on the structuring of the fund manager's compensation and profit-sharing arrangements?

The only fees and incidental costs chargeable to a Swiss fund are those set out in the relevant fund regulations in accordance with the statutory provisions of the CISA and CISO. These include in particular the management fee and may also include a performance fee. The intended use of the management fee must be disclosed, as detailed in the AMAS Code of Conduct recognised by FINMA as the minimum standard.

FINMA Circular 2010/1 sets out minimum standards for salary and remuneration policies of financial institutions that generally apply to licensees under the CISA and fund

management companies, managers of collective assets and portfolio managers under FinIA only on a voluntary basis.

Law stated - 1 June 2025

FUND MARKETING

Authorisation

7 | Does the marketing of investment funds in your jurisdiction require authorisation?

Foreign funds

The marketing of foreign funds falling under the definition of 'offering' or 'advertising' may trigger authorisation requirements for the fund itself. The degree of regulatory requirements depends on the category of investors targeted. Foreign funds offered or advertised to non-qualified investors require approval by the Swiss Financial Market Supervisory Authority (FINMA). Various registration requirements apply (eg, the appointment of a Swiss representative and paying agent). Relevant fund documents to be approved by FINMA can be in English or in a Swiss official language. Foreign funds offered or advertised to qualified investors do not require an approval by FINMA and no Swiss representative or paying agent is required. However, offers and advertising of foreign funds to high-net-worth private clients and private investment structures established for them, even if they have declared that they wish to be treated as professional clients under the Financial Services Act (FinSA) (opting out) and, therefore, are deemed to be qualified investors under the Collective Investment Schemes Act (CISA), do not require FINMA approval but do still require the appointment of a Swiss representative and paying agent.

Domestic funds

The approval requirement for domestic funds applies irrespective of any marketing activity in Switzerland for such funds, except for the L-QIF, which is exempted from such requirement.

Marketing entity

Marketing of foreign and domestic funds does not trigger an authorisation requirement for the marketing entity, but requires compliance with certain rules of conduct and organisational requirements if a particular marketing activity qualifies as a financial service under the FinSA that is performed in Switzerland or (cross-border) to clients in Switzerland. The duties stipulated in the FinSA include requirements for registration of client advisers and for affiliation with an ombudsman's office. FinSA duties to be complied with by financial service providers and client advisers include client segmentation and rules of conduct (information and documentation duties, appropriateness and suitability, accountability, transparency and diligence requirements) as well as organisational requirements.

Law stated - 1 June 2025

8 | What marketing activities require authorisation?

Marketing activities are potentially regulated if they fall under the definition of 'offering', 'advertising' or 'financial service' under the CISA, the FinSA and the Financial Services Ordinance (FinSO), respectively.

Offering

The FinSA and FinSO define an 'offer' as any invitation to acquire a financial instrument that contains sufficient information on the terms of the offer and the financial instrument itself (ie, a communication of any kind that normally aims to draw attention to a financial instrument to sell it). The following are explicitly not deemed to be offers:

- provision of information upon request or own initiative of the client (reverse solicitation) that has not been preceded by any advertising within the meaning of the FinSA of the specific financial instrument by the financial service provider or someone appointed by the financial service provider;
- naming financial instruments without or in connection with factual, general information (eg, international securities identification numbers, net asset values, prices, risk information, price development and tax figures);
- mere provision of factual information; and
- preparation, provision, forwarding and publication of information and documents regarding financial instruments, which are required by law or agreement, to existing clients or financial intermediaries (eg, information on corporate actions, invitations to AGMs, EGMs and related instructions).

As a general rule, an offer (which allows an investor to accept such offer) or an invitation for an offer as outlined in the Swiss Code of Obligations is required.

The activity of offering that triggers the requirements under CISA shall be interpreted in line with this definition of offer pursuant to FinSA/FinSO whereas no offer in the sense of the Swiss Code of Obligations is required if a fund is made available on the market in Switzerland.

A pre-sounding, testing-the-water or similar clarification of the fundamental interest of investors, made prior to an offer or other general communications, is not an offer. Generally, no offer takes place if the key characteristics of a not yet established fund, in particular the investment policy, fees, subscription and redemption terms and the name of the fund as well as the relevant parties (eg, fund management company, portfolio manager, administrator and custodian), have not yet been definitively determined to allow a purchase decision by an investor.

Advertising

'Advertising' may be interpreted in line with the definition of this term set out in the FinSA and FinSO as any communication directed to investors that is aimed at drawing attention to particular financial instruments. The following is explicitly not considered advertising information:

- naming financial instruments without or in connection with the publication of prices, net asset values, price lists or developments and tax figures;
- reports on issuers or transactions, in particular where these are required by law or regulations by supervisory authorities or trading venues;
- making available or transmitting notices by an issuer to existing clients through financial service providers; and
- reports in the trade press.

Advertising information, ultimately, must serve the offer of certain financial instruments.

Financial service

Fund marketing may occur in the context of transaction-related advice (ie, investment advice without taking account of the entire client portfolio) or portfolio-related investment advice. However, if no personal recommendation is given to a potential investor, no investment advice is rendered to such investor. Mere marketing activities may also fall under the definition of 'acquisition or disposal of financial instruments', which contains any activity undertaken directly towards a particular (end) client specifically aiming to purchase or sell a financial instrument (including fund interests). However, the offering of a fund itself does not constitute a financial service for a client. In particular, the purchase or sale of a fund interest between regulated financial intermediaries is not considered a financial service.

Law stated - 1 June 2025

Territorial scope and restrictions

9 What is the territorial scope of your regulation? May an overseas entity perform fund marketing activities in your jurisdiction without authorisation?

Swiss legislation governing fund marketing has an extraterritorial scope.

Marketing of foreign funds falling under the definition of ‘offering’ or ‘advertising’ may trigger an approval requirement for the fund itself or a requirement to appoint a Swiss representative and paying agent for the fund.

Marketing of funds by an overseas entity does not trigger an authorisation requirement for the marketing entity but requires compliance with certain rules of conduct and organisational requirements if a particular marketing activity performed in Switzerland qualifies as a financial service under the FinSA. However, neither financial services rendered by an overseas entity within an existing client relationship requested by the explicit initiative of a client nor individual financial services requested by the explicit initiative of clients from a foreign financial service provider are considered as performed in Switzerland and, therefore, are not captured by the FinSA.

Law stated - 1 June 2025

10 If a local entity must be involved in the fund marketing process, how is this rule satisfied in practice?

The offering or advertising of foreign funds in Switzerland to non-qualified investors and opted-out high-net-worth private clients and their private investment structures who are qualified investors, among other things, requires the prior appointment of a Swiss representative and paying agent.

Law stated - 1 June 2025

Commission payments

11 What restrictions are there on intermediaries earning commission payments in relation to their marketing activities in your jurisdiction?

Swiss law generally does not prohibit intermediaries from accepting and keeping commission payments in relation to their marketing activities, provided that certain transparency and consent requirements are met.

Licensees under the Collective Investment Schemes Act (CISA) and their agents are under a regulatory duty of disclosure regarding compensation for distribution. This encompasses the nature and scale of all fees and other pecuniary benefits through which the activities of the distributor are to be compensated. According to the CISA and the Asset Management Association Switzerland (AMAS) Code of Conduct, licensees that pay such compensation must comply with their duty to inform by disclosing in the fund documents that 'retrocessions' may be paid and the services for which they are payable. The recipients of the retrocessions must inform investors, unsolicited and free of charge, of the amount of compensation they may receive for distribution and, upon request, of the amounts actually received. The AMAS Code of Conduct extends the applicability of the respective duties to foreign intermediaries and foreign funds and their managers via the Swiss representative. In practice, the distribution agreements for Switzerland usually include a respective contractual undertaking.

In relation to the provision of a financial service subject to the FinSA, any compensation from third parties may be accepted and retained only if the financial service provider has expressly informed the client in advance of the nature and size of the compensation and the client has waived its right to receive such compensation.

Moreover, intermediaries must comply with any corresponding obligations in relation to their clients under applicable Swiss civil law. In a series of leading decisions beginning in 2006, the Swiss Federal Supreme Court held that distribution fees paid to an intermediary acting as agent in connection with clients' assets were subject to a statutory restitution duty and therefore must be passed on to the client unless otherwise foreseen by (written) agreement in which the client waives the right to receive the distribution fee and other benefits on the basis of sufficient disclosure of conflicts of interest and information about the amounts actually paid to the intermediary or, at least, the range of fees and their calculation.

Swiss pension fund legislation provides for a mandatory duty of restitution of all pecuniary benefits that cannot be waived by a Swiss pension institution.

Law stated - 1 June 2025

RETAIL FUNDS

Available vehicles

12 | What are the main legal vehicles used to set up a retail fund? How are they formed?

Open-ended retail funds may be set up as contractual funds (FCPs) or as investment companies with variable capital (SICAVs).

FCPs are based on a tripartite fund contract between investors, the fund management company and the custodian bank. Under the fund contract, the fund management company commits itself to involving investors in accordance with the number and type of units they have acquired in the fund and to managing the fund's assets in accordance with the provisions of the fund contract at its own discretion and in its own name, but for the account of the investors. The custodian bank is a party to the contract in accordance with the tasks conferred on it by the Collective Investment Schemes Act (CISA) and by the fund contract. The fund management company draws up the fund contract and, with the consent of the custodian bank, submits it to the Swiss Financial Market Supervisory Authority (FINMA) for approval. Any amendment to the fund contract requires the consent of the custodian bank and prior FINMA approval.

SICAVs must be authorised by FINMA as institutions, and their articles of association and investment regulations require FINMA approval. A SICAV is a company whose capital and number of shares are not specified in advance, whose capital is divided into company and investor shares, for whose liabilities only the company's assets are liable and whose sole object is collective capital investment. It is important to distinguish between self-managed SICAVs, which perform their own administration, and externally managed SICAVs, which delegate the administration to an authorised fund management company. The formation of a SICAV is largely based on the provisions of the Swiss Code of Obligations regarding the formation of companies limited by shares.

If closed-ended share companies in the form of a Swiss stock company are listed on a Swiss stock exchange, they do not fall under the CISA. However, if they are not listed on a Swiss stock exchange, they qualify as investment companies with fixed capital (SICAF) and are subject to authorisation and supervision by FINMA, unless only qualified investors participate and the shares are registered shares. Since the introduction of SICAFs in 2007, none have been authorised in Switzerland, mainly owing to the unfavourable tax treatment that leads to taxation at both the company and the investor level.

Law stated - 1 June 2025

Laws and regulations

13 | What are the key laws and other sets of rules (regulatory and self-regulatory) that govern retail funds?

The investment fund business in Switzerland is governed by:

- the Collective Investment Schemes Act (CISA);
- the Collective Investment Schemes Ordinance (CISO);
- the FINMA Collective Investment Schemes Ordinance (CISO-FINMA);
- the FINMA Collective Investment Schemes Bankruptcy Ordinance (CISBO-FINMA);
- the Financial Institutions Act (FinIA);
- the Financial Institutions Ordinance (FinIO);
- the FINMA Financial Institutions Ordinance (FinIO-FINMA);
- the Financial Services Act (FinSA);
- the Financial Services Ordinance (FinSO);
- the Anti-Money Laundering Act (AMLA);
- the Anti-Money Laundering Ordinance (AMLO); and
- the FINMA Anti-Money Laundering Ordinance (AMLO-FINMA).

In addition, FINMA, as the competent regulatory body and supervisory authority, has published circulars addressing specific areas of collective investment schemes law.

Market participants must also comply with self-regulation of industry organisations recognised by FINMA as a minimum standard, namely the code of conduct and various guidelines of the Asset Management Association Switzerland (AMAS) – formerly Swiss Funds & Asset Management Association – and the guidelines of the Swiss Bankers Association.

Law stated - 1 June 2025

Authorisation

14 | Must retail funds be authorised or licensed to be established or marketed in your jurisdiction?

All domestic funds open to non-qualified investors require authorisation or approval by FINMA.

Furthermore, all foreign funds offered or advertised to non-qualified investors in Switzerland require FINMA approval.

Law stated - 1 June 2025

Marketing

15 | Who can market retail funds? To whom can they be marketed?

Marketing of foreign and domestic retail funds does not trigger an authorisation requirement for the marketing entity but requires compliance with certain rules of conduct and organisational requirements if a particular marketing activity qualifies as a financial service under the FinSA and is considered as performed in Switzerland.

Retail funds may be marketed to non-qualified and qualified investors.

Law stated - 1 June 2025

Managers and operators

16 | Are there any special requirements that apply to managers or operators of retail funds?

There are no special requirements for managers or operators of retail funds. The general authorisation requirements for managers and operators of funds apply. Overseas managers may be entrusted with the portfolio management of domestic retail funds on the basis of an equivalent home country authorisation and supervision, provided their licence includes the managing of retail funds.

Law stated - 1 June 2025

Investment and borrowing restrictions

17 | What are the investment and borrowing restrictions on retail funds?

The CISA distinguishes four types of open-ended funds based on type of investment: securities funds, real estate funds, other funds for traditional investments and other funds for alternative investments. Each type of fund follows a different set of rules regarding permitted investments, investment restrictions and techniques.

Additional restrictions may be determined in the fund regulations.

Securities funds

Securities funds may invest in transferable securities issued on a large scale and in non-securities rights with the same function (uncertified securities) that are traded on a stock exchange or another regulated market that is open to the public, in addition to other liquid financial assets.

The following investments are permitted:

- securities;
- derivatives;
- units in funds;
- money market instruments; and
- short-term deposits.

The following are not permitted: investments in precious metals or precious metal certificates, or commodities or commodity certificates, as well as short-selling of investments.

The following investment techniques may be employed:

- securities lending;
- repurchase agreements;
- borrowing of funds of up to 10 per cent of the fund's net assets; and
- pledging or transferring as collateral up to 25 per cent of the fund's net assets.

Real estate funds

Real estate funds may invest their assets in:

- property;
- real estate companies;
- units in other real estate funds and listed real estate investment companies; and
- foreign real estate securities.

The use of derivatives is permitted for hedging purposes.

Other funds for traditional and alternative investments

Other funds for traditional and alternative investments are open-ended funds that neither qualify as securities funds nor as real estate funds. Permitted investments for both types of funds include, in particular:

- securities;
- precious metals;
- real estate;
- commodities;
- derivatives;
- units of other funds; and
- other assets and rights.

Investments may be of limited marketability, subject to strong price fluctuations and may be difficult to value. Often these types of funds exhibit limited risk diversification.

The risk profile of these types of funds differs in terms of their investments, investment techniques and restrictions, in particular with regard to the following:

	Other funds for traditional investments	**Other funds for alternative investments**

Borrowing	Up to 25 per cent of the fund's net assets	Up to 50 per cent of the fund's net assets
Pledge or transfer as collateral	Up to 60 per cent of the fund's net assets	Up to 100 per cent of the fund's net assets
Overall exposure	Up to 225 per cent of the fund's net assets	Up to 600 per cent of the fund's net assets
Engagement in short - selling	Permitted	Permitted

Specific investment restrictions and techniques must be laid down in the fund regulations.

FINMA may grant derogations from the statutory provisions in the individual case.

For SICAFs, the provisions concerning permitted investments for other funds for traditional and alternative investments apply accordingly.

Law stated - 1 June 2025

Tax treatment

18 | What is the tax treatment of retail funds? Are exemptions available?

Swiss tax law does not generally differentiate between domestic retail funds and non-retail funds. Taxation depends on the type of legal structure of the fund. The various types of domestic fund can be classified into two groups: FCPs, SICAVs and partnerships for collective investment (LPs); and SICAFs.

The first group is viewed in a transparent manner from a Swiss corporate income tax perspective. These types of funds are not subject to Swiss corporate income taxes on their income or gains. The fund's income is taxed in the hands of the investors. An exception applies to income derived from directly owned real estate that is subject to corporate income tax at the fund level. A domestic fund holding real estate situated in Switzerland may, nevertheless, be tax-exempt for the purpose of corporate income tax if its investors consist exclusively of tax-exempt pension schemes or social security institutions and compensation funds.

Profit distribution or accumulated profits from non-distributing (annual deemed distribution) FCPs, SICAVs and LPs are subject to a withholding tax at 35 per cent. If such distributions or accumulated profits derive from real estate or capital gains, no withholding tax is due, provided that they are reported separately. The withholding tax on the distribution or accumulated profits can be reclaimed by Swiss investors if they declare the income in their tax return or account for it in their financial statements.

Non-resident investors may qualify for an exemption from Swiss withholding tax under the affidavit procedure or may reclaim the withholding tax in full if at least 80 per cent of the fund's earnings are foreign-sourced. If foreign-sourced earnings amount to less than 80

per cent, a non-resident investor can reclaim Swiss withholding tax based on an applicable double taxation treaty between Switzerland and its country of residence.

The second group is treated identically to any other corporation in Switzerland and, therefore, is not tax transparent for any type of tax. SICAFs are subject to corporate income tax and tax on net equity, and their distributions (but not accumulated profits) to shareholders are subject to withholding tax at 35 per cent.

In principle, regarding capital and income taxes, Swiss legislation does not distinguish between investments in a domestic or a foreign fund. In both cases, investments are subject to capital tax and distributed or accumulated income is subject to income tax, while capital gains are tax-free for investors holding their assets for private investment purposes.

Law stated - 1 June 2025

Asset protection

19 Must the portfolio of assets of a retail fund be held by a separate local custodian? What regulations are in place to protect the fund's assets?

Fund management companies of FCPs, SICAVs and SICAFs must entrust the safekeeping of assets to a custodian bank. Custodian banks must be authorised banks according to the Swiss Banking Act and have an appropriate organisational structure to act as custodian banks for funds. Unlike depositories and paying agents, custodian banks must, in addition to their banking licence, be authorised by FINMA.

The role of a custodian bank includes holding fund assets on deposit, issuing and redeeming units, handling payments processing and ensuring that the fund management company or SICAV complies with the regulations.

A custodian bank may delegate the safekeeping of fund assets to regulated third-party custodians and collective securities depositories in Switzerland or abroad, provided this is in the interest of efficient safekeeping and is appropriate. Any change of custodian bank requires prior FINMA authorisation.

If a custodian bank becomes bankrupt, the assets held by it in custody are not included in the bank's bankruptcy estate. Instead, the assets (except cash) are segregated from the bank's bankruptcy estate in favour of the fund management company of an FCP or of a SICAV, subject to any claims by the custodian bank against the respective depositor.

In the case of bankruptcy of a fund management company of an FCP, assets and rights belonging to the fund will be segregated in favour of the investors. Debts of the fund management company that do not arise under the fund contract may not be set off against claims of the fund.

Law stated - 1 June 2025

Governance

20

> What are the main governance requirements for a retail fund formed in your jurisdiction (registration, record-keeping, filings, officers)?

Any party responsible for the management of funds and the safekeeping of assets held in it must obtain authorisation from FINMA.

If there is a change in the circumstances underlying the authorisation, FINMA's authorisation must be sought prior to the continuation of activity. The following must be reported to FINMA without delay:

- changes to organisational and corporate documents;
- changes in the persons responsible for the management and business operations and of significant equity holders;
- facts that might call into question the good reputation or the guaranteeing of proper management by the persons responsible for the management and business operations (eg, criminal proceedings);
- facts that might call into question the good reputation of significant equity holders or the prudent and sound business practice of the licensee owing to the influence of significant equity holders;
- change of executive persons entrusted with the performance of the custodian bank's duties; and
- any change regarding minimum capital, capital adequacy and financial guarantees.

Persons managing, representing or safekeeping assets of funds and their agents must fulfil the following statutory conduct rules:

- duty of loyalty: they must act independently and exclusively in the interest of the investors;
- due diligence: they must implement organisational measures that are necessary for proper management; and
- duty to provide information:
    - they must ensure the provision of transparent financial statements and provide appropriate information about the funds that they manage and distribute and the assets that they hold in safekeeping;
    - they must disclose all charges and fees incurred directly or indirectly by the investors and their appropriation; and
    - they must notify investors of compensation for the distribution of funds in the form of commission, brokerage fees and other soft commissions in a full, truthful and comprehensive manner.

Persons providing a financial service within the meaning of the FinSA related to funds must comply with the rules of conduct and organisational requirements under the FinSA.

The statutory conduct rules are complemented by self-regulation of industry organisations that FINMA has recognised as minimum standards, particularly the AMAS Code of Conduct, as well as several guidelines.

Law stated - 1 June 2025

Reporting

21 What are the periodic reporting requirements for retail funds?

Domestic funds

Open-ended funds must keep separate accounts and publish an audited annual report within four months of the end of the fund's financial year and an unaudited semi-annual report within two months of the end of the first half of the fund's financial year.

The fund management company of an FCP or a SICAV must publish the prices at regular intervals in the designated publication instrument as indicated in the prospectus.

Changes to the fund regulations of FCPs, SICAVs or SICAFs must be communicated to investors by way of publication and require prior approval or authorisation by FINMA. In the case of material changes, investors have a right to lodge objections. Changes to the prospectus and the basic information sheet must only be notified to FINMA.

Foreign funds

Foreign retail funds approved for offer must also publish an annual report within four months of the end of the fund's financial year and a semi-annual report within two months of the fund's first half of the financial year.

In addition, they must publish prices at regular intervals in the designated Swiss publication instrument as indicated in the prospectus.

Moreover, investors must be notified by way of publication about amendments to the fund documents, change of legal form, mergers, liquidations, changes of Swiss representative or paying agent and measures taken by foreign regulators, and if 'gating' is imposed for a foreign fund having the ability to gate. The publication in Switzerland must be effected with the same content and at the same date as in the home country of the foreign fund. The amended fund documents require (post-effective) FINMA approval.

Proposed changes of the Swiss representative or paying agent, as well as the termination of representative agreements, require prior FINMA approval.

Law stated - 1 June 2025

Issue, transfer and redemption of interests

22 Can the manager or operator place any restrictions on the issue, transfer and redemption of interests in retail funds?

The fund management company of an FCP or a SICAV may temporarily or fully suspend the issue of units at any time and may reject individual applications to subscribe for, or switch, units without assigning any reason therefor.

There are no statutory restrictions on the transfer of units in open-ended retail funds.

The fund regulations of open-ended retail funds, however, may further restrict the issue and transfer of units.

Investors of open-ended retail funds are, in principle, entitled to request the redemption of their units and payment of the redemption amount in cash. The fund regulations of open-ended retail funds whose value is difficult to ascertain, or that have limited marketability, however, may provide for notice to be served only on specific dates, subject to a minimum of four times per year.

FINMA may, in the event of a justified request, restrict the right to redeem at any time depending on the investments and investment policy. This can apply specifically in the case of investments that are not listed and not traded on another regulated market open to the public, mortgages and private equity investments. The right to redeem at any time may be suspended for a maximum of five years and this restriction on redemption must explicitly be disclosed in the fund regulations.

The fund regulations may provide for repayment to be deferred temporarily in certain circumstances (eg, market closures, trading restrictions or suspensions, emergencies, restrictions on asset transfers or large-scale withdrawals of units) or for a 'gating' procedure taking into account the interests of the remaining investors.

The auditor and FINMA must be informed immediately of any decision to defer redemptions or apply gating as well as of any lifting of such measures. Respective decisions must also be communicated to the investors in a suitable manner.

The transferability of shares in SICAFs is regulated by the Swiss Code of Obligations. The SICAF's articles of association can set out certain transfer restrictions. If there are no restrictions, the shares are freely transferable.

Law stated - 1 June 2025

NON-RETAIL POOLED FUNDS

Available vehicles

23 What are the main legal vehicles used to set up a non-retail fund? How are they formed?

Open-ended non-retail funds may be set up as contractual funds (FCPs) or as investment companies with variable capital (SICAVs). Closed-ended non-retail funds may be set up as investment companies with fixed capital (SICAFs) or as partnerships for collective investment (LPs).

An LP is a partnership whose sole objective is collective investment. At least one member bears unlimited liability (general partner), while other members (limited partners) are liable

only up to a specified amount (limited partner's contribution). General partners must be companies limited by shares with their registered office in Switzerland. Limited partners must be qualified investors according to the Collective Investment Schemes Act (CISA-). An LP may only manage its own investments and conduct investments in risk capital. Investments in companies or projects can take the form of equity capital, lending or mezzanine financing. Other permitted investments generally include construction, real estate and infrastructure projects as well as alternative investments.

All of the above-mentioned forms of Swiss funds, except for the SICAF, can be set up as a regulated fund or a Limited Qualified Investor Fund (L-QIF), which is exempt from any authorisation, approval and product supervision by FINMA.

Law stated - 1 June 2025

Laws and regulations

24 What are the key laws and other sets of rules (regulatory and self-regulatory) that govern non-retail funds?

Investment fund business in Switzerland is governed by:

- the Collective Investment Schemes Act (CISA);
- the Collective Investment Schemes Ordinance (CISO);
- the FINMA Collective Investment Schemes Ordinance (CISO-FINMA);
- the FINMA Collective Investment Schemes Bankruptcy Ordinance (CISBO-FINMA);
- the Financial Institutions Act (FinIA);
- the Financial Institutions Ordinance (FinIO);
- the FINMA Financial Institutions Ordinance (FinIO-FINMA);
- the Financial Services Act (FinSA);
- the Financial Services Ordinance (FinSO);
- the Anti-Money Laundering Act (AMLA);
- the Anti-Money Laundering Ordinance (AMLO); and
- the FINMA Anti-Money Laundering Ordinance (AMLO-FINMA).

In addition, the Swiss Financial Market Supervisory Authority (FINMA), as the competent regulatory body and supervisory authority, has published circulars addressing specific areas of collective investment schemes law.

Market participants must also comply with self-regulation of industry organisations recognised by FINMA as a minimum standard, namely the code of conduct and various guidelines of the Asset Management Association Switzerland (AMAS) – formerly Swiss Funds & Asset Management Association – and the guidelines of the Swiss Bankers Association.

Law stated - 1 June 2025

Authorisation

25 | Must non-retail funds be authorised or licensed to be established or marketed in your jurisdiction?

Domestic non-retail funds must be approved or authorised by FINMA, except for L-QIFs. Foreign non-retail funds may not be approved for offer to non-qualified investors.

Law stated - 1 June 2025

Marketing

26 | Who can market non-retail funds? To whom can they be marketed?

Marketing of foreign and domestic non-retail funds does not trigger an authorisation requirement for the marketing entity but requires compliance with certain rules of conduct and organisational requirements if a particular marketing activity qualifies as a financial service under the FinSA and is considered as performed in Switzerland.

Non-retail funds may exclusively be marketed to qualified investors.

Law stated - 1 June 2025

Ownership restrictions

27 | Do investor-protection rules restrict ownership in non-retail funds to certain classes of investor?

The circle of investors of non-retail funds is limited to the following qualified investors according to the CISA and CISO.

- Professional clients within the meaning of the FinSA, namely:
    - financial intermediaries as defined in the Banking Act, the Financial Institutions Act and the CISA (eg, banks, securities firms, fund management companies, managers of collective assets, portfolio managers and trustees);
    - regulated insurance companies as defined in the Insurance Supervision Act;
    - foreign financial intermediaries and insurance companies subject to prudential supervision as institutions listed above;
    - central banks;
    - public entities with professional treasury operations;
    - pension funds with professional treasury operations and other occupational pension institutions providing professional treasury operations;
    - companies with professional treasury operations;
    -

large companies that reach at least two of the following thresholds: a balance sheet of 20 million Swiss francs, turnover of 40 million Swiss francs or equity of two million Swiss francs, regardless of whether they have professional treasury operations; and

- private investment structures established for high-net-worth private clients with professional treasury operations.

- High-net-worth private clients and their investment structures without professional treasury operations who have confirmed in writing that they have at least two million Swiss francs of eligible financial assets, or confirmed that they have at least 500,000 Swiss francs in eligible financial assets and demonstrate that their knowledge is sufficient to understand the risks of the investments due to their education and work experience or a similar experience in the financial sector; and who have declared that they wish to be treated as professional clients under the FinSA (opting out).
- Private clients to whom a regulated financial intermediary as defined above or a foreign financial intermediary subject to equivalent prudential supervision renders discretionary portfolio management services or advisory services in the context of long-term relationships.

The professional treasury operations requirements are fulfilled if at least one internal or external qualified person with experience in financial matters is entrusted with managing the liquid financial assets within the framework of professional cash or treasury management on a permanent basis.

Any investor that is not a qualified investor is considered a 'non-qualified investor'.

Professional clients that opt in to private client status remain qualified investors for the purpose of the CISA.

The specific fund regulations may provide for additional restrictions in individual cases (eg, for tax exemption reasons).

Law stated - 1 June 2025

Managers and operators

28 Are there any special requirements that apply to managers or operators of non-retail funds?

The requirements that apply to managers or operators of non-retail funds are essentially the same as for retail funds. The general authorisation requirements for managers and operators of funds apply.

In the case of single investor funds (for regulated insurance companies, public entities with professional treasury operations or pension schemes with professional treasury operations and other occupational pension institutions providing professional treasury operations), the fund management company of an FCP or SICAV may delegate the investment decisions to the single investor. FINMA may exempt them from the duty to subject themselves to supervision for managers of collective assets.

Law stated - 1 June 2025

Tax treatment

29 | What is the tax treatment of non-retail funds? Are any exemptions available?

Swiss tax law does not generally differentiate between domestic retail funds and non-retail funds (including L-QIFs) not approved or authorised by FINMA). Taxation depends on the type of legal structure of the fund. The various types of domestic fund can be classified into two groups: FCPs, SICAVs and LPs; and SICAFs.

The first group is viewed in a transparent manner from a Swiss corporate income tax perspective. These types of funds are not subject to Swiss corporate income taxes on their income or gains. The fund's income is taxed in the hands of the investors. An exception applies to income derived from directly owned real estate that is subject to corporate income tax at the fund level. A domestic fund holding real estate situated in Switzerland may, nevertheless, be tax-exempt for the purpose of corporate income tax if its investors consist exclusively of tax-exempt pension schemes or social security institutions and compensation funds.

Profit distribution or accumulated profits from non-distributing (annual deemed distribution) FCPs, SICAVs and LPs are subject to a withholding tax at 35 per cent. If such distributions or accumulated profits derive from real estate or capital gains, no withholding tax is due, provided that they are reported separately. The withholding tax on the distribution or accumulated profits can be reclaimed by Swiss investors if they declare the income in their tax return or account for it in their financial statements.

Non-resident investors may qualify for an exemption from Swiss withholding tax under the affidavit procedure or may reclaim the withholding tax in full if at least 80 per cent of the fund's earnings are foreign-sourced. If foreign-sourced earnings amount to less than 80 per cent, a non-resident investor can reclaim Swiss withholding tax based on an applicable double taxation treaty between Switzerland and its country of residence.

The second group is treated identically to any other corporation in Switzerland and, therefore, is not tax transparent for any type of tax. SICAFs are subject to corporate income tax and tax on net equity, and their distributions (but not accumulated profits) to shareholders are subject to withholding tax at 35 per cent.

In principle, regarding capital and income taxes, Swiss legislation does not distinguish between investments in a domestic or a foreign fund. In both cases, investments are subject to capital tax, distributed or accumulated income is subject to income tax, while capital gains are tax-free for investors holding their assets for private investment purposes.

Law stated - 1 June 2025

Asset protection

30 | Must the portfolio of assets of a non-retail fund be held by a separate local custodian? What regulations are in place to protect the fund's assets?

Fund management companies of FCPs, SICAVs and SICAFs must entrust the safekeeping of assets to a custodian bank. Custodian banks must be authorised banks according to the Swiss Banking Act and have an appropriate organisational structure to act as custodian banks for funds. Unlike depositories and paying agents, custodian banks must, in addition to their banking licence, be authorised by FINMA.

In the case of a SICAV that is exclusively open to qualified investors, FINMA may, under certain conditions, grant exemptions to appoint a custodian bank.

The role of a custodian bank includes holding fund assets on deposit, issuing and redeeming units, and handling payments processing and ensuring that the fund management company or SICAV complies with the regulations.

A custodian bank may delegate the safekeeping of fund assets to regulated third-party custodians and collective securities depositories in Switzerland or abroad, provided this is in the interest of efficient safekeeping and is appropriate. Any change of custodian bank requires prior FINMA authorisation.

If a custodian bank becomes bankrupt, the assets held by it in custody are not included in the bank's bankruptcy estate. Instead, the assets (except cash) are segregated from the bank's bankruptcy estate in favour of the fund management company of an FCP or a SICAV, subject to any claims by the custodian bank against the respective depositor.

In the case of bankruptcy of a fund management company of an FCP, assets and rights belonging to the fund will be segregated in favour of the investors. Debts of the fund management company that do not arise under the fund contract may not be set off against claims of the investment fund.

LPs do not have to deposit the fund's assets with a Swiss custodian bank or any other regulated institution. Therefore, the assets are generally not subject to special treatment in the event of the fund's bankruptcy. However, if the assets are held with a Swiss bank within the meaning of the BA, the assets deposited with that bank are, in the case of the bank's bankruptcy, subject to the same rules as open-ended funds.

Law stated - 1 June 2025

Governance

31 What are the main governance requirements for a non-retail fund formed in your jurisdiction (registration, record-keeping, filings, officers)?

Any party responsible for the management of funds and the safekeeping of assets held in it must obtain authorisation from FINMA.

If there is a change in the circumstances underlying the authorisation, FINMA's authorisation must be sought prior to the continuation of activity. The following must be reported to FINMA without delay:

- changes to organisational and corporate documents;
- changes in the persons responsible for the management and business operations and of significant equity holders;

- facts that might call into question the good reputation or the guaranteeing of proper management by the persons responsible for the management and business operations (eg, criminal proceedings);
- facts that might call into question the good reputation of significant equity holders or the prudent and sound business practice of the licensee owing to the influence of significant equity holders;
- change of executive persons entrusted with the performance of the custodian bank's duties; and
- any change regarding minimum capital, capital adequacy and financial guarantees.

Persons managing, representing or safekeeping assets of funds and their agents must fulfil the following statutory conduct rules:

- duty of loyalty: they must act independently and exclusively in the interest of the investors;
- due diligence: they must implement organisational measures that are necessary for proper management; and
- duty to provide information:
    - they must ensure the provision of transparent financial statements and provide appropriate information about the funds that they manage and distribute and the assets that they hold in safekeeping;
    - they must disclose all charges and fees incurred directly or indirectly by the investors and their appropriation; and
    - they must notify investors of compensation for the distribution of funds in the form of commission, brokerage fees and other soft commissions in a full, truthful and comprehensive manner.

Persons providing a financial service within the meaning of the FinSA related to funds must comply with the rules of conduct and organisational requirements under the FinSA.

The statutory conduct rules are complemented by self-regulation of industry organisations that FINMA has recognised as minimum standards, particularly the AMAS Code of Conduct, as well as several guidelines.

Law stated - 1 June 2025

Reporting

32 | What are the periodic reporting requirements for non-retail funds?

The general rules for retail funds apply.

FINMA may, upon request, fully or partially exempt approved and authorised non-retail funds from certain reporting requirements under the CISA (eg, the duty to publish a semi-annual report or to publish prices). Exemptions must be established in the fund

regulations. Although not explicitly foreseen in the CISA, an L-QIF does not need to publish a semi-annual report but only an annual report).

Law stated - 1 June 2025

SEPARATELY MANAGED ACCOUNTS

Structure

33 How are separately managed accounts (ie, accounts through which investor funds are segregated – not pooled – and the investor owns the underlying assets, which are managed at the investment manager's discretion) typically structured in your jurisdiction?

Managed accounts are usually structured by arranging for the mainly professional client to appoint a (Swiss) bank or securities firm for the purpose of holding the client's assets in an account. In addition, the respective bank or securities firm, or an outside asset manager, is given discretionary investment management authority to acquire and dispose of assets in the account. Operational duties in areas such as investment compliance, risk management, reporting and accounting can be delegated to a fund management company.

Law stated - 1 June 2025

Key legal issues

34 What are the key legal issues (eg, standard of care, indemnification) to be determined when structuring a separately managed account?

The standard of care owed to the client, any limitation of liability, fee structure, transparency and reporting requirements and applicable investment limitations are often among the most important terms for a separately managed account.

The discretionary investment management mandate given by the client to the investment manager as well as the account relationship with the bank or securities dealer are typically governed by the statutory provisions set out in the Swiss Code of Obligations and by the relevant agreements between the parties. As a financial service provider subject to the Financial Services Act (FinSA), the investment manager must comply with the regulatory duties towards its clients set out in the FinSA. Furthermore, accepted minimum standards for investment management mandates are defined in the guidelines and codes of conduct regarding investment management issued by the Swiss Financial Market Supervisory Authority (FINMA) and industry organisations, in particular, the Swiss Bankers Association and the Asset Management Association Switzerland – formerly Swiss Funds & Asset Management Association.

Law stated - 1 June 2025

Regulation

35 Is the management or marketing of separately managed accounts regulated in your jurisdiction? (If so, how does this operate? Is this the same regime for fund management?)

The management or marketing of separately managed accounts by overseas managers is not subject to an authorisation requirement in Switzerland, provided that no personnel are permanently and on a professional basis employed in Switzerland or fully integrated into the organisation (or both) and, accordingly, no branch or representative office within the meaning of the FinSA is maintained. However, foreign financial service providers and their client advisers, respectively, who service clients in Switzerland, are required to affiliate with an ombudsman's office and to register with the client adviser register under the FinSA, except when they are subject to prudential supervision in their home country and if exclusively institutional and professional clients are targeted in Switzerland. A registration or affiliation exemption does not relieve foreign financial service providers from compliance with the applicable rules of conduct and the organisational requirements imposed by the FinSA.

Domestic banks, securities firms, managers of collective assets and portfolio managers providing portfolio management services for separately managed accounts in accordance with a discretionary mandate given by a client are supervised by FINMA or the competent supervisory organisation also with regard to the provision of this (additional) service.

The rules on offering and advertising funds must be considered if investment funds are used in separately managed accounts.

Law stated - 1 June 2025

GENERAL

Proposed reforms

36 Are there proposals for further regulation of funds, fund managers or marketers of funds in your jurisdiction?

Currently, there are no proposals to amend the existing fund legislation.

As of 1 March 2024, the Limited Qualified Investor Fund (L-QIF), was introduced in the amended Collective Investment Schemes Act (CISA) as a new fund type which does not require approval by the Financial Market Supervisory Authority (FINMA).

The new fund category is based on existing European fund types such as the Luxembourg Reserved Alternative Investment Fund. Such funds can be launched quickly and inexpensively due to the waiver of authorisation and often offer great flexibility regarding investment regulations. They are therefore particularly suitable for alternative investments and innovative strategies and are popular with Swiss fund providers and investors. The introduction of the L-QIF is therefore intended to ensure that fund providers and investors in Switzerland have a comparable Swiss fund category at their disposal.

The following core elements apply to the L-QIF:

- it does not introduce a new legal form of collective investment schemes, but a new fund category in addition to securities funds, real estate funds and other funds for traditional investments and other funds for alternative investments;
- all legal forms of the CISA are available for the L-QIF, except for the investment companies with fixed capital (SICAF);
- it is exclusively open to qualified investors. Except for L-QIFs with real estate investments, this includes high-net-worth private clients and private investment structures established for them that have declared that they wish to be considered professional clients (opting out);
- it is managed by a supervised Swiss fund management company or manager of collective assets;
- it does not require authorisation or approval from FINMA;
- a prospectus is not required;
- the term 'Limited Qualified Investor Fund' or 'L-QIF' must be used on the first page of the fund documents and in connection with advertising for an L-QIF. Furthermore, a note must be added stating that the fund has neither a licence nor an authorisation from FINMA and is not supervised by FINMA;
- very liberal investment rules and risk diversification requirements to encourage innovation;
- permissible investments must be disclosed in the fund documents (eg, the fund contract for the contractual fund (FCP), the investment regulations for an investment company with variable capital (SICAV) and in the articles of association for a partnership for collective investment (LP)). Special risks associated with alternative investments must be mentioned in the fund documents, in the description documents and in the marketing or advertising documents, and it must be ensured that the relationship between the investments, investment policy, risk distribution, investor base and redemption frequency, on the one hand, and the liquidity, on the other hand, is appropriate throughout the life cycle of the L-QIF;
- special provisions apply for real estate investments. For example, in case of real estate investments, at least two independent natural persons or one independent legal entity must be appointed as valuation experts; and
- it will be treated equally with other Swiss funds approved by FINMA in terms of tax law.

The introduction of the L-QIF was necessary to ensure and improve the competitiveness of the Swiss fund market. However, the existing disadvantages of Swiss collective investment schemes in connection with access to the European Union market and tax legislation cannot be eliminated even with the introduction of the L-QIF.

Law stated - 1 June 2025

Public listing

37 | Outline any specific requirements for stock-exchange listing of retail and non-retail funds.

The listing of domestic and foreign funds on a Swiss stock exchange is governed by the Federal Act on Financial Market Infrastructures and Market Conduct in Securities and Derivatives Trading (FMIA), and the applicable self-regulation of the respective stock exchange.

The listing rules of the main Swiss stock market, the SIX Swiss Exchange, contain specific requirements for the listing and maintenance of the listing of different types of collective investment schemes, namely investment funds, exchange-traded structured funds and – in practice, most relevant – real estate funds and actively or passively managed exchange-traded funds (ETFs). In particular, minimum capitalisation and free-float requirements apply if no market-maker is appointed for the fund interests. The implementing trading provisions contain further conditions for the market-making of ETFs. Furthermore, it is a listing requirement that domestic and foreign funds be approved or authorised by FINMA. On the other hand, FINMA will not approve, for offer to non-qualified investors, a foreign fund that is an ETF or has the term 'ETF' in its name unless the share classes offered to non-qualified investors in Switzerland are listed on a recognised Swiss stock exchange. Under the revised Collective Investment Scheme Ordinance (CISO), also 'blended' exchange-traded funds including (listed) ETF and non-ETF share classes are recognised. FINMA requires the fund regulations of an ETF to include specific information (eg, applicable replication method, market making and disclosures of ETF share classes of 'blended' exchange-traded funds).

Law stated - 1 June 2025

Overseas vehicles

38 | Is it possible to redomicile an overseas vehicle in your jurisdiction?

There is neither a general regulatory system nor any official guidance by FINMA on the redomiciliation of overseas vehicles to Switzerland.

FINMA may, in an individual case, accept two forms of repatriation of an overseas vehicle to Switzerland:

- transfer of assets of an overseas vehicle into a newly created domestic fund by exchange of units of the overseas vehicle or by redemption of units in kind to the investors of the overseas vehicle and following contribution in kind as new investors of the domestic fund on the same day. The then empty overseas vehicle will be liquidated; or
- transfer of domicile of the overseas vehicle to Switzerland, whereby the overseas vehicle needs to be transformed into a domestic fund, complying with all applicable Swiss laws and regulations.

Law stated - 1 June 2025

Foreign investment

I

39 Are there any special rules relating to the ability of foreign investors to invest in funds established or managed in your jurisdiction or domestic investors to invest in funds established or managed abroad?

Other than the applicable marketing restrictions, there are no special statutory restrictions in this regard.

However, the ability of foreign investors to invest in domestic funds may be limited by the applicable fund regulations.

Certain domestic investors, such as Swiss pension schemes, may be restricted to a certain extent by law to invest in funds established or managed abroad.

Law stated - 1 June 2025

Funds investing in derivatives

40 Are there any special requirements in your jurisdiction relating to funds investing in derivatives?

Derivatives may be used not only for hedging purposes but also as part of the active investment strategy of funds. However, for real estate funds, the use of derivatives is only permitted for hedging purposes. The derivatives used must correspond to the investment strategy of the fund and their underlying assets must also be permissible as investments. Risks must be measured using either the commitment approach or the model approach depending on the complexity of the use of the derivatives. The derivatives used in an investment fund must also be fully taken into account when complying with the various legal limits (risk distribution limits, minimum and maximum limits of the investment policy and so on) as well as the requirements for counterparty risk. In addition, fund management companies, managers of collective assets and collective investment schemes must comply with the requirements of the market conduct rules of the FMIA when trading derivatives. In particular, settlement, reporting, risk mitigation and platform trading obligations stemming from the FMIA must be complied with.

Law stated - 1 June 2025

UPDATE AND TRENDS

Recent developments

41 Are there any other current developments or emerging trends in your jurisdiction that should be noted? Please include reference to world-wide regulatory concerns, such as restrictions on foreign ownership in strategic industries, high-frequency trading, commodity position limits, capital adequacy for investment firms and 'shadow banking'.

After the introduction of the new unregulated fund type, the Limited Qualified Investor Fund (L-QIF), and certain other new material provisions applying to all domestic funds (eg, obligations with respect to active breaches of investment restrictions, liquidity management

and side pockets) and, to a certain extent, to foreign funds approved by FINMA for offering to non-qualified investors in Switzerland (eg, with respect to 'blended' exchange-traded funds (ETFs) with ETF share classes to be listed on a Swiss trading venue and non-ETF share classes) there is no pending legislation directly related to fund management in Switzerland.

After the adoption of a revised 'Self-regulation on transparency and disclosure for sustainability-related collective assets' by the Asset Management Association Switzerland in September 2024, which provides for binding organisational, reporting and disclosure requirements and standards for members of the Asset Management Association Switzerland that apply to their sustainable asset management activities (including the management of ESG and sustainable funds) it is not expected that the Swiss Federal Council might decide on the adoption of new government regulations for the prevention of greenwashing also affecting domestic and potentially foreign funds in the near future.

Law stated - 1 June 2025

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Summary

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GENERAL

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FUND MANAGEMENT REGULATION

Regulatory framework and authorities

1 How (in very general terms) is fund management regulated in your jurisdiction? Which authorities have primary responsibility for regulating funds, fund managers and those marketing funds?

In Taiwan, there are five broad types of funds, defined by the organiser and the type of organisation structure utilised:

- securities investment trust enterprise funds (SITE funds);
- private equity limited partnership funds set up by securities investment trust enterprises (SITEs) or securities firms' affiliates (SITE PE funds);
- private equity limited partnership funds set up by entities or individuals other than SITEs' and securities firms' subsidiaries (non-SITE limited partnership funds);
- private equity funds not structured in the form of limited partnerships, typically organised as a company (private equity company funds); and
- offshore funds that are regulated under the jurisdictions where such funds are organised, but which are marketed and distributed in Taiwan pursuant to the Regulations Governing Offshore Funds or other regulations and rules (offshore funds).

By way of comparison, SITE funds invest and behave similarly to mutual funds in other jurisdictions, and the other funds may be the equivalent of hedge funds, private equity funds, venture funds or a mixture. For simplicity, this article will from time to time refer to SITE PE funds, non-SITE limited partnership funds and private equity company funds as 'non-SITE funds'.

Generally, in Taiwan, any person who provides analysis, opinions or recommendations on matters relating to investment in or trading of securities, securities-related products or other items approved by the government, in return for compensation obtained directly or indirectly from a principal or third party shall be a licensed securities investment consultant in accordance with the Securities Investment Trust and Consulting Act, under the supervision of the Financial Supervisory Commission (FSC). Although it is uncommon for a fund manager (if not managed internally via its general partner entity) to obtain such licence, a fund manager without a securities investment consulting licence is exposed to the risk of being fined or penalised by the authorities.

SITE funds, SITE PE funds and offshore funds are subject to periodic regulatory audits by the FSC. In addition, Taiwan institutional investors in all types of funds are also subject to periodic regulatory audits. By issuing comments to the funds and its key institutional investors, such audits could, from time to time, allow the Taiwan regulator to indirectly influence the direction of fund management, particularly with respect to investments in mainland China and investments in complex financial products.

Law stated - 7 May 2025

Fund administration

2 Is fund administration (support services provided to funds such as book-keeping, preparing reports, trade settlement, etc) regulated in your jurisdiction?

Taiwan currently does not separately license fund administration. In the absence of direct regulation, the fund administration business is generally not regulated in Taiwan, nor can it be registered with the competent authority. However, it is typical in Taiwan for SITE or securities firms to act as the fund administrator of a SITE fund without engaging other third parties to provide related services. In the future, as more independently managed funds prosper in Taiwan, there may be a market for independent fund administration services.

Law stated - 7 May 2025

Authorisation

3 What is the authorisation or licensing process for funds? What are the key requirements that apply to managers and operators of investment funds in your jurisdiction?

Any SITE fund may raise funds officially only after the SITE's application and filing to the FSC are approved, and such a SITE fund should be directly or indirectly managed by a SITE that shall be licensed and meet the requirements for its minimum capital and sales personnel.

Any SITE PE fund may raise funds only after the SITE's application to the FSC is approved. If such fund is to be managed by a SITE, then the management function should be performed by a specialised and segregated internal department within the SITE without involving any other personnel from other departments.

Any non-SITE limited partnership fund and any private equity company fund should be established and registered with the Ministry of Economic Affairs. Such funds may be operated by management consulting companies that do not require specific qualifications. However, if such management consulting companies provide analyses, opinions, advice or recommendations to third parties for compensation with respect to securities, securities-linked products or other investments or transactions, they may be deemed to be conducting a securities investment trust and consulting business, and would then, to be licensed accordingly, meet a minimum capital threshold and have qualified sales personnel.

Law stated - 7 May 2025

Territorial scope of regulation

4 What is the territorial scope of fund regulation? Can an overseas manager perform management activities or provide services to clients in your jurisdiction without authorisation?

In principle, the scope of fund regulation is limited to funds that are registered in Taiwan and offshore registered funds that raise funds or conduct private equity placement in Taiwan. An overseas manager may not provide fund management services or other related fund services in Taiwan without being duly licensed or registered as a foreign company in Taiwan. In practice, successful fundraising activities for offshore funds have been conducted offshore with minimal contacts in Taiwan via reverse solicitation.

Law stated - 7 May 2025

Acquisitions

5 Is the acquisition of a controlling or non-controlling stake in a fund manager in your jurisdiction subject to prior authorisation by the regulator? (Restrict your answers to the regulator with responsibility for oversight of fund management. Do not answer with respect to other agencies, such as the merger control authorities.)

Any change in shareholding held by directors, supervisors, managers and shareholders holding more than 5 per cent of the total issued shares of a SITE should be reported within five business days of the effective date of such change.

Any change in shareholding held by directors, supervisors, managers and shareholders holding more than 10 per cent of the total issued shares of securities firms that have established a SITE PE fund should be reported before the 15th of the following month.

There are no equivalent regulations pertaining to non-SITE limited partnership funds, private equity company funds and offshore funds; however, to the extent that such funds have institutional investors, such institutional investors will likely restrict events of change of control through 'key man' provisions or other provisions in the fund documentation.

Law stated - 7 May 2025

Restrictions on compensation and profit sharing

6 Are there any regulatory restrictions on the structuring of the fund manager's compensation and profit-sharing arrangements?

The fund manager's compensation and profit-sharing of funds may be arranged via agreements, and, therefore, the terms are usually subject to market standards and norms.

As SITE funds in Taiwan are regularly audited, the compensation agreements for such SITE funds will generally follow market standard template agreements, and any significant deviation in terms for the fund manager's compensation and profit-sharing arrangement as compared to the template agreements may affect regulatory approval for the SITE fund or generate commentary during the regulatory audit process.

For non-SITE funds and offshore funds, managers' compensation and profit-sharing arrangements for other types of funds would usually be decided by market practice; there are no regulatory restrictions or templates.

Law stated - 7 May 2025

FUND MARKETING

Authorisation

7 | Does the marketing of investment funds in your jurisdiction require authorisation?

Only securities investment trust enterprise funds (SITE funds) are allowed to be marketed to retail investors, and such public offerings require the approval of a competent authority. Such approval is needed before offerings are made to unspecified persons via general advertisement or promotional activities. Private placement of SITE funds does not require prior approval but must be reported to the competent authority within five days of the subscription price being paid. Furthermore, with respect to the private placement process, SITE funds may not make any general advertisement or public inducement.

SITE PE funds may not conduct any public offerings. Private placements of SITE PE funds require the prior approval of the Financial Supervisory Commission (FSC); such approval is given on a per-GP basis and not on a per-investment basis.

Non-SITE limited partnership funds and private equity company funds require no FSC approval prior to private placement offerings nor any after-the-fact reporting. However, to permit certain Taiwan financial insurance companies to invest in such funds, the funds will need to be qualified by the Ministry of Economic Affairs in advance.

Law stated - 7 May 2025

8 | What marketing activities require authorisation?

The marketing activities of SITE funds and SITE PE funds are regulated by the FSC.

For all types of funds, an offer towards, or inducement of, unspecified persons regarding a fund sale via public announcement, advertisement, radio broadcast, video broadcast, internet, mail, telephone, personal visit, inquiry, press conference, seminar or other methods may constitute a public offering for which prior approval from the competent authority is required.

Law stated - 7 May 2025

Territorial scope and restrictions

9 | What is the territorial scope of your regulation? May an overseas entity perform fund marketing activities in your jurisdiction without authorisation?

The territorial scope covers marketing activities in Taiwan. Overseas entities may not perform fund marketing in Taiwan without authorisation. Taiwan regulators generally do not

seek to regulate marketing activities outside of Taiwan, even if such offshore activities are directed towards overseas Taiwan nationals.

Law stated - 7 May 2025

10 | If a local entity must be involved in the fund marketing process, how is this rule satisfied in practice?

Overseas fund institutions may make offerings to professional investment institutions (including banks, the bills industry, the trust industry, the insurance industry, the securities industry or other legal entities or institutions approved by a competent authority), or elect to engage banks, the trust industry, security agencies, SITEs or securities investment consulting enterprises (SICEs) with the necessary qualifications to conduct offerings.

However, if such overseas fund does not have the nature of a securities investment trust fund, such overseas fund institutions may engage SITEs or securities firms to make private placement and market to professional investment institutions (including banks, the bills industry, the trust industry, the insurance industry, the securities industry or other legal entities or institutions approved by a competent authority) and high-net-worth investors.

In practice, overseas mutual funds and hedge funds making offerings in Taiwan usually elect to collaborate with a SITE or a SICE. Overseas private equity funds and venture capital funds often may not need to conduct marketing activities in Taiwan.

Law stated - 7 May 2025

Commission payments

11 | What restrictions are there on intermediaries earning commission payments in relation to their marketing activities in your jurisdiction?

With respect to SITE funds, the FSC requires using assets under management as a base for calculating commission payments. However, the relevant rate and applicable time periods are determined by the parties. There are no restrictions placed on non-SITE funds and offshore funds, but, generally, market norms will dictate the extent of fees that investors are willing to accept.

Law stated - 7 May 2025

RETAIL FUNDS

Available vehicles

12 | What are the main legal vehicles used to set up a retail fund? How are they formed?

Domestic retail funds are set up as securities investment trust enterprise funds (SITE funds). These are formed by SITEs with prior approval from the Financial Supervisory Commission (FSC).

Offshore funds that are retail funds seeking to market in Taiwan must engage a local SITE, securities investment consulting enterprise (SICE) and securities broker to act as a 'master agent' for distribution and sale in Taiwan, and the relevant SITE, SICE and securities broker will generally be required to obtain FSC approval to market and distribute such offshore funds' offerings on a product-by-product basis.

Law stated - 7 May 2025

Laws and regulations

13 | What are the key laws and other sets of rules (regulatory and self-regulatory) that govern retail funds?

The key laws are the Securities Investment Trust and Consulting Act, the Regulations Governing Securities Investment Trust Funds and the Regulations Governing Offshore Funds. There is also a large number of regulations, rulings and interpretations promulgated under those three bodies of law.

Law stated - 7 May 2025

Authorisation

14 | Must retail funds be authorised or licensed to be established or marketed in your jurisdiction?

Yes.

Law stated - 7 May 2025

Marketing

15 | Who can market retail funds? To whom can they be marketed?

SITE funds, once established, could be marketed by SITEs, SICEs and other financial institutions authorised by FSC. Offshore funds that are retail funds could also be marketed by SITEs or SICEs.

Law stated - 7 May 2025

Managers and operators

16 |

Are there any special requirements that apply to managers or operators of retail funds?

The managers or operators of domestic retail funds must be SITEs.

Law stated - 7 May 2025

Investment and borrowing restrictions

17 What are the investment and borrowing restrictions on retail funds?

The investment and borrowing restrictions are approved on a case-by-case basis by the FSC for domestic retail funds and are largely guided by market standards and norms. Offshore funds that are retail funds are not subject to prior regulatory approval in Taiwan, but as they can only be marketed by SITEs, SICEs or securities brokers in Taiwan with prior FSC approval, such approval may be delayed if the terms of the offshore fund product deviate from market standards and norms.

Law stated - 7 May 2025

Tax treatment

18 What is the tax treatment of retail funds? Are exemptions available?

Earnings of SITE funds are not taxed at the fund level but are deemed income of the beneficiaries of SITE funds.

Law stated - 7 May 2025

Asset protection

19 Must the portfolio of assets of a retail fund be held by a separate local custodian? What regulations are in place to protect the fund's assets?

In general, the portfolio assets of a SITE fund will need to be held by a custodian. The duties of the custodian, as well as the SITE, are regulated largely by the Securities Investment Trust Enterprise and Securities Investment Consulting Enterprise Law and the Trust Law.

Law stated - 7 May 2025

Governance

20 What are the main governance requirements for a retail fund formed in your jurisdiction (registration, record-keeping, filings, officers)?

There are two levels of regulation for domestic retail funds. First, only SITEs may form and manage retail funds, and the formation and licensing of a SITE is time-consuming and requires significant capital. A SITE is also a regulated financial institution and is subject to numerous regulatory requirements, including proper reporting and qualification of personnel, and extensive internal controls and compliance requirements. Second, each SITE fund that is established by a SITE also requires regulatory approval to be launched, and the terms and conditions of such SITE funds tend to be based on precedents and within a narrow range of market standards and norms.

Law stated - 7 May 2025

Reporting

21 | What are the periodic reporting requirements for retail funds?

Retail funds are generally required to provide monthly reporting, as well as half-annual and annual audited reporting.

Law stated - 7 May 2025

Issue, transfer and redemption of interests

22 | Can the manager or operator place any restrictions on the issue, transfer and redemption of interests in retail funds?

In general, managers and operators are not able to place any significant restrictions on issuing, transferring and redeeming interests in domestic retail funds, as domestic SITE funds are approved by the FSC in advance.

Offshore funds that are retail funds have no restrictions on issuing, transferring and redeeming interests in retail funds. However, as offshore funds require a SITE, a SICE or securities broker to act as a master agent for marketing and distribution in Taiwan, to the extent that the terms of an offshore fund product are not within market standards and norms, such offshore fund product may not be approved for distribution via the master agent.

Law stated - 7 May 2025

NON-RETAIL POOLED FUNDS

Available vehicles

23 | What are the main legal vehicles used to set up a non-retail fund? How are they formed?

The main legal structure used for private equity funds in Taiwan is the limited partnership. A name availability check on the limited partnership's proposed name is required as part of the registration procedure for a limited partnership. After confirmation that the name may be used, an application, the general partner's written consent, identification information of the general partner and the limited partner, limited partnership agreement, capitalisation table and other ancillary documents must be submitted to the competent authority for registration of formation. Formation is complete after the competent authority's documentary review, which usually requires three weeks to one month.

Law stated - 7 May 2025

Laws and regulations

24 What are the key laws and other sets of rules (regulatory and self-regulatory) that govern non-retail funds?

Securities investment trust enterprise (SITE) funds are primarily governed by the Securities Investment Trust and Consulting Act and the Regulations Governing Securities Investment Trust Funds.

SITE PE funds are primarily governed by the Limited Partnership Act and the relevant interpretive letters issued by the Financial Supervisory Commission (FSC) on funds formed by SITEs or securities firms.

Non-SITE limited partnership funds are primarily governed by the Limited Partnership Act.

Private equity company funds are primarily governed by the Company Act and the Venture Capital Industry Assistance Regulations.

Law stated - 7 May 2025

Authorisation

25 Must non-retail funds be authorised or licensed to be established or marketed in your jurisdiction?

Licences and approvals are not required for the private placement of SITE funds, but a post-closing filing with the competent authority is required within five days of the subscription price being paid.

SITE PE funds must obtain prior approval from the FSC for engaging in fund business.

Non-SITE limited partnership funds and private equity company funds are not required to be licensed or approved for establishment.

Law stated - 7 May 2025

Marketing

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26 | Who can market non-retail funds? To whom can they be marketed?

SITE funds should be marketed by SITEs to banks, the bills industry, the trust industry, the insurance industry, securities firms, financial holding companies or other legal persons or institutions approved by the FSC; and the natural persons, legal persons or funds meeting specific requirements (such natural persons should hold financial proof of having over NT$30 million and have sufficient professional knowledge of financial derivatives and dealing experience; such legal persons or funds should hold the most recent Certified Public Accountant (CPA) audited financial report demonstrating over NT$50 million in their aggregate assets, and for those who are authorised to transact, they should have sufficient professional knowledge of financial derivatives and dealing experience).

Non-SITE limited partnership funds should raise funds through the general partner, and there is no restriction on the marketing targets. Private equity company funds may be marketed by their respective shareholders or directors, and there is no restriction on the marketing targets.

SITE PE funds may be marketed by the general partner, or the SITE or securities firm who is engaged in the management of the SITE PE funds. A SITE or securities firm may only solicit funds from professional investment institutions. The professional investment institutions include domestic or foreign banks, fund management companies, and the bills, futures and insurance industries; government-invested institutions; domestic or foreign sovereign funds, retirement funds, mutual funds, unit investment trusts, funds or discretionary investment assets allowing entrustment of financial consumers that are managed or administered by financial institutions pursuant to the Securities Investment Trust and Consulting Act, the Futures Trading Act or the Trust Enterprise Act; and other institutions approved by the competent authority.

Law stated - 7 May 2025

Ownership restrictions

27 | Do investor-protection rules restrict ownership in non-retail funds to certain classes of investor?

The investors of SITE funds are limited to banks, the bills industry, the trust industry, the insurance industry, securities firms, financial holding companies or other legal persons or institutions approved by the FSC; and the natural persons, legal persons or funds meeting specific requirements (such natural persons should hold financial proof of having over NT$30 million and have sufficient professional knowledge of financial derivatives and dealing experience; such legal persons or funds should hold the most recent CPA audited financial report demonstrating over NT$50 million in their aggregate assets, and for those who are authorised to transact, they should have sufficient professional knowledge of financial derivatives and dealing experience).

There is no restriction on the investors of non-SITE limited partnership funds and private equity company funds.

SITE PE funds are limited to professional investment institutions referred by SITEs or securities firms. There is no restriction on the investors; however, if such funds are marketed by the general partner.

Law stated - 7 May 2025

Managers and operators

28 Are there any special requirements that apply to managers or operators of non-retail funds?

SITE funds shall be managed and operated by SITEs. In principle, SITE PE funds shall be managed by the general partner, the relevant SITE or the relevant securities firm, if such SITE PE funds wish to be managed by any third party other than the foregoing entity, it is advisable to obtain prior approval from the FSC or discuss with the FSC case handler before launching.

There are no special requirements that apply to operators of non-SITE limited partnership funds and private equity company funds.

Law stated - 7 May 2025

Tax treatment

29 What is the tax treatment of non-retail funds? Are any exemptions available?

The earnings of SITE funds are not taxed at the fund level but are deemed income of the beneficiaries of SITE funds.

Non-SITE limited partnership funds and SITE PE funds may apply to be taxed as pass-through entities if certain qualifications are met.

There are no pass-through mechanisms available for private equity company funds and the fund would be taxed based on the relevant organisation structure.

Law stated - 7 May 2025

Asset protection

30 Must the portfolio of assets of a non-retail fund be held by a separate local custodian? What regulations are in place to protect the fund's assets?

SITE funds are required to designate a trust enterprise or a bank concurrently operating a trust business to act as its custodian, on the basis of a trust relationship. Such designated custodian shall handle the custody, disposition, collections and payments in accordance with the Securities Investment Trust and Consulting Act and the trust contract.

Law stated - 7 May 2025

Governance

31 What are the main governance requirements for a non-retail fund formed in your jurisdiction (registration, record-keeping, filings, officers)?

For private equity company funds, registration is required with the Ministry of Economic Affairs. Company by-laws, shareholders' meeting minutes, board meeting minutes and financial statements shall be maintained by the fund. The register of members and company loan receipt books shall be kept by the fund or its stocks affairs agency.

For SITE PE funds, prior approval from the FSC is required. Financial records shall be maintained. The financial data and operation status of the relevant SITE or securities firm shall be periodically reported to the FSC. There shall be a designated, segregated internal department within the SITE to handle fund matters.

Law stated - 7 May 2025

Reporting

32 What are the periodic reporting requirements for non-retail funds?

There are no periodic reporting requirements for non-SITE limited partnership funds and SITE PE funds.

A private equity company fund is required to provide information on its directors, supervisors, managers and shareholders holding more than 10 per cent of its issued shares to the competent authorities on an annual basis through the portal designated by competent authorities. Any change in shareholding held by such directors, supervisors, managers and shareholders holding more than 10 per cent of the issued shares should be reported within 15 days of the effective date of such change.

Law stated - 7 May 2025

SEPARATELY MANAGED ACCOUNTS

Structure

33 How are separately managed accounts (ie, accounts through which investor funds are segregated – not pooled – and the investor owns the underlying assets, which are managed at the investment manager's discretion) typically structured in your jurisdiction?

Separately managed accounts may be established by a securities investment trust enterprise (SITE) or a securities investment consulting enterprise (SICE) under the Securities Investment Trust and Consulting Act and the Regulations Governing Securities

Investment Trust Funds. The SITE or SICE establishing those accounts must meet capital and qualifications requirements.

Law stated - 7 May 2025

Key legal issues

34 What are the key legal issues (eg, standard of care, indemnification) to be determined when structuring a separately managed account?

Separately managed accounts in Taiwan are not established or held by a fund, company or other entity. In simple terms, they remain accounts of the investor except where full investment authority has been granted to a SITE or SICE manager. Thus, assets in such accounts are not commingled with the assets of other separately managed accounts.

Law stated - 7 May 2025

Regulation

35 Is the management or marketing of separately managed accounts regulated in your jurisdiction? (If so, how does this operate? Is this the same regime for fund management?)

Separately managed accounts may be established by a SITE or a SICE under the Securities Investment Trust and Consulting Act and the Regulations Governing Securities Investment Trust Funds. These are the same laws and regulations governing other domestic funds.

Law stated - 7 May 2025

GENERAL

Proposed reforms

36 Are there proposals for further regulation of funds, fund managers or marketers of funds in your jurisdiction?

In the current climate, there is pressure on regulators to further relax restrictions for Taiwan financial institutions to form and manage different types of private equity funds. This is partly driven by a policy preference for Taiwan insurance companies to invest in domestic funds as well as further development of Taiwan's industry and infrastructure.

As a result, there are numerous proposals for the further relaxation of regulations to permit Taiwan financial institutions to form real estate funds and funds of funds. It is not certain when such proposals would be considered and formulated as official regulations. However, due to regulatory and supervisory reasons with respect to the use of insurance companies'

funds, several new restrictions on the limited partnership for insurance companies to invest in have been implemented in recent years.

Law stated - 7 May 2025

Public listing

37 Outline any specific requirements for stock-exchange listing of retail and non-retail funds.

Securities investment trust enterprise (SITE) funds and private equity company funds may be listed for public trading only with the prior registration and approval of the Financial Supervisory Commission (FSC) (and the relevant stock exchange). In general, only market-standard products are approved for listing.

Non-SITE funds and offshore funds may not be publicly listed in Taiwan.

Law stated - 7 May 2025

Overseas vehicles

38 Is it possible to redomicile an overseas vehicle in your jurisdiction?

It is not possible to do so. In addition, there is no business reason for doing so, as overseas funds are generally more flexibly regulated in their home jurisdictions and may be marketed and sold in Taiwan under the Regulations Governing Offshore Funds, and overseas funds may also separately establish a domestic 'parallel fund' as a non-SITE limited partnership fund, whose terms and conditions could closely mirror that of the 'main' offshore fund.

Law stated - 7 May 2025

Foreign investment

39 Are there any special rules relating to the ability of foreign investors to invest in funds established or managed in your jurisdiction or domestic investors to invest in funds established or managed abroad?

In general, except for obtaining foreign investment approvals issued by the Department of Investment Review at the Ministry of Economic Affairs, there are no special rules or prohibitions for foreign investors to invest in domestic funds. However, mainland Chinese investors are not allowed to hold significant interests in a Taiwan fund manager.

Likewise, there are no special rules or prohibitions for domestic investors to invest in offshore funds, provided that such offshore funds are marketed and sold through a domestic master agent. In practice, however, offshore funds that are established or managed in mainland China are unlikely to be approved to be offered for sale and distribution in Taiwan. Nevertheless, there are no special rules or prohibitions for overseas

Taiwan investors to invest in funds established or managed abroad, including funds established or managed in mainland China.

Law stated - 7 May 2025

Funds investing in derivatives

40 Are there any special requirements in your jurisdiction relating to funds investing in derivatives?

The Regulations Governing Securities Investment Trust Funds provide that unless a competent authority's approval is obtained, SITE funds may only invest in derivatives that are pre-approved by the competent authority. There are no special requirements governing non-SITE funds' investment in derivatives.

Law stated - 7 May 2025

UPDATE AND TRENDS

Recent developments

41 Are there any other current developments or emerging trends in your jurisdiction that should be noted? Please include reference to world-wide regulatory concerns, such as restrictions on foreign ownership in strategic industries, high-frequency trading, commodity position limits, capital adequacy for investment firms and 'shadow banking'.

In recent years, there have been a number of significant changes in the regulation of funds. The most prominent change has been the relaxation of regulations to permit securities investment trust enterprises (SITEs) and securities companies to manage and act as general partners (via subsidiaries) of private equity funds (previously, SITEs were limited to mutual funds and hedge funds, and securities companies were not permitted to manage funds and could only establish separately managed accounts under a securities investment consulting enterprise licence). The purpose of such relaxation is to permit Taiwan managers to establish vehicles for raising funds from the private sector to fund projects that are in line with government policies, such as infrastructure, green energy and biotechnology. In addition to the foregoing, the designation of Taiwan limited partnerships as pass-through entities (provided that their terms and investments qualify for pass-through treatment) has also significantly affected funds and fund managers.

The foregoing changes have resulted in a dramatic increase in the formation of Taiwan private equity funds (the vast majority of which have been Taiwan limited partnerships). Furthermore, Taiwan regulators have steadily adopted regulations in line with worldwide concerns on money laundering, data privacy and capital adequacy of investment firms. As most of the new wave of funds being formed in Taiwan are formed by Taiwan financial institutions, such regulations would also have an impact on those funds.

In addition, for regulatory and supervisory reasons, the competent authority enhances its supervision toward insurance companies' investment in onshore private equity funds, and

the insurance companies are required to strengthen their post-investment management of the onshore private equity funds invested. Therefore, if an onshore private equity fund (including SITE PE funds and non-SITE limited partnership funds) wishes to strive for any insurance company's funds, more qualifications and requirements shall be met.

Recently, the Financial Supervisory Commission (FSC) has been gradually opening up channels for private fundraising. According to the Regulations Governing Offshore Funds, offshore funds that may raise funds through private placement channels should meet the definition of 'having the nature of a securities investment trust'. Currently, the FSC considers offshore private equity funds to be offshore funds that 'do not have the nature of a securities investment trust', which makes it impossible to apply the Regulations Governing Offshore Funds in terms of interpretation, and this further leads to difficulties in establishing an offshore private equity fund in Taiwan and limits the channels of fundraising. At the end of 2023, the FSC published a new rule opening up opportunities for private SITE Funds to invest in various types of offshore private funds, including funds of funds, venture capital, private equity, private debt, corporate finance (eg, buyout fund), those specialising in tangible assets such as infrastructure and real estate, and those specialising in fixed-income instruments such as mezzanine financing, first and second priority bonds and royalty streams. Although it remains to be seen how this rule will be implemented in practice, it is expected to broaden the fundraising channels available to offshore private funds in Taiwan.

The new rule explicitly opens up the possibility for offshore private equity funds to expand the fundraising channels; however, only offshore private equity funds, not local private equity funds, have been opened up for private securities investment trust funds' investment, which is a slight shortcoming. This may be because of the legislative framework, the risk of asset allocation and the rate of return of offshore assets. It is worth continuing to pay attention to this issue, as there may be opportunities for gradual opening up in the future.

In response to the robust growth of Taiwan's private placement market, the FSC has introduced the 'New Wealth Management Programme' and is also working to position Taiwan as a centre for asset management in Asia by promoting regulatory reforms that ease restrictions and expand the range of financial products and services that financial institutions are permitted to offer. For example, at the end of 2024, the FSC broadened the scope of services that SITEs may provide: (1) SITEs may now offer brokerage and consulting services to foreign asset management institutions to introduce offshore fund products that are not classified as securities investment trust funds not only to professional institutional investors but also to high-net-worth clients; (2) SITEs may also provide brokerage and consulting services to introduce both professional institutional investors and high-net-worth clients to private equity funds in which the general partner is a subsidiary of the SITE; and (3) the scope of institutions that SITEs may provide administrative services has also been expanded – from being previously limited to offshore banking units and offshore securities units, to now including all banks and securities firms – allowing SITEs to assist in handling offshore fund business that does not fall under the definition of a securities investment trust fund.

Law stated - 7 May 2025

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Summary

SEPARATELY MANAGED ACCOUNTS

GENERAL

UPDATE AND TRENDS

FUND MANAGEMENT REGULATION

Regulatory framework and authorities

1 How (in very general terms) is fund management regulated in your jurisdiction? Which authorities have primary responsibility for regulating funds, fund managers and those marketing funds?

Investment funds established in the United Kingdom can be characterised into one of two main categories for regulatory purposes:

- undertakings for collective investment in transferable securities (UK UCITS), which must be authorised by the Financial Conduct Authority (FCA) (in addition to the authorisation requirements applicable to the fund manager) and can be offered to UK retail investors; and
- alternative investment funds (AIFs), which covers investment funds that are not UK UCITS and covers a wide range of different types of investment fund. Certain types of AIFs must be authorised by the FCA, and only certain types of AIFs may be offered to UK retail investors.

Note that a UK UCITS is distinct from a UCITS authorised in a member state of the European Union (EU UCITS), which is an AIF for UK regulatory purposes. Note also that throughout this questionnaire for the United Kingdom, references to 'manager', 'operator', 'UCITS management company' and 'AIFM' refer to the person responsible for the operation of the investment fund.

The categorisation of a fund as a UK UCITS or AIF will impact the regulatory requirements that apply to the fund and to the manager of the fund. Other characteristics will also impact those requirements, such as the legal form of the investment fund, whether it is available to retail investors and its investment strategy. In addition, different rules apply to non-UK funds that are marketed in the United Kingdom.

The primary legislation in the United Kingdom for regulating financial services including fund management is the Financial Services and Markets Act 2000 (FSMA), which is supplemented by various secondary legislation as well as rules and guidance issued by the regulators, principally the FCA.

Key aspects of the UK financial services regulatory framework relevant to fund management include the following:

- The 'regulated activities' regime. This prohibits any person from carrying on regulated activities by way of business in the United Kingdom unless the person is appropriately authorised or exempted. Regulated activities are those activities specified in legislation, for example, managing collective investment schemes (ie, funds), managing investments, advising on investments and/or arranging deals in investments.
- The regime for unauthorised funds. This is largely derived from the EU Alternative Investment Fund Managers Directive. This regulates the alternative investment fund managers (AIFM) of AIFs but not AIFs directly. However, certain types of AIFs may be authorised funds.

- The regime for authorised funds. This regulates both the funds and their managers. Funds that must be authorised include UK UCITS and certain types of AIFs such as those intended to be offered to retail investors. The UK UCITS-related requirements are derived from the EU Undertaking for Collective Investment in Transferable Securities Directive.
- The marketing regimes. These include the financial promotion regime and sector-specific marketing requirements. The financial promotion regime is a general regime applicable to essentially all regulated financial services/products; it prohibits any person, other than an authorised person, from promoting financial services/products (including investment funds) in the course of a business to persons in the United Kingdom unless one or more exemptions are available. The sector-specific requirements include those relating to marketing of AIFs and UK UCITS, and the Overseas Funds Regime which allows certain EU UCITS to be marketed in the United Kingdom upon being 'recognised'.

There are two main financial services regulators in the United Kingdom: the FCA and the Prudential Regulation Authority (PRA), which is part of the Bank of England. Certain types of fund management business in the United Kingdom may be authorised by both the FCA and PRA. However the primary regulator for the investment funds sector is the FCA, and therefore this questionnaire focuses on the requirements of the FCA.

Law stated - 20 May 2025

Fund administration

2 Is fund administration (support services provided to funds such as book-keeping, preparing reports, trade settlement, etc) regulated in your jurisdiction?

Fund administration involves a wide range of activities, some of which may be regulated and others unregulated. The extent to which fund administration may be regulated in the United Kingdom depends on the specific activity or service being carried out. For example, book-keeping, the preparation of reports or other merely administrative tasks are generally not regulated. However, involvement in investor subscriptions/redemptions may, depending on the circumstances, involve carrying on a regulated activity such as arranging deals in investments or dealing in investments as agent, which could cause those administration activities to be within the UK regulatory perimeter.

Law stated - 20 May 2025

Authorisation

3 What is the authorisation or licensing process for funds? What are the key requirements that apply to managers and operators of investment funds in your jurisdiction?

Fund managers carrying on business in the United Kingdom must be authorised by the FCA to manage and/or operate funds.

In some cases there is an additional requirement for the fund to be authorised. This applies in particular to UK open-ended funds that are offered to retail investors, such as an UK UCITS. These are referred to as 'authorised funds'.

At a high level, the application process for a UK authorised fund can be summarised as follows:

- All applications must be submitted to the FCA.
- As part of the application, required documentation must be submitted including, in relation to an authorised fund, a draft prospectus, constitutional documents and a model portfolio.
- The application processing times differ depending on the application. For example, the FCA has two months to process a complete application for authorisation as a UK UCITS, and six months for authorisation as a non-UCITS retail scheme.
- The FCA may raise questions and/or request further information during the entire application process.

Specific application and notification procedures apply to non-UK funds that wish to be marketed to UK investors. In the case of a non-UK fund that is to be marketed to professional or institutional investors only, there is a straightforward notification coupled with mandatory disclosure and reporting requirements that need to be complied with at the initial marketing and on an ongoing basis. Certain non-UK open-ended funds intended for retail investors may apply to be recognised for marketing to UK retail investors. Neither of these types of non-UK funds marketed into the United Kingdom are 'authorised funds'.

The regulatory requirements applicable to a fund manager/operator vary depending on their regulatory status (eg, the regulated activities for which the fund manager is authorised). Generally, regulatory requirements are more extensive for fund managers/operators that are authorised to deal with retail investors.

Law stated - 20 May 2025

Territorial scope of regulation

4 What is the territorial scope of fund regulation? Can an overseas manager perform management activities or provide services to clients in your jurisdiction without authorisation?

Persons engaging in fund management by way of business in the United Kingdom are required to be authorised. However, the concept of 'in the United Kingdom' in the regulatory context is wider than having a physical presence in the United Kingdom. Firms that are located physically outside the United Kingdom but carry out cross-border activities into the United Kingdom may nonetheless be deemed to be carrying on one or more regulated activities 'in the United Kingdom' from a regulatory perspective.

For overseas managers carrying on fund management activities or providing services to UK clients/investors on a cross border basis, a key consideration is whether there is a sufficient UK nexus. This is largely a question of fact that requires a case-by-case analysis of all the

relevant circumstances. For example, investment management is usually considered to be carried on at the location of the investment manager (unless the facts point to a different conclusion) whereas non-discretionary advice is usually considered to take place where the advice is received.

There are various exemptions and exclusions from the authorisation requirement. If an overseas manager is deemed to be carrying on regulated activities 'in the United Kingdom', it may be able to rely on a specific 'overseas persons' exclusion to avoid the UK authorisation requirements. Broadly, this exclusion applies to firms that do not maintain a permanent place of business in the United Kingdom and carry on the relevant activities (that would otherwise be regulated) with or through a UK authorised firm. In some cases, compliance with UK financial promotion requirements is sufficient to bring the situation into scope of the overseas persons exclusion. Each case must be considered individually.

Further, even where an overseas manager is outside the UK regulatory perimeter, the manager must also consider the UK financial promotion requirements when communicating with UK investors (eg, sending fund documentation to UK investors). Breach of the UK financial promotion requirements is a criminal offence.

Law stated - 20 May 2025

Acquisitions

5 Is the acquisition of a controlling or non-controlling stake in a fund manager in your jurisdiction subject to prior authorisation by the regulator? (Restrict your answers to the regulator with responsibility for oversight of fund management. Do not answer with respect to other agencies, such as the merger control authorities.)

Any person who decides to acquire control over a UK authorised firm must obtain prior approval from the FCA before completing the acquisition. The FCA determines whether the proposed controller is a fit and proper person to have control of an FCA authorised firm. This process is referred to as a 'change in control' application. Detailed information must be submitted to the FCA for the application. The FCA has 60 working days to determine whether to approve a change in control, subject to possible extensions. Regarding fund management, 'control' for this purpose is 10 per cent or more of the shares or voting power in the target firm or its parent undertaking, or any percentage of shares or voting power in the target firm or its parent undertaking that enables the acquiring person to exercise significant influence over the management of the target firm. This applies to direct and indirect holdings in any firm along the control chain up to controllers of the ultimate parent undertaking of the target in question.

Certain other parties or stakeholders in connection with the change in control will also need to notify the FCA. For instance, the shareholder selling their stake or shares in the firm, that is, the outgoing controller, must notify the FCA of the same transaction. However, there is no obligation on this party to obtain prior approval from the FCA before selling their shares or voting rights within the firm.

The target being acquired itself also has regulatory obligations to notify the FCA both prior to the acquisition and after the acquisition has actually taken place (or failed to take place).

The above approval applications and notifications can be made jointly by the parties involved if all are willing to do so.

For completeness, for fund managers that are authorised by both the FCA and the PRA (Prudential Regulation Authority), the change in control application needs to be submitted to the PRA (but not also the FCA). The conditions and requirements for the PRA process are similar to the FCA process outlined above.

Further, if the target fund manager has its shares admitted to trading on a UK regulated market (eg, the Main Market of the London Stock Exchange) and the voting rights acquired by the acquiring person reaches, exceeds or falls below specific thresholds, this may trigger an obligation to notify the target fund manager and the FCA. This is separate process to the change in control processes outlined above.

Law stated - 20 May 2025

Restrictions on compensation and profit sharing

6 Are there any regulatory restrictions on the structuring of the fund manager's compensation and profit-sharing arrangements?

The FCA has four sets of remuneration requirements, called 'Remuneration Codes'. Fund managers must comply with the relevant Remuneration Codes applicable to them. The four Remuneration Codes are:

- The UCITS Remuneration Code. This applies to UK UCITS management companies.
- The AIFM Remuneration Code. This applies to AIFMs (such as hedge fund managers).
- The MIFIDPRU Remuneration Code. This applies to what is known as 'MiFID investment firms' or portfolio managers (eg, firms that manage separated accounts).
- Dual-regulated firms Remuneration Code. This applies to firms which are jointly regulated by the Prudential Regulation Authority and FCA, such as banks and certain very large investment management firms.

In summary, key requirements covered by the Remuneration Codes include:

- performance assessment when firms determine staff bonuses (including using financial and non-financial factors);
- the process for awarding bonuses (eg, potential mandatory deferral, pre-vesting risk-adjusted deductions and/or clawback of awards that have been paid for misconduct);
- the process for making bonuses in instruments rather than cash; and
- remuneration governance arrangements.

'Remuneration' for these purposes is defined widely and could potentially cover certain profit-sharing arrangements as well.

A fund manager may need to comply with more than one Remuneration Code simultaneously depending on its regulatory status. The requirements under the Remuneration Codes are similar to each other but there are important differences. Further, a manager also needs to consider compliance with the relevant Remuneration Codes where it delegates investment management activities to another person. In addition, where a fund manager is part of a group, the position for group personnel performing roles across multiple entities and potentially subject to different requirements on remuneration should also be considered.

Law stated - 20 May 2025

FUND MARKETING

Authorisation

7 | Does the marketing of investment funds in your jurisdiction require authorisation?

This depends on the type of the investment fund being marketed and UK investors being targeted. Marketing of investment funds to UK retail investors generally requires the fund to be either 'authorised' (for UK funds) or 'recognised' (for overseas funds) by the Financial Conduct Authority (FCA). Marketing of investment funds to professional/institutional investors generally requires only a notification (for both UK and overseas funds) to the FCA, although there are also other mandatory disclosure and reporting obligations. A brief summary is set out below.

Marketing to UK retail investors:

- Undertakings for collective investment in transferable securities (UK UCITS) can be marketed to retail investors in the UK once the fund is authorised as such.
- UCITS authorised by a member state of the EU (EU UCITS) (other than EU UCITS that are money market funds) may be marketed to retail investors in the United Kingdom under either the temporary marketing permissions regime (TMPR) or the Overseas Funds Regime (OFR). The TMPR has, broadly, allowed EU UCITS that passported into the United Kingdom before the UK's withdrawal from the EU (Brexit) to continue being marketed in the United Kingdom after Brexit. The TMPR is currently scheduled to expire on 31 December 2026. Funds seeking recognition under the OFR are required to apply for that status, and ensure that they are making certain prescribed disclosures to UK investors. There is currently a transitional period between the two regimes with funds within the TMPR being required to transition across to the OFR at a time fixed by the FCA.

Marketing to UK professional investors:

- Non-UK alternative investment funds (Non-UK AIFs) can be marketed to professional/institutional investors in the United Kingdom once the fund has been notified to the FCA under the national private placement regime (NPPR). Note that an AIF is any investment fund that is not authorised as a UK UCITS, covering all UK funds that are not authorised, all UK funds that are authorised but not authorised

as UK UCITS, and all non-UK funds regardless of their authorisation status in their home state (including EU UCITS).

- UK AIFs managed by a full-scope UK alternative investment fund manager (AIFM) can be marketed to professional/institutional investors in the United Kingdom once the AIFM has obtained FCA approval for marketing. The FCA is required to give or refuse that approval within 20 working days of receipt of a completed application. Note that His Majesty's Treasury (HM Treasury) is consulting on removing the need to wait 20 working days to market.

There are other requirements that need to be complied with by the fund being marketed in the United Kingdom, its manager and its distributor, including investor disclosure requirements, ongoing reporting requirements, product governance requirements (such as identifying the target market for the fund and assessing whether fund meets the identified needs, characteristics and objectives of the target market), and conduct of business requirements (such as assessing suitability of any advice provided to investors and assessing appropriateness of the fund for investors). These vary depending on the marketing regime into which the fund falls.

Regardless of the marketing regime that is being used, the UK general financial promotion requirements must be complied with at the same time. For example, financial promotions for an EU UCITS recognised under the OFR by a person that is not FCA authorised may need to be approved by a UK authorised firm in order to be compliant with the financial promotion requirements. This is a change to the position under the TMPR, which allowed the EU operator of the EU UCITS to approve financial promotions under the 'TMPR UCITS qualifier' regime. Note that the marketing to professional investors of a non-UK AIF that has been notified for marketing under the NPPR will be permitted under UK financial promotion requirements.

Law stated - 20 May 2025

8 | What marketing activities require authorisation?

Marketing activities themselves are generally not subject to an FCA authorisation requirement under the UK regulatory framework. However, certain activities undertaken in the course of marketing may involve carrying on a regulated activity, such as arranging deals in investments or advising on investments. This may depend on the level of involvement in the investment process, or if an investment recommendation is provided. If so, these activities will require prior FCA authorisation for the person carrying them on unless an exemption is available. In all cases, UK financial promotion requirements will need to be observed in relation to any UK-directed marketing activities initiated by persons that are not FCA authorised.

Law stated - 20 May 2025

Territorial scope and restrictions

9 | What is the territorial scope of your regulation? May an overseas entity perform fund marketing activities in your jurisdiction without authorisation?

Persons engaging in regulated activities by way of business in the United Kingdom are generally required to be authorised. However, the 'in the United Kingdom' concept for regulatory purposes is wider than a UK physical presence. So cross-border activities carried out without any UK physical presence may nonetheless be deemed to be 'in the United Kingdom' for regulatory purposes.

Activities carried out in the course of marketing can amount to regulated activities, depending on the circumstances. An overseas entity may generally perform marketing activities towards UK investors without having to be authorised by the FCA, provided that the relevant activities do not amount to regulated activities that could be deemed to be carried on in the United Kingdom. In general, there are more potential issues with this position where marketing activities are carried on physically in the UK, for example, on marketing trips to the United Kingdom, or via UK-based persons. The overseas entity must still comply with UK financial promotion requirements regardless of whether the authorisation/licensing requirements may be triggered.

Law stated - 20 May 2025

10 If a local entity must be involved in the fund marketing process, how is this rule satisfied in practice?

There is no requirement to involve a local entity in the fund marketing process and in some cases it is possible for an overseas entity to proceed without taking this step. In practice, however, involving a locally authorised entity can have advantages. For example, it can widen the potential investors to whom a fund may be offered, and it may help mitigate the risk of the overseas entity being considered to carry on regulated activities in the United Kingdom.

Law stated - 20 May 2025

Commission payments

11 What restrictions are there on intermediaries earning commission payments in relation to their marketing activities in your jurisdiction?

This depends on the relationship between the parties (eg, between the intermediary and the investors to whom it markets the fund) and the intermediary's regulatory status. For example, where a UK-authorised firm acting as intermediary provides investment advice to a targeted retail investor, the firm must not accept any commission payments or other benefits (subject to certain exceptions) from anyone other than its client (being the targeted investor) in relation to the services it provides to its client.

Law stated - 20 May 2025

RETAIL FUNDS

Available vehicles

12 | What are the main legal vehicles used to set up a retail fund? How are they formed?

The main types of UK retail fund that can be access by the general public in the United Kingdom are: (1) UK funds authorised by the Financial Conduct Authority (FCA) as an undertaking for collective investment in transferable securities (UK UCITS) or non-UCITS retail schemes (NURS), and (2) closed-ended UK funds that are listed on the London Stock Exchange (LSE). There are other types of 'retail fund' that are capable of being marketed to retail investors, but not the general public in the United Kingdom, as described below.

UK UCITS and NURS are a type of 'authorised fund' for UK regulatory purposes, and are subject to the rules of the FCA. The main permitted legal forms of vehicle for a UK UCITS and NURS are:

- Unit trust (AUT). A unit trust scheme is constituted by a trust deed between a trustee and the manager of the scheme. The manager will be responsible for investing the assets of the unit trust in accordance with the terms of the trust deed. The investors are the beneficial owners of the trust property, and their interests are represented by units in the unit trust scheme.
- Open-ended investment company (OEIC). This is also referred to as an investment company with variable capital (ICVC). Both terms can be used interchangeably. This is a corporate vehicle that is established in accordance with prescribed conditions under specific legislation. Broadly, it is formed with an instrument of incorporation. There is typically a single corporate director referred to as an authorised corporate director (ACD) which is responsible for managing the fund (although it may delegate day-to-day discretionary management of the fund).

Each of these vehicles can be established as an umbrella with multiple sub-funds. UK UCITS and NURS are open-ended vehicles, though there is greater ability for a NURS to have more limited redemption arrangements.

For completeness, we note that there are sub-categories of NURS that may be marketed to retail investors satisfying certain conditions indicating their level of investment sophistication, for example the recently established Long Term Asset Fund (LTAF) and fund of alternative investment funds. In addition, there is an additional type of authorised fund called a Qualified Investor Scheme (QIS) that can be marketed to professional investors and certain individual investors who meet prescribed sophistication requirements.

Closed-ended funds that can be accessed by UK retail investors typically take the form of companies listed on the LSE. These include 'investment trusts', real estate investment trust (REITs) and 'venture capital trusts'. Note that these types of funds are, notwithstanding their names, bodies corporate and not trusts. For UK regulatory purposes, listed investment companies are alternative investment funds (AIFs). The UK government is in the process of reviewing the alternative investment funds regime. Recent proposals indicate that listed investment companies would remain in-scope of the regime, but subject to changes to that regime as it applies to listed investment companies.

Law stated - 20 May 2025

Laws and regulations

13 What are the key laws and other sets of rules (regulatory and self-regulatory) that govern retail funds?

The key law and rules directly relevant to the regulation of retail funds include:

- The Financial Services and Markets Act 2000 (FSMA) and related legislation. This sets out the overall financial services regulatory framework in the United Kingdom.
- The Open-Ended Investment Company Regulations 2001. This applies to OEIC, also known as ICVC.
- Certain rules and guidance in the Handbook of Rules and Guidance of the Financial Conduct Authority (FCA Handbook), potentially including amongst others the Collective Investment Scheme sourcebook (COLL), the Investment Funds sourcebook (FUND), and the Environmental, Social and Governance sourcebook.
- The EU Packaged Retail and Insurance-based Investment Products Regulation 286/2014 as incorporated into UK law following the UK's withdrawal from the EU (the PRIIPs Regulation). This requires a key information document (PRIIPs KID) to be prepared and made available to retail investors. The UK government is proposing to replace the PRIIPs Regulation with a UK-specific investor disclosure regime. The new regime will apply to firms that manufacture or distribute Consumer Composite Investments (CCIs).
- The EU Money Market Funds Regulation (EU) No 2017/1131 as incorporated into UK law following the UK's withdrawal from the EU (MMF Regulation). This sets out various requirements applicable to money market funds.

The manager of a retail fund will also be subject to various laws and regulations, such as the FCA's senior managers and certification regime, prudential (capital) requirements, anti-money laundering and terrorist financing, market abuse etc.

Law stated - 20 May 2025

Authorisation

14 Must retail funds be authorised or licensed to be established or marketed in your jurisdiction?

UK domestic funds that wish to be able to be marketed to the general public in the UK must either be authorised as UK UCITS or NURS (non-UCITS retail scheme), or listed on the relevant market of the LSE.

Non-UK funds that wish to be marketed to retail investors in the UK must be recognised by the FCA as a 'recognised scheme'. Going forwards, there are two recognition regimes: (1) the Overseas Funds Regime (OFR), which is replacing the post-Brexit Temporary Marketing Permissions Regime; and (2) the individual recognition regime. The OFR is currently open only for an EU UCITS authorised as such in its home state that is not a

money market fund; the individual recognition regime is open to other non-UK funds, but the process is more complex and the compliance requirements are more extensive than under the OFR. Note that recognition is not authorisation, and as such recognised schemes are not 'authorised funds' for UK regulatory purposes; the recognition is for marketing purposes only.

Law stated - 20 May 2025

Marketing

15 | Who can market retail funds? To whom can they be marketed?

The fund manager, or a distributor or intermediary engaged by the fund manager, can potentially market a retail fund in the United Kingdom. Note that where activities carried on in the course of marketing involve the fund manager, distributor or intermediary carrying on a regulated activity in the United Kingdom, they must have the necessary FCA authorisation to carry on that activity or else be satisfied that an exemption from the requirement to be authorised is available. Consideration should also be given to the financial promotion requirements – in particular, considering the need for a financial promotion to be approved by an FCA authorised person where it is to be communicated in the United Kingdom by a person that is not FCA authorised.

The types of investors a fund can be marketed to depends on the authorisation status of the fund. For example, a UK authorised fund that is a UK UCITS can potentially be marketed to the general public. However, certain fund types may be subject to limitations, for example a Long-Term Asset Fund may only be marketed to retail investors meeting certain criteria.

For funds listed on the LSE, the LSE's rules and other general regulatory requirements may limit their ability to be marketed to retail investors. For example, the LSE generally only admits funds to the Specialist Fund Market, which are for professional or institutional investors only. Similarly, a fund listed on the Alternative Investment Market (AIM) (a market operated by LSE) is in practice not usually offered to retail investors. This is because any such retail offering would require compliance with the UK Prospectus Regulation, which funds listing on the AIM generally aim to avoid, due to the time and cost.

Law stated - 20 May 2025

Managers and operators

16 | Are there any special requirements that apply to managers or operators of retail funds?

Generally, the regulatory obligations imposed on managers of retail funds are more extensive than those for managers of funds that are only available to professional/institutional investors. Note that the regulatory requirements applicable to managers of retail funds vary depending on the particular circumstances of the manager. For example, managers of retail funds may be authorised differently (some may be

authorised to deal directly with retail investors, while others may not) and accordingly will be subject to different requirements. Managers of retail funds that have the same authorisation may also be subject to different requirements due to the differences in their size or other proportionality factors.

This regulatory complexity may be illustrated by the application of the Consumer Duty regime. This regime requires in-scope firms to act to deliver good outcomes for retail investors and also imposes specific consumer protection requirements. The Consumer Duty applies to any firm involved in a distribution chain where the ultimate investor is a retail investor regardless of whether the firm has a direct relationship with the ultimate retail investor. The way the Consumer Duty applies will be different depending on whether the firm interacts directly with retail investors.

Law stated - 20 May 2025

Investment and borrowing restrictions

17 | What are the investment and borrowing restrictions on retail funds?

The investment and borrowing restrictions that apply to UK retail funds vary depending on the type of the fund (eg, UK UCITS, NURS (non-UCITS retail scheme) and/or money market fund (MMF)). A retail fund may be subject to more than one set of restrictions simultaneously. For example, a fund that is classified as a UK UCITS that is also an MMF will need to comply with restrictions for both UK UCITS and MMFs.

The summaries below are intended to provide a simplified overview.

For UK UCITS (excluding MMFs):

A UK UCITS can only invest in the following asset classes: transferable securities; approved money-market instruments; deposits; derivatives and forwards; and units in other collective investment schemes. Each of these asset classes has further detailed requirements and conditions.

A UK UCITS is also subject to detailed and complex investment restrictions. By way of example, there are 'spread' requirements intended to ensure the portfolio of a UK UCITS is diversified, which include the following restrictions:

- No more than 5 per cent of the fund's assets may be invested in transferable securities or approved money market instruments issued by a single body.
- No more than 20 per cent may be invested in any combination of transferable securities, approved money-market instruments, deposits or over the counter (OTC) derivatives from a single body.
- No more than 20 per cent of the fund's assets may be invested in a single eligible collective investment scheme (CIS, eg, another UCITS), and no more than 30 per cent in total in eligible CISs that are not UK or EU UCITS (eg, a NURS).
- No more than 35 per cent of the fund's assets can be invested in government or public securities, subject to various conditions.

There are additional investment restrictions, such as 'concentration' requirements intended to ensure a UK UCITS does not acquire a substantial holding of an issuer. In relation to borrowing, a UK UCITS fund can borrow up to 10 per cent of the fund's assets on a temporary basis.

For NURS (excluding MMFs):

A NURS is generally subject to restrictions similar to those for an UK UCITS but less restrictive in some respects. A NURS can invest in investments that are permitted for a UK UCITS. In addition, a NURS can also hold:

- 100 per cent of its assets in real property;
- 10 per cent of its assets in transferable securities issued by a single issuer;
- 10 per cent in gold;
- 20 per cent in unlisted securities; and
- a broader range of collective investment scheme.

A NURS is subject to a number of concentration restrictions which are similar to but less stringent than those for a UK UCITS. In relation to borrowing, a NURS can borrow up to 10 per cent of its assets on a permanent basis.

For MMF:

A UK UCITS which is also an MMF will be subject to further borrowing and investment restrictions set out in the UK Money Market Funds Regulation. This Regulation sets out specialised requirements on investment eligibility, spread, concentration and portfolio rules. The extent to which rules are applied will depend on the type of MMF (eg, whether the fund is a 'short-term' or 'standard' MMF).

Law stated - 20 May 2025

Tax treatment

18 | What is the tax treatment of retail funds? Are exemptions available?

Given the complexity of UK tax regime for investment funds, this is a high-level summary of some of the main tax issues for investors in AUTs and OEICs.

Generally, AUTs and OEICs are treated as companies. So they are within the scope of UK corporation tax, and may benefit from reliefs under tax treaties with other jurisdictions. Funds within umbrella arrangements are each treated as a separate company for UK corporation tax. AUTs and OEICs are generally exempt from UK tax on capital gains on the disposal of investments. They are liable to corporation tax on their net income at the basic rate of income tax, which is currently 20 per cent. Dividend received generally benefit from tax exemption, subject to certain conditions.

Funds commonly known as bond funds (essentially, those (including MMFs) which mainly invest in debt securities and similar assets) can generally deduct interest distributions paid to investors so that their net corporation tax liability is nil.

UK-resident individual investors in AUTs and OEICs are subject to income tax on distributions made or accumulated, if the fund adds value to accumulation units or applies the money to reinvestment units, subject to certain personal allowances. Interest distributions are effectively taxed as interest and attract personal tax-free allowances applicable to interest income. Dividend distributions are effectively taxed as dividend income and attract personal allowances accordingly.

Withholding tax on payment of distributions is not required for UK UCITS (but may be required for NURS investing in UK real estate).

Dividend distributions are generally tax-exempt for UK corporation taxpayers. To the extent dividend distributions are sourced from non-dividend income, UK corporation taxpaying investors are taxable on the distribution. But the tax charge is adjusted to take account of the difference between the basic rate of income tax and the main rate of corporation tax.

Interest distributions (made by AUTs and OEICs which are bond funds including MMFs) are subject to corporation tax recognised in accordance with UK Generally Accepted Accounting Practice (GAAP) fair value accounting.

UK-resident individual investors are generally subject to capital gains tax on gains realised (after taking account of accumulated or re-invested amounts previously treated as income) that exceed their annual capital gains exempt amount on the disposal of units or shares in an AUT or OEIC.

Profits and gains (or losses) made by corporate investors in AUTs and OEICs which are bond funds (including MMFs) are subject to corporation tax recognised in accordance with UK GAAP fair value accounting. UK corporate investors in AUTs and OEICs are liable to corporation tax on chargeable gains (subject to certain exceptions).

Special UK tax rules apply to non-UK residents who invest directly or indirectly in AUTs or OIECs that invest significantly directly or indirectly in UK real estate.

A UK resident individual holding an investment in an AUT or an OEIC which is a UK UCITS or a qualifying NURS held through an individual savings account (ISA) is exempt from income tax and capital gains tax in relation to that investment holding through an ISA.

Law stated - 20 May 2025

Asset protection

19 Must the portfolio of assets of a retail fund be held by a separate local custodian? What regulations are in place to protect the fund's assets?

A separate depositary is generally required, not just for retail funds but for UK investment funds in general.

Depending on the legal form and authorisation status of the retail fund, there are also specific requirements for the jurisdiction of the depositary. For example, the trustee of an authorised unit trust which holds the assets in its capacity as depositary must be established in the United Kingdom. A depositary of a UK UCITS must also be established in the United Kingdom.

An overseas custodian or depositary (where allowed) may be carrying on in the United Kingdom the regulated activities of acting as a trustee/depositary, and/or safeguarding and administration of assets, depending on the circumstances. If so, that overseas custodian/depositary would need to obtain prior authorisation from the FCA.

With respect to the protection of assets, there are various requirements in the FCA rules that custodians/depositaries must comply with including requirements relating to custody of assets. For example, a UK UCITS's depositary must act honestly, fairly, professionally and independently and solely in the interests of the UK UCITS and its unitholders. It must have in place appropriate procedures to manage conflicts of interest between itself and the UK UCITS, unitholders or the manager of the UK UCITS. It must have certain oversight over the manager's systems and controls; it also has specified roles in the process of valuing the fund assets.

Law stated - 20 May 2025

Governance

20 What are the main governance requirements for a retail fund formed in your jurisdiction (registration, record-keeping, filings, officers)?

The governance requirements applicable to a retail fund that is established in the United Kingdom as an authorised fund are typically imposed on the entity that is appointed to act as the operator, which for a UK UCITS would be the 'UCITS management company', and for a NURS would be the alternative investment fund manager (AIFM). The operator may delegate the provision of investment manager services to another person, commonly referred to as the 'investment manager' or 'investment adviser'. The discussion here focuses on the requirements applicable to the operator of a retail fund that is a UK authorised fund.

- Management and officers. The operator of a UK authorised fund must ensure its management is undertaken by at least two persons meeting specified requirements. It must also have at least a quarter of the members of its governing body (eg, the board) who are independent of the manager. If the governing body has fewer than eight members, at least two of them must be independent. Such independent members must be appointed for terms of no longer than five years, with a cumulative maximum duration of 10 years.
- Senior management arrangements, systems and controls. There are various organisational controls that the operator of a UK authorised firm must comply with, such as having appropriate internal systems and controls to ensure compliance with their regulatory obligations.
- Record-keeping. There are detailed record-keeping requirements imposed on the operator of a UK authorised fund. Relevant records include details of each portfolio transaction and records of subscriptions and redemptions. Those records must be retained for at least five years or a longer period as directed by the FCA. They must be retained in a medium that allows the storage of information in a way that is accessible for future reference by the FCA.

- Filing. Various documents of the fund are required to be approved/filed with the FCA. These vary depending on the type of fund, including: the constitutional document, the fund's prospectus, the fund's key investor information document (KIID). Certain changes to documents are also required to be approved/filed with the FCA. The annual and half-yearly financial reports must also be filed with the FCA.

For retail funds that are listed, the relevant governance requirements imposed by the LSE need to be complied with (as well as those described above if the fund is authorised as a NURS). For example, the UK Listing Rules require that a majority of the fund's board are independent from the manager.

Law stated - 20 May 2025

Reporting

21 | What are the periodic reporting requirements for retail funds?

The reporting requirements vary depending on the circumstances of the relevant fund including the fund's authorisation status. Summarised below are some of the main periodic reporting requirements for UK retail funds in general.

The manager of a UK authorised fund must prepare an annual and half-yearly financial report for the fund it manages and file the reports with the FCA and provide the reports to investors on request. The content of the reports must comply with prescribed requirements, which are set out in the COLL within the FCA rules. The manager must also, within four months after the end of each annual accounting period and two months after the end of each half-yearly accounting period respectively, make available and publish the reports (typically on its website).

For retail funds listed on the LSE, they must also comply with the LSE's publication requirements, which generally require publishing a report twice a year, with a longer report annually.

Law stated - 20 May 2025

Issue, transfer and redemption of interests

22 | Can the manager or operator place any restrictions on the issue, transfer and redemption of interests in retail funds?

The manager of UK retail funds can place certain restrictions on the issue, transfer and redemption of interests in the relevant fund, but must do so in compliance with all relevant regulatory requirements.

Summarised below are some of the main requirements.

The arrangements for the issue and redemption of interests must be described in the fund's prospectus. Where the fund limits the issue of interests, the prospectus must provide for the circumstances and conditions when interests will be issued, and the manager may not

further issue interests unless, at the time of the issue, it is satisfied on reasonable grounds that the proceeds of that subsequent issue can be invested without compromising the fund's investment objective or materially prejudicing existing investors.

A NURS (non-UCITS retail scheme) can limit redemptions up to every six months where the NURS invests substantially in immovables, offers some form of capital protection (ie, has an investment objective providing for a specified level of return) or is a fund of AIFs. In addition, specialised liquidity management rules apply to the suspension of redemptions by UK UCITS that are classified as UK MMFs. A retail fund which has at least one valuation point on each business day may permit deferral of redemptions at a valuation point to the next valuation point where the requested redemptions exceed 10 per cent, or some other reasonable proportion disclosed in the prospectus, of the fund's value.

Managers may, with agreement of the depositary, temporarily suspend the issue and redemption of units in exceptional circumstances where doing so is in the interest of all the unitholders. Such a suspension is only allowed to continue for as long as it is justified having regard to the interests of the unitholders. Difficulties in realising assets or temporary shortfalls in liquidity may not on their own be sufficient justification for suspension.

There are also specialised issue and redemption requirements in the UK Money Market Funds Regulation. These apply differently depending on the type of the MMF. For example, for certain MMFs, where their liquidity falls below prescribed thresholds, they may impose redemption gates. There are detailed and complex conditions that must be met.

For listed closed-ended retail funds, it is usually a condition to listing a fund and admitting the fund’s interests to a settlement system that there are no restrictions on transfer, although limited restrictions (such as restrictions on transfer to US holders) can be accommodated.

Law stated - 20 May 2025

NON-RETAIL POOLED FUNDS

Available vehicles

23 What are the main legal vehicles used to set up a non-retail fund? How are they formed?

Non-retail funds are categorised as alternative investment funds (AIFs) for UK regulatory purposes. Note that some retail funds are categorised as AIFs as well, for example, NURS (non-UCITS retail scheme). References to ‘non-retail funds’ in this questionnaire are to funds that can be marketed to professional investors only. For those AIFs that can be marketed to certain sub-sets of the general public in the United Kingdom (such as a Long Term Asset Fund or a Qualified Investor Scheme), these are regarded as retail funds and are not discussed in this section.

Non-retail closed-ended funds (such as private equity funds) are typically established as English or offshore limited partnerships. Non-retail open-ended funds (such as hedge funds) are typically established as offshore companies or trusts. Popular offshore jurisdictions for limited partnerships include Jersey, Guernsey and the Cayman Islands.

Ireland and the Cayman Islands are popular offshore jurisdictions for companies. In addition, listed closed-ended vehicles that are only offered to institutional investors are often formed in Guernsey.

Law stated - 20 May 2025

Laws and regulations

24 What are the key laws and other sets of rules (regulatory and self-regulatory) that govern non-retail funds?

Non-retail funds themselves are governed by the law of the jurisdiction in which the fund is formed. Non-retail funds, being AIFs, are within the scope of the UK alternative investment funds regime. Depending on the authorisation status of the alternative investment fund manager (AIFM) and the type of funds being managed, UK-based AIFMs of non-retail funds are primarily regulated under the following regulatory regimes:

- The UK D regime (which is derived from the EU Alternative Investment Funds Directive), where the manger must be authorised by the Financial Conduct Authority (FCA) for the regulated activity of managing AIFs. They are managed by AIFMs.
- The UK MIFID regime (which is derived from the EU Markets in Financial Instruments Directive), where, for example, the manager carries on portfolio management services as a delegate of another fund manager.
- The UK Money Markets Fund Regulation (where the fund is a money market fund), which sets out rules on liquidity management procedures, a prohibition on external financial support and specialised investment eligibility, spread, concentration and portfolio composition rules.

These may apply simultaneously or on a stand-alone basis, depending on the regulatory status of the AIFM.

Note that the regulatory requirements are generally imposed on the AIFM but not directly on the fund itself.

The UK government is currently considering potentially significant reforms to the regulation of the non-retail fund sector. This is at an early stage and detailed proposals are yet to be published.

Law stated - 20 May 2025

Authorisation

25 Must non-retail funds be authorised or licensed to be established or marketed in your jurisdiction?

Non-retail funds themselves are generally not directly regulated in the United Kingdom. It is the AIFM of a non-retail fund (being an AIF) that is subject to regulation.

The UK AIFM must be authorised by the FCA before it may carry on its business. There are two categories of AIFMs:

- AIFMs whose aggregate assets under management across the entire portfolios of their AIFs do not exceed €100 million or are between €100m and €500m if the AIFs: (1) do not use any financial or synthetic leverage; and (2) do not provide redemption rights within the first five years. These are referred to as sub-threshold or small AIFMs which are subject to less burdensome requirements.
- Any other AIFMs. These are referred to as full scope AIFMs which are subject to the full regulatory requirements under the UK AIFMD regime.

The UK government is considering whether to replace this distinction with a more flexible three tier regulatory structure for different sizes of AIFM as part of its proposed reforms to the non-retail fund sector. However, this is still at an early stage.

The scope of authorisation a UK AIFM seeks depends on its business model. For example, an AIFM that is only authorised for the regulated activity of 'managing AIFs' would not be able to manage separate accounts on a client-by-client basis, as the latter would require an additional permission for the regulated activity of 'managing investments'.

The marketing regime for AIFs is referred to as the the UK national private placement regime (NPPR), which operates at a high level as follows:

- A UK AIF managed by a full-scope UK AIFM can be marketed to non-retail investors in the United Kingdom, subject to an FCA approval process and compliance with the relevant AIFMD requirements and the general UK financial promotion requirements.
- A UK or non-UK AIF managed by a sub-threshold UK AIFM can be marketed to non-retail investors in the United Kingdom, subject to compliance with the general UK financial promotion requirements.
- A UK or non-UK AIF managed by a non-UK AIFM (regardless of the above size-thresholds) and a non-UK AIF managed by a full-scope UK AIFM can be marketed to non-retail investors in the UK subject to an NPPR notification to the FCA and compliance with relevant UK AIFMD requirements.

Law stated - 20 May 2025

Marketing

26 | Who can market non-retail funds? To whom can they be marketed?

The UK AIFM of the fund or a third party intermediary engaged by the AIFM can market the non-retail fund in the United Kingdom. Generally non-retail funds may only be marketed to professional or institutional investors in the UK, and investors falling within financial promotion exemptions such as high net worth investors in certain circumstances.

While marketing of funds in itself may not require the person to be authorised, activities carried out in the course of marketing may involve the person carrying on regulated activities such as arranging or advising on investments. In such circumstances, this would

limit who could market the fund, as it would require the person marketing the fund to be authorised by the FCA or more exempt from the need to be FCA authorised.

Law stated - 20 May 2025

Ownership restrictions

27 | Do investor-protection rules restrict ownership in non-retail funds to certain classes of investor?

In the United Kingdom, there are no investor-protection rules that restrict ownership of non-retail funds to certain classes of investors. But there are rules that restrict the marketing, distribution and promotion in the United Kingdom of non-retail funds to a limited group of investors (such as professional investors). Furthermore, certain types of investors (such as UK pension funds and charities) are subject to restrictions on the types of investment they can make (for risk management or prudential reasons).

Law stated - 20 May 2025

Managers and operators

28 | Are there any special requirements that apply to managers or operators of non-retail funds?

As with other UK regulated firms, the regulatory requirements applicable to UK AIFMs of non-retail funds vary depending on the circumstances of the AIFM and the relevant fund including their authorisation status and regulatory categorisation. UK AIMFs within the different categories, for example, full-scope AIFMs or sub-threshold AIFMs, will need to comply with different requirements. UK AIFMs within the same category may also have different regulatory obligations depending on their scope of authorisation (eg, a full-scope AIFM that is authorised to manage AIFs only will have fewer obligations than a full-scope AIFM that can also manage separate accounts in addition to AIFs).

Law stated - 20 May 2025

Tax treatment

29 | What is the tax treatment of non-retail funds? Are any exemptions available?

Funds structured as partnerships are generally not taxable entities for UK income, profits and gains tax purposes, the investors having invested directly in the underlying partnership assets. Special rules may apply to certain transparent funds which limit realisation events for UK capital gains.

Funds structured as offshore companies are taxable entities, but generally would not be subject to tax in the United Kingdom unless they derive certain UK-source income (such as

UK-source interest and certain UK real estate related income or gains), or if they are treated as trading in the United Kingdom for UK tax purposes. An asset manager transacting in the United Kingdom on behalf of an offshore company potentially results in the company being treated as trading in the United Kingdom, but typically that offshore company and the manager may qualify for the UK investment manager exemption or the benefits of a double tax treaty (DTT), provided the manager is sufficiently independent from the fund and the manager and/or that offshore company satisfies applicable UK or DTT conditions.

Funds with hybrid or reverse hybrid characteristics require special consideration.

Non-UK investors in funds are generally not subject to UK capital gains tax or UK corporation tax on chargeable gains, but special UK tax rules apply to non-UK residents who invest directly or indirectly in non-resident funds that invest significantly directly or indirectly in UK real estate.

Income, profits and gains (or losses) made by UK corporate investors in offshore funds which are bond funds are subject to corporation tax and recognised in accordance with UK Generally Accepted Accounting Practice (GAAP) fair value accounting.

Offshore corporate funds (and some contractual funds, but not all offshore partnerships) may fall within the UK offshore funds rules, under which UK-resident investors may be subject to income tax on disposals of interests in the fund, although some exemptions apply if the offshore corporate fund invests primarily in unlisted trading companies.

If, however, the offshore corporate fund elects to, and continues to qualify as, a reporting fund (which requires the relevant approval from the UK tax authority and compliance with ongoing tax filing rules), UK-resident investors will be subject to income tax on income as either interest or dividends and as it arises in the fund (whether or not it is distributed, accumulated or re-invested). But the investors should still qualify for capital gains tax on disposals of interests. Special rules can apply to prevent double counting in relation to the taxation of holdings in a reporting fund.

A UK resident individual holding an investment in a recognised EU undertaking for collective investment in transferable securities (UCITS) or a qualifying non-UCITS retail scheme (NURS) held through an individual savings account (ISA) is exempt from income tax and capital gains tax in relation to that investment holding through an ISA.

Law stated - 20 May 2025

Asset protection

30 Must the portfolio of assets of a non-retail fund be held by a separate local custodian? What regulations are in place to protect the fund's assets?

Under the UK AIFMD regime, which applies to non-retail funds in general, the requirements relating to depositary arrangements are complex and their application depends on certain factors, such as whether the fund is a UK or non-UK AIF or whether the fund is being marketed in the United Kingdom.

By way of a high-level summary:

- Generally, a UK AIFM of a UK AIF must appoint a separate depositary. 'Depositary' for these purposes has a specific meaning; it refers to a firm that is appointed to hold the AIF's assets and perform certain prescribed functions. These functions are (in summary) safekeeping of the AIF's assets, monitoring of the AIF's asset valuation process and cash accounts, and general oversight. The depositary in this context is legally required to be strictly liable for the loss of any of the AIF's assets by itself or by a sub-custodian, unless it can prove that the loss resulted from an external event beyond its reasonable control, the consequences of which would have been unavoidable despite all reasonable efforts by it to the contrary.
- UK depositaries are subject to, amongst others, the rules of the FCA on custody of client assets. These rules are intended to ensure that custodians comply with professional standards of care and diligence, including where they appoint sub-custodians.

A UK AIFM of a non-UK AIF that is not marketed in the United Kingdom is not required to appoint a 'depositary' as described above. Similarly, a non-UK AIFM of a non-UK AIF that is marketed in the United Kingdom under the national private placement regime does not need to appoint such a depositary either. A depositary-lite regime applies to a UK AIFM of a non-UK AIF that is marketed into the United Kingdom; this excludes the strict liability requirement and does not require a single service provider to perform the depositary functions described above. In cases where a depositary (within the above meaning) is not required to be appointed, funds would nevertheless typically have a custodian and an administrator; and these service providers would undertake some, but not necessarily all, of the relevant services that would otherwise be carried on by the depositary.

Law stated - 20 May 2025

Governance

31 What are the main governance requirements for a non-retail fund formed in your jurisdiction (registration, record-keeping, filings, officers)?

The governance requirements are typically imposed on the UK AIFM rather than the non-retail fund which is typically not authorised on its own. For a non-retail fund that is also an authorised fund, there may also be certain governance-related requirements at the fund level. A UK AIFM may delegate discretionary investment decision-making to a third party which is commonly referred to as 'investment manager' or 'sub-adviser'. Requirements that may apply to such investment managers/sub-advisers are not discussed.

The discussion here focuses on the requirements applicable to the AIFM acting as such:

- Management and officers. A UK AIFM must ensure its management is undertaken by at least two persons meeting specified requirements. It must functionally and hierarchically separate the functions of risk management from the operating units, including from the functions of portfolio management.
- Record-keeping. There are various record-keeping requirements on UK AIFMs. For example, a UK AIFM must keep appropriate records of all services, activities and

transactions undertaken by it. These records must be sufficient to enable the FCA to fulfil its supervisory tasks.

- Filing. Various matters are required to be approved/filed with the FCA, including: the appointment of an external valuer by the UK AIFM, and delegation of the UK AIFM's functions to another person (eg, delegation of portfolio management to a sub-adviser).

Law stated - 20 May 2025

Reporting

32 What are the periodic reporting requirements for non-retail funds?

The reporting requirements are typically imposed on the AIFM rather than the non-retail fund which is typically not authorised on its own. For a non-retail fund that is also an authorised fund, there may also be reporting requirements at the fund level. The summary below focuses on the main reporting requirements applicable at the level of the AIFM.

A UK AIFM must, for each UK AIF it manages and for each UK or non-UK AIF it markets in the United Kingdom:

- prepare and make available to investors and the FCA an annual report that contains the AIF's financial statements and certain prescribed disclosures;
- disclose certain information on the AIF (such as changes in its risk profile, liquidity or leverage) to its investors on a periodic basis;
- provide to the FCA on request a detailed list of all AIFs managed by it; and
- regularly report to the FCA on detailed information on the AIF including categories of assets, risk profile and principal exposures. The frequency (annual, half-yearly or quarterly) of this reporting depends on the type of AIF and the size of assets under management of the UK AIFM.

Law stated - 20 May 2025

SEPARATELY MANAGED ACCOUNTS

Structure

33 How are separately managed accounts (ie, accounts through which investor funds are segregated – not pooled – and the investor owns the underlying assets, which are managed at the investment manager's discretion) typically structured in your jurisdiction?

In the United Kingdom, a separately managed account typically involves the client appointing an investment manager to provide discretionary investment services in relation to an identifiable portfolio of assets pursuant to an investment management agreement (IMA). Where the client has their own custodian, the IMA will authorise the manager

to provide instructions to the custodian related to the investment of the assets within the account. An IMA will set out specific investment guidelines including but not limited to, the investment strategy and objectives, as well as investment restrictions placed on the manager. References to 'investment manager' or 'manager' in this section have the meaning described above.

A UK firm that provides such discretionary management services must be authorised by the Financial Conduct Authority (FCA) for the regulated activity of 'managing investments' under the UK MIFID regime (which is derived from the EU Markets in Financial Instruments Directive). Note that the regulated activity of 'managing investments' is different to and distinct from the regulated activities of 'managing AIFs' and 'managing UCITS'; separate permissions are required for these other regulated activities.

Law stated - 20 May 2025

Key legal issues

34 What are the key legal issues (eg, standard of care, indemnification) to be determined when structuring a separately managed account?

The terms for a separately managed account are mainly set out and negotiated in an investment management agreement between the investor and the manager. While issues such as standard of care and indemnification, etc, are largely a matter of negotiation between the parties, the manager as a regulated firm is subject to the relevant regulatory requirements.

These requirements include: making required disclosures to the client, exercising due care in providing services, acting in the best interests of the client, and providing best execution in accordance with the applicable requirements.

These prescribed investor protection requirements cannot be contracted out and they are typically more extensive where the investor is a retail client than when the investor is a professional client. Where the client is a retail investor or it has underlying retail investors, the investment manager will also need to comply with the Consumer Duty rules which require firms to deliver good outcomes to retail customers and sets out various investor-protection requirements.

Law stated - 20 May 2025

Regulation

35 Is the management or marketing of separately managed accounts regulated in your jurisdiction? (If so, how does this operate? Is this the same regime for fund management?)

In the United Kingdom, the management of a separately managed account will fall under the regulated activity of 'managing investments'. The manager engaging in this activity will require prior authorisation from the FCA, subject to certain exemptions, under the UK

MIFID regime. Note that the regulated activity of 'managing investments' is different to and distinct from the regulated activities of 'managing AIFs' and 'managing UCITS'; separate permissions are required for these other regulated activities.

A separately managed account will not generally fall within scope of a collective investment scheme or an AIF (alternative investment fund). However, note that a fund of one may constitute an AIF in certain circumstances. For example, where the constituting instrument does not prohibit it from having more than one investor.

Marketing of financial products/services in itself is generally not subject to authorisation/licensing in the United Kingdom (albeit activities in the course of marketing may amount to regulated activities depending on the circumstances, such as arranging or advising on investments). However, the general UK financial promotion requirements will apply in respect of marketing of separately managed accounts (but the investment fund-related marketing requirements will generally not).

Law stated - 20 May 2025

GENERAL

Proposed reforms

36 Are there proposals for further regulation of funds, fund managers or marketers of funds in your jurisdiction?

There are various reforms and initiatives being proposed by the UK government and the Financial Conduct Authority (FCA). Some of these requirements are still at an early stage. Of these, the most notable include:

- Proposed reform to the UK AIFMD regime (which is derived from the EU Alternative investment Fund Managers Directive). Proposals include, for example, abolishing the thresholds that distinguish small alternative investment fund managers (AIFMs) (which are currently subject to lighter requirements) and full scope AIFMs (which are subject to full UK AIFMD requirements) and replacing this with a single authorisation regime covering all AIFMs but with the application of the relevant requirements tailored to be proportionate to the size of the AIFM. This is at an early stage. Details of the proposed rules are not available yet.
- Proposed new Consumer Composite Investments regime (CCI). This is intended to replace the existing UK PRIIPs regime (which is derived from the EU Packaged Retail and Insurance-Based Investment Products Regulation), with a more flexible and proportionate framework for making disclosures of CCIs to UK retail investors (an investment fund would generally be a CCI). This is still being consulted on and is not yet finalised.
- New investment research rules. The FCA has extended the joint payment optionality rules to managers of investment funds, that is, AIFMs and undertakings for collective investment in transferable securities (UCITS) management companies. Taking effect 9 May 2025, this would allow these managers to bundle payment for investment research with payment for execution services where certain safeguards

or conditions are met (which they were previously prohibited from doing except in connection with separate account management).

Law stated - 20 May 2025

Public listing

37 Outline any specific requirements for stock-exchange listing of retail and non-retail funds.

Most closed-ended funds listed on the London Stock Exchange's (LSE) Main Market qualify as alternative investment funds (AIFs), but their listed status means that they are generally accessible by retail investors. Those funds are typically listed in the premium segment and the specialist fund segment of the LSE's Main Market. But some of the LSE market segments are intended only for professional/institutional investors.

Law stated - 20 May 2025

Overseas vehicles

38 Is it possible to redomicile an overseas vehicle in your jurisdiction?

It is generally not possible to redomicile an overseas fund into the United Kingdom. It may be possible to put a scheme of arrangement in place, whereby an overseas fund is liquidated, and investors receive interests in a replacement UK fund.

Law stated - 20 May 2025

Foreign investment

39 Are there any special rules relating to the ability of foreign investors to invest in funds established or managed in your jurisdiction or domestic investors to invest in funds established or managed abroad?

There are no special rules in this regard (asides from the various marketing requirements for funds and general financial promotion rules). However, certain national security-related requirements may need to be considered in the context of foreign investment into the United Kingdom. The regime requires notification to the UK Investment Security Unit on a mandatory and voluntary basis, on grounds of national security, for transactions involving an acquisition of shares or voting rights above certain thresholds in a sensitive sector (eg, defence, energy, communications or transport).

UK sanctions and related requirements may also need to be considered.

Law stated - 20 May 2025

Funds investing in derivatives

40 Are there any special requirements in your jurisdiction relating to funds investing in derivatives?

The UK EMIR regime (derived from the EU European Market Infrastructure Regulation) sets out the regulatory framework regarding over-the-counter (OTC) derivatives trading in the United Kingdom. In relation to OTC derivatives trades by UK funds, UK EMIR imposes various requirements, including:

- The obligation to centrally clear standardised OTC derivative contracts.
- Risk mitigation in regards to trades which are not subject to clearing obligations, including requirements relating to variation margin, trade confirmation and reconciliation.
- The obligation to report all derivative transactions to a trade repository.

Managers of authorised funds (eg, UK UCITS) may also need to comply with certain requirements with respect to the use of derivatives. For example, if a UK UCITS manager has previously used derivatives only for efficient portfolio management (such as to manage liquidity risk) and subsequently uses derivatives for investment purposes for the first time (to the extent that the fund's prospectus permits such use), it must notify the FCA. The relevant prescribed investment limits on, for example, a UK UCITS may also impact on the fund manager's ability to use derivatives.

Law stated - 20 May 2025

UPDATE AND TRENDS

Recent developments

41 Are there any other current developments or emerging trends in your jurisdiction that should be noted? Please include reference to world-wide regulatory concerns, such as restrictions on foreign ownership in strategic industries, high-frequency trading, commodity position limits, capital adequacy for investment firms and 'shadow banking'.

Summarised below are some key developments:

- Liquidity management. The Financial Conduct Authority (FCA) continues to focus on liquidity risk, and it intends to align the UK's liquidity risk practices with recommendations in the International Organisation of Securities Commission's consultation paper on liquidity management for collective investment schemes.
- International competitiveness and growth. The FCA has now been given a secondary international competitiveness and growth objective. As part of its initiatives to promote UK's competitiveness and growth, the FCA has made various proposals and announcements. For example, in its five-year strategy for 2025-30 it states that in areas such as asset management it will strip out redundant requirements.

- Outcome-based approach to regulation. The FCA Consumer Duty regime has been in force since 31 July 2023. The regime requires firms to act to deliver good outcomes for retail customers and applies to all UK authorised firms in a distribution chain where the end customer is a retail customer, regardless of whether the firm has a direct relationship with that retail customer. Following the implementation of the Consumer Duty, the FCA is considering whether/how to simplify certain requirements for regulated firms and to focus on an outcome-based approach to regulation.
- Environmental, social and governance (ESG). The UK government and regulators have been using regulation to encourage investment in products with strong ESG credentials, and to ensure that investors can have confidence in representations being made to them on these matters. Some slowing in the pace of change in this area has been evident recently, although the general policy approach remains. For example, the FCA's proposed extension of the UK Sustainability Disclosure Regime (currently in force for fund managers) to Markets in Financial Instruments Directive portfolio managers (eg, those managing separate accounts) and to overseas funds, has been delayed whilst the FCA's labelling regime settles in.
- UK fund taxation: to promote UK-onshore fund establishment and scheme/asset management in the United Kingdom, new investment vehicle provisions have been recently introduced as part of a wider review of the UK funds regime to have positive outcomes for the financial sector and enhance the UK's competitiveness as a location for asset management and for investment funds:
    - The Qualifying Asset Holding Company (QAHC): a UK resident corporate investment intermediary (generally entitled to UK double tax treaty benefits) and designed to mitigate tiered entity/corporate intermediary UK tax disadvantages otherwise applying and designed to apply to prescribed investment arrangements involving diversified investment funds, charities, long-term insurance business, sovereign immune entities and certain pension schemes and public bodies; QAHCs are increasingly used in connection with private equity alternative investment funds (AIFs) (in the form of limited partnership) for UK-based asset management arrangements including those designed for buyout funds and credit funds.
    - The Reserved Investor Fund (RIF) – a UK-based AIF (in the form of a co-ownership scheme) designed to complement and enhance the UK's existing funds regime by meeting industry demand for a UK-based unauthorised contractual scheme with lower costs and more flexibility than the existing authorised contractual scheme; the RIF is designed for a diversely owned (non-retail) investor base and is expected to be particularly attractive for investment in commercial real estate.

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