Asset Management

Changing rules

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

June 2009

Contents

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press, given the rapid pace of change in the global hedge fund industry, the factual data in this paper may quickly be superceded.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

Foreword

This is the 7th year we have produced our whitepaper report. Our last report was dated September 2008 and was published just as Lehman Brothers announced that it was in administration and the US Government announced massive support for AIG. These events signalled the start of a period of extreme financial turbulence and volatility.

The reduction in worldwide securities markets coupled with net redemptions over the last 9 months have resulted in industry assets under management falling significantly – estimates suggest some 30% from their peak. Some hedge funds have closed, some have restructured and some fund managers have gone out of business. The business environment remains extremely challenging yet the regulatory consequences of the credit crunch and their potential impact on the marketplace are only beginning to emerge.

At the end of April 2009, the European Commission published a draft proposed European Directive that will apply to all Alternative Investment Fund Managers established in an EU member state. In their current form the proposals in the draft Directive will affect not only the managers of hedge funds but also private equity, real estate, infrastructure and some traditional long only managers. Although there is bound to be much debate and lobbying to change the proposals, history shows that a lot of the original text will remain. The changes proposed would have far reaching effects on the European non-retail asset management industry and quite probably, a number of unintended consequences.

All industry participants will need to monitor developments carefully as the new rules emerge.

Once again our international network has successfully collaborated with our central team to produce this paper and I am indebted to all those involved.

If you would like to discuss any of the issues in this paper in more detail, please speak with your usual contact at PricewaterhouseCoopers[1] or one of the country members listed in the contact section at the end of this document.

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

01

Changing rules

In September last year, the consequences of the credit crunch accelerated. Coupled with the demise of Lehman Brothers and the intervention of governments to "bail out" banks, the sub prime crisis became a banking crisis and then a macro crisis. For the sector, the deleveraging by financial institutions and flight to cash by all investor classes caused significant redemptions and, together with the falls in securities markets worldwide, is estimated to have reduced assets under management in the industry to about 30% of the position at December 2007.

Last year we were predicting that more institutional money would be allocated to hedge fund strategies and that this money would fuel a focus on operational risk – both by investors and managers. We anticipated that the larger hedge fund managers would need to embrace the published Best Practice Standards and Practices (both of the Hedge Fund Standards Board and the US President's Working Group on Financial Markets) to demonstrate robust controls and processes.
We also commented that compensation strategies would need to be modified and aligned to achieve adherence to a strong operational control framework and avoid bias to risk and short term thinking.

That was then. Whilst these issues remain valid the extreme financial market dislocation over the last 9 months has caused every financial institution to reappraise its business model. Necessarily, the emphasis has been on survival and trying to get some vision on the future business environment – a tough challenge given the huge upheavals in financial markets.

But just as managers have started to see a slow down in redemptions and started to achieve some positive investment performance, they are being faced with a new challenge – a challenge from the regulators.

The Draft EC Directive

It is fair to say that since the European Parliament approved the Rasmussen report in July 2008, it has been known that the European Commission would have to draft proposals to address the recommendations of this Parliament approved report. However, it was not expected that the draft Directive published at the end of April 2009 would be so wide in scope and released with such limited consultation. The draft directive is proposed to apply to Alternative Investment Fund Managers (AIFMs) established in an

EU member state and who provide management services to alternative investment funds (AIFs). The definition of an AIF includes all non-UCITS funds and therefore also covers for example, real estate funds, infrastructure funds, exempt unauthorised unit trusts and UK investment trusts.

Issues with the Directive

Not only was the scope much broader than expected, but also the provisions in the draft Directive were much more extensive. For the hedge fund industry, it is proposed that EU hedge fund managers with assets under management of EUR 100 million or more will be subject to a minimum level of capital of EUR 125,000 plus a further 0.02 per cent of the value of assets under management in excess of EUR 250 million.

There are also detailed reporting requirements for the AIFM to both the home state regulator (e.g. information on governance structures, internal risk management systems, valuation procedures and risk management systems and to investors (e.g. descriptions about valuation procedures, liquidity risk management, redemption rights, identity of the AIF's depository, the third party independent "valuator", when the AIF may use leverage, any investors who benefit from preferential interests etc.).

More fundamentally, the draft Directive seeks to change some of the existing relationships and infrastructure within the industry. Under the proposals, it will be necessary for each AIF to appoint an independent valuer to value the assets and then the units/shares of the AIF each dealing or subscription/ redemption day and at least annually.

It is unclear whether there is sufficient supply of expertise in the EU marketplace for such an independent valuation process, especially when it comes to hard–to-value assets.

In addition, the AIF will need to appoint a depository. The depository needs to be an EU credit institution and this will exclude most existing prime brokers – it is thought that there are only four prime brokers who currently have EU credit institution status. Consequently, an EU credit institution will need to be appointed as a depository to a hedge fund and in turn sub-delegate to a prime broker. This is feasible except that the draft Directive also requires the depository to take the liability risk for breaches of the Directive, irrespective of the sub-delegation arrangements which probably makes such arrangements uneconomic and possibly unworkable.

The Directive also requires disclosure about leverage to both the investors and the regulator. The definition of leverage is unclear but it appears that the regulatory authorities including the Commission itself will have the power to impose limits on leverage.

The reaction of the Industry Associations has been negative and reflects their perception that only limited consultation has taken place. Clearly, the draft Directive will be subject to much lobbying and negotiation and it must be remembered that it only represents Level 1 principles under the Lamfalussy process and the fine detail is yet to be worked out; however, most commentators believe that the basic thrust of the Directive will remain.

US Regulatory Developments

The US is moving at a different pace. At the time of writing a US House Sub-committee had just finished a hearing on “Perspectives on Hedge Fund Registration”. There is a bill proposing an amendment to the Investment Advisors Act of 1940 which would lead to a mandatory registration regime for all US investment advisors and non-US investment advisors if they have US clients. This registration requirement differs to the proposed European AIFM model (where registration is required if the AIFM operates from a place of business in the EU) because the US model, by virtue of linking the registration requirement to clients, makes it extra-territorial.

The US appears to be moving at a slightly slower pace than the EU and although registration would bring obligations under the proposed rules, there does not seem to be the appetite yet for such a “root and branch” rewriting of the rules. This could lead to serious competitive disadvantage for EU managers.

Business Implications

What is clear is that the financial environment in which hedge funds operate has changed fundamentally. The regulators are rewriting the rules. Therefore, hedge fund managers need to start re-thinking what this means to their business and operating model. Although the new rules are not yet completely clear, there is enough information in the proposed Directive to start working through the issues, considering their impact and then potential solutions. We have set out an action plan opposite of the key areas to consider.

Conclusion

Hedge fund managers need to get up to speed quickly with the proposed new rules. Even discussion and debate is causing additional transparency and it seems even more likely than at this time last year that managers will need to demonstrate a robust governance, infrastructure and controls framework to regulators and investors. There is potential for a seismic shift in the industry and managers must both address the challenges but also seek the opportunities for achieving real competitive advantage.

Business Model Assessment: Action plan

Steering Group

- Have you established an appropriate cross business group to both monitor and assess the impact of the Directive as it is implemented in law and regulations?

Governance

- Are committees in place to oversee the various aspects of the business – portfolio management, trading, risk management, valuation, operations and compliance?
- Are policies, procedures and controls documented and tailored to the particular size and complexity of the business?
- Do segregation of duties and other controls minimise potential for fraud and conflicts of interest?

Risk Management

- Is there a Risk Management Committee or Chief Risk Officer in place?
- Does the Risk Management Framework encompass not only investment risk but a comprehensive risk evaluation process, including counterparty risk?

Controls Framework

- Have you commissioned a review of your procedures and controls to ensure they meet the standards expected by your investors and regulators?
- How are you going to demonstrate to investors and regulators that you have a robust control framework and that it has been operating effectively throughout the period?
- Would your controls framework and monitoring mechanisms stand up to an “intensive” review by a regulatory team?

Remuneration Strategy

- Have remuneration strategies been reviewed to ensure that they are aligned with the longer term interests of the corporate manager entity, avoid excessive risk taking and match AIF investor expectations?

Prime Brokers

- Have you undertaken a detailed review of your prime broker agreements and are you clear on the rehypothecation arrangements?
- Have you considered the adequacy of your counterparty risk management policies (e.g. a multi prime broker model) and their implementation?
- Have you reviewed the insolvency and regulatory approaches to the enhanced segregation and protection of unencumbered fund cash and assets?
- Will the prime brokers be able to meet the additional demands for transparency?

Independent Administrators

- What is the scope of work of the administrator and, apart from accounting, are they responsible for undertaking the valuation of the AIF?

Valuation

- Are independent personnel responsible for the pricing process?
- Are policies and procedures in place and documented that cover the fair valuation process?
- If an independent valuer is used, has appropriate due diligence been undertaken to ensure the valuation agent has the appropriate skills, robust methodologies and models to value fund assets?

Liquidity

- Is there a robust process to actively manage and monitor liquidity to meet various redemption scenarios?

Transparency and Disclosure

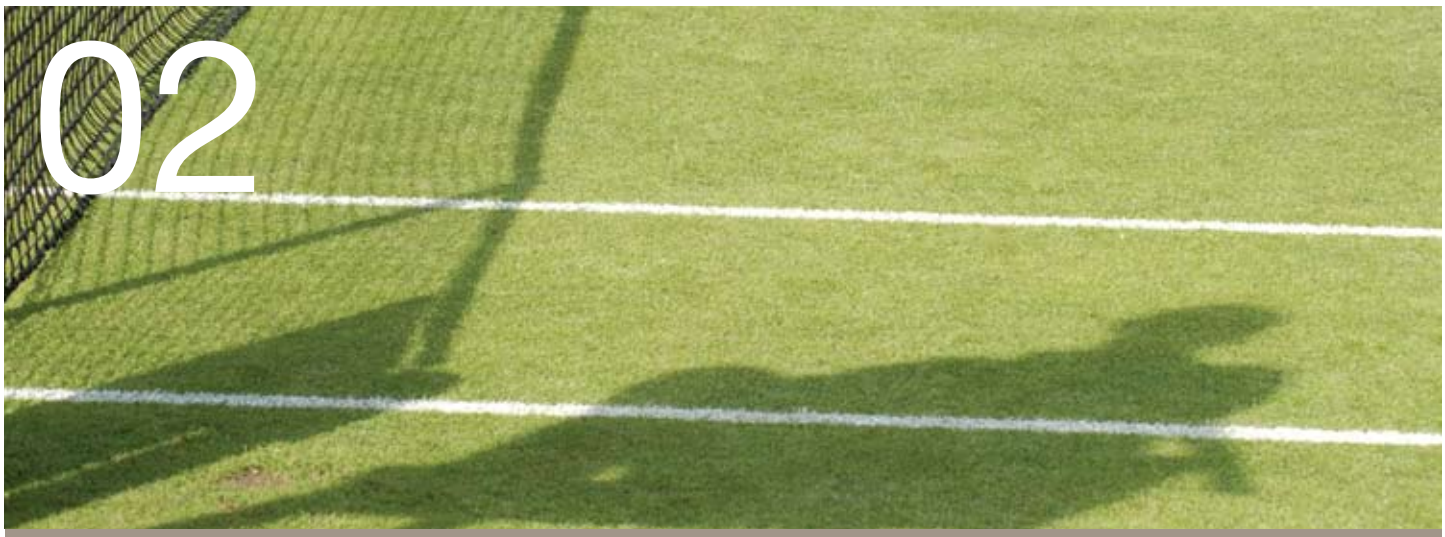
- What will be the impact of increased disclosure and transparency to both investors (fund documentation, annual accounts etc.) and regulators (AIF information on concentration risk, leverage etc.)?

Financial Projections and Capital Requirements

- How will the new capital requirements under the proposed Directive apply to you?
- What will be the other “on-costs” of implementing the Directive’s proposals both to the AIFs and to the corporate manager entity?

New Opportunities

- Are there opportunities arising from the potential changes in regulation where the corporate manager entity can achieve competitive advantage?
- Are changes in other rules (e.g. tax) providing product development opportunities?



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Regulatory developments

The hedge fund industry has been the focus of significant attention over the past year in light of the recent global economic crisis.

EU Directive

Following the G20 recommendations regarding the financial crisis and pressure from the European Parliament, on 29 April 2009, the European Commission issued a draft European Directive to establish a regulatory framework for alternative investment fund managers (AIFM). It aims to "…create a comprehensive and effective regulatory and supervisory framework for AIFM in the European Union." The proposed Directive will require all AIFM within scope to be authorised and to be subject to harmonised regulatory standards on an ongoing basis. The executive summary comments on some of the issues arising from this proposed Directive.

EU Supervision

Jacques de Larosière, the former head of the IMF, reported to the European Commission ("EC") on cross-border supervision in the EU to remedy flaws in the current patchwork of national supervision. His report stated that there was a risk of "major dislocation" in the markets if significant hedge funds ran into financial difficulties. His approach was for a European Systemic Risk Council ("ESRC") with an effective risk warning system so that if a national regulator was not deemed to be taking adequate action to deal with risk, the ESRC would take immediate action.

Lehman Brothers

The impact of the Lehman Brothers administration on investment managers has focused attention on operational issues around settlement, the holding and use of collateral and pricing, and also upon segregation arrangements for client money and custodied assets, particularly through the use of cash and margin prime brokerage accounts.

FSA View

Nearly 85% of European hedge fund managers are based in the UK so it is worth considering the UK regulator's observations.

Lord Turner, chairman of the UK's FSA, gave a regulatory response to the global banking crisis. It made reference to the "shadow banking system" – investment banks, mutual funds and off balance sheet vehicles – performing credit intermediation and maturity transformation functions whilst not being subject to adequate capital and liquidity constraints. The FSA does not consider that there is any evidence that hedge funds have made a significant direct contribution to the underlying causes of the current economic crisis However, it does say that the effective regulation of the potential systemic impacts of hedge funds, or clusters of hedge funds, should be considered

as an important part of the future regulatory framework, both globally and nationally. Key components of such a framework would include the mandatory authorisation and supervision of hedge fund managers, an effective enforcement regime and transparency/disclosure requirements. The FSA has also been focusing upon remuneration and internal capital adequacy assessments.

Summary of some specific country changes

France

In France, since October 2008, the regulations or by-laws of hedge funds ("ARIA" funds) may provide for a ceiling above which redemptions may be limited. Contractual funds are not subject to rules relating to diversification of holdings or limits on the amount of leverage they may employ, and since 24 October 2008, they have been able to invest in assets other than securities or financial instruments such as aeroplanes, boats, works of art and real estate, provided that they comply with specific requirements set out by regulations.

Guernsey

In Guernsey, from 15 December 2008, a new regime of investment fund regulation was implemented, applicable to both open-ended and closed-ended funds. All Guernsey funds are now classified as either "authorised funds", subject to ongoing regulation by the Guernsey Financial Services Commission ("GFSC"), or as "registered funds", subject to limited ongoing supervision by the GFSC. There is no restriction with respect to the type of activity undertaken by a fund designated as either an authorised fund or a registered fund, although registered funds cannot be offered to the Guernsey public. The GFSC introduced a fast track registered closed-end fund regime, where the turnaround time is normally 10 days or less, subject to the administrator satisfying the GFSC that its due diligence is complete and the promoter has a favourable track record in an established jurisdiction.

India

The Securities and Exchange Board of India, "SEBI", removed the restrictions on indirect investment via Participatory Notes ("P-Notes") from October 2008, effectively allowing hedge funds to invest either directly by seeking registration as a Foreign Institutional Investor ("FII") sub-account or by obtaining indirect exposure by investing via P-Notes.

Isle of Man

The Isle of Man has seen considerable change and consolidation in the regulations applicable to collective investment schemes and those persons providing services to them. The Collective Investment Scheme Act 2008 and Collective Investment Schemes (Definitions) Order 2008 have replaced the provisions of the Financial Services Act 1988. The CIS Act identifies 3 classes of scheme: Authorised Schemes, International Schemes and Recognised Schemes. Authorised Schemes are established in the island and offered to the general public; International Schemes, which are not authorised or exempt, cannot be offered to the general public in the Isle of Man, and Recognised Schemes are managed or authorised under the law of another country or territory outside the Isle of Man and cannot be promoted to the general public until they have been recognised by the Isle of Man's Financial Supervision Commission.

USA

The US congress is currently considering changes to the SEC hedge fund registration regime that may have an impact on offshore managers. At the time of this publication, however, there are no new details regarding the extent of the proposed changes and whether they will actually impact offshore managers.

UK

The UK's FSA has introduced the requirement to disclose short selling, specifically that firms must report all net short positions in excess of 0.25% of companies' issued shared capital. The FSA has also published a number of papers based upon effective risk management and the need for more extreme stress testing and scenario analysis, given that their regulatory reviews indicated many firms' testing is not as robust or embedded in senior management as they would expect.

The introduction of the Funds of Alternative Investment Funds ("FAIF") regime into the UK, in which retail investors could be sold funds of hedge funds, has been deferred by the FSA in light of market sentiment, with the likelihood that it will not go ahead.

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Taxation developments

Over the past 18 months a number of hedge funds and their managers, have closed their doors. With lower returns and greater investor demands for liquidity, and hence redemptions, a large proportion of funds have seen AUMs fall drastically. The result of this impact for many managers is that their mass is now half or even a quarter of its size in 2007. While the hedge fund industry works its way through the current crisis, some forecasts indicate that recovery is coming and some commentators believe that by 2013 the industry should be thriving again. It is important to realise, however, that the new, recovered, hedge fund industry will have metamorphosed from what we currently know and expect, to something new and different.

So the question right now has to be: What are the tax challenges facing the remaining players and how will the landscape shift in response to the huge upheaval of the financial markets?

Offshore vs. Onshore Funds

One of the key questions facing not only hedge fund managers but traditional fund managers is the "offshore vs. onshore" debate when dealing with fund domicile. There are a number of advantages to operating in an onshore regulated market rather than in an offshore centre such as Cayman. But one of the key drivers to fund location is tax. Have the onshore jurisdictions got it right and made it attractive from a tax perspective to domicile funds in their territory?

The Undertakings for Collective Investment in Transferable Securities Directive (UCITS III) has produced a flexible fund model for asset managers to utilise as it has wide ranging investment powers which include the use of derivatives and indices.

The UCITS brand has been successful not only across EU borders but also in the Asian and South American markets. A common misconception is that UCITS means a product that is marketed to retail investors, however, this is not accurate. UCITS funds are very flexible and allow for institutional as well as retail investors. Over the last 12 months we have seen a number of hedge fund managers enter the regulated UCITS market as a new way of raising capital in difficult times.

Turning specifically to the EU onshore fund domiciles there has been an explosion of funds being set up in Luxembourg and Dublin due to their favourable regulation and the exempt tax status of funds located in these jurisdictions. That said, the management of these funds still resides largely in the UK where the investment professionals are located.

More recently the UK authorities have tried to improve competitiveness of the UK funds market by giving UK funds greater clarity on the distinction between what constitutes trading versus investment. There is now a white list of transactions for UK authorised investment funds ("AIFs") which mirrors the list of "investment transactions" that qualify for the UK Investment Manager Exemption ("IME"). Given that onshore products can now be managed as tax efficiently as offshore products, it could mean that the convenience of locating the fund, as a regulated onshore fund offering, in the same territory as the manager will be more of a driving factor. Post the UK Budget 2009, we are already seeing interest from the industry in establishing tax efficient onshore funds as a complementary offering to an existing offshore fund range.

United Kingdom

There has not been the same success around the introduction of the Fund of Alternative Investment Fund ("FAIF") regime in the UK, largely because there is not an efficient tax treatment to go hand-in-hand with the regulatory regime. This vehicle was heralded as facilitating UK retail investment in hedge funds and was intended to provide a model which spread risk by using the fund-of funds model. The difficulty in agreeing the tax treatment, however, has resulted in delays to any product being launched.

Tax Havens

Following the 2009 G20 meeting, and the draft European Commission Directive for Alternative Investment Fund Managers, political agendas across the globe are weighing heavily on hedge funds, and this has created an increased focus on tax havens and a consequential call for there to be full tax information exchange. We understand that the Cayman Islands, Channel Islands and certain other offshore territories will sign up to these agreements which should afford them "white list" status and they should therefore remain as an offshore fund domicile of choice.

Asia and South East Asia

Interestingly, the Asian and South East Asian regions are pushing forward with their plans to attract more fund managers. We have seen the implementation of an independent agent exemption for fund managers operating out of Japan. This is a welcome change for fund managers operating in Japan as the need for the work around solution, whereby decision-making takes place in Hong Kong, has been removed. In addition Singapore, which had already introduced a domestic exemption, has relaxed some of its requirements this year in order to stay competitive with Hong Kong.

Other territories

Other territories are seeing increased lobbying for similar exemptions to be introduced in their jurisdiction. These territories include Australia and New Zealand and it will be interesting to see how this progresses, and whether there is an actual desire from the local governments to build their financial service centres and attract hedge fund managers to these locations.

Capital Profits

Capital profits treatment continues to be debated across the world, with the US still pushing with submissions to Congress on how the treatment of the taxation of carried interest or performance fees might be amended. Germany has introduced a flat rate of tax for income and gains for individuals which means that there is no longer an advantage in receiving one over the other (although there is grandfathering in relation to investments held prior to 1 January, 2009). There is a 95% exemption on tax on dividends and capital gains for corporate investors holding hedge funds, as long as the fund provides additional reporting to German investors.

Conclusion

From the changes outlined above, it is clear that regulatory bodies and tax authorities have hedge funds firmly in their sights but there is still opaqueness on the nature of the regulation requirements in the new environment of hedge funds. However, we can be certain that tax information exchange from the offshore territories will be a must. There is no question that onshore funds will play their role in the new world, and offshore funds will remain in play, and it will be interesting to observe which becomes the preferred choice, and that, of course, is in the hands of investors and politicians.

Figure 1: Tax barriers to the distribution of hedge funds

	High Net Worth Individuals	Pension funds	Corporate	Bank
Austria				
Bahamas				
Belgium				
Bermuda				
Cayman Islands				
Denmark				
Finland				
France				
Germany				
Gibraltar				
Greece				
Guernsey				
Ireland†				
Isle of Man				
Italy				
Jersey				
Luxembourg				
Malta				
Netherlands				
Netherlands Antilles				
Norway				
Portugal				
Spain				
Sweden				
Switzerland				
UK††				
USA				

No tax discrimination against foreign hedge fund

More favourable treatment for foreign hedge fund

Direct tax discrimination against foreign hedge fund

Not likely to be a significant investor class; investment in hedge funds not permitted; or there are no domestic hedge funds

Indirect tax discrimination against foreign hedge fund

† There is no discrimination in the tax treatment of an investment in an Irish fund compared with an investment in a fund located in an "Offshore State". "Offshore State" is defined as a Member State of the European Communities, a state which is an EEA state or a state which is a member of the OECD, the government of which has entered into a double taxation agreement with Ireland. Ireland operates a less favourable tax regime for individuals where the investment fund is domiciled in a jurisdiction other than an Offshore State.

†† There are VAT efficiencies to be gained by establishing investments in a non EU hedge fund vehicle. However, this will not in general be immediately apparent to the investor.

04

Country-by-country overview

Australia

Taxation

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

Australian individual investors are taxed at the marginal income tax rate (up to 45% plus Medicare levy). Australian corporate investors are subject to tax at 30%. Complying superannuation entities are taxed at the rate of 15%. Income derived by complying superannuation entities from investments supporting current pension liabilities is, however, exempt from tax.

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

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

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

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

Distributions of certain types of Australian sourced income by domestic hedge funds to foreign investors may be subject to Australian withholding tax. Distributions of interest or unfranked dividends may be subject to Australian withholding tax at the general rate of 10% and 15%, respectively. These rates are subject to the application of a relevant Double Tax Agreement.

Where the hedge fund is a domestic managed investment trust ("MIT") (as defined), foreign investors of jurisdictions with which Australia has effective exchange of information on tax matters will be subject to a new withholding regime in respect of certain distributions of Australian sourced income or capital gains from taxable Australian property. In relation to the 2008/09 income year, the rate applied to the relevant payment will be 22.5%, reducing to 15% in the next income year and 7.5% in subsequent years. A 30% rate of withholding tax will apply to foreign investors resident in other jurisdictions in relation to such distributions from an MIT.

Austria

Regulation

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

Taxation

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

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

2) The foreign hedge fund provides the OeKB with information on the net interest income (interest income plus/minus equalisation minus expenses on interest income) on a

daily ("daily" in terms of each time a NAV is published) basis (daily reporting).

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

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

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

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

Austrian pension funds are exempt from tax in Austria.

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

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

If a foreign fund has not appointed a local tax representative, it will be treated as a "black fund" and all investors (except pension funds) will be subject to unfavourable lump-sum taxation. A 25% tax will be applied to the higher of:

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

ii) 90% of the increase in value between the first and the last redemption price in the calendar year, less the actual distribution received by the investor.

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

Bahamas

Regulation

Bahamas-domiciled funds are regulated by the Securities Commission of The Bahamas (SCB) under the Investment Funds Act 2003 (the "Act"). The Act regulates the operation of the Bahamas-domiciled investment funds and fund administrators. There are four types of investment funds:

1) Professional Fund: a recognised legal structure in The Bahamas which issues or has equity interests, the purpose or effect of which is the pooling of investor funds with the aim of spreading investment risks and achieving profits or gains from the acquisition, holding, management or disposal of investments;

2) Specific Mandate Alternative Regulatory Test ("SMART") Funds: an investment fund that satisfies the parameters and requirements of a category, class or type of investment fund previously approved by the SCB. There are five categories (SMF 001, 002, 003, 004, 005) and one new proposed category (SMF 006) of SMART Funds;

3) Recognised Foreign Fund: an investment fund, which is not licensed but is registered in The Bahamas, whose equity interests are listed on a prescribed securities exchange or an investment fund licensed or registered in a prescribed jurisdiction and not suspended from operation. Current proposed legislation will expand the definition to also include an investment fund that is incorporated or established and is in good standing in a jurisdiction prescribed by the Commission;

4) Standard Fund: any investment fund not meeting the criteria of a Professional or SMART Fund.

An investment fund having only sophisticated ('eligible') investors may be licensed either by an Unrestricted Fund Administrator or the SCB. A Standard Investment Fund must be licensed by the SCB.

Eligible investors include:

- A bank or trust company licensed in The Bahamas or licensed in a prescribed jurisdiction;
- A securities firm registered in The Bahamas or registered in a prescribed jurisdiction;
- A Bahamian investment fund or investment fund regulated in a prescribed jurisdiction;
- An insurance company licensed in The Bahamas or in a prescribed jurisdiction;
- Natural person (jointly w/spouse) with a net worth of US$ 1 million;
- Natural person who had minimum income of US$ 200,000 for the last 2 years (US$ 300,000 w/spouse) and has reasonable expectation of same for current year;
- A trust with minimum US$ 5 million in assets;
- An entity owned by any one of the above.

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

Taxation

Investors and funds are not subject to taxation in The Bahamas. Therefore, there is no tax on income, capital gains, dividends earned by the fund or the investor.

Belgium

Regulation

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

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

- A Undertaking for Collective Investment ("UCI") investing in hedge funds (funds-of-hedge funds) which are allowed in and under permanent supervision of a Member State of the European Economic Area;
- A diversified basket of units issued by hedge funds which are allowed in and under permanent supervision in one or more Member States of the European Economic Area such that each fund represents a maximum 20% exposure; and
- A hedge fund index.

Taxation

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

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

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

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

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

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

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

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

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

Bermuda

Regulation

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

Bermuda allows for four distinct types of collective investment schemes:

1) Institutional funds – for investment by "qualified" participants or where the minimum investment is US$ 100,000;

2) Administered funds – where the fund has retained a Bermuda-licensed administrator and either (i) the minimum subscription is US$ 50,000; or (ii) the fund is listed on a stock exchange recognised by the BMA;

3) Standard funds – any fund not qualifying to be classed under (1) or (2) (e.g. retail funds).

4) Exempted funds – subject to certain criteria, a fund can apply to be exempt from the requirements of the Act.

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

Fund structures recognised in Bermuda include:

1) Corporate entities of a limited or unlimited life;

2) Unit trusts;

3) Partnerships; and

4) Segregated account companies.

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

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

Taxation

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

Brazil

Regulation

Investment funds (or solely "funds") in Brazil are regulated by the Securities Commission (CVM), specifically by CVM Instruction 409 as amended. The managers and administrators of hedge funds in Brazil are also registered and regulated by that body.

The funds are classified in accordance with CVM Instruction 409:

- Short term;
- Referenced to a specific index;
- Fixed income;
- Equities;
- External debt (only Brazilian sovereign bonds);
- Multimarket (Brazilian hedge funds);
- Foreign exchange.

The funds must present investment policies in line with the classification assigned to them, observing the limits of concentration of the portfolio contained in their regulations.

The funds may be constituted as open-ended, allowing the redemption of the shares issued and contributed, or closed-end, in which the redemption of units will occur only at the end of the term of the fund, as estimated in its bylaws.

The shares of funds can be distributed to qualified investors, super-qualified investors or the public in general.

For these purposes:

Qualified investors are: i) investment funds, ii) financial institutions, iii) pension and insurance companies, and iv) other investors who have demonstrated equity over US$ 300,000.

Super qualified investors: Investors who can demonstrate, through documents, net worth in excess of US$ 1 million. Such investors can hold funds that have up to 100% of their portfolios invested in securities issued abroad.

The expenses of the fund are primarily: i) fees for administration and performance, ii) fees for custody and control, iii) fees for monitoring, and iv) costs of publication. These expenses are usually paid by the fund.

The most common assets in the portfolio of Brazilian hedge funds are: i) securities issued by the federal government, ii) private securities iii) shares of companies listed on the stock exchange, and iv) derivative instruments to protect exposures or to leverage positions. Leverage of these funds is determined by CVM regulations and as permitted in the prospectus of the Fund.

The regulations of these funds must be approved by the CVM, and the shareholders must certify, by filing a form, their awareness and assumption of the risks involved with the investment, including in some cases, the loss of the entire amount invested and the commitment to pay eventual negative NAV.

All assets of the fund over US$ 50,000 must be held in custody in its own account with the fund's clearing houses and custodians especially created for this purpose. All custodians must be authorised by the CVM to provide this service and on an annual basis must present to the CVM an attestation report from an independent auditor regarding its custody process and controls.

Measurement of assets
According to CVM Instruction 438 and subsequent amendments, the assets of the fund should be classified for trading or held to maturity.

Assets for trading should be measured at their market value according to consistent market valuation criteria. All managers must make their Valuation Manual available on their internet sites.

Assets held to maturity should be measured at cost plus accrued earning on a "pro rata" basis. Only exclusive funds are able to classify securities within this category and provided that all shareholders formally manifested their intention and financial ability to maintain these assets to maturity.

Assets from held to maturity to trading can be reclassified only once and then subject to the penalty of mandatory reclassification of the entire portfolio to the trading category.

Release of information
Daily: Total NAV and NAV per share.

Monthly: trial balance, statement of the composition and diversification of the fund's portfolio, statement of account with information required under the regulations in force, containing information regarding the balance and the movements during the period.

Annually: at year end, as determined in its bylaws, the audited financial statements.

The reporting year-end date of the financial statements may be in any month of the year, as defined in the bylaws.

Alternative investments

Real Estate Investment Funds (FII)

Real Estate Investment funds in Brazil are regulated by the Securities Commission (CVM), specifically by CVM Instruction 472 as amended.

These funds are always constituted as closed-end, in which the redemption of shares will occur only at the end of the term of the Fund, as estimated in its bylaws. Shares of these funds should be registered for trading in a stock exchange.

The objective of this type of fund is to invest in real estate properties or securities linked to any real estate asset or receivables. The fund must present investment policies as determined in its bylaws, observing the limits of concentration of the portfolio contained in the CVM regulation.

Share subscriptions must be in cash, land, other real estate, or rights to use or rights to acquire other real estate properties.

Measurement of assets
Real estate properties are measured at acquisition cost, and their fair or market value must be informed in the footnotes of the Fund's financial statements.

Release of information
Daily: Total NAV and NAV per share.

Monthly: trial balance, statement of the composition and diversification of the Fund's portfolio, statement of account with information required under the regulations in force, containing information regarding the balance and the movements during the period.

Annually: at 31 December, the audited financial statements.

Participation Investment Funds (FIP)

Participation Investment Funds are regulated by the (CVM), specifically by CVM Instruction 391 as amended.

These funds are always constituted as closed-end, in which the redemption of shares will occur only at the end of the term of the fund, as estimated in its bylaws. Units of these funds should be registered for trading in a stock exchange.

This type of fund is a vehicle for private equity deals, and it is able to acquire stock, debentures, subscription bonus, or other equities convertible or exchangeable for stock. The fund must present investment policies as determined in its bylaws, observing the criterion contained in the CVM regulations.

Measurement of assets
Public quoted assets are valued at market price. Assets not publicity traded should be valued at acquisition cost, equity method or internal valuation criteria as determined in the bylaws.

Release of information
Daily: Total NAV and NAV per share.

Monthly: trial balance, statement of the composition and diversification of the fund's portfolio, statement of account with information required under the regulations in force including information regarding the balance and the movements during the period.

Annually: at 31 December, the audited financial statements.

Receivables Investment Funds (FIDC)

Receivables Investment Funds are regulated by the CVM, specifically by CVM Instructions 356 and 393 as amended.

The funds may be constituted as open-end, allowing the redemption of the shares issued and contributed, or closed-end, in which the redemption of shares will occur only at the end of the term of the fund, as estimated in its bylaws. Units of closed-end funds should be registered for trading in a stock exchange. A FIDC is able to issue senior and subordinated shares for this fund.

This type of fund is a vehicle for securitisation of credit portfolios (financial, commercial, industrial, real estate; including distressed credits) and discounted cash flows. The fund must present investment policies as determined in its bylaws, observing the criterion contained in the CVM regulations.

Measurement of assets
Receivable portfolio – should be measured at cost plus accrued earnings on a "pro rata" basis.
A provision for loan loss must be recorded when required.

Release of information
Daily: Total NAV and NAV per share.

Monthly: trial balance, statement of the composition and diversification of the fund's portfolio, statement of account with information required under the regulations in force, containing information regarding the balance and the movements during the period.

Annually: at 31 December, the audited financial statements.

Taxation

An Investment Fund's portfolios are not subject to taxation.

As a general rule, earnings arising from the holding of quotes of an Investment Fund will trigger withholding income tax (WHT) at rates of 15% (for residents not domiciled in a tax haven jurisdiction) and 25% (for residents domiciled in a tax haven jurisdiction). Specifically regarding one type of a investment fund, the FIP, a positive development occurred through the reduction to zero of the withholding income tax due during the holding period. This reduction is subject to compliance with the rules of investment concentration and on the distribution of earnings established by law (most notably the requirement that no investor may hold more than 40% of the fund's units or earnings). To benefit from this condition, foreign investors should not be domiciled in tax havens and should invest pursuant to the regulations established by Resolution 2.689 issued by the Brazilian Monetary Council, which details the requirements for a foreigner to invest in the Brazilian financial market.

A capital gain arising from the disposal of assets by a foreign investor can trigger withholding tax at 15% or 0% (when selling through stock exchanges).

In another positive development the Brazilian Government recently reduced to 0% the Tax on Financial Operation (IOF) on foreign exchange transactions for the entrance and remittance of amounts inside and outside Brazil. IOF is charged on remittances at 0.38%.

The British Virgin Islands

Regulation

Legislative Background to the BVI

The British Virgin Islands ("BVI") is a British Overseas Territory. As a British Overseas Territory, legislation is based on the British Legal System and English Common Law; the United Kingdom Privy Council is the final Court of Appeal. Since the introduction of the International Business Companies Act 1984 and its successor; the Business Companies Act 2004 the territory has made significant progress in developing the BVI as a leading international financial services centre. The BVI Business Companies Act, 2004 (as Amended) ("BCA") is the principal legislation which governs the formation and management of the majority of companies incorporated in the BVI.

The Investment Services Division of the British Virgin Islands Financial Services Commission ("FSC") is responsible for the regulation and supervision of all mutual funds, operating in and from within the Territory. BVI domiciled funds are required to register under the Mutual Funds Act, 1996 (As Amended). The Mutual Funds Act 1996 (As Amended) provides for the regulation, authorisation and control of mutual funds and their managers and administrators carrying on business in or from within the BVI and for related matters.

Mutual Funds

According to the Mutual Funds Act 1996 (As Amended) a mutual fund means a company incorporated, a partnership formed or a unit trust organised, under the laws of the Territory or of any other country or jurisdiction which:

a) Collects and pools funds for the purpose of collective investment in accordance with the principle of risk spreading, and

b) Issues shares (as herein defined) that entitle the holder to receive on demand, or within a specified period after demand, an amount computed by reference to the value of a proportionate interest in the whole or in a part of the net assets of the company, the partnership or the unit trust, as the case may be, and

c) Includes an umbrella fund whose shares are split into a number of different class funds or sub-funds.

The Mutual Funds Act 1996 (As Amended) recognises 3 types of fund:

1) Public

2) Private

3) Professional

Public Fund

A mutual fund which, by means of publishing or distributing a prospectus or by any other means, offers any shares it issues for subscription or purchase to any interested member of the general public.

Private fund

A mutual fund that:

a) The shares issued by it are not offered to the general public and are owned or held by:

   i) not more than fifty investors where the first time investment of each of such investors is not less than US$ 25,000 in the United States currency or the equivalent in any other currency; or

   ii) any number of investors where the first time investment of each of such investors is not less than US$ 250,000 in the United States currency or the equivalent in any other currency; or

b) is designated as a private fund by regulations.

Professional Fund

A mutual fund that:

a) the shares of which are made available only to professional investors and the initial investment in which, in respect of the majority of each of such investors, is not less than US$ 100,000 in the United States currency or its equivalent in any other currency; or

b) is designated as a professional fund by regulations.

Professional Investor

A professional investor means a person:

a) whose ordinary business involves, whether for its own account or the accounts of others, the acquisition or disposal of property of the same kind as the property, or a substantial part of the property, of the fund; or

b) who has signed a declaration that he, whether individually or jointly with his spouse, has net worth in excess of one million dollars in the United States currency or its equivalent in any other currency and that he consents to being treated as a professional investor.

Investment Managers

The Mutual Funds Act 1996 (As Amended) also provides for the regulation, authorisation and control of investment managers. There is no requirement to have a BVI based investment manager provided the manager is from a recognised country or jurisdiction.

Approximate Number of Funds

The latest available statistics issued by the FSC (as at September 2008) reported the total number of recognised funds in the BVI as 2,922 comprised of:

- Public Funds 227
- Private Funds 831
- Professional Funds 1,864

Reporting Framework

There is currently no audit requirement for Private and Professional funds. Public funds are required to prepare audited financial statements to be made available to the FSC upon request. There may be an audit requirement, however, contained in the funds constitutional or legal documents such as the Memorandum and Articles of Association, Offering Memorandum etc.

The FSC has also recently created a framework for the collection of financial, statistical and other information with respect to mutual funds; the Mutual Funds Annual Return became mandatory from the reporting period ending December 31, 2008. The Mutual Fund Annual Return may be completed by any director, officer or otherwise authorised representative of the reporting fund and must be submitted within six months after the end of the reporting period to the FSC. The information is used for statistical and compliance purposes only and will not be shared outside the FSC other than on an aggregate basis or as required by law.

Lastly, there are FSC guidelines concerning the voluntary solvent liquidation of a fund, with the consent of the FSC being necessary before the process can commence.

Anti Money Laundering

The BVI has a robust legislative and administrative regime with regard to anti-money laundering ("AML") and combating terrorist financing ("CFT").

Obligations relating to AML and CFT are provided by legislation including

- Proceeds of Criminal Conduct Act 1997, as Amended
- Anti Money Laundering Regulations 2008
- Anti money Laundering and terrorist Financing Code of Practice 2008.

Taxation

Mutual Funds in the British Virgin Islands may benefit from the jurisdiction being effectively tax neutral in that there is currently:

- No Corporation Tax
- No Capital Gains Tax
- No Sales Tax or Value Added Tax
- No Inheritance Tax
- No Withholding Tax†

Tax Information Exchange Agreements ("TIEA's") have been signed between the territory and Australia, United Kingdom and the USA. Further developments are expected in this area following the recent G20 meeting held in April 2009.

† There is an EU withholding tax on interest payments to individuals resident in the EU who have not elected to exchange information.

Canada

Regulation

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

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

- Portfolio managers or advisers who manage hedge fund portfolios and dealers who sell hedge fund securities must both be registered. Registered advisers and dealers advising on or selling hedge funds are required to meet "Know Your Client" and suitability requirements (which include knowing your product).
- Dealers who sell securities must be registered.
- Hedge funds sold under exemptions from prospectus requirements may only be sold to accredited investors who meet certain net income or financial asset tests or who can make a minimum purchase in the hedge fund of C$ 150,000. This is the most common method of hedge fund distribution in Canada. While these funds are not required to provide a prospectus they do generally provide an offering memorandum and may be required to provide certain continuous disclosures, such as annual financial statements, to investors.
- Disclosure requirements apply, depending on how the hedge fund is sold. Hedge funds sold pursuant to a prospectus are subject to continuous disclosure requirements which include specified disclosures in the prospectus, and annual and semi-annual filing of financial statements and management reports on fund performance. Many prospectus exempt funds are required to deliver annual audited financial statements. Annual financial statements are required to be filed/delivered (as applicable) within 90 days.
- PPNs, which may give retail investors access to alternative investments, are currently outside the scope of securities regulations in Canada. PPNs are currently under regulatory scrutiny in Canada due to the ability of these products to expose retail investors to riskier investment without any regulation.
- Compliance reviews of advisers, fund managers and dealers are performed by compliance staff of the securities regulatory authorities and self-regulatory organisations using risk-based approaches. Such reviews include focused sweeps that arise often as a result of local or international issues, such as high profile frauds.

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

Taxation

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

Type of Investor

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

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

The mark-to-market regime applies to investments in shares and certain debt obligations, as well as an interest in a trust or a partnership controlled by the financial institution. Recent legislation

has been enacted to include "tracking property" as property subject to the mark-to-market regime. "Tracking property" may include a non-controlling interest in a trust or partnership.

Type of Offshore Hedge Fund

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

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

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

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

The draft FIE rules apply to Canadian taxpayers holding investments in foreign entities that earn primarily (i.e. more than 50%) passive income. The rules generally use an asset based test to make this determination. The property of an FIE must be segregated into investment properties and other properties. Investment properties include such property as shares, partnership and trust interests, real property, resource properties and currency.

Generally, if the carrying value of investment properties exceeds 50% of the carrying value of all the properties, the entity is an FIE. Limited exemptions are provided. For example, the rules do not apply to investments in controlled foreign affiliates or partnerships or when the "mark-to-market'" regime applies. Provided there is no tax avoidance motive, they also do not apply to FIEs that trade on a prescribed stock exchange or are resident in a treaty country (in both cases, certain conditions must be met to qualify for the exemption). Cash settled derivatives are also excluded from the FIE rules.

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

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

It should be noted that certain conditions are required to choose the second or third amount.

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

Canadian Taxation of an Offshore Hedge Fund

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

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

Cayman Islands

Regulation

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

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

Taxation

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

Denmark

Regulation

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

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

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

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

A hedge association must have assets of no less than DKK 25 million. Intangible assets may not be included in the total assets for this purpose.

The funds of a hedge association are required to be entrusted to and kept separately from said association with a depositary approved by the Danish FSA. The depositary must be a bank with its registered office in Denmark

or a corresponding foreign credit institution with a branch in Denmark and with its registered office in another country within the European Union, or in a country with which the Community has entered into an agreement for the financial area.

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

Taxation

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

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

Finland

Regulation

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

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

Taxation

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

1) Dividend, which will usually be taxed at 28% or at progressive rates (depending on several factors, e.g. a dividend from a non-EU non-Tax Treaty state, such as Cayman or Bermuda, is fully taxed at progressive rates); or as
2) "Fund distribution", taxed at 28%. If the hedge fund is structured as a partnership, transparent from a Finnish tax perspective, the individual would be taxed annually on his/her portion of the realised income of the hedge fund either at 28% or at progressive rates.

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

1) Dividend, which will usually be fully or 75% (under certain conditions, even 0%) taxable at 26% (depending on several factors, e.g. a dividend from a non-EU non-Tax Treaty state, such as Cayman or Bermuda, is fully taxable); or as
2) "Fund distribution", taxed at 26%.

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

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

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

France

Regulation

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

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

There are three types of ARIA Funds:

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

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

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

Since October 2008, the regulations or bylaws of ARIA funds may also provide for a ceiling above which the redemption may be limited in compliance with conditions set out by regulations in force.

Contractual funds are not subject to rules relating to diversification of holdings or limits on the amount of leverage they may employ. Individual investors with a minimum net worth of EUR 1 million or individual investors with a minimum of one year of relevant work experience are subject to a minimum investment threshold of EUR 30,000. Other individual investors are required to make a minimum investment of EUR 250,000. Certain qualified investors or other types of financial or governmental organisations are not subjected to any minimum investment. Since 24 October, 2008, contractual funds may also invest in assets other than securities or financial instruments,

such as planes, boats, work of art, real estate etc. provided they comply with specific requirements set out by regulations.

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

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

Taxation

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

Individuals are taxed on receipt of income at marginal income tax rates (up to 40% plus social contributions at 12.1% for income paid in 2009). Individuals may, subject to satisfying certain requirements, benefit from a 40% relief on dividends received or be taxed at a flat rate of 18% upon request (plus social contributions at 12.1%). Capital gains on disposal of shares realised since 1 January, 2009 are taxed at 30.1% (including social contributions).

If the OPCVM is a FCIMT, which is a special vehicle for alternative investments, capital gains will be taxed at marginal income tax rates if the individual is an existing or professional investor.

Corporations, banks and insurance companies are taxed on receipt of dividends and taxed annually on the adjusted liquidation value of the shares (on a mark-to-market basis).

Generally, pension funds may benefit from total tax exemption on capital gains and suffer a maximum 24% taxation on other income.

French investors in foreign funds are normally taxed on the same basis, provided the foreign fund is considered as resident in the foreign country and under double-tax treaty provisions signed by France. In other cases, depending on the French tax analysis of the foreign fund's status, the tax transparency of the fund may not be recognised and all income distributed from the foreign based fund may be taxed at the maximum individual and corporation tax rates. This tax issue is very important for hedge funds domiciled in jurisdictions such as the Bahamas or the Cayman Islands, which are considered as tax havens for French tax purposes. This may consequently trigger some adverse French CFC issues.

Germany

Regulation

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

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

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

The aforementioned amendments to the German Investment Act, dated December 2007, included new rules for hedge funds. One of the key amendments in relation to hedge

funds is the setting of formal legal rules for prime brokers for German single manager hedge funds. Before December 2007 the application of prime brokers was only regulated in subsequent decrees of the Investment Act.

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

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

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

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

c) Has adequate solvency.

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

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

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

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

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

Based on the Ordinance on the Investments of Restricted Assets of Insurance Undertakings (Anlageverordnung – AnlV), issued by the German insurance regulator, insurance companies may invest up to 5% of committed assets in domestic hedge funds and funds-of-hedge funds and EEA-domiciled hedge funds and funds-of-hedge funds that are subject to supervision in their home country.

Additionally, insurance companies may invest in hedge funds indirectly via regulated mixed funds, which can invest up to 10% of their net asset value in domestic and foreign single manager hedge funds. Indirect investments in hedge funds are also possible via wrapper products by EEA-domiciled issuers. Total direct exposure to a single manager hedge fund may not exceed 1% of the committed assets and overall total exposure (direct and indirect) may not exceed 5% of committed assets.

Taxation

German legislation classifies hedge funds as either tax transparent or opaque, depending on the fund's level of German tax reporting. The tax rules provide for a more or less level playing field for German and non-German hedge funds and abolish the previous direct discrimination against foreign funds.

The most important tax reporting obligation for German and foreign funds is that a tax transparent fund has to determine its income/capital gains under German tax law (which is manageable for basically all hedge fund strategies).

Funds will only be treated as tax transparent if the fund:

1) Calculates taxable income in accordance with German law;

2) Calculates and publishes distributed and accumulated income;

3) Obtains a tax certificate; and

4) Files tax data with the German authorities upon request.

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

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

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

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

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

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

ii) 6% of the last NAV of the fund in the calendar year.

iii) This means that for an opaque investment fund, even if the fund's NAV decreased during the calendar year, a minimum taxation of 6% of the calendar year end NAV will be triggered.

Furthermore, according to the amendments of December 2007 the German Investment Act established a new formal definition for a foreign investment fund.

This has the consequence that some foreign hedge funds (especially of a more closed-end type) fall outside the scope of the Investment Tax Act. These foreign hedge funds are taxed according to general German tax law. Such funds may fall within the scope of the German CFC rules which may require a tax reporting format which is different from the fund tax reporting. However, this has to be determined on a case-to-case basis.

Gibraltar

Regulation

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

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

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

Private funds

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

Experienced investor funds

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

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

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

Public funds

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

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

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

- Non-UCITS public funds: a non-UCITS fund is one that does not invest in transferable securities. The Regulations impose restrictions on the types of investments that a non-UCITS public fund may hold. It is, however, possible to obtain derogations from the Financial Services Commission allowing the fund to invest in certain investments.
- UCITS public funds: a UCITS fund is one which invests in transferable securities (stocks and bonds registered in a recognised stock exchange). A UCITS fund is licensed in compliance with EU Directives. Unlike the non-UCITS public funds, they must comply with all of the regulations with regard to investment

restrictions and structure, for example:

- No more than 10% of the fund's assets may be invested in one entity; and
- The fund can invest only up to a total of 10% of the share capital of any one entity.

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

Taxation

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

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

Gibraltar recently won a landmark ruling against the European Commission before the EU Court of First Instance. The Court concluded that Gibraltar is able to have a tax system different to that of the United Kingdom.

Currently the corporate tax rate is 27%. The government has announced, however, that it is its intention to reduce it to a low rate of around 10% no later than 2011 and possibly earlier.

Greece

Regulation

Greek legislation effectively prevents the establishment of domestic hedge funds. Distribution of foreign hedge funds by private placement is permissible, subject to the granting of a licence by the Capital Markets Committee.

Taxation

Individuals are taxed based on a tax scale ranging from 15% to 40%.

Individual investors are not taxed on income and capital gains from UCITS funds. According to domestic tax practice only mutual funds (non-legal entities) are recognised by Greek Law as UCITS funds and, therefore, all the other types may be considered to be taxable like the non-UCITS funds. For non-UCITS funds, in the absence of any special provision, the taxation will depend on the legal form of the fund (but generally it is expected that the respective income would be fully taxable at the rates above). For non-UCITS funds which have the legal form of a Societe Anonyme (S.A.), upon dividend distribution, there is a 10% withholding tax imposed on the dividends amount as of 2009. Such withholding tax exhausts any further tax liability of the individual investor for this income.

Corporates, banks and insurance companies are taxed on income and capital gains from UCITS funds at 25% when the respective income and gains are distributed. In 2014 the applicable income tax rate will fall to 20%, gradually decreased by 1% each year, starting from 2010 onwards.

Special rules determine how taxation may be deferred by allocating the profit that is not distributed to a special tax reserve. Pension funds are exempt from tax, although special rules may apply, depending on the type of pension fund.

Guernsey

Regulation

Guernsey recently introduced a new regime of investment fund regulation which is applicable to both open-ended and closed-ended funds, the rules (including new and existing rules) came into effect as of 15 December 2008.

All Guernsey funds (whether open-ended or closed-ended) will now be categorised as:

1) Authorised funds subject to ongoing regulation by the Guernsey Financial Services Commission ("GFSC"); or

2) Registered funds subject to limited ongoing supervision by the GFSC.

There is no restriction with respect to the type of activity of a fund designated as either an Authorised or a Registered fund. It should be noted, however, that Registered Funds, which may not be offered to the Guernsey public (there are no other restrictions on the identity of investors), are subject to less rigorous regulation (there is a need to consider the investors' requirements) and other regulatory or listing authorities with which the fund must comply, may require the fund to be Authorised in status.

Investment managers and promoters may wish to take advantage of the fast track Registered closed-ended fund regime (or Qualified Investor Funds) introduced by the GFSC where the turn around time is normally 10 days or less, subject to the fund administrator having satisfied the GFSC via warranties that its due diligence is complete and the promoter has a suitable favourable track record in an established jurisdiction.

The Authorised fund regime offers investment managers and promoters the ability to have an open or closed-ended fund in an established jurisdiction which is closely regulated by the GFSC which has issued specific legislation for this purpose. In the current environment this option may be favoured by investors. The application is a 3 or 4 stage process, depending on whether the promoter is known to the GFSC or not. This is typically a longer process than that for the Registered closed-ended fund regime.

Taxation

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

It is possible for Hedge Fund Managers operating in Guernsey to qualify for 0%. An Exempt Company scheme exists in Guernsey. Exempt companies do not normally pay tax.

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

No tax is deducted on distributions made to non residents from Guernsey hedge funds and non resident investors are themselves responsible for taxes in their home territory.

Individual investors resident in Guernsey investing into hedge funds can be taxed at the rate of 20% on income.

Gulf Co-operation Council ("GCC")

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

This agreement makes specific reference to taxation and provides for non-discrimination such that GCC nationals should be taxed in each of these separate jurisdictions as if they were nationals of that jurisdiction itself.

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

In response to the rapid economic development and increased investment interest in the region, there has been a move towards the development of modern investment laws and regulations throughout the region. Dubai in particular (an Emirate of the UAE) has taken some significant steps to establish a new regulatory framework. It has issued specific collective investment legislation to encourage both the establishment of hedge funds and the active management of those funds from a designated financial services centre, i.e. the Dubai International Financial Centre ("DIFC").

Similarly, Qatar through the Qatar Financial Centre has established, or revamped, its own specific regime relating to the financial services industry.

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

VAT in the GCC Region

The GCC countries have agreed, in principal, to introduce VAT in each of their respective countries by 2012.

The UAE is the most advanced of the GCC countries in this respect and has undertaken extensive preparatory work in respect of the implementation of VAT. In fact, the UAE publicly stated in 2008 that the necessary systems would be in place to introduce the tax by the end of that year, although at the time of writing, the UAE government has not confirmed an implementation date for VAT.

There has been speculation that a common GCC wide VAT may be introduced. We consider this to be unlikely given the various stages of development each country is currently at and the significant resources required in order for six countries to introduce a VAT at the same time.

Hong Kong

Regulation

Hedge funds that have been authorised by the Securities and Futures Commission ("SFC") in Hong Kong can be marketed to retail investors in Hong Kong. All authorised funds, including authorised hedge funds, are governed by the Code on Unit Trusts and Mutual Funds ("the Code") issued by the SFC. The Hedge Fund Guidelines of the Code (last updated by the SFC in September 2005) provide a regulatory framework for authorised retail hedge funds and cover both single manager hedge funds and funds of hedge funds. The Hedge Fund Guidelines establish minimum subscription thresholds for different categories of hedge funds e.g. US$ 50,000 for single manager hedge funds and US$ 10,000 for funds-of-hedge funds. As of 16 March 2009, 14 hedge funds have been authorised by the SFC.

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

Taxation

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

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

Where gains on the disposal of equity interests in hedge funds are considered to be capital in nature, such capital gains will not be subject to profits tax in Hong Kong. Accordingly, individual investors are usually not taxed on the gains on the disposal of the equity interests in hedge funds provided that the individuals are not carrying on a business of trading in hedge funds. Where corporate investors are carrying on a business of securities trading, the gains on the disposal of equity interests in hedge funds will be subject to Hong Kong profits tax unless the disposal gains are derived from an offshore source. The Hong Kong profits tax rates for individuals and corporations for 2009/10 are 15% and 16.5% respectively.

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

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

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

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

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

i) The fund is not Hong Kong resident;

ii) Profits are derived from "specified transactions";

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

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

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

Hedge funds that do not qualify for the Hong Kong Profits Tax Exemption for Offshore Funds will be subject to Hong Kong profits tax if:

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

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

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

India

Regulation

Currently, there are no specific regulations governing hedge funds or investment by hedge funds in India.

Subsequent to October 2007, the Securities and Exchange Board of India ('SEBI') placed restrictions on indirect investment via Participatory Notes ('P-Notes') and encouraged Hedge Funds to invest directly via the Foreign Institutional Investor ('FII')/sub-account route. These restrictions were removed with effect from October 2008 and thus, currently, Hedge Funds can invest either directly by seeking registration as a FII/sub-account or take indirect exposure by investing via P-Notes.

Regulatory framework governing various entry routes for Overseas Hedge Funds

i) FII/sub-account route

Hedge funds seeking to invest under the FII/sub-account route need to comply with the regulations laid down in SEBI (Foreign Institutional Investors) Regulations, 1995.

The Regulations prescribe eligibility criteria qua FII/sub-account. In a typical structure, the Hedge Fund is registered as a sub-account and its investments are managed by an Offshore Asset Management Company ('AMC') which is registered as an FII.

ii) P-Notes

P-Notes are instruments issued by FIIs registered with the SEBI. Hedge Funds which prefer not to register with SEBI invest via P-Notes. In the case of P-Notes, the FII acquires securities in the Indian market and issues derivative instruments in the form of P-Notes to overseas investors. There can be several variations in P-Notes structures such as redemption of P-notes without corresponding sale of Indian securities, simultaneous sale of Indian security and redemption of P-Notes, and total return swaps.

Nature of income	Rates of tax For a non-corporate FII†	Rates of tax For a corporate FII††
Dividend	Nil	Nil
Interest on securities	22.66%	21.12%
Long term capital gains[i] (Transaction chargeable to Securities Transaction Tax ("STT"))	Nil	Nil
Long term capital gains (Transaction not chargeable to STT)	11.33%	10.56%
Short term capital gains[ii] (Transaction chargeable to STT)	16.995%	15.84%
Short term capital gains (Transaction not chargeable to STT)	33.99%	31.67%

† Including Surcharge at 10% and Cess at 3%

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

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

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

Taxation

i) Investment under the FII Route

The Income Tax Act in India provides for a specific tax regime for the FIIs and its sub-accounts.

The applicable rates under the Act considering different streams of income that may be earned are summarised below. Investing through treaty jurisdiction can mitigate tax in India.

ii) Characterisation of Income on sale of securities

Under the domestic tax law, gains arising from sale of investments can be either characterised as business income or capital gains depending on the facts and circumstances of each case. The issue of characterisation of income becomes relevant since the tax treatment for business income and capital gains differs considerably under India domestic law and the tax treaties. There are no express provisions either under the Act or under the Tax Treaties to determine when an activity is one of Investment and when it constitutes a Business. There are conflicting judicial decisions which have compounded the uncertainty. Furthermore, the Indian Revenue Authorities have laid down tests to determine whether income should be characterised as business income or capital gains. These tests merely re-iterate the ratios laid down by past judicial decisions, however, and do not provide any precise rules.

If the gains are characterised as 'Capital Gains', they will be subject to tax at the rates discussed above. But if the gains are characterised as 'Business Income', they will be taxable in India at 42.23% (corporate assessee) or 45.32% (non-corporate assessee), only if the FII/FVCI is regarded to have a PE in India (relevant for investment from treaty jurisdiction).

iii) Activities of the Offshore AMC

India does not have a safe harbour that allows an investment manager to invest on behalf of a fund without subjecting that fund to a local tax exposure. The Indian activities of the Offshore AMC should be ring fenced so as to mitigate tax exposure for the Offshore Hedge Fund/AMC in India.

iv) Investment through P-Notes

The taxability of income earned on P-Notes by the hedge fund is contingent upon the manner in which the P-Notes transaction is structured. Where the income does not accrue or arise or cannot be said to accrue or arise in India, the same may not be taxable in India.

In case of transactions involving transfer of P-Notes by one non-resident to another non-resident investor which does not involve sale of underlying Indian securities, the Indian tax authorities may seek to tax the resulting gains applying the Hutch Vodafone analogy. In the Hutch Vodafone case, the Indian tax authorities have sought to recover tax on transfer of shares of an overseas company by one non-resident investor to another non-resident investor on the grounds that the underlying asset is the 'controlling interest' in an Indian company.

Ireland

Regulation

Irish Fund Structures for Hedge Funds

There are three different fund structures available for hedge funds in Ireland:

- Qualifying Investor Funds ("QIFs")
- Professional Investor Funds ("PIFs")
- Retail Funds-of-Hedge Funds

The QIF has proved to be the most popular structure for the establishment of regulated single manager and fund-of-hedge funds and other types of alternatives funds in Ireland. Some of the main reasons behind the popularity of the Irish QIF are:

- QIFs have no restrictions on investment strategy or gearing;
- They can be authorised by the Irish Financial Regulator within 24 hours of the submission of relevant documentation to the Financial Regulator.

The table opposite summarises the main characteristics for the above fund structures.

Hedge Fund Approval Process

Hedge funds seeking to domicile in Ireland must obtain authorisation from the Irish Financial Regulator. Approval is a two-stage process involving:

1) The approval of the fund's promoter.
2) The approval of the fund itself, including details of the service providers.

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

	Retail fund-of-hedge funds	PIFs	QIFs
Investment Restrictions	Retail fund-of-hedge funds may not invest more than 20% of net assets in the units of any one scheme (this can be increased to 30% for one of the underlying schemes).	PIFs can invest up to 40% in any one scheme, if they invest in more than 40% they are considered to be feeder type investments.	None, but like PIFs, if they invest in more than 50% they are considered to be feeder type investments.
Investments in unregulated schemes	May not invest more than 10% of net assets in unregulated schemes.	May invest up to 100% in unregulated schemes subject to a maximum of 20% in any one unregulated scheme.	May invest up to 100% in unregulated schemes subject to a maximum of 50% in any one unregulated scheme.
Redemptions	While open-ended PIFs and QIFs may provide for dealing on a quarterly basis, the Financial Regulator requires that the time between submission of a redemption request and payment of settlement proceeds must not exceed 90 calendar days. This period can however be extended to 95 calendar days in the context of a PIF/QIF feeder or fund of funds scheme, including a PIF or QIF which provides for dealing on a more frequent basis (e.g. monthly, weekly etc.) In such circumstances, a prominent statement highlighting the fact that while the scheme deals, for example, on a monthly basis there may be times when redemption proceeds are paid on a quarterly basis. Retail Fund of Hedge Funds, PIF or QIF can retain up to 10% of redemption proceeds, where this reflects the redemption policy of the underlying scheme and until such time as the full redemption proceeds from the underlying scheme are received.		
Investment in other Funds of Funds	A retail fund-of-hedge funds may not invest in other fund of hedge funds. A PIF is permitted to derogate from this requirement provided investment in other fund of funds does not exceed 10% of net assets. This requirement is disapplied in the case of a QIF.		
Other Requirements	The underlying unregulated schemes must be subject to independent audit and must have arrangements in place whereby all assets are held by a party or parties independent of the manager of the underlying schemes.		

The promoter must be approved before the financial regulator can approve the fund.

Fast track approval for fund promoters

Since 2007, there has been a fast-track approval process for promoters of Irish funds. The fast track approval for the promoters is available to firms that are already regulated as investment firms under the Markets in Financial Instruments Directive ("MiFID") in a Member State of the European Economic Area ("EEA") (European Union Member States plus Norway, Iceland and Liechtenstein). On provision of the necessary information set out in the financial regulator's application checklist and subject to certain criteria, the financial regulator will accept the entity as a promoter for an Irish fund within one week of receipt of the application. This new fast track process reduces the overall length of the approval process for hedge funds.

Hedge Funds and Custody

Under Irish regulations an Irish based custodian must be appointed to Irish domiciled funds. The custodian must maintain an appropriate level of supervision over the safekeeping agent and make appropriate enquiries from time to time to confirm that the obligations of the agent continue to be competently discharged.

Since 1999 the Financial Regulator has agreed to the use of prime brokers for Irish PIFs and QIFs. The following is a summary of the Financial Regulator's requirements for the use of prime brokers by Irish domiciled hedge funds:

1) The value of assets of a PIF passed to the prime broker must not exceed 140% of the level of the hedge fund's indebtedness to the prime broker.

2) In the case of a QIF, there is no limit on the extent to which assets may be passed to the prime broker.

3) The arrangement must incorporate a procedure to mark positions to market daily in order to monitor the value of assets passed to the prime broker on an ongoing basis.

4) The prime broker must agree to return the same or equivalent assets to the hedge fund.

5) The arrangement must incorporate a legally enforceable right of set-off for the hedge fund.

Where the prime broker holds assets of the fund other than as provided for above, the prime broker must be appointed as a sub-custodian by the hedge fund's custodian.

Side pockets

Due to the current and anticipated liquidity challenges being experienced by funds and in particular, fund-of funds (where the underlying funds may have reduced or suspended redemptions) the Financial Regulator has outlined a number of changes to its existing policy for the treatment of side pockets.

With regards to PIFs and QIFs, the Financial Regulator will not limit the amount of assets which might be allocated to a side pocket, partial suspension, or partial redemption arrangement. Furthermore, PIFs and QIFs may avail of reduced gate provisions or may disapply the limit on compulsory redemptions in specie. While each fund must consider its own position with regard to the fair treatment of all shareholders, the Financial Regulator does not require prior notification of actions taken, but that the board of directors and the trustee provide written confirmation to the Financial Regulator that the proposed action takes into account the interests of all investors and is in accordance with the fund rules.

Non-UCITS retail funds may also establish side pockets, apply reduced redemption gates, partial suspensions or partial repayment of proceeds as described above, however, in specie redemptions must comply with existing policy for retail investment funds.

Distribution of Foreign Hedge Funds

Foreign hedge funds and funds-of-hedge funds can be distributed in Ireland but must first be approved by the Irish Financial Regulator for inward marketing purposes. Foreign funds which are subject to prudential supervision in their country of origin and which are deemed to offer similar levels of investor protection to that of Irish Non-UCITS will be considered for approval by the Financial Regulator. Additionally, the Financial Regulator must be satisfied that the management and trustee/custodial arrangements and the investment objectives of the foreign fund provide similar investor protection as that of funds authorised under Irish laws. The Financial Regulator must also have access to the foreign fund's documentation such as the prospectus, the annual and semi annual reports, a confirmation letter from the facilities agent, a certified copy of the fund rules and a certificate from the home state supervisor. Foreign funds must also appoint a local facilities agent to deal with investors' requests such as obtaining payment of dividends and providing copies of the fund prospectus. Foreign funds marketing into Ireland must comply with the Code of Advertising Standards for Ireland.

Hedge funds and funds-of-hedge funds can also be distributed through private placement. There is no requirement to seek regulatory approval in the event that the private placement is targeted at one individual investor. That said, the Financial Regulator has recently advised that in any event, legal advice should be sought as to whether the number of private placements could be regarded as marketing. Furthermore, regulatory approval may be required in the event that the foreign scheme is captured under Section 9 of the Unit Trust Act 1990. Again a legal opinion should be sought as to the interpretation of Section 9 and its applicability to the fund in question as the Financial Regulator has advised that private placement in respect of such schemes requires regulatory approval.

Taxation

Irish resident individual investors in hedge funds are generally subject to tax on income at the standard rate of income tax plus 3% (currently 23%) and on capital gains at the standard rate of income tax plus 6% (26%) on a receipts basis.

For investors who acquired their interest in the fund on or after 1 January 2001, the holding of shares at the end of a period of eight years from acquisition (and thereafter on each eight year anniversary) will constitute a deemed disposal and reacquisition at market value by the shareholder of the relevant shares. The tax payable on the deemed disposal is subject to tax at the standard rate of income tax plus 6% (currently 26%). Any tax arising on such a deemed disposal will be taken into

account in respect of any subsequent disposal of the relevant shares.

If a hedge fund is based outside Ireland but in an EU, EEA or double tax treaty country, it must be analogous to an Irish-regulated fund in order for the above treatment to apply. If it is not analogous to an Irish-regulated fund, then Irish investors will be subject to taxation at their marginal rate of income tax, likely 41% (plus 5.5% social insurance/health levy) on income received from the fund, and at 22% on gains realised.

Special anti-avoidance rules may also apply where the investor, together with connected parties, is in a position to direct the investment strategy of the fund (both Irish and offshore funds).

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

Corporate investors in hedge funds are subject to tax on trading income at 12.5%, non-trading income at 25% and capital gains at either 12.5% or 26% (normally on a receipts basis). If the hedge fund is located in a non-EU/non-EEA/non-DTA country, corporate investors will be taxed on capital gains at 40% (qualifying distributing funds) or 25% (non-distributing funds) on a receipts basis.

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

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

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

Isle of Man

Regulation

The Isle of Man has seen considerable change and consolidation in the regulations applicable to collective investment schemes and persons providing services to collective investment schemes. The Collective Investment Schemes Act 2008 ("CIS Act") and Collective Investment Schemes (Definitions) Order 2008 have replaced the provisions of the Financial Services Act 1988.

The regulated category of 'Class 7 - Management or Administration Services' covers entities offering the following services to collective investment schemes.

1) Acting as a manager of a collective investment scheme other than an exempt scheme or an exempt-type scheme.

2) Acting as an administrator of a collective investment scheme other than an exempt scheme or an exempt-type scheme.

3) Acting as a trustee of a collective investment scheme other than an exempt scheme or an exempt-type scheme.

4) Acting as a fiduciary custodian of a collective investment scheme other than an exempt scheme or an exempt-type scheme.

5) Acting as a custodian of a collective investment scheme other than an exempt scheme or an exempt-type scheme.

6) Acting as an asset manager to a collective investment scheme.

7) Acting as an investment adviser to a collective investment scheme.

8) Acting as a promoter of a collective investment scheme which is exempted from a requirement of the Collective Investment Schemes Act 2008 subject to a condition that the promoter of the scheme be regulated as a promoter.

9) Providing management or administration services to a person acting as mentioned in paragraphs (1), (2), (6) or (7).

10) Providing administration services to the manager or administrator of a collective investment scheme where that manager or administrator is located outside the Island.

11) Acting as a manager, administrator, trustee, fiduciary custodian or custodian to a collective investment scheme which is an exempt scheme or exempt type scheme.

12) Providing administration services to a person who is exempt from licensing under section 4 of the Act by virtue of paragraph 3.2 of the Financial Services (Exemptions) Regulations 2008 in relation to an exempt scheme or an exempt-type scheme.

Authorised Schemes

Any scheme established in the Island which is promoted to the general public in the Island (or the UK by virtue of the Island's designated territory status) must be authorised by the Commission under Schedule 1 to the CIS Act. Authorised Schemes are subject to detailed regulation concerning their structure and operation.

The investor's compensation scheme: Authorised Collective Investment Schemes (Compensation) Regulations 2008 only applies to investors in Authorised Schemes.

International Schemes

Any scheme established in the Isle of Man which is not an Authorised Scheme or an Exempt Scheme, is an International Scheme under Schedule 2 to the CIS Act. International Schemes may not be promoted to the general public in the Isle of Man.

- **Full International Schemes** – The Commission does not prescribe the types of schemes which can be full international schemes. The Commission aims to provide a flexible regulatory framework in which new innovative products, which meet the needs of the market place operators, can be developed. Full international schemes are not subject to any direct approval or authorisation process, however the manager of such a scheme must have the Commission's permission to act, and persons comprising the Governing Body of the scheme must be fit and proper persons.

  The manager and trustee/fiduciary custodian of a full international scheme must be Authorised Persons. In granting permission for the manager to manage the scheme, the Commission reviews the constitutional documents of the scheme. The Commission does not, and is not required to, comment on the investment objectives or strategy of the scheme or its suitability for any investor or any class of investor. Investors in such funds are not protected by any statutory compensation arrangements in the event of the fund's failure.

- **Specialist Funds** – The Specialist Fund (SF) is a sub-category of International scheme which is available only to specialist investors who are generally institutional investors and high net worth individuals. The minimum investment in a SF is US$ 100,000.

  A SF is not subject to approval in the Isle of Man and investors in such funds are not protected by any statutory compensation arrangements in the event of the fund's failure. The Commission does not vouch for the financial soundness of the fund or for the correctness of any statements made or opinions expressed with regard to it.

- **Qualifying Funds** – The Qualifying Fund (QF) is a sub-category of international scheme which is available only to qualifying investors who are non retail investors.

- **Professional Investor Funds** – The Professional Investor Fund (PIF) is a sub-category of International scheme which is available only to professional investors who are generally market professionals and who have net assets in excess of US$ 1 million. The minimum investment in a PIF is US$ 100,000.
- **Experienced Investor Fund** – The Experienced Investor Fund (EIF) is a sub-category of international scheme aimed at the "Experienced Investor". Since 1st November 2007 no new Experienced Investor Funds can be established.

  A SF, QF, PIF or an EIF are not subject to approval in the Isle of Man and investors in such funds are not protected by any statutory compensation arrangements in the event of the fund's failure. The Commission does not vouch for the financial soundness of the fund or for the correctness of any statements made or opinions expressed with regard to it.
- **Exempt Schemes** – Exempt schemes (as defined in Schedule 3 to the CIS Act) are Isle of Man schemes that must have less than 50 investors and their relevant constitutional documents must expressly prohibit the making of an invitation to the public to subscribe in any part of the world. Exempt International Schemes are regarded as private arrangements and are not subject to regulation.

Recognised Schemes

Collective Investment Schemes which are managed in or authorised under the law of another country or territory outside the Island may not be promoted to the general public in the Island unless they have been granted recognition by the Financial Supervision Commission under Schedule 4 to the CIS Act. Once granted recognition, a Recognised Scheme may be promoted to the general public in the Island.

Overseas Schemes

Schemes that are established outside the Isle of Man and administered or managed in the Island are not subject to detailed Isle of Man regulations or approvals in the Isle of Man, (but will be subject to the regulatory regime in their home jurisdiction), and investors in such funds are not protected by any Isle of Man statutory compensation arrangements in the event of the fund's failure The Commission does not vouch for the financial soundness of such funds or for the correctness of any statements made or opinions expressed with regard to it. Schemes which were full international schemes, specialist funds, qualifying funds, professional investor funds, experienced investor funds or exempt schemes when the CIS Act came into operation can continue to be such schemes.

Taxation

All Isle of Man tax resident companies (excluding licensed banks and companies that receive income from land and property situated in the Isle of Man) are taxed at 0%. The Isle of Man operates an attribution regime which allocates the taxable profits of locally owned or partially owned companies to their Isle of Man resident shareholders if sufficient of those profits are not distributed.

The Isle of Man is effectively a part of the UK for VAT purposes.

Italy

Regulation

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

Distribution to individual investors is restricted by the fact that no public marketing is allowed and that there is a EUR 500,000 minimum investment requirement.

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

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

From December 2008, as consequence of the increase of illiquid assets and high volatility of financial markets, the Bank of Italy has established that hedge funds can transfer illiquid assets, hedging instruments and tax receivables to side pockets to facilitate repayments to investors. The Bank of Italy has recently cancelled the limit of 200 investors, which was the maximum number previously admitted for hedge fund.

Taxation

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

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

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

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

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

Notes

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

Japan

Taxation

Japanese corporations investing in hedge funds are generally subject to corporate tax at the effective statutory tax rate of approximately 42% (unless size-based taxation applies, in which case the rate may vary) on income and gains from investments in hedge funds. If hedge funds are structured as corporations or investment trusts and the paying handling agent is based in Japan, distributions from hedge funds may also be subject to withholding tax at the rate of 20% (reduced to 7% until 31 December 2011 if the funds are listed corporations or publicly offered investment trust, and 15% thereafter).

In the case of Japanese individual investors, if the hedge funds (where established as corporations or investment trusts) are not publicly traded, the distribution is in principle subject to income tax at progressive individual income rates (up to 50%). Distributions from hedge funds are also subject to withholding tax at the rate of 20% (reduced to 10% until 31 December 2011, provided the hedge funds are listed corporations or publicly offered investment trust) if received through a paying handling agent in Japan.

If the hedge funds are listed corporations or publicly offered investment trusts and the paying handling agent is based in Japan, Japanese individual investors may not be required to file a Japanese tax return on distribution. Their Japanese tax liabilities may be finalised by the withholding tax.

Capital gains arising from the sale of units/shares in a hedge fund received by Japanese individual investors are subject to income tax at the rate of 20% (a transitional rate of 10% will apply to capital gains on listed stocks or publicly offered investment trust from 1 January 2009 until 31 December 2011 where the sale is made to, or through, a broker-dealer acting in Japan).

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

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

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

If a foreign hedge fund has no PE in Japan, capital gains derived from certain sales of shares may still be subject to Japanese tax where a foreign hedge fund owns or has owned (together with specially related persons) 25% or more of the shares in the Japanese corporation at any time during the 36 months prior to the last day of the fiscal year of sale, and the investor (together with specially related persons) sells 5% or more of the shares in the fiscal year of sale ("25/5 rule"). In addition, capital gains derived from the sale of shares in a Japanese corporation, holding mainly real estate assets in Japan, will be subject to taxation in specified cases based on the extent of the shareholding of the hedge fund in the real estate holding corporation. Generally the ownership tests described above are assessed at the level of the fund even if the fund is a partnership in legal form. In certain circumstances, the above rules may be overridden by the terms of double tax treaties with Japan, as applicable.

The 2009 Tax Reform liberalises the 25/5 Rule for certain transactions where the sale is made by an investment business limited partnerships (toushi jigyou yugen sekinin kumiai or "IBLP") or overseas partnership funds similar to an IBLP. Under the changes that were made effective from 1st April 2009, provided certain conditions are met, the 25% ownership (and the 5% disposition threshold) is tested at that foreign partner level instead of the fund level.

Jersey

Regulation

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

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

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

3) "Private Funds" are not governed by the CIF Law provided that the fund is offered to fewer than 50 professional or institutional investors and has a minimum investment requirement of GBP 250,000. The Regulator ("JFSC") does continue to exercise ongoing supervision of these funds but there is considerable flexibility in the way in which these funds can be structured and operated. Within this classification are "Very Private Funds", which may be offered to 15 investors or fewer, and are less heavily regulated than those with between 15 and 50 Investors.

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

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

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

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

Taxation

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

Under the Income Tax (Jersey) Law 1961, companies resident in Jersey are taxed on income from hedge fund investments on a receipts basis at the corporate tax rate applicable to that company. Pension funds are not taxed. With effect from 2009, the standard rate of corporate income tax fell to 0%, with certain regulated financial services companies (banks, trust and investment businesses and fund administrators and custodians) taxed on their profits at 10%.

Companies which have obtained International Business Company status may benefit from a lower rate of tax, although this status is being phased out and will be abolished by 2011.

The new regime has not changed the tax treatment of hedge funds and hedge fund managers are taxed at 0%. Capital gains continue to be outside the scope of Jersey tax.

Kingdom of Saudi Arabia ("KSA")

(Part of the GCC)

Taxation

To the extent a Saudi company has non-GCC shareholders, the proportion of profit from the company that is attributable to those non-GCC owners is subject to corporate tax in Saudi Arabia at 20%.

A Saudi company that is owned by GCC owners is required to pay 'Zakat' tax at 2.5% on the net assets of the Saudi company. The Saudi company is required to pay over the Zakat tax on behalf of the GCC shareholders.

There is an exemption from tax in KSA on profits from trading in KSA listed shares. The Department of Zakat & Income tax has confirmed that this exemption extends to profits derived by non-residents from swaps over Saudi listed shares.

KSA imposes withholding taxes on profits repatriated to investors resident outside of the Kingdom of Saudi Arabia. This means that profits generated at the investment level would suffer Saudi withholding tax on their onward repatriation from a KSA company to non-KSA investors.

Korea

Regulation

With the enactment of the Capital Market and Financial Investment Services Act on 4 February, 2009, American/European style "hedge funds" can be set up in Korea, employing hedge fund style portfolio management and leverage strategies.

Domestic hedge funds must be established and registered by domestic licensed investment managers with the Financial Services Commission ("FSC"). Through private placement, these can be sold only to qualifying investors by domestic licensed brokers/dealers.

Foreign hedge funds which meet the requirements in relation to redemption/marketability must be registered with FSC by foreign investment managers who have no historical records of sanction. Through private placement, these can be sold only to professional (excluding convertible-to-general) investors by domestic licensed brokers/dealers.

Taxation

Privately placed investment trust

The fund itself is not a taxable entity and the distribution of profits from the fund is taxed as dividends in the hands of the investors. An interim withholding tax is deducted at the rate of 15.4% and 14% for a resident individual and company, respectively, at the time of distribution of profits. A final withholding tax of 22% applies to a non-resident recipient of the distribution of profits subject to a treaty rate.

Where the fund is held by one investor (including its associates) and effectively managed by the investor, the character of the underlying income and gain flow through to the fund and thus the investor is taxed as if invested into the underlying assets directly.

Corporate type private equity fund

The fund is subject to corporate income tax at the headline rate of 24.2% (22% from 2010) in respect of the underlying income and gain. Alternatively the fund may elect to be taxed in accordance with the new partnership taxation regime (introduced in 2009).

Under the partnership taxation regime, the fund itself is not liable to pay tax and the investors are subject to tax on their share of the underlying income and gain. For an "active" investor, the underlying character of income and gain flows through the fund to the investor who is subject to corporate income or individual income tax at normal tax rates (individual tax rates are 6.6% to 38.5% (36.5% from 2010)).

For a “passive” investor, the share of underlying income and gain is re-characterised and taxed as dividends and subject to the above-mentioned withholding taxes.

Taxation of a foreign hedge fund

The income and gain derived by a resident company/individual from investment into foreign hedge funds are subject to the corporate/individual income tax at the above-mentioned rates and foreign tax credit is available.

Kuwait

(Part of the GCC)

Taxation

The profits of a Kuwaiti company should only be subject to Kuwaiti corporate tax to the extent the Kuwaiti company is owned by non-GCC owners.

This treatment follows the GCC Agreement.

Should there be non-GCC investors in a fund, Kuwaiti tax at a rate of 15% would arise to the extent of the non-GCC ownership. On the basis that the ownership structure was GCC only, the shareholders would be subject to Zakat tax at 1% instead.

There are currently no withholding taxes imposed in Kuwait.

Liechtenstein

Regulation

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

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

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

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

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

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

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

Taxation

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

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

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

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

Luxembourg

Regulation

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

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

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

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

Domestic hedge funds and funds-of-hedge funds will be set up as non-harmonised collective investment schemes (thus not benefiting from an

EU passport). They can be created pursuant to one of the following two regimes:

- A collective investment scheme compliant with Part II of the Law of 20 December 2002 on Collective Investment Schemes (so called "Part II funds"). Shares/units of Part II funds can be distributed to retail investors in Luxembourg. The possibility to distribute a Part II fund to retail investors abroad will depend upon the flexibility of foreign authorities in the target distribution country; retail distribution will only be possible if registration of the fund with the foreign authorities in the target country is possible, which must be analysed on a case-by-case basis.
- A collective investment scheme compliant with the Law of 13 February 2007 on Specialised Investment Funds ("SIFs"). Shares/units of SIFs can only be distributed to "well-informed investors" as defined by the law of 13 February 2007, which include institutional investors, professional investors and other investors, provided they meet the following conditions:

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

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

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

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

Taxation

Luxembourg resident individual investors are taxed, in principle, on receipt of income (dividends) in excess of EUR 1,500 (or EUR 3,000 for married taxpayers filing jointly) derived from hedge fund investments at their progressive tax rates up to a maximum of 38.95% increased by the 1.4% dependency contribution. Certain kinds of dividends, however, may benefit from a 50% exemption.

Capital gains realised by a Luxembourg resident individual investor are exempt after six months if their direct/indirect shareholding in the fund does not exceed 10% (alone or together with members of his/her household) and the disposal takes place more than six months from the date of acquisition. Otherwise, if the disposal takes place within six months of the acquisition the capital gains will be taxed at a maximum of 38.95% increased by the 1.4% dependency contribution (some allowances are available). If the disposal takes place after six months and the shareholding exceeds 10%, the capital gain will be taxed at half the rate mentioned above. An allowance of EUR 50,000 (double for married taxpayers filing jointly, available for a ten-year period, is applicable).

Nevertheless, reference should be made to the relevant double tax treaty (if any) to determine which State (Luxembourg or State of source) has the right to tax the capital gains and dividends.

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

Banks, insurance companies and corporate entities are taxed upon receipt of income and capital gains from hedge fund investments at a rate of 28.59% as from 1 January 2009 and are subject to net wealth tax at a rate of 0.5% computed on the basis of the unitary value on 1 January of each year.

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

Malta

Regulation

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

The Malta Financial Services Authority ("MFSA") is responsible for the licensing, regulation and supervision of CISs, including PIFs. PIFs are subject to proportionately reduced regulation if their only activity is operating as a PIF and licensed external "functionaries" (e.g. custodian, prime broker, investment adviser, etc) are appointed to carry out licensable activities. The MFSA only regulates that part of the PIF's activity that constitutes licensable activity in Malta, though it must be satisfied that overseas based functionaries are subject to equivalent regulation in their home jurisdiction. If the PIF carries out other licensable activities – for example, by acting as its own manager – those activities will be regulated under an appropriately extended MFSA licence.

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

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

Experienced Investors

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

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

Qualifying Investors

"Qualifying Investors" are defined as persons who have reasonable experience in the acquisition and/or disposal of (a) funds of a similar nature or risk profile, and (b) property of the same kind as the property to which the PIF in question relates. There are also various other criteria to be met to be classified as a "qualifying investor". However, the main criterion is that the investor must have more than EUR 750,000 of net assets and the minimum initial investment is at least EUR 75,000 (or equivalent in another currency). PIFs promoted to Qualifying Investors are not subject to any restrictions on their investment or borrowing powers (including leverage) other than those which may be specified in their Offering Document.

Extraordinary Investors

"Extraordinary Investors" are required to meet various criteria, including the requirement that the investor must have more than EUR 7.5 million of net assets and that the minimum initial investment is at least EUR 750,000 (or equivalent in another currency). Unless they invest in immovable property, PIFs promoted to Extraordinary Investors are not subject to any restrictions on their investment powers other than those which may be specified in their offering document/ marketing document.

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

Taxation

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

Mauritius

Regulation

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

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

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

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

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

Taxation

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

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

There is no capital gains tax in Mauritius. Moreover, any profit on sale of shares or securities derived by a company holding a GBL1 is exempt from income tax.

Netherlands

Regulation

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

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

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

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

- Domestic hedge fund managers are required to obtain a licence from the AFM and may then launch new sub-funds in existing hedge funds

without the individual sub-funds being required to obtain a separate licence, provided an updated prospectus is available.

- Foreign hedge fund managers established in countries that the AFM has determined apply adequate home country supervision may apply for a notification in The Netherlands.

Hedge fund managers in other countries should apply for a licence, unless the funds have the UCITS status' in which case they can passport into the Netherlands. Furthermore, the AFS requires providers of various types of financial services (for instance offering and acting as intermediary in relation to financial products) to obtain a licence from the AFM. Therefore hedge fund managers may, under certain circumstances, be required to obtain a second licence.

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

Taxation

As a general rule, resident individual portfolio investors are deemed to receive a notional yield of 4% on the average annual value of their hedge fund investments, which is taxed at a rate of 30%. Distributions of actual income and gains are not taxable. Banks, insurance companies and corporate entities are taxed on income and capital gains from hedge fund investments at the corporate tax rate of 25.5% (2009 rate). Pension funds are exempt from corporate income tax.

No capital duty is due.

Netherlands Antilles

Regulation

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

Several ordinances apply to hedge funds and other investment institutions. They regulate supervision by the Central Bank. An investment institution established in the Netherlands Antilles must have a director who is a resident of the Netherlands Antilles. The director may be a trust company or a person who is an employee of a trust company. Trust companies are also supervised by the central bank.

Taxation

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

Banks, insurance companies and corporate entities are taxed on income and capital gains from hedge fund investments at the profit tax rate of 34.5%. A 95% participation exemption may be available in respect of investments of 5% or more in foreign hedge funds, or 5% or more in Netherlands Antilles exempt companies or investments in hedge funds with a cost price of at least ANG 1 million (approximately US$ 561,798). Insurance companies may also opt for a special regime under which only the premium income is subject to profit tax.

No capital tax is levied in the Netherlands Antilles.

Norway

Regulation

To be marketed for sale in Norway a fund needs a notification from the regulator (The Financial Supervisory Authority of Norway ("FSA")).

Currently hedge funds are not allowed to be marketed for sale to retail customers in Norway. Hedge funds have however, been sold in Norway to more professional customers.

By an amendment to the securities fund act of 27 June, 2008 changes to the securities fund act was ratified allowing hedge funds to be marketed for sale to retail investors. The amendment has still not come into force, but the Finance Ministry are expecting it to come into force by the end of June, 2009.

Taxation

Individual investors, tax-resident in Norway, will be subject to tax at 28% on income and capital gains on a receipts basis from hedge fund investments structured as corporate vehicles. From 1 January, 2006 a component of the return (for the income year 2008 estimated at 3.8% of cost price – will be estimated for the income year 2009 in 2010) is treated as tax-exempt.

Hedge funds structured as partnerships will be treated as tax transparent in Norway and all classes of investors will be taxed on a proportionate part of the hedge funds income under the tax regulations applicable to each investor.

Corporate investors in EEA-domiciled hedge funds, structured as corporate vehicles, will be exempt from tax on dividends received and gains made on shares under the tax exemption method (3% of the gain will be regarded as taxable income from 7 October, 2008), if the hedge fund is regarded as a comparable company to the Norwegian company qualifying for the tax exemption method ("TEM").

The criteria for a foreign entity to be considered as comparable to a Norwegian entity according to section 2-38 of the tax act has been subject to much discussion. The Norwegian ministry of finance issued an interpretive statement on 25 September, 2007 setting out its view of the conditions that must be satisfied for an EU/EEA entity to be entitled to benefit from the TEM.

- The first condition brought forward in the statement is that the company must be resident in an EU/EEA country according to a tax treaty. The two main conditions that have to be fulfilled in order to be resident in an EU/EEA country according to a tax treaty is that the company is an entity for tax purposes and a resident for tax purposes according to domestic provisions.
- The second condition in the statement is that the recipient is the real owner (beneficial owner) of the distributed dividends. The traditional interpretation of the term is that the owner according to private law is considered to be the real owner unless the substance over form rule is applicable where someone other than the owner according to the private law has a more qualifying interest in the asset (share) and the setup is typically tax driven.
- The last condition is that the recipient of the dividends has to be subject to corporate income tax.

If these conditions are not met, dividends and capital gains derived from shareholdings in such funds will be taxable for the Norwegian investor. Furthermore, the funds will be liable to withholding tax on dividends from shareholdings in Norwegian companies.

In our view, these rulings, as well as the statement from the ministry of finance, sets out conditions that implies that non-Norwegian EEA investment funds are treated less favourably than comparable Norwegian investment funds. In our opinion, this is in violation of the EEA agreement article 40 concerning the right of free movement of capital and article 4 concerning discrimination on the grounds of nationality.

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

Based on the uncertainty towards which foreign entities are comprised by the tax exemption method, we will recommend that a tax advisor is contacted before the investment is done.

Oman

(Part of the GCC)

Taxation

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

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

Portugal

Regulation

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

Taxation

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

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

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

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

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

Qatar

(Part of the GCC)

Taxation

Entities established in the Qatar Financial Centre ("QFC") are subject to corporate tax at a flat rate of 10% (regardless of whether the entity is owned by GCC nationals) from 1 May, 2008.

Activities in Qatar, outside the QFC, are taxed at rates of up to 35%, although income tax is only levied on profits attributable to non-GCC ownership.

There are proposals to reduce the Qatari corporate income tax rate to 12%.

Singapore

Regulation

The hedge funds industry in Singapore has expanded in recent years, largely due to the liberalisation of the regulatory and taxation regime, coupled with the continuous efforts by the Singapore government to make Singapore a central hub for alternative investments in Asia. The phenomenal growth has been subdued to a certain extent, however, because of the global financial crisis in 2008. As a large majority of Singapore-based hedge fund are equity long/short, many of the hedge funds suffered marked losses and redemption requests, resulting in an overall drop in assets under management as at the end of 2008. Nevertheless, the industry appears to be resilient, with many of the hedge fund managers keeping a stable outlook on the marketplace, and it looks ready to ride out the storm over the next year to 2010. While some consolidation in the marketplace is inevitable, the good news is new funds continue to be launched under different strategies, including distressed assets and global macro. As a result of the increased focus by regulators on unregulated products in the global financial centres, hedge funds will face increasing pressure to increase their governance and transparency standards, while regulators in Asia would possibly follow the lead of the major financial centres to increase their oversight of hedge funds.

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

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

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

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

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

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

Taxation

Investors

Generally, individual investors are exempt from tax on Singapore-sourced dividends and distributions from Singapore-based unit trusts.

Foreign sourced dividends and distributions from overseas unit trusts received by individuals in Singapore usually are not subject to tax. Further, the gains derived by individuals from the disposal of their investments in funds generally will not be subject to tax in Singapore unless they are derived in the course of a trade or business carried on by the individual in Singapore.

Investors other than individuals similarly are exempt from tax on Singapore-sourced dividends. These investors, however, generally will be taxed on distributions from unit trusts in Singapore, and on foreign-sourced unit trust distributions if received in Singapore. Foreign-sourced dividends are mostly subject to tax in Singapore if received by non-individuals in Singapore, but may be exempted from tax if specified conditions are met. Further, the gains derived by non-individuals from the disposal of their investments in funds normally will be subject to tax in Singapore, unless they are capital in nature.

Funds managed in Singapore

A fund manager in Singapore who manages funds on a discretionary basis for a person not resident in Singapore could be regarded as constituting a Singapore permanent establishment (PE) of that non-resident person, and considered to be carrying on a business in Singapore on his behalf. Income attributable to the PE generally would be exposed to Singapore tax. Singapore offers tax incentives, however, which exempt income attributable to such a PE.

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

Investors in the qualifying fund are split into two categories – qualifying investors and non-qualifying investors. A non-qualifying investor is required to pay a financial amount to the Inland Revenue Authority of Singapore (IRAS). In essence, the "financial amount" is computed by applying the corporate tax rate, currently 18% (17% subject to legislative change) to the non-qualifying investor's share of the profits of the qualifying fund for the year in question. The question of whether an investor of a qualifying fund is a qualifying investor will be determined on the last day of the qualifying fund's financial year.

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

Broadly, a non-qualifying investor refers to a Singapore corporate investor who, together with his associates, owns more than 30% of the fund, or more than 50% if it has ten or more investors.

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

In addition, tax exemption may also be available for funds set up in the form of Singapore-resident companies (these are subject to the qualifying fund and qualifying investor rules described above, with additional conditions) and trusts.

One of the 2009 Budget proposals was that the current rules will be relaxed further for fund managers who qualify for a newly introduced "enhanced tier" status. This status will carry additional conditions but will dispense with some of the residency requirements imposed on the fund and investors, as well as recognise more types of investment fund vehicles.

Fund managers in Singapore are ordinarily taxed at 17% (with effect from 2009) on their taxable income (typically, fee income less expenses). This rate can be reduced to 10% if certain conditions are satisfied.

South Africa

Regulation

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

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

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

Taxation

There is still much uncertainty in South Africa regarding the tax treatment of hedge funds. Generally, domestic hedge funds are operated as tax transparent partnerships or trusts with investors participating as limited partners or beneficiaries and subject to tax on income and gains on an accruals basis. Individual investors are taxed on income at marginal rates of up to 40% and a 25% inclusion rate and a maximum effective rate of 10% of capital gains (if not viewed as a trader).

Companies, banks and insurance companies (except certain policyholder funds) are taxed on income at 28% and a 50% inclusion rate and a maximum effective rate of 14% of capital gains. Retirement funds are not taxed on any streams of income or capital gains.

Investors in corporate foreign hedge funds are taxed on income derived by the foreign fund.

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

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

Spain

Regulation

After the consolidation of the general regulatory regime for hedge fund products adopted in 2007, the Spanish authorities have made additional changes focused on (i) additional regulatory conditions applicable to the custodian's role of hedge fund products and (ii) certain rules on NAV calculation. The purposes of these changes refer to the increase in the oversight duties imposed on the fund custodian role and to ensure NAV rules consistent with the fund strategies versus the protection of investors.

According to the information sourced by the Spanish Financial Private Funds Association (as of February 2009), 25 hedge fund managers are currently authorised and around 21 single manager hedge fund products and 35 funds-of-hedge funds are now operating in the local hedge fund industry in Spain.

New Circular 6/2008, dated 26 November, 2008 provides certain rules governing the NAV calculation and other regulatory conditions to improve the transparency standards for fund products in the local market which also affect hedge fund and fund-of-hedge fund categories. In particular, this new rule applies to both hedge fund and fund-of-hedge fund product categories. It is in addition to the general rules governing the subscription and redemption conditions (e.g. single manager hedge funds and funds-of-hedge funds may impose cap amounts for redemptions and require advanced notice for subscriptions or redemptions) and the basic NAV calculations.

Existing regulations on the ability of the asset manager to impose minimum holding periods on investors in single strategy hedge funds and regulatory restrictions applicable to the active marketing of local single manager hedge funds which are confined to qualified investors, remain unaltered. This does not prevent retail investors from investing at their own discretion in such products.

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

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

- Law 35/2003, dated 4 November 2008, on undertakings for collective investments (which was adopted in November 2005 and provided a basic framework for launching and distributing domestic single manager hedge funds and funds-of-hedge funds in Spain).
- Royal Decree 1309/2005 dated 4 November 2005, implementing Law 35/2003 (as amended by RD 362/2007 of 16 March 2007).
- Ministerial Order EHA/1199/2006, dated 25 April 2006, implementing Royal Decree 1309/2005.
- CNMV Circular 1/2006, dated 3 May 2006, implementing Royal Decree 1309/2005.
- CNMV Circular 6/2008, dated 26 November 2008.

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

Marketing of single manager hedge funds is limited to qualified investors. However, access to retail investors is not prevented on the basis of unsolicited marketing, provided that the retail investor acknowledges the level of risks connected to the investment in such products in writing. MiFID new rules also impose higher transparency and product pre-trade and post-trade information requirements at the point of sale (i.e. distributors affected but probably transferring additional duties to asset managers in order to produce further details of product profile and product features).

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

Taxation

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

Corporations, banks and insurance companies are taxed at a fixed rate of 30%. Investment funds and SICAVs incorporated under Law 35/2003 of Collective Investment Institutions (real estate funds have to comply with additional tax rules) are taxed at a 1% rate and pension funds are not subject to tax (0% rate). Investments in Spanish hedge funds or funds-of-hedge funds are taxed (except in the case of pension funds) as if they invest in Spanish UCITS funds.

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

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

1) The legal status of the fund;

2) Its fiscal residence;

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

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

5) Regulatory approvals for marketing in Spain.

Sweden

Regulation

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

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

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

Taxation

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

Switzerland

Regulation

Since 2007 the Federal Act on Collective Investment Schemes ("CISA"), the related ordinance of the Federal Council and the ordinance of the Swiss Financial Market Supervisory Authority (FINMA) have formed the basis of the relevant fund regulation.

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

- A qualified investor concept: qualified investors in general include all regulated financial intermediaries, other institutional investors with a professional treasury function (pension funds, government, corporates), private investors with financial assets of at least CHF 2 million, and private investors who have a discretionary asset management agreement with a regulated financial intermediary;
- Historically, non-corporate open-ended funds in the form of contractual funds; in 2007 the introduction of new corporate forms for funds, such as the investment company with variable capital (SICAV), the limited partnership for collective investment, and the (non-listed) investment company with fixed capital (SICAF);
- A licensing requirement for the asset managers of Swiss collective investment schemes: not only the funds but also the independent asset manager of a Swiss collective investment scheme needs to be authorised by the FINMA;
- Swiss-domiciled asset managers of foreign funds can apply for an asset manager licence if they manage funds subject to foreign supervision equivalent to supervision in Switzerland and the foreign regulator requires a regulated asset manager, there are ongoing discussions to introduce a simplified option for asset managers of offshore funds to be brought under the supervision of the FINMA;
- A prime broker concept: upon application by a hedge fund, the FINMA approves the use of regulated prime brokers, both foreign and domestic;
- A simplified prospectus regime;
- A revised simplified approval and authorisation process for both qualified investor funds and public funds, if FINMA approved standard fund documents developed by recognised industry organisations are used for the application; and
- A possible lock-up period for investors of up to five years, upon application.

The scope of regulatory supervision in the fund market includes not only the open-ended investment funds but also the managers of Swiss collective investment schemes and SICAFs, if they have non-qualified investors and are not listed. All closed-ended foreign funds are also within the scope of the CISA.

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

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

In Switzerland both qualified and retail investors may invest in the shares of funds-of-hedge funds that are closed-ended, non-regulated investment companies listed on a regulated stock exchange. Open-ended domestic hedge funds or funds-of-hedge funds regulated under the CISA, and foreign hedge funds approved for distribution in Switzerland, may also be sold to retail and qualified investors. Hedge funds that are not approved in this manner may not be publicly marketed. They can be sold to qualified investors, however, via private placement and to all types of investors in connection with a discretionary management contract, provided that hedge funds form part

of an overall asset allocation by the wealth manager (bank, securities dealer, independent professional asset manager) for the specific investor profile.

Taxation

In January 2007 Switzerland introduced the new "Collective Investment Scheme Act" (CISA). Two circulars have been published so far: Circular no. 24 dated January 1, 2009, and circular no. 25 dated March 5, 2009.

1) Investment Structures

Swiss contractual investment schemes (FCP), Swiss investment companies with variable capital (SICAV), Swiss limited partnerships for collective investments (KGK) are regarded as tax transparent, i.e. not themselves subject to tax, while Swiss investment companies with fixed capital (SICAF) are regarded as opaque, i.e. subject to tax themselves, from a Swiss tax point of view.

Foreign collective investment schemes will be treated equally to Swiss collective investment schemes in case the conditions foreseen in the CISA and its circulars are fulfilled (e.g. investment schemes permitted for distribution in Switzerland, foreign investment schemes subject to sufficient foreign supervision).

Foreign collective investment schemes should take care that, e.g. the board of directors consists mainly of people not resident in Switzerland, and that the meetings of the board of directors are held outside Switzerland, in order not to be re-qualified as a Swiss collective investment scheme for the purpose of the Swiss withholding tax (i.e. in case of a requalification into a Swiss collective investment scheme for the purpose of the Swiss withholding tax, 35% withholding tax would be due on dividends and deemed dividend distributions).

Typically hedge funds are structured as tax transparent for Swiss tax purposes and are therefore not liable to tax.

2) Taxation of fund managers

It is common procedure for hedge fund managers in Switzerland to establish a management/advisory company. The management/advisory company enters into a contract with the general partner of the fund and is remunerated for its services. The individual managers, resident in Switzerland, are employees and/or shareholders of the company and receive salary and dividends.

The management company may potentially qualify for the special tax status of a mixed company if the specific conditions are fulfilled (business activity needs to be predominately performed outside Switzerland) or otherwise be treated as an ordinarily taxed company. The tax burden would amount to 10% to 12% (mixed company) respectively to 13% to 25% (ordinarily taxed company) depending on the canton of residence.

The individuals would receive salary and dividend payments. The salary is taxed at 20% to 40% depending on the canton of residence, while the income from dividends is generally subject to a preferential tax regime (if the respective conditions are met, e.g. shareholding of at least 10%) and taxed at 9% to 25%.

If the fund as well as the participation in the fund is structured efficiently the performance fee/carried interest may potentially be received by the Swiss resident individual as a tax free capital gain. Therefore it may be possible to optimise the taxation by routing the management fee through the management/advisory company and the performance fee directly to the principals resident in Switzerland.

- If the remuneration of the managers/principals is in ratio with their participation in the formal equity of the fund then the remuneration of the principals should generally qualify as tax exempt capital gain.
- If the remuneration of the principals exceeds the remuneration directly proportionate to their participation in the formal equity, than the remuneration would qualify as income from self-employment and is fully taxable.

Taiwan

Regulation

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

According to the ruling and Q&A issued by FSC, it seems that the FSC is starting to relax its policy gradually, and hedge funds may be marketed in Taiwan through an unregistered private placement, as distinguished from a registered public offering. Therefore two options became available for local investors to invest directly in offshore hedge funds – they may invest in a local feeder fund which in turn invests in offshore hedge funds, or they may invest in a privately placed offshore hedge fund. Local investors may also replicate the effect of hedge funds through purchasing derivatives that track hedge fund indices. The conditions for a private placement include the meeting of qualitative and quantitative criteria.

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

Taxation

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

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

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

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

Turkey

Regulation

Domestic Funds

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

- The establishment procedures for FIFs are similar to those applicable to other Turkish investment funds (i.e. securities investment funds). The approval of the CMB is required, a prospectus should be prepared in line with the CMB rules and units must be registered with the CMB. Turkish banks, brokerage houses, insurance companies, pension funds and employee funds (which are established according to Temporary Article 20 of Social Securities Law, No. 506), that meet the requirements set out by the CMB are allowed to establish FIFs. Portfolio management companies are currently not allowed to establish FIFs or any other investment funds, but in order to become harmonised with the EU legislation, and particularly for compatibility with the UCITS directive, the CMB is planning to change the regulations so as to eliminate this restriction on portfolio management companies.
- FIFs can only be marketed to "qualified investors". Qualified investors include Turkish and foreign investment funds, securities investment trusts, venture capital investment trusts, REITs, brokerage houses, banks, insurance companies, portfolio management companies, mortgage finance institutions, pension funds, relief funds, foundations, employee funds, benevolent societies and other investors which are accepted as similar to these organisations by the CMB and real and/or legal persons that have total assets of at least TRY 1 million cash (TRY or foreign currency) and/or (Turkish or foreign) capital market instruments. FIFs are not allowed to publish any advertisement or announcement for any reason. Moreover, they are exempted from the requirement of preparing and publishing a circular, which is a disclosure document similar to a simplified prospectus. They are allowed to declare their unit price on a monthly basis, rather than the daily basis which applies for other investment funds. Finally, they are subject to annual independent audit.
- FIFs are allowed to freely determine their own investment strategies and concentration limits in their internal statute. Compared with other investment funds they can use more sophisticated portfolio management techniques and strategies, inter alia, short sales, leverage and derivatives.
- All investment funds employing derivatives under the CMB regulation are required to set up internal audit procedures and risk management systems in line with the standards determined by the CMB. However, given that FIFs investment strategies and the instruments used are more sophisticated, the risk management systems of FIFs are also more complicated and sophisticated.

Foreign Funds

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

after the registration of certificates with the CMB. The qualifications required, inter alia, are as follows:

Fund units should be traded in Turkish Lira or foreign currencies, whose daily exchange rates are announced by the Central Bank of the Republic of Turkey;

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

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

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

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

Taxation

Domestic funds

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

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

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

of incorporation, such as articles of association and a certificate of establishment, should be submitted to the tax office for non-resident companies).

Foreign funds

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

When Turkish resident individual investors derive income from a foreign hedge fund (e.g. from the disposal/ redemption of participation certificates of foreign hedge funds), such income is usually subject to income tax through filing an annual income tax return and is subject to progressive income tax rates that vary from 15% to 35%. Likewise, Turkish resident corporate investors (including banks and insurance companies) and non-resident corporate investors that have a permanent establishment in Turkey are subject to taxation of 20% on income derived from foreign hedge funds as part of their ordinary corporate income. Taxes paid offshore can be offset against Turkish taxes, subject to certain conditions. Some transactional taxes such as banking and insurance transaction tax may also become due on such income.

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

United Arab Emirates

(Part of the GCC)

Regulation

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

Onshore registrations tend to be unattractive due to a number of local restrictions. Accordingly, the majority of funds and fund managers generally opt for establishing in a free zone.

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

The DFSA has issued legislation to regulate the fund management industry within the DIFC. The Collective Investment Law was enacted in the DIFC in 2006. It sets out the framework for regulating funds and permits the operation of various types of funds in the DIFC including hedge funds. The Law provides for limitations on promotion of products, sets out requirements for risk assessment and audit requirements and sets out specific oversight roles.

Of particular note, the enacted legislation contains several restrictions relating to the distribution of some foreign funds. Broadly speaking, the

restrictions apply where the foreign fund is not located in a "recognised jurisdiction". A recognised jurisdiction is one which is a signatory to the IOSCO Framework.

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

Taxation

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

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

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

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

UK

Regulation

Market Turmoil

Whilst the main impact of the Lehman collapse relates to operational issues concerning settlement, collateral and pricing, the case also highlighted certain regulatory issues. Specifically, there are likely to be investigations regarding the effectiveness of the firm's segregation arrangements for client money and custody assets and the legal framework within which those arrangements were operated.

The Lehman Brothers collapse focussed attention on issues around the protection of hedge funds' assets and monies held in their prime brokerage cash and margin accounts providing graphic evidence of the risks around the market standard practice of rehypothecation of client assets by prime brokers and the potential for loss should the broker collapse.

Reaction from the FSA to the banking crisis included temporary restrictions on short selling and the promise of the imposition of further requirements relating to capital adequacy and liquidity, particularly for banks and full scope investment firms. The FSA also responded to demands from politicians and the press by undertaking to review bonus structures 'with increased intensity' and firms are likely to be required to justify that their compensation arrangements do not foster short term behaviour and have been appropriately vetted by an independent risk control function.

Short Selling

After introducing short selling disclosure requirements in relation to rights issues in June, the FSA banned the short selling of certain UK Financial Sector stocks as a further emergency measure in September 2008. The emergency measure banned the creation or increase of net short selling positions and required the disclosure of net short positions in excess of 0.25% of a company's issued share capital. These disclosure requirements have been extended to 30 June 2009.

The FSA published a discussion paper in January 2009 (DP 09/01) that examined the options for enhanced transparency and proposed that disclosure requirements for significant short positions be introduced for all UK listed stocks.

Market abuse controls

The FSA also published a market watch newsletter in October 2008, which highlighted the fact that they have been carrying out visits to hedge fund managers with respect to market abuse controls. Given the range of strategies and investment styles employed by hedge fund managers and the varying governance and reporting structures within those firms, the FSA expect there to be differences in the control procedures adopted by those firms. The FSA noted that the issues pertinent to each hedge fund manager should be properly considered and managed through the use of appropriate controls.

Extension of approved persons regime

In December 2008, the FSA issued the Consultation Paper (08/25) on the approved persons regime. It proposes to bring additional individuals into the FSA's approved persons regime if they have 'significant influence' over an FSA authorised firm. The FSA proposes to extend the definitions of both CF1 (director) and CF2 (non-executive director) to include individuals employed by a parent undertaking or holding company whose decisions, opinions or actions are regularly taken into account by the governing body of the authorised firm.

ICAAPs – Pillar 2 Capital requirements

The FSA has requested copies of investments firms' (including hedge funds) ICAAPs as part of their regulatory assessment of the firm e.g. as part of their ARROW visit. Accordingly, it is critical that firms complete their ICAAP and that they are updated on a regular basis, especially in light of the heightened risks faced by the industry. In December 2008, the FSA issued a consultation paper on stress and scenario testing (CP 08/24) which indicated that their reviews have showed that many firms' stress and scenario testing is not as robust nor as embedded in senior decision-making as the FSA would like.

Fund of Alternative Investment Funds ("FAIFs")

During the second quarter of 2009, FSA advised that their policy statement on FAIFs is being put on hold further to the publication of its initial consultation paper (07/06) in March 2007.

FSA's Draft Code of Practice on Remuneration Policies

In February 2009, the FSA published its draft code of practice on remuneration policies. The code is designed to ensure that firms have remuneration policies which are consistent with sound risk management and which do not encourage individual employees to expose the firm to excessive risk.

Turner Review

The FSA published the "Turner Review of Global Banking Regulation" in March 2009. It was a review of the events that led to the financial crisis and to recommend reforms. The Review identifies three underlying global causes of the crisis:

1) Macro-economic imbalances;

2) Financial innovation of little social value; and

3) Important deficiencies in key bank capital and liquidity regulations.

The FSA advised that they do not consider that there is any evidence that hedge funds have made a significant direct contribution to the underlying causes of the current economic crisis. However, the effective regulation of potential systemic impact by hedge funds or clusters of hedge funds should be considered as an important part of the future regulatory framework at an international and national level.

In the review the FSA considered the following areas as key components of an effective regulatory framework for hedge funds:

1) Mandatory authorisation and supervision of all hedge fund managers and systemically important hedge fund counterparties by regulators in their home domicile;

2) Enforcement regime in respect of fund managers creating a credible deterrence;

3) Regulatory powers to take remedial action where a hedge fund is itself domiciled offshore and poses a significant systemic risk;

4) Collection and sharing of data from hedge fund managers and other key market participants in systemically important or particularly vulnerable markets, for the purposes of identifying systemic and financial stability concerns; and

5) Convergence of industry good practice standards at a global level to support but not replace an enhanced regulatory framework.

There are no proposals for the automatic direct regulation of hedge funds themselves in jurisdictions where they may trade. Hedge fund managers in the UK often locate their hedge fund entities offshore and these funds are not subject to prudential regulations although the hedge fund managers are subject to prudential requirements in the same manner as other investment managers are.

Taxation

Taxation rates

Individual investors are taxed at up to 32.5% on dividends from non-transparent overseas hedge funds. Individuals are subject to capital gains tax at a flat rate of 18% and from 2011/2012 they may be taxed at rates of up to 45% on non-dividend income. This greatly increases the importance of the applicability of offshore fund rules/ new reporting regime detailed below.

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

UK Authorised Investment Funds ("AIF"s) are taxed at 20% on income, but are not subject to corporation tax on capital gains on disposal of investments. Unauthorised unit trusts are taxed at 20% on income.

Offshore funds

In December, HM Treasury published additional detail and further draft regulations on both the proposed reform of the offshore funds taxation regime and the definition of an offshore fund. The new regime and definition are intended to be effective from 1 October 2009 subject to transitional rules and grandfathering provisions.

The wide definition of an offshore fund together with the fact that there will no longer be a requirement to physically distribute income could be an advantage to offshore hedge funds that are seeking to raise funds from UK investors. There is a wide disparity between being taxed at 18% versus 45% (individuals) and 20% versus 0% (UK AIFs). In order to take advantage of this disparity there will be challenges that need to be met in terms of the reporting of income to investors and accounting for complex financial instruments and derivatives.

Taxation of foreign profits

HMRC has published draft legislation covering the UK taxation of foreign profits, encompassing (amongst others); restrictions on the deductibility of interest by reference to the worldwide interest expense (worldwide debt cap) and an exemption for dividends not received on trading account.

The welcomed exemption from UK corporation tax on dividends in particular, may encourage a greater number of hedge funds to set up UK headquarters. Perhaps more interestingly if a hedge fund were to pay a dividend to a UK corporation or a UK AIF this dividend potentially falls within one of the exemptions from UK tax. Given that a hedge fund is likely to meet the definition of an offshore fund and therefore will also fall within the offshore fund rules if the fund pays a dividend it is both potentially exempt in the hands of a UK corporate investor and may also satisfy the requirements of the reporting regime.

UK fund managers and the Investment Manager Exemption

The Investment Manager Exemption ("IME") is a UK safe harbour provision which prevents UK taxation of the profits of a trading non-resident fund which would otherwise be taxable in the UK on the grounds that it is trading through a permanent establishment as a result of the activities of a UK-based investment manager. In order to be afforded the protection of the IME, it is necessary to satisfy six tests that demonstrate the fund and the investment manager are sufficiently independent of each other.

Trading vs. investment

It is not clear why the government has only extended the discussion of trading vs. investment to UK AIFs when the matters at issue apply equally to offshore funds with UK managers and investors. It is expected that the government will look to extend these proposals to offshore funds (indeed the definition of investment activity for UK funds is mirrored by that of investment transactions for offshore hedge funds seeking the safe harbour of the IME).

Definition of an investment transaction

To be covered by the IME the transactions carried out on behalf of the non-resident fund must meet the definition of "investment transactions". The government has introduced a legislative change to remove the condition that requires all transactions to qualify in order for a fund to place reliance on the IME and hence the so called 'cliff edge' test has been removed.

Investor redemptions

One of the IME tests states that the fund must be 'widely held'. A fund is not widely held where a majority interest is held by five or fewer persons and persons connected with them; or an interest greater than 20% is held by a single person and persons connected with them.

Hedge funds are seeing a significant number of redemptions which may reduce the number of investors in their funds. Some managers are also injecting their own capital into the fund as a show of faith and to build confidence in the funds. Whilst such actions are arguably commercially driven, fund managers should be aware of the effect this may have on their ability to satisfy the widely held test of the IME. There is a five year window to satisfy the test and managers should ensure they are keeping track of their own and connected party investment levels.

Transfer pricing methodology and customary rate test

Currently hedge fund managers operate transfer pricing methodologies that should be justified and benchmarked as robust strategies. Many UK fund managers are finding it necessary to revisit their profit split methodology as a result of this turning into a loss split due to current market conditions. The question of which entities in which jurisdictions should bear the brunt of the losses will need to be addressed.

United States

Regulation

The Securities and Exchange Commission ("SEC") requires offshore hedge fund advisers to be registered if the adviser has more than 14 clients who are resident in the United States, unless an exemption is available. Currently, an offshore private fund is regarded as a single non-US client and would not be counted towards the 14-client limit, regardless of the number of U.S. resident investors in the fund. The regulatory approach to the adviser's relationship with an offshore private fund should be substantially equivalent to the regulatory treatment of the adviser's work with any other non-U.S. client. If the offshore adviser is registered with the SEC, then it must comply with the Advisers Act with respect to any U.S. client or prospective client.

The U.S. Congress is currently considering changes to the SEC hedge fund registration regime that may have an impact on offshore managers. At the time of this publication, however, there are no new details regarding the extent of the proposed changes and whether they will actually impact offshore managers.

Offshore advisers will still be subject to examination by SEC staff, although we note that current SEC staffing constraints would seem to make the wholesale review of offshore advisers highly unlikely in the near term. Registered offshore advisers will also not be exempt from the requirement (generally arising through the application of Rule 204-2(a) of the Investment Advisers Act) to keep certain books and records, although there are some exceptions with respect to transactions involving offshore clients.

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

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

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

Taxation

US Federal Income Taxation

Hedge funds marketed to US and non-US investors are often formed through a "parallel" or a "master-feeder" structure. Under a "parallel" structure, two separate funds are formed, an "offshore" fund treated as a corporation for US tax purposes (generally, a

Cayman or a BVI corporation) and an "onshore" fund treated as a partnership for US tax purposes (generally, a US or Cayman limited partnership). Non-US persons and US tax exempts (such as universities, pension funds, and endowments) typically invest through an offshore fund. An onshore fund is organised for US taxable investors such as US corporations and individuals.

Under a "master-feeder" structure, an onshore and an offshore fund invest their assets through an offshore corporate vehicle (the "master fund") that makes an election to be treated as a partnership for US tax purposes. While the parallel structure normally allows for more flexibility with respect to structuring of the investments, a master feeder structure could reduce the administrative costs because all the investments are held in one vehicle.

For purposes of a parallel or master-feeder structure, the onshore fund is not subject to tax in the US itself. Rather, the fiscally transparent nature of the onshore fund results in its US investors being taxed on a current basis on the fund's profits (i.e. whether or not distributed). The income earned by an onshore fund is taxed at the US investor level at graduated rates, with the highest rate currently being 35% (excluding any state taxes). However, a US individual investor pays tax on qualifying dividends and long term capital gains at the rate of 15% or lower, depending on his or her income tax bracket. This reduced rate is scheduled to end on 31 December 2010. When an investor disposes of his or her interests in an onshore fund, capital gains arise to the extent that the amount realised on the sale exceeds his or her tax basis in the fund (adjusted for the income allocable to the investor over the life of the fund, share of liabilities in the fund, and contributions/ distributions).

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

Without careful planning, the profits of an offshore fund may be subject to US income tax (at rates of up to 55%) if it has a taxable presence in the United States. An exception that is of particular interest to hedge funds may apply to a fund that trades in stocks and securities from a US office. While the "US trading safe harbour" provides clear guidance with respect to straight forward activities, the qualification for the safe harbour for certain novel investments (such as trading in carbon credits) is less certain and invites further clarification by the US tax authorities. Non-US fund managers looking to market funds to US investors should be aware of the potentially significant tax compliance costs required to prepare information in accordance with US tax principles.

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

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

Table 1

Availability of hedge funds and funds-of-hedge funds to investors by country at June 2009

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

Country	Single strategy hedge funds			Funds-of-hedge funds			Minimum investment for: – Retail Investors – Institutional investors	Average time taken to set up a domestic fund
	Domestic	EU domiciled?	Other domiciles?	Domestic	EU domiciled?	Other domiciles?		
Gibraltar	✓	✓	✓	✓	✓	✓	Depends on type of investors the fund is marketed to and the type of fund.	14 days for Experienced Investor Funds. 3 to 6 months for public funds.
Greece	✗	✓[6]	✓[6]	✗	✓[6]	✓[6]	N/A	N/A
Guernsey	✓[7]	✓	✓	✓[7]	✓	✓	Depends on type of investors the fund is marketed to and the type of fund (Authorised or Registered and open-ended or closed-ended).	Depends on nature and type of fund (Authorised or Registered and open-ended or closed-ended) but can range from a minimum of 3 days to 6 to 8 weeks.
Hong Kong	✓	✓	✓	✓	✓	✓	For distribution to retail investors the minimum level of initial subscription by each investor must not be less than US$ 50,000 and US$ 10,000 for single strategy hedge funds and funds-of-hedge funds respectively. No statutory minimum subscription thresholds for hedge funds which are not subject to SFC authorisation requirements.	Depends on the nature and type of funds and the extent of use of financial derivative instrument etc. The authorisation process may take 1 month (for funds with simple structure and which the management company has other funds already authorised by the SFC) to 6–9 months.
Ireland	✓	✓	✓	✓	✓	✓	No minimum investment for retail funds of hedge funds. Minimum investment of EUR 125,000 applies in the case of a PIF and EUR 250,000 in the case of a QIF.[8]	24 hours for QIFs; on average 6 weeks for all other fund structures.
Isle of Man	✓	✓	✓	✓	✓	✓	No minimum subscription level for Qualifying Funds. US$ 100,000 for Specialist Funds.	3 days.
Italy	✓	✓	✗	✓	✗	✗	EUR 500,000	6 to 8 months.

Country	Single strategy hedge funds			Funds-of-hedge funds			Minimum investment for: – Retail Investors – Institutional investors	Average time taken to set up a domestic fund
	Domestic	EU domiciled?	Other domiciles?	Domestic	EU domiciled?	Other domiciles?		
Jersey	✓	✓	✓	✓	✓	✓	US$ nil, US$ 100,000 or US$ 1 million. [9]	3 days for expert funds, notification only for unregulated funds.
Korea	✓ [10]	✓ [11]	✓ [11]	✓ [10]	✓ [11]	✓ [11]	N/A	20 days for fund registration.
Liechtenstein	✗	✓	✓ [12]	✓	✓	✓	CHF nil	4 months.
Luxembourg	✓	✓	✓	✓	✓	✓	For retail investors: EUR nil except for SIF where the minimum investment is EUR 125,000. For institutional investors: EUR nil.	1 to 3 months except for SIF where NO pre-approval by the Regulator is required.[13]
Malta	✓	✓	✓	✓	✓	✓	EUR 15,000 in the case of an Experienced Investor Fund, EUR 75,000 in the case of a Qualifying Investor Fund and EUR 750,000 in the case of an Extraordinary Investor Fund.	The MFSA has committed to process applications for the authorisation of PIFs within 7 working days, provided all relevant documentation has been properly completed and that all functionaries are based and regulated in a "Recognised Jurisdiction" (i.e. members of the EU or EEA and some other specified countries).
Netherlands	✓	✓	✓	✓	✓	✓	EUR nil when the manager is in possession of a licence from the Dutch regulator AFM. EUR 50,000 when the manager is not subject to supervision from the Dutch regulator AFM.	Approx 1 month for managers established in countries with adequate supervision; regular licence application for manager approx 3 to 6 months.[14]
Netherlands Antilles	✓	✓	✓	✓	✓	✓	EUR nil	2 to 4 weeks.
Norway	✗	✗	✗	✗	✗	✗	N/A	N/A New regulation is expected by the end of June.
Portugal	✓	Information unavailable [15]	Information unavailable [15]	✓	Information unavailable [15]	Information unavailable [15]	EUR nil. Amounts are defined individually by each fund in the incorporation documents.	1 to 2 months for a straightforward fund; longer for more complex funds.

Country	Single strategy hedge funds			Funds-of-hedge funds			Minimum investment for: – Retail Investors – Institutional investors	Average time taken to set up a domestic fund
	Domestic	EU domiciled?	Other domiciles?	Domestic	EU domiciled?	Other domiciles?		
Singapore	✓	✓ Subject to MAS approval of home jurisdiction	Possibly subject to MAS approval of home jurisdiction	✓ Subject to MAS approval of home jurisdiction	✓	Possibly subject to MAS approval of home jurisdiction	Authorised/Recognised schemes available to retail investors. Minimum subscription for single manager hedge funds is S$ 100,000 while funds-of-hedge funds are S$ 20,000. Restricted Authorised/Recognised schemes only available to accredited investors as defined in SFA (C289). Minimum of S$ 200,000 per transaction.	Approximately 1 to 3 months.
South Africa	✓	✓	✓	✓	✓	✓	ZAR nil [16]	No regulatory time period. Current structures can be complex to avoid being classified as a collective investment scheme.
Spain	✓	✓	✗ [17]	✓	✓	✗ [17]	EUR 50,000 for subscription to single manager hedge funds.	Standard regulatory 3 month period for authorisation of collective investment undertakings.
Sweden	✓	✓	Possibly	✓	✓	Possibly	SEK nil	Domestic hedge funds: up to 6 months from completing the application. Other domiciles: approximately 2 months.
Switzerland	✓	✓	✓ [18]	✓	✓	✓ [18]	CHF nil	1 to 2 months for funds eligible for simplified approval process. For other funds 3 to 12 months.[19]
Taiwan	✗	✓ [20]	✓ [20]	✓	✓	✓	The minimum investment amount is at the discretion of hedge fund manager.	N/A
Turkey	✓	✓ [21]	✓ [21]	✓	✓ [21]	✓ [21]	TRY nil – minimum investment amounts can be set by the hedge funds individually.[22]	N/A [23]
United Kingdom	✓	✓	✓	✓	✓	✓	GBP 250 to GBP 250,000.	2 to 6 months.
USA	✓	✓	✓	✓	✓	✓	US$ nil	3 to 6 months.

Table 1 notes

Canada	1. Minimum investment depends on method of distribution.
Finland	2. Hedge funds are formed as Special Funds (usually Special Common Funds) with a definition of UCITS or non-UCITS. 3. The Financial Services Authority ("FSA") must be notified or a licence must be obtained when marketing mutual funds or special common funds. 4. Under the Mutual Funds Act, UCITS funds may commence marketing their units two months after the submission of the relevant notification, unless the FSA has special cause to prohibit the commencement of marketing.
Germany	5. The average time for authorisation depends on the complexity of the investment strategy and the product structure.
Greece	6. Only via private placement, subject to the granting of a licence by the Capital Markets Committee.
Guernsey	7. Proposals enacted to allow all 'Authorised' funds to be offered to Guernsey residents; however, 'Registered' funds will not be capable of being offered to the public in Guernsey.
Ireland	8. Minimum investment amounts have been abolished for retail funds-of-hedge funds. Minimum investments are EUR 125,000 for Professional Investor Funds ("PIFs") and EUR 250,000 for Qualified Investor Funds ("QIFs").
Jersey	9. For Jersey-regulated hedge funds there is no minimum investment for professional or institutional investors or investors with a net worth above US$ 1 million. Otherwise the minimum initial investment is US$ 100,000. For Jersey unregulated hedge funds investors must make a minimum initial investment of US$ 1 million, or be institutional investors or professional investors as defined in the legislation.
Korea	10. Through private placement, sold only to qualifying investors, subject to fund registration with the Financial Services ("FSC") Commission by domestic licensed investment managers. 11. Through private placement, funds which meet the requirements in relation to redemption/marketability sold only to professional (excluding convertible-to-general) investors, subject to fund registration with FSC by foreign investment managers who have no historical records of sanction.
Liechtenstein	12. Generally, offshore products in jurisdictions are not subject to adequate regulation and supervision will not be approved for public distribution in Liechtenstein. However, such products can be invested in by regulated funds-of-hedge funds, structured products, as well as by professional wealth managers and banks who manage customer accounts under a discretionary management agreement, provided hedge funds form part of the regular asset allocation for the relevant client category that a particular client of a given asset manager falls into.
Luxembourg	13. Art. 41 of the law of 13 February 2007, which provides that the application file should be sent within the month of the set up of the FIS.
Netherlands	14. The periods stated are for (1) managers established in counties with adequate supervision (to be determined by the AFM). This is a new facility since for such countries a licence application is no longer necessary but only a registration with the AFM. Therefore, the period of one month is an estimate, or (2) UCITS funds established in an EU country. The AFM has determined that currently only a limited number of countries provide adequate supervision, including the United States.

Portugal	15. There are funds marketed in Portugal which are domiciled elsewhere but no information on whether these are EU or non-EU. There is no information publicly available on whether any of these are hedge funds and if so whether they are single strategy hedge funds or funds-of-hedge funds.
South Africa	16. The minimum investment amount is at the discretion of the hedge fund manager. The Financial Services Board issued a discussion paper to assist in drafting hedge fund regulations. The paper suggested that ZAR 250,000 should be considered reasonable as a minimum investment amount in a single-strategy hedge fund and that regulated funds-of-hedge funds might have no minimum investment amount.
Spain	17. The authorisation from the Spanish authority to foreign hedge funds and fund-of-hedge funds may be feasible provided the same category of non-UCITS is regulated under Spanish laws (i.e. condition complied) but it shall also be necessary to provide a favourable certificate issued by the foreign non-UCITS home supervisory authority and standard fund documentation filing requirements. CNMV assessment of the equivalence between the foreign non-UCITS hedge fund/ fund-of-hedge fund to be authorised in Spain and Spanish hedge fund/fund-of-hedge fund regulated categories, shall be carried out on a principles based approach.
Switzerland	18. Funds from jurisdictions not subject to adequate regulation and supervision will not be approved for public distribution in Switzerland. However, such funds can be distributed to qualified investors (which also include regulated funds-of-hedge funds); also, such funds can serve as underlying for structured products, or be used by banks, securities dealers and independent professional wealth managers who manage customer accounts under a discretionary management agreement, provided that hedge funds form part of the regular asset allocation for the relevant client category that a particular client of a given asset manager falls into. 19. Funds which use a standard fund regulations/fund prospectus of an industry organisation which are accepted as a minimum standard by the Swiss Financial Market Supervisory Authority (FINMA) are eligible for a simplified authorisation process: Qualified investor funds for alternative investments are automatically authorised four weeks after acknowledgement of receipt of the fund application by the FINMA, however the FINMA can request changes of the fund application documents for up to three months; public funds for alternative investments are authorised within eight weeks after acknowledgement of receipt of the fund application by the FINMA, unless the FINMA requires further information which stops the authorisation period. The authorisation for all other domestic funds for alternative investments not eligible for the simplified authorisation process will be in the range of three to 12 months, depending on the quality of application documents, the complexity of the fund and the profile of the applicant at the FINMA.
Taiwan	20. Only via private placement, subject to the submission of relevant notification to Financial Supervisory Commission.
Turkey	21. Foreign hedge funds should be registered with the Capital Markets Board (“CMB”) in order to distribute their units in Turkey. 22. Minimum total portfolio value for FIFs is TRY 3.5 million at the time of establishment. There is no separate regulatory requirement for the minimum investment amounts for investor. FIFs may set their own requirements for the minimum investment amounts applicable for the qualified investors. 23. Since there is no precedent for FIFs in Turkey, it is not possible to provide the estimated time. However, setting up any other investment fund takes approximately four to six months.

Table 2

Channels of distribution of hedge funds by country at June 2009

Country	Main marketing channels							Summary of regulations currently governing distribution of hedge fund products and significant non-tax barriers to development of new distribution channels	Restrictions on location of key service providers?
	Banks	Fund distribution companies	Via wrappers (specify)	Private placement	Investment managers	Other regulated financial services institutions	Non-regulated financial intermediaries		
Austria	✓	✓	✓	✓	✓	✓		If a foreign hedge fund qualifies as an investment fund within the meaning of the Austrian law, public distribution will require the permission of the Austrian Financial Market Authority ("FMA"). Such permission will not be granted e.g. where the fund undertakes physical short selling, if investors can be obliged to make additional contributions or if loans exceed 10% of the fund's assets.	✘[1]
Bahamas	✓			✓	✓			Hedge fund products are generally not available to retail investors in the Bahamas.	✓[2]
Belgium	✓		✓	✓				Domestic legislation effectively prevents the establishment of domestic hedge funds. Public distribution of foreign hedge funds is not permitted except through bond wrappers, life wrappers or capital protected or capital guaranteed fund of fund wrappers.	✘
Bermuda	✓			✓	✓			Distribution to retail investors requires: (i) the fund to be registered as a Standard fund; and (ii) the investment manager to be registered under the Investment Funds Act 2006.	✓[3]
Brazil	✓	✓		✓	✓			CVM does not impose any capital limits for authorising asset managers and investment fund distributors. The most important distributor agents in Brazil are commercial banks through their bank agencies. FII and FIP can be registered in the Brazilian Stock Exchanges. Distribution and offering processes are regulated by the CVM and self regulated by the National Association of Investment Banks (ANBID). Only investment funds incorporated in Brazil can be distributed in Brazil. Closed-ended Investment Funds should be registered and approved by the CVM prior to their distribution.	
Canada	✓	✓	✓	✓	✓	✓		Registration status is determined based on whether the hedge fund is distributed under a prospectus, under prospectus exemptions or through a linked product. Know your client and suitability requirements exist for dealers in the distribution chain.	✘
Cayman Islands	✓			✓	✓			Most Cayman funds are distributed to institutional and high net worth individuals outside the Cayman islands. A fund cannot be distributed to retail investors in the Cayman Islands unless it is registered as a licensed fund under the Mutual Funds Law or it is listed on a recognised stock exchange. If the fund is structured as a Cayman offshore company and is distributed in Cayman as a retail fund, then it must be listed on the Cayman Islands Stock Exchange.	✓[4]
Denmark	✓	✓		✓	✓	✓		Full FSA approval is required for distributing domiciled funds and funds domiciled outside the EEA. Other hedge funds registered in EU countries must give notice to the Danish FSA before cross-border distribution.	✘[5]

Country	Main marketing channels							Summary of regulations currently governing distribution of hedge fund products and significant non-tax barriers to development of new distribution channels	Restrictions on location of key service providers?
	Banks	Fund distribution companies	Via wrappers (specify)	Private placement	Investment managers	Other regulated financial services institutions	Non-regulated financial intermediaries		
Finland	✓	✓			✓	✓[6]		The Mutual Funds Act on Common Funds governs the distribution of Common Funds (UCITS) and Special Common Funds (non-UCITS). Domestic hedge funds are generally formed as SCFs. The Securities Market Act governs distribution of non-Finnish funds that are available only to professional investors (for which no marketing licence is required. The FSA must be notified prior to the commencement of marketing of UCITS funds. Non-EU mutual funds marketing their units to retail investors must obtain a licence from the FSA.	✗
France	✓	✓	✓		✓	✓[7]		Hedge funds and hedge fund-like products are regulated as Authorised Funds with Simplified Investment Rules (OPCVM Agreés à Règles d'Investissement Allégées – ARIA), Contractual Mutual Funds (OPCVM Contractuels), or future funds (Fonds communs d'intervention sur les marches à terme) and may be marketed to different categories of investors, including retail investors.	✗
Germany	✓[8]	✓	✓	✓	✓	✓	✓[9]	Single strategy hedge funds may not be publicly distributed to retail investors. Funds-of-hedge funds, whether foreign or domestic, may be publicly distributed to retail investors with the permission of BaFin. As of December 2007, according to the German Investment Act, even single manager hedge funds have to hand out all sale documents to the potential investor. Generally, aside from the duty to publish a prospectus, publicly distributed wrapper products are not subject to direct supervision.	✓[10]
Gibraltar	✓				✓	✓		Hedge funds can be distributed globally, subject to the rules of the territory in which they are being promoted.	✓[11]
Greece				✓				Domestic funds are regulated according to their legal form; however Greek legislation effectively prevents the establishment of domestic hedge funds. All non-UCITS funds seeking to distribute to retail investors are required to obtain a licence from the Capital Markets. Committee. Distribution of foreign hedge funds tends to be by private placement only and outside the scope of the regulatory framework.	✗
Guernsey	✓	✓	✓	✓	✓	✓	✓	Hedge funds can be distributed globally, subject to the rules of the territory in which they are being promoted.	✓[12]
Hong Kong: Retail funds	✓	✓			✓	✓		Hedge funds which are marketed to the Hong Kong public must be authorised by the Securities and Futures Commission in Hong Kong.[13]	✗[14]
Private funds	✓	✓		✓	✓	✓			

Country	Main marketing channels							Summary of regulations currently governing distribution of hedge fund products and significant non-tax barriers to development of new distribution channels	Restrictions on location of key service providers?
	Banks	Fund distribution companies	Via wrappers (specify)	Private placement	Investment managers	Other regulated financial services institutions	Non-regulated financial intermediaries		
Ireland	✓[15]	✓	✓	✓	✓	✓[16]	✓	Hedge funds domiciled outside Ireland, which are seeking to market publicly in Ireland, must be approved by the Financial Regulator. Only funds subject to adequate prudential supervision in their country of origin will be approved.	✓[17]
Isle of Man	✓	✓	✓	✓[18]	✓	✓	✓	Hedge funds can be distributed worldwide, subject to the rules of the territory in which they are being sold.	✓[19]
Italy				✓				Authorisation to establish domestic hedge funds (single strategy and funds-of-hedge funds) is granted by the Bank of Italy, which must approve the fund's constitutional documents. Hedge funds may not be offered publicly in Italy.	✓[20]
Jersey	✓	✓	✓	✓	✓	✓	✓	Hedge funds can be distributed globally, subject to the rules of the territory in which they are being promoted.	
Korea				✓				Distribution of foreign hedge funds must be by private placement only through domestic licensed broker/dealer.	
Liechtenstein	✓				✓	✓		Regulated open-ended Liechtenstein hedge funds or funds-of-hedge funds and foreign-regulated hedge funds.	✓[21,22]
Luxembourg	✓	✓	✓	✓	✓	✓	✓	Domestic hedge fund and funds-of hedge funds can be set up as non-harmonised collective investment schemes (either Part II funds or SIFs). Both, Part II funds and SIFs can be marketed to all categories of investors including retail investors. For SIF the minimum investment of a retail investor is EUR 125,000. No such limit exists for Part II funds. Hedge funds domiciled outside Luxembourg seeking to market to the public in Luxembourg must be approved by the Commission de Surveillance du Secteur Financier ("CSSF"). Only funds which are subject to adequate prudential supervision in their country of origin will be approved. There are no major obstacles in Luxembourg to distributing foreign hedge funds and/ or funds-of hedge funds through a private placement regime.	✓[23]
Malta	✓	✓		✓	✓	✓		In order for hedge funds to be marketed in Malta, they must first be approved by the Malta Financial Services Authority.	✓[24]

Country	Main marketing channels							Summary of regulations currently governing distribution of hedge fund products and significant non-tax barriers to development of new distribution channels	Restrictions on location of key service providers?
	Banks	Fund distribution companies	Via wrappers (specify)	Private placement	Investment managers	Other regulated financial services institutions	Non-regulated financial intermediaries		
Netherlands	✓	✓	✓	✓	✓	✓		The Act on Financial Supervision or ("AFS") provides licence requirements for hedge fund managers. When in possession of a licence, no minimum investment amount applies for investors in the Netherlands. A hedge fund manager may offer participations in the Netherlands without a licence amongst others if (a) participations are offered above the threshold of EUR 50,000 nominal value per participation or if the package of participations represents a value of at least EUR 50,000; (b) if the offer is limited to less than 100 persons who are not institutional (qualified) investors; (c) if the offer is limited solely to institutional (qualified) investors. Please note that these are the most important exemptions available.	✓ [25]
Netherlands Antilles				✓				Domiciled funds are generally not available to retail investors in The Netherlands Antilles.	✓
Norway								To be marketed for sale in Norway a fund needs a notification from the regulator (The Financial Supervisory Authority of Norway("FSA")). Currently hedge funds are not allowed to be marketed for sale to retail customers in Norway. Hedge funds have, however, been sold in Norway to more professional customers. By an amendment to the Securities Fund Act of 27 June 2008 changes to the securities fund act were ratified, allowing for hedge funds to be marketed for sale to retail investors. The amendment has still not come into force, but is expected to by the end of June 2009.	
Portugal	✓				✓			Domestic/EU-domiciled funds Special Investment Funds ("SIFs") are distributed to institutional investors. In the case of non-institutional investors the CMVM needs to be informed on the training program of the entities involved in the distribution. CMVM may refuse to authorise the distribution of SIFs to certain investors if there are concerns that they are not adequately protected by existing conditions. Foreign funds that are EU domiciled can be distributed in Portugal provided that CMVM does not oppose the distribution and that it authorises the related contract. Non-EU-domiciled funds or EU domiciled funds that do not comply with the EU directive 85/611/CE are also required to be authorised by CMVM prior to public distribution in Portugal. Authorisation will not be granted if the distribution conditions and the fund itself do not provide the investor with similar security and protection conditions to those of the funds domiciled in Portugal.	✓ [26]
Russia				✓				Hedge funds may only be distributed by private placement.	✘

Country	Main marketing channels							Summary of regulations currently governing distribution of hedge fund products and significant non-tax barriers to development of new distribution channels	Restrictions on location of key service providers?
	Banks	Fund distribution companies	Via wrappers (specify)	Private placement	Investment managers	Other regulated financial services institutions	Non-regulated financial intermediaries		
Singapore	✓			✓	✓	✓	Yes if filed notice with MAS as an exempt fund manager or exempt financial adviser	Distribution/promotion to retail investors is allowed only if it is an authorised hedge fund or recognised hedge fund. Restricted authorised hedge funds and restricted recognised hedge funds can only be marketed to accredited investors. Distribution of hedge funds to retail investors is typically through distributor banks or licensed financial advisers, while non-retail hedge funds distribution is mainly through private banks and other exempt institutions.	✘
South Africa	✓		✓	✓	✓			Hedge fund managers are not currently allowed to actively solicit investments into their funds. The restriction on marketing covers foreign hedge funds sold in South Africa as well as domestic hedge funds. A collective investment scheme managed outside South Africa must at all times have a representative office in South Africa and maintain a minimum capital amount of ZAR 2 million (invested in liquid assets) in order to distribute in South Africa.	✓
Spain	✓	✓	✓		✓	✓[27]		Under Spanish legislation, the marketing of domestic or foreign single manager hedge fund products is confined to qualified investors as defined under the Prospectus Directive (it does not mean that retail investors are prevented from investing in such categories provided certain conditions are met). Retail investors may invest in single manager hedge funds and funds-of-hedge fund products subject to certain conditions and representations about their knowledge of the risk of such products. This representation is not necessary in the case of investment under a portfolio discretionary management basis. Any category of foreign hedge fund product which intends to distribute shares/units in Spain under the same conditions as those prescribed for Spanish products is required to obtain prior authorisation of the CNMV.	✓[28]
Sweden	✓	✓	✓	✓	✓	✓		Activities aiming to further the sale of any product or service in Sweden, including securities and fund shares, are subject to the provisions of the Swedish Marketing Practices Act and the Swedish Act on Investment Funds (2004:46).	✓[29]

Country	Main marketing channels							Summary of regulations currently governing distribution of hedge fund products and significant non-tax barriers to development of new distribution channels	Restrictions on location of key service providers?
	Banks	Fund distribution companies	Via wrappers (specify)	Private placement	Investment managers	Other regulated financial services institutions	Non-regulated financial intermediaries		
Switzerland	✓	✓	✓	✓	✓	✓		There are no restrictions on retail investors to invest in shares of closed-ended investment companies listed on a regulated stock exchange (funds-of-hedge funds), as these are not in the scope of the CISA. CISA-regulated open-ended Swiss hedge funds or funds-of-hedge funds and foreign-regulated hedge funds approved for public distribution in Switzerland can be sold to retail and/or qualified investors. Investments in closed-end CISA-regulated limited partnerships can only be distributed to qualified investors. Banks, securities dealers and other independent professional asset managers can use regulated and non-regulated domestic and foreign hedge funds and funds-of-hedge funds on the basis of discretionary management contracts with clients. Furthermore, hedge funds and funds-of-hedge funds not approved for distribution in Switzerland may be sold via private placement to qualified investors. Distributors of CISA-regulated funds or FINMA-registered foreign funds are either an FINMA-regulated institution or are required to obtain the FINMA's approval as a distributor prior to commencing distribution.	✓ [30,31]
Taiwan	✓			✓	✓	✓		Foreign hedge funds cannot be promoted in public; they may only be accessed through private placement. Investors can access foreign hedge funds via 1) a privately placed local feeder fund which in turn invests in/feeds into offshore hedge funds, or 2) a privately placed offshore hedge fund, or 3) derivatives that replicate the effect of hedge funds by, among other things, tracking hedge funds indices.[32]	✘
Turkey	✓					✓ [33]		CMB approval is required for distributing foreign hedge funds in Turkey. Domestic hedge funds are formed under the CMB as Free Investment Funds ("FIFs"). Their units can only be sold to qualified investors and should not be promoted to the public. FIFs are not allowed to advertise or make announcements regarding their sales activities.	✓ [34]
United Kingdom	✓		✓	✓	✓			Hedge funds should not be promoted to the public. However, there are a number of products with hedge fund exposure that target and promote to the retail market in the UK. These have typically been structured as UK listed companies, which are funds-of-funds.	✘
USA				✓				In the USA, marketing rules governing hedge funds are covered by: (1) The rules of the SEC, which govern much of the activities of investment advisers; (2) State/Blue Sky regulations; and (3) The rules of the NASD, which regulate the offering of hedge funds by registered representatives of broker dealers who offer hedge funds. The majority of hedge funds and funds-of-hedge funds are sold via private placements. Funds may, however, register with the SEC and be offered more widely.	✘

Table 2 notes

Austria	1. Foreign funds need to appoint a custodian bank, a paying agent as well as a legal representative in Austria. Only Austrian credit institutions or domestic branches of an European Economic Area credit institution can take over these functions.
Bahamas	2. Foreign funds being sold in The Bahamas must appoint a registered representative who is approved by the Securities Commission.
Bermuda	3. The custodian and administrator must be located in Bermuda for Bermuda-domiciled retail funds, although the Bermuda Monetary Authority ("BMA") may grant exemptions or permit services to be sub-contracted outside Bermuda in certain circumstances.
Cayman Islands	4. Funds registered with CIMA are required to appoint a local CIMA-approved auditor.
Denmark	5. Domestic hedge associations are required to appoint a bank as the depository. This bank is required to have its registered office in Denmark or be a corresponding foreign credit institution with a branch in Denmark and with its registered office within the EU or EEA.
Finland	6. Other regulated financial services institutions consist of Investment Firms with MiFID compliance.
France	7. The custodian must be located in the EU.
Germany	8. Banks often choose to distribute overseas hedge funds by issuing wrapper products. 9. Only funds-of-hedge funds may be distributed by non-regulated financial intermediaries. 10. For domestic funds the investment manager is required to be located and regulated in Germany. The fund can cooperate with prime brokers of good solvency which are domiciled and regulated in the OECD, EU or EEA.
Gibraltar	11. The custodian, investment manager and trustee must be registered in Gibraltar and must be regulated.
Guernsey	12. Both Authorised and Registered open-ended and closed-ended Guernsey domiciled funds require an administrator that is domiciled in Guernsey, regulated by The Protection of Investors (Bailiwick of Guernsey Law 1987 and independent of the designated custodian function.)
Hong Kong	13. Under the Securities and Futures Ordinance, a person is required to be licensed with the Securities and Futures Commission for distribution of investment products in Hong Kong, if the activities constitute the making or offering to make an agreement with another person, or inducing or attempting to induce another person to enter into or to offer to enter into an agreement: a) for or with a view to acquiring, disposing of, subscribing for or underwriting securities; or b) the purpose or pretended purpose of which is to secure a profit to any of the parties from the yield of securities or by reference to fluctuations in the value of securities. 14. SFC-authorised schemes are required to appoint a Representative in Hong Kong if their management company is not incorporated and does not have a place of business in Hong Kong.
Ireland	15. Private banks only. 16. Brokers only. 17. Irish-domiciled hedge funds must appoint an Irish trustee/custodian and fund administrator and perform certain other tasks in Ireland.
Isle of Man	18. Wrapper products issued by insurance companies only. 19. Day-to-day operations of Professional Investor Funds and Qualifying Funds must be carried out in the Isle of Man.
Italy	20. The depository bank for Italian hedge funds must be located in Italy. However, this may be an Italian bank or a branch of an EU bank located in Italy.
Liechtenstein	21. Domestic open-ended hedge funds and funds-of-hedge funds must appoint a domestic administrator and a domestic custodian. 22. Foreign hedge funds and funds-of-hedge funds approved for public distribution in Liechtenstein are required to appoint an FMA-approved domestic representative and a domestic paying agent for the settlement of subscriptions, redemptions and distributions.

Luxembourg	23. Foreign funds need to appoint a local paying agent. The custodian bank of a Luxembourg fund and the external auditor need to be located in Luxembourg. In addition, key administrative functions must be performed in Luxembourg.
Malta	24. The custodian/prime broker, administrator, manager and adviser appointed by the Fund must be located in an established, regulated and recognised jurisdiction; these include members of the EU or EEA and some third countries.
Netherlands	25. Outsourcing of services to external service providers by a regulated investment vehicle is possible provided certain The restrictions are met as defined in the AFS. The investment manager remains responsible for the outsourced activities and outsourcing may not hinder supervision. Outsourcing of the execution of the investment policy is only allowed to regulated entities. There must be an outsourcing agreement in place that meets certain requirements.
Portugal	26. Domestic funds must appoint a local bank or a local branch of an EU bank as custodian. It is possible for the investment management function of domestic funds to be sub-contracted to an entity (authorised financial intermediary) either in Portugal or in the EU, subject to certain conditions and to the management company keeping its ultimate responsibilities. Outside the EU, authorisation can also be granted where regulation in the country of the investment manager is deemed by the Portuguese regulator to be of an acceptable standard and the regulators agree to co-operate.
Spain	27. MiFID Firms and financial intermediaries. 28. Domestic funds must appoint a local bank or a branch of an overseas bank in Spain as Custodian. Additionally, regulations require that any outsourcing entity can demonstrate appropriate experience in performing the outsourced activity and the local hedge fund manager must have proper follow-up resources and systems to ensure adequate monitoring of the activities outsourced. In any case, outsourcing should not imply “letter-box” management companies in Spain.
Sweden	29. Funds must have a domestic paying agent for the settlement of subscriptions, redemptions and distributions.
Switzerland	30. Domestic open-ended hedge funds and funds-of-hedge funds must appoint a domestic administrator (except for self-administrated SICAVs) and a domestic custodian. Closed-end CISA-regulated hedge funds and funds-of-hedge funds have to appoint a domestic custodian and paying agent. Hedge funds, upon approval by the FINMA, can use foreign professional prime brokers. 31. Foreign hedge funds and funds-of-hedge funds approved for public distribution in Switzerland are required to appoint a FINMA-approved domestic representative and a domestic paying agent for the settlement of subscriptions, redemptions and distributions.
Taiwan	32. The sale of foreign hedge funds is governed by the Regulations Governing Offshore Funds, which provide that privately placed offshore funds can contract with the following channels to access potential investors: bank, trust enterprise, securities broker, Securities Investment Trust Enterprises or Securities Investment Consulting Enterprises (revised on 5 February 2008).
Turkey	33. If the units of the foreign funds are distributed in Turkey it is subject to certain conditions set out for the registration of the units to the CMB by the CMB regulations. Domestic FIFs can only appoint CMB-registered portfolio managers (i.e. non-deposit collecting banks (such as investment banks), portfolio management companies, and intermediary brokerage houses) which are established in Turkey to manage their portfolio. Furthermore, the founder is responsible for the protection and safekeeping of the fund’s assets; there is no requirement for the existence of a depositary. ISE Settlement and Custody Bank (Takasbank A.S.) acts only as a safekeeper for investment funds’ assets, and has no legal and financial responsibility in the content of UCITS Directive. It is also worth noting that portfolio management companies are not allowed to distribute units of the hedge funds as per CMB regulation. 34. Other regulated financial institutions refer to brokerage houses operating in Turkey in accordance with CMB rules.

Table 3

Regulation of hedge fund managers by country at June 2009

Country	Name of regulator	Minimum capital required to operate as hedge fund manager	Notes
Austria	Finanzmarktaufsicht ("FMA")	Varies	1
Bahamas	Securities Commission of The Bahamas	US$ 25,000 except for funds licensed in The Bahamas which are exempt from the requirement to be licensed as an Investment Advisor under the SIA and therefore there is no minimum capital requirement.	
Belgium	Banking, Financial and Insurance Commission	N/A	2
Bermuda	Bermuda Monetary Authority ("BMA")	None	3
Canada	Canadian Securities Administrators ("CSA")	None (unless managing portfolio assets).	4
Cayman Islands	Cayman Islands Monetary Authority ("CIMA")	Cayman-domiciled investment managers must register under the Securities Investment Business Law ("SIBL"). An exemption from the normal US$ 500,000 minimum capital, audit and financial statement filing requirement is available where the funds being managed are only open to institutional and high net worth investors.	
Denmark	Danish Financial Supervisory Authority ("FSA")	Varies depending on the manager. Most commonly the manager is either the investment management department of a bank or an Investment Manager ('Fondsmæglerselskab'). A hedge fund manager in Denmark will be an Investment Management company which is required to have a minimum capital of EUR 300,000.	
Finland	Financial Supervision Authority ("FSA")	EUR 125,000 + 0.02% of assets under management in excess of EUR 250 million (subject to an overall maximum capital requirement of EUR 10 million).	
France	Autorités des Marchés Financiers ("AMF")	Minimum share capital of at least EUR 125,000. Net equity must be maintained at a level equal to the greater of: • 25% of annualised expenditure; and • EUR 125,000 + 0.02 % of assets under management in excess of EUR 250 million (subject to an overall maximum capital requirement of EUR 10 million).	
Germany	Bundesanstalt für Finanzdienstleistungsaufsicht ("BaFin")	Initial capital of EUR 300,000 according to the December 2007 modifications of the German Investment Act plus an ongoing capital requirement based on assets under management. Own funds shall at no time be less than 25% of annual operating expenses.	
Gibraltar	Financial Services Commission ("FSC")	**Fund administrator** GBP 10,000 of paid-up share capital. **Investment manager** EUR 125,000 minimum share capital. **UCITS Fund Manager** The greater of: • 13/52 of its relevant annual expenditure and; • EUR 125,000 or the equivalent in another currency; and an additional financial resource requirement equals 0.02% of the value of funds under management that exceed EUR 250,000 or the equivalent in another currency.	
Greece	N/A	N/A	
Guernsey	Guernsey Financial Services Commission ("GFSC")	GBP 10,000 of paid-up share capital if no staff or premises, otherwise a financial resources requirement of the higher of GBP 25,000 and 3 months' expenditure.	5
Hong Kong	Securities and Futures Commission ("SFC")	Minimum paid-up share capital: nil to HK$ 5 million. Minimum liquid capital: HK$ 100,000 to HK$ 3 million. Both depend on the nature and scope of the activities.	
Ireland	Irish Financial Regulator	Promoters of Irish-domiciled hedge funds must maintain minimum regulatory capital of EUR 635,000.	6
Isle of Man	Financial Supervision Commission ("FSC")	Share capital of GBP 25,000 plus up to GBP 175,000 net tangible assets requirement, dependant on the exact category of the scheme.	
Italy	Bank of Italy; Commissione Nazionale per le Società e la Borsa	EUR 1 million (although this can be larger depending on the nature and scale of investment management activities). Since June 2007 management companies can offer both traditional and alternative products provided that they appropriately enhance the risk management, internal control and compliance functions.	

Country	Name of regulator	Minimum capital required to operate as hedge fund manager	Notes
Jersey	Jersey Financial Services Commission ("JFSC")	GBP 25,000	7
Korea	Financial Services Commission ("FSC") and Financial Supervisory Service ("FSS")	Initial capital requirements of KRW 8 billion (for general investors)/KRW 4 billion (for professional investors) to be a domestic licensed investment manager, and ongoing capital requirements of 70% of initial capital requirement.	
Liechtenstein	Finanzmarktaufsicht (FMA)	Varies	8
Luxembourg	Commission de Surveillance du Secteur Financier ("CSSF")	EUR 125,000	
Malta	Malta Financial Services Authority ("MFSA")	A Hedge Fund Manager will typically hold a category 2 licence under the Investment Services Act and the minimum capital requirement is EUR 125,000.	
Netherlands	Netherlands Authority for the Financial Markets ("AFM") for supervision of market conduct. Dutch Central Bank ("DCB") for prudential supervision	EUR 225,000 (non-UCITS manager) if it manages assets of at least EUR 250 million and EUR 125,000 (non-UCITS manager) if it manages assets of less than EUR 250 million.	
Netherlands Antilles, The	Central Bank of The Netherlands Antilles	N/A	
Norway	Financial Supervisory Authority of Norway	N/A	
Portugal	Portuguese Securities Market Commission ("CMVM")	(i) EUR 250,000 (share capital) plus a requirement based on assets under management. (ii) EUR 7.5 million (own funds) for managers of closed-ended vehicles other than an investment funds management companies (only credit institutions).	9
Russia	N/A	N/A – hedge fund managers are not regulated in Russia.	
Singapore	Monetary Authority of Singapore	No requirements if operating as an "exempt fund manager", which is subject to exemption criteria being met on an ongoing basis. If the fund manager holds a CMS licence, there is a minimum capital requirement of S$ 250,000.	10
South Africa	Financial Services Board ("FSB")	N/A	11
Spain	Comisión Nacional del Mercado de Valores (CNMV)	EUR 300,000 plus additional own funds requirements based on the level of assets under management and a percentage (i.e. 4%) of their gross income received from the management fees applied to Hedge Funds and Fund-of-Hedge Funds products under management.	
Sweden	The Swedish Financial Supervisory Authority	EUR 125,000 initial capital. In addition, capital equal to 3 months' annualised expenditure must be maintained, plus 0.02% of assets under management in excess of EUR 250 million (up to a maximum capital requirement of EUR 10 million).	
Switzerland	Swiss Financial Market Supervisory Authority ("FINMA")	Minimum capital of CHF 200,000 fully paid (or bank guarantee for natural persons and non-corporate entities). Additional regulatory capital of up to CHF 20 million, depending on assets under management and fixed operating costs of the hedge fund manager. Net regulatory capital has to cover at least 25% of the fixed expenses per the last annual financial statements of the hedge fund manager.	12
Taiwan	Financial Supervisory Commission	N/A	13
Turkey	Capital Markets Board ("CMB")	Varies	14
United Kingdom	Financial Services Authority ("FSA")	Regulatory capital must generally be equivalent to 3 months' fixed overheads.	15
USA	The Securities and Exchange Commission ("SEC") and, in some cases, the Commodity Futures Trading Commission ("CFTC")	None	16

Table 3 notes

Austria	1. The FMA is only responsible for Austrian banks and Austrian ISD firms: if a bank is the manager, the capital requirement is EUR 5 million (EUR 2.5 million for Austrian managed); if an ISD firm is the manager, the capital requirement is either EUR 50,000, EUR 125,000 or EUR 730,000 depending on scope of services provided.
Belgium	2. Hedge fund managers may only operate private hedge funds (public distribution of hedge funds in Belgium is not allowed except through bond wrappers, life wrappers or capital guaranteed or protected fund of fund wrappers). Hedge fund managers operating such funds are not subject to any specific prudential controls.
Bermuda	3. Domestic hedge fund managers are not regulated in Bermuda unless they are distributing funds to residents of Bermuda, in which case they are required to be registered under the Investment Business Act.
Canada	4. There is currently no requirement for hedge fund managers to be registered unless they are also managing portfolio assets. This is currently under examination by the CSA as part of its Registration Reform Project. Current proposals would require minimum capital of C$ 100,000 for an investment fund manager.
Guernsey	5. There is no requirement to have a principal manager set up and regulated in Guernsey to operate either a closed- or open-ended hedge fund. The Guernsey hedge fund engages the services of a regulated Guernsey administrator.
Ireland	6. Promoters of Irish-domiciled hedge funds must maintain minimum regulatory capital of EUR 635,000.
Jersey	7. There is no requirement to have a principal manager set up and regulated in Jersey to operate either a closed- or open-ended Jersey regulated hedge fund. The Jersey regulated hedge fund engages the services of a regulated Jersey administrator. Hedge fund managers are regulated under the Financial Services (Jersey) Law 1998. For a Jersey unregulated hedge fund there is no requirement to engage the services of a regulated Jersey administrator or to have a principal manager set up and regulated in Jersey.
Liechtenstein	8. The initial capital in the case of a fund management company must be at least CHF 1 million. A self-managed investment company is required to have an initial capital of at least CHF 500,000 (or a bank guarantee for an equivalent amount). The initial capital of an investment company managed by a third management company is at least CHF 50,000.
Portugal	9. (i) EUR 250,000 is the minimum share capital for an investment funds management company (Sociedade Gestora de Fundos de Investimento – SGFI); in addition SGFIs are required to maintain own funds that are not less than the sum of 0.5% of the first EUR 75 million of assets under management and 0.1% of any additional assets. Own funds cannot exceed EUR 10 million except if this amount is lower than 25% of the entity general expenses of the previous year. (ii) For closed-ended funds other than the SGFI, the manager can also be a credit institution (CI). The minimum share capital of a CI depends on the nature of its main activity, e.g. banking, leasing, etc. However, other than the share capital, to manage a closed ended fund a CI has a minimum requirement for own funds of EUR 7.5 million.
Singapore	10. MAS does not regulate hedge funds which are only distributed to accredited investors, i.e. as Restricted Authorised/ Recognised schemes. No annual regulatory reporting requirement to MAS is necessary if the hedge fund manager is exempt, although an annual declaration of continued compliance with exemption criteria is required. If the hedge fund manager is CMS licensed, annual audited regulatory reporting will be required using prescribed forms, including quarterly regulatory filings with the MAS. For Authorised/Recognised schemes, MAS will require annual audited reports to be distributed to investors within three months of the year end in accordance with the Code of Collective Investment Schemes.
South Africa	11. There are no minimum capital requirements for hedge fund managers. Hedge fund managers are authorised by the FSB as Category IIA Discretionary Financial Services Providers under FAIS. This is a separate category of FSPs created by the FSB (effective February 2008) specifically to regulate hedge fund managers.

Switzerland	12. Applicable to hedge fund managers of Swiss collective investment schemes. Usually no minimum capital requirements are applicable to Swiss-domiciled hedge fund managers of foreign hedge funds, as they are generally not regulated. If hedge fund managers manage foreign hedge funds subject to foreign supervision equivalent to Swiss supervision, and the foreign regulator requires a regulated hedge fund manager, they can voluntarily apply for an asset manager licence of the Swiss Federal Banking Commission.
Taiwan	13. Hedge funds may not be established by local Taiwan fund managers, either through public distribution or private placement. In the short term, without the establishment of a supervisory framework for hedge funds, it does not appear that Taiwanese authorities are ready for deregulation in this sector.
Turkey	14. Portfolio management companies, intermediary institutions and non-deposit collecting banks (e.g. investment banks) are allowed to provide portfolio management services provided that they get CMB approval. For portfolio management companies, the minimum capital requirement is TRY 325,000. For intermediary institutions such as brokerage houses, the minimum capital requirement is at least 25% of the shareholders' equity. The minimum shareholders' equity for intermediary institutions ranges between TRY 84,000 and TRY 799,000 depending on the type of licence they hold. The minimum capital requirement for non-deposit collecting banks is TRY 20 million. (Note that these figures are for the year 2009.) These rules only apply to domestic hedge funds (FIFs) but not for foreign hedge funds distributed in Turkey subject to CMB approval.
UK	15. Detailed requirements depend on the precise activities of the manager.
USA	16. Rules in the US generally require investment advisers to register with the SEC if they manage the assets of US clients. There are certain exemptions from registration for advisers that manage the assets of fewer than 15 clients (or for US-domiciled advisers that manage less than US$ 25 million). Advisers who have their principal place of business outside the United States (Offshore Advisers) only need to count their US-resident clients (determined at the time of initial investment) towards this 15-client threshold.

Table 4

Taxation of hedge funds and hedge fund managers

Country	Single-strategy fund	Funds-of-hedge funds	Hedge fund manager
Australia	Resident fund is tax transparent.		Subject to corporate income tax at the rate of 30%. However, if Offshore Banking Unit concession applies, tax rate is 10%.
Austria	Fund is tax transparent.		Subject to corporate income tax at the rate of 25%.
Belgium	N/A		N/A
Bermuda	Currently Bermuda does not impose any taxes on income, capital gains or transfer taxes. Funds can obtain an undertaking from the Minister of Finance which exempts funds from any future income or capital gains taxes (if imposed) until March 28, 2016. Bermuda also does not impose any withholding taxes.		Currently Bermuda does not impose any taxes on income or capital gains. Fund Managers can obtain an undertaking from the Minister of Finance which exempts funds from any future income or capital gains taxes (if imposed) until March 28, 2016. Bermuda also does not impose any withholding taxes.
Brazil	Fund's portfolios are not taxed.		Under Actual Profit Method: corporate income tax of 34%. Tax on revenues of 9.25%. Under Presumed Profit Method: total tax (corporate + tax on revenues) of 14.53%. Tax on services of 5% (can be avoided).
Canada	Domestic funds are generally not subject to tax as long as they are structured as such. However, the investors are subject to tax on any amounts paid or payable to them. Assuming that the foreign fund meets Canada's Safe Harbour rules (i.e. it does not have a nexus in Canada) and is excluded from the proposed non-resident trust rules, foreign funds are generally subject to a 25% withholding tax on investment income paid by Canadians, which can be reduced if the foreign fund is eligible for treaty benefits. Interest paid from a non-related Canadian to a non-resident is not subject to withholding tax, with some exceptions. Non-residents are subject to Canadian income taxes on disposition of "Taxable Canadian Property", which tax can be reduced if the foreign fund is eligible for treaty benefits.		A Canadian-domiciled hedge fund manager in the legal form of a corporation is taxed at a federal corporate income tax rate of 19% (for a corporation with a calendar 2009 tax year) plus the applicable provincial rate (i.e. 14% for an Ontario resident corporation). A foreign-domiciled hedge fund manager without any permanent establishment that does not carry on business in Canada is generally not subject to Canadian income taxes.
China	Hedge funds are not applicable yet in China. Foreign hedge funds are allowed to invest in Chinese listed companies' shares including overseas listed shares (e.g. H shares), B shares and A shares. For the PRC domestic A shares, foreign portfolio investment is only permitted via the Qualified Foreign Institutional Investors ("QFII") license holder. For hedge funds without constituting permanent establishment in China, dividends from Chinese listed companies' shares are subject to withholding income tax at 10% from 2008 onwards which can be reduced if any treaty benefits. At this stage, it is unclear whether China will impose withholding income tax on transfer gains under the new corporate income tax ("CIT") law. As to direct investments, foreign hedge funds operate much like a private equity or venture capital investor in China such as acquisition of a Chinese target. Dividends, interest and transfer gains upon disposal should be subject to withholding income tax at 10% from 2008 onwards, which can be reduced if any treaty benefits.		For a foreign-domiciled hedge fund manager, no PRC CIT is triggered if no permanent establishment is constituted in China. Should permanent establishment constituted, the PRC CIT of 25% effective 1 Jan 2008 (33% for pre-2008) would be imposed on deemed onshore profit. Under the pre-2009 Business Tax ("BT") regulations, 5% of the PRC BT is imposed on the gross onshore management fee. However, under the amended BT regulations effective 1 January 2009, if the service recipient is in China, 5% BT may be triggered even if foreign hedge fund manager has successfully convinced the in-charge tax bureau that all the services were rendered outside of China. For a PRC resident fund manager (which is usually in the form of a consulting company/capital venture company or representative office), it should be subject to the PRC CIT on its actual profit (for consulting company/capital venture company or deemed profit for representative office) at 25%. Additionally, PRC BT on the whole service fee (for consulting company/capital venture or deemed service fee for representative office) at 5%. China transfer pricing issue may also be triggered if the service fee is collected from related party.

Country	Single-strategy fund	Funds-of-hedge funds	Hedge fund manager
Denmark	Tax exempt. Subject to a final withholding tax of 15% on dividends received on shares in Danish companies.		Taxed at corporate rates.
Finland	Finnish common funds within the meaning of the Finnish law are tax exempt.		Subject to corporate income tax at the rate of 26%.
France	Fund is tax transparent.		Taxed at standard rates.
Germany	Tax-exempt.		A German-domiciled hedge fund manager in the legal form of a corporation is taxed at a flat rate of 15% corporate tax plus trade tax (trade tax rate is applicable according to regional laws) and solidarity surcharge.
Gibraltar	Any Gibraltar fund approved by the Commissioner of Income Tax will be exempt from tax.		27% for tax year 2008/09 for income accrued in or derived in Gibraltar (there is a small company's rate of 20% which rises to 27% once taxable profits have exceeded GBP 67,667). In addition a marginal rate of tax is charged on profits between GBP 35,000 and GBP 67,667. Currently the Corporate Tax Rate is 27% however the Government have announced that it is their intention to reduce the rate to a low rate of around 10% no later than 2011 and possibly earlier. There is no capital gains tax and there is no tax on certain types of qualifying dividends and investment income. Tax exempt companies currently enjoy a rate of 0% but can no longer be incorporated and will be phased out by December 2010.
Greece	25% In 2014 the income tax rate will fall to 20%, gradually decreased by 1% each year starting from 2010 onwards .		25% In 2014 the income tax rate will fall to 20%, gradually decreased by 1% each year starting from 2010 onwards.
Guernsey	0% There is no taxes payable in Guernsey on fund returns and any distributions to non residents.		0%. Hedge fund managers operating from Guernsey can achieve a 0% tax rate.
Hong Kong	Tax exempt or 16.5%		16.5%
Ireland	Tax-exempt assuming declarations are in place for all non-resident investors.		12.5% on trading profits; 25% on non-trading income.
Isle of Man	0%		Taxed at 0%.
Italy	12.5% / 0% (only foreign qualified investors).		27.5% (corporate income tax) and 3.9% / 4.82% (regional tax on productive activities).
Japan	0% / 30% / 42% depending upon the income and whether or not the Fund has a PE in Japan.		A Japanese resident corporate fund manager, and non-resident corporate fund managers deemed to have a PE in Japan, would be subject to corporate income tax at an effective rate of 42%.
Jersey	0%		20%, falling to 0% from 2009.

Country	Single-strategy fund	Funds-of-hedge funds	Hedge fund manager
Korea	The Korean government has recently issued a "roadmap for introduction of hedge funds into Korea" under which a "Korean hedge fund" will be introduced in phases from late 2009. **Taxation of a Korean hedge fund** Where a hedge fund is formed as a privately placed investment trust, the fund itself is not a taxable entity and the distribution of profits from the fund is taxed as dividends in the hands of the investors. An interim withholding tax is deducted at the rate of 14% and 15.4% for resident individual and company, respectively, at the time of distribution of profits. A final withholding tax of 22% applies to a non resident recipient of the distribution of profits subject to a treaty rate. Where a hedge fund is formed as a corporate type private equity fund, the fund is subject to corporate income tax at the headline rate of 24.2% (22% from 2010) in respect of the underlying income and gain. However, the fund may elect to be taxed in accordance with the new partnership taxation regime (introduced in 2009). Under the partnership taxation regime, the fund itself is not liable to pay tax and the investors are subject to tax on their share of the underlying income and gain. For an "active" investor, underlying character of income and gain flow through the fund to the investors and they are subject to corporate income or individual income tax at normal tax rates (individual tax rates are 6.6% to 38.5% (36.5% from 2010)). For a "passive" investor, their share of underlying income and gain is taxed as dividends and subject to the above-mentioned withholding taxes. **Taxation of a foreign hedge fund** The income and gain derived by a resident company/individual from investment into foreign hedge fund is subject to the corporate/individual income tax at the above-mentioned rates and the foreign tax credit is available.		Management fees derived by a Korean corporate hedge fund manager are subject to corporate income tax at 24.2% (22% from 2010).
Luxembourg	Tax-exempt, but registration duty of EUR 75 and annual subscription tax of 0.01% (for Specialized Investment Funds or sub-funds, the shares of which are dedicated to institutional investors) or 0.05% on funds NAV. For fund of hedge funds, no subscription tax is levied in respect of Luxembourg-domiciled underlying funds. An exemption can also be granted for funds, the securities of which are reserved for institutions for occupational retirement provision. Similar investment vehicles set up on one or several employers' initiative for the benefit of their employees and companies of one or several employers investing the funds they own, in order to provide their employees with retirement benefits.		Profits taxed under normal corporate tax regime at 28.59% as from 1 January 2009 plus annual 0.5% Net Wealth Tax (computed on the basis of the unitary value of the company). Capital duty was abolished as from 1 January 2009. However, a fixed registration duty of EUR 75 is levied upon incorporation, amendments to the articles of incorporation and transfer of seat to Luxembourg. The management company of a sole FCP could benefit from an exemption from income tax and net wealth tax.
Malta	Maltese licensed hedge funds would typically have more than 15% of their investments situated overseas. Such funds are not taxed in Malta on their income or capital gains. Separate rules apply for funds having at least 85% of their investments situated in Malta.		Fund managers managing non-resident funds and / or local funds are subject to tax at the normal corporate rate of 35% (although effective tax leakage upon distributions to non-resident shareholders could be minimal due to local imputation system which would result in a refund of most of the tax paid on distributed profits).

Country	Single-strategy fund	Funds-of-hedge funds	Hedge fund manager
Mauritius	Hedge funds located in Mauritius are generally structured as a GBL1 and are normally entitled to treaty benefits. A GBL1 is subject to tax at a rate of 15%. A foreign tax credit ("FTC") would, however, be available to set off against the Mauritius tax levied on the foreign source income. The FTC would be the higher of the actual foreign tax paid or 80% of the Mauritius tax charged with respect to that income. Therefore, the maximum tax rate which applies to foreign source income is 3%, and, where it can be shown that the actual foreign tax paid is 15% or more, no Mauritius tax will arise. There is no capital gains tax in Mauritius.		Fund managers (managing non-resident funds and local funds) are subject to tax at the rate of 15% but they are entitled to an FTC amounting to the higher of the actual foreign tax paid or 80% of the Mauritius tax charged with respect to the management fees. Therefore, the maximum tax rate which applies to the management fee is 3%.
Netherlands	Dutch funds are either transparent or subject to a special tax regime (0% corporate income tax and profits distributions are subject to 15% dividend withholding tax). As per October 2007 a new special regime came into force for investment funds. This regime provides for a full exemption from Corporate income tax, capital gains tax and dividend withholding tax.		Profits are taxed at the normal corporate tax rates (20% for income up to EUR 200,000 and 25.5% for income in excess of EUR 200,000; 2009 rates).
Norway	N/A		Subject to corporate income tax at the rate of 28%.
Portugal	Domestic hedge funds that qualify as mutual funds are subject to taxation at rates that vary from 10% to 25% depending on type of income received by the fund.	Domestic hedge funds that qualify as mutual funds are exempt on distributions or redemption from underlying funds. Other income is subject to taxation at rates that vary from 10% to 25% depending on type of income received by the fund.	Taxed at normal corporate rate of 25% plus 1.5% (maximum) municipal surcharge on taxable income.
Singapore	0% or 18% (17% subject to legislative change).		10% or 18% (17% subject to legislative change).
South Africa	Fund is tax transparent.		Corporate managers taxed at 28%.
Spain	Corporate Tax on net profits at a 1% rate (for CII incorporated under Law 35/2003 – Real Estate funds have to comply with additional tax rules).		Corporate Tax on net profits at 30% rate in 2008.
Sweden	Realised income taxed with the exception of capital gains on shares and share-based derivatives. Profit distributions to shareholders are deductible. Any excess income is taxed at 30%.		Taxed at 28% on an accrued income/loss basis.
Switzerland	Can be either tax transparent or opaque depending on various conditions. Typically however the funds would tend to be tax transparent. Swiss structures: If opaque, taxed as a corporate (preferential tax regimes available if specific conditions are met) and if transparent, no tax at fund level. Foreign structures with Swiss manager / advisor: Analogue treatment as equivalent Swiss investment schemes (conditions to be fulfilled); conditions to be taken care of in order not to qualify as Swiss collective investment scheme.		Taxation of management company: 13–25% taxed on income depending on the canton in which the Hedge Fund Management Company is domiciled Taxation of manager/principal: - As employee / recipient of dividends by the management company: Salary taxed at 20% to 40% depending on the canton of residence, income from dividends taxed at 9% to 25% depending on the canton of residence. - Performance fee/carried interest generally may be treated as tax free capital gain if fund and participation in the fund is structured properly.
Taiwan	Fund is tax transparent.		Subject to corporate income tax at the rate of 25%.

Country	Single-strategy fund	Funds-of-hedge funds	Hedge fund manager
Turkey	**Taxation of Turkish hedge funds ("FIFs")** There is no clear and specific regulatory guidance. However, it is widely accepted in practice that analogous to other types of investment funds, effective rate of taxation at the FIF level is 0%. **Taxation of Foreign Hedge Funds** Generally, the taxation of portfolio investment income (e.g. capital gains, interest and dividends) derived in Turkey by foreign hedge funds changes depending on various factors, such as the residence status of the fund, the legal status of the hedge fund in its country of domicile, whether or not the foreign hedge fund has a permanent establishment (fixed place of business or a representative) in Turkey, type of income, the type of assets and the specifications of the assets (e.g. for securities, the issuance date, date of acquisition, type etc.). Moreover, Turkish sourcing rules which determine when an income of a non-resident is subject to Turkish taxation rules, set out different standards for various sources of income (e.g. income from real property, securities, etc.). Please kindly note that as a recent development, a regime which is similar to investment manager exemption regime in the UK has been brought into the Turkish tax legislation. In the past there has been a risk that if the portfolio of the foreign fund is managed in Turkey, the fund could potentially be considered as Turkish investment fund and the worldwide income of the fund would be taxed in Turkey. Based on a temporary article (Temp. Art. 3) was added to the Corporate Tax Law with the Law no. 5838, foreign investment funds or hedge funds whose establishers and unit holders are non-residents and that are managed by portfolio management companies established in Turkey under the license extended by the Turkish Capital Markets Board ("CMB") will not be treated as Turkish resident companies for Turkish tax purposes, yet their Turkish managers will create a permanent establishment ("PE") for such funds as they are considered to be the permanent representatives of such funds. The consequence of this amendment would be that, such foreign funds will not be regarded as a Turkish fund, rather they will be deemed to be a non-resident having a PE, through appointing a permanent representative, in Turkey. Therefore, in principle such funds should not be taxed in Turkey on their worldwide income. Rather, they should only be taxable over their Turkish-sourced income which is currently subject to 0% withholding tax in Turkey for most portfolio income (e.g., listed equities acquired after 01.01.2006 and t-bills and government bonds issued after 1 January 2006).		Turkish resident fund manager is subject to ordinary corporate income taxation at the rate of 20%. In addition, certain transactional taxes may apply as a result of the operational activities (such as Banking and Insurance Transactions Tax ("BITT") at the rate of 5% over management income).
United Kingdom	Funds organised as OEICs/AUTs taxed on income at 20% with capital gains exempt from tax. Unauthorised unit trusts are taxed at 20%.		Corporate managers taxed at 28%. Fund managers organised as Limited Liability Partnerships and Limited Partnerships are tax transparent. Income tax at Partner's marginal tax rate currently at rates up to 40% (plus self-employed NI). The Budget 2009 introduced proposals to tax earnings over GBP 150,000 at 50% (plus self-employed NI).

Country	Single-strategy fund	Funds-of-hedge funds	Hedge fund manager
USA	Hedge funds marketed to US investors are commonly structured through a parallel or master-feeder structure. Under a parallel structure, a separate fund in the form of an offshore (e.g. Cayman or B.V.I corporation) is set up for US tax-exempt investors such as pension funds and not-for-profit entities and a US limited partnership ("LP") or a US limited liability company ("LLC") fund is set up for US taxable investors, such as US individuals and corporations. Under the master-feeder structure the two funds invest in an offshore corporate vehicle (the "master fund") which holds the investments and makes an election to be treated as a partnership for US tax purposes. While the parallel structure normally allows for more flexibility with respect to structuring of the investments, a master-feeder structure can reduce administration costs as all the investments are held through a single vehicle.		Fund managers in the US are commonly organised as an LP or LLC which are tax transparent. Income tax at the Partner's marginal tax rate paid by partners.

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Contacts

PricewaterhouseCoopers' Asset Management industry group

Our Asset Management industry group comprises a team of industry specialists who advise alternative investment managers in all aspects of the development of their businesses.

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

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