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France

Alternative Investment Funds

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This country-specific Q&A provides an overview of alternative investment funds laws and regulations applicable in France.

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France: Alternative Investment Funds

1. What are the principal legal structures used for Alternative Investment Funds?

The French Monetary and Financial Code (the "**MFC**"), among other legislation and regulations, governs the creation and functioning of French alternative investment funds ("**AIFs**").

In France, there are two categories of AIFs:

- AIFs "*de facto*" (*Autres FIA*), i.e. any entities which meets the definition of AIF in EU Directive 2011/61/UE on alternative investment funds managers (the "**AIFMD**"), whatever their legal form, but which are not AIFs *de jure*; and
- AIFs *de jure*, i.e. any French AIF which is specifically governed and listed by the MFC.

AIFs *de jure* listed in and governed by the MFC are the following:

- French AIFs opened to both retail and professional investors:
  - generic investment funds (*fonds d'investissement à vocation générale* – "**FIVG**");
  - private equity investment funds (*fonds de capital investissement* – "**FCPR**", "**FCPI**" or "**FIP**");
  - real estate investment funds (*organismes de placement collectif immobilier* – "**OPCI**");
  - real estate investment civil companies (*sociétés civiles de placement immobilier* – "**SCPI**");
  - forest savings companies (*sociétés d'épargne forestière* – "**SEF**");
  - closed-ended investment companies with fixed share capital (*sociétés d'investissement à capital fixe* – "**SICAF**"); and
  - alternative funds of funds (*fonds de fonds alternatifs* – "**FFA**").
- French AIFs opened to professional investors:
  - generic professional investment funds (*fonds professionnels à vocation générale* – "**FPVG**");
  - professional real estate investment funds (*organismes professionnels de placement collectif immobilier* – "**OPPCI**");
  - professional private equity investment funds (*fonds professionnels de capital investissement* – "**FPCI**");
  - professional specialised investment funds (*fonds professionnels spécialisés* – "**FPS**");
  - limited partnerships (*sociétés de libre partenariat* – "**SLP**") ; and
  - special limited partnerships (*sociétés de libre partenariat spéciale* – "**SLPS**").
- French employee savings funds (*fonds d'épargne salariale* – "**FCPE**" and "**SICAVAS**").
- French financing vehicles:
  - securitisation vehicles (*organismes de titrisation* – "**OT**"); and
  - specialised financing vehicles (*organismes de financement spécialisé* – "**OFS**").

AIFs *de jure* generally take the form of either a mutual fund (*fonds commun de placement* – "**FCP**") or an investment company with a variable capital (*société d'investissement à capital variable* – "**SICAV**").

The FCP is a co-ownership of assets and does not have any legal personality. Thus, an AIF in the form of FCP cannot be self-managed and must always be managed by an AIF manager (the "**AIFM**").

The SICAV is either in the form of a simplified limited company (*société par actions simplifiée* – "**SAS**") or a public limited company (*société anonyme* – "**SA**"). Therefore, a SICAV has a legal personality and can be self-managed or appoint an AIFM.

In addition, a professional specialised investment fund (*fonds professionnel spécialisé* – "**FPS**") may also be set up in the form of a limited partnership (SLP) or, since the entry into force of French Ordonnance No. 2024 662 of 3 July 2024, a special limited partnership (SLPS) with no legal personality.

AIFs *de facto* may take the form of any type of legal structure (corporate entities, *fiducies*, trusts, etc.).

2. Does a structure provide limited liability to the investors? If so, how is this achieved?

AIFs in the form of FCP are contractual structures (co-ownerships). The common rules of civil liability apply to the AIFM which would be held liable for any misconduct vis-a-vis investors in relation to the management of the AIF.

The MFC expressly provides for a limited liability for unitholders within an FCP. The liability of each unitholder

is thus limited to the amount of its own contribution within the FCP.

For AIF in the form of a company, the common rules of civil liability and criminal offences in relation to the management of French companies are applicable to its managing directors. In practice, such role is often undertaken by the AIFM.

As any shareholder within a French SA or SAS, SICAV shareholders' liability is also limited to the amount of their contribution within the SICAV.

3. Is there a market preference and/or most preferred structure? Does it depend on asset class or investment strategy?

There is in the French market of collective investment (in the form of AIF or undertakings for collective investments in transferable securities ("UCITS") (together, "UCIs")) a preference for the FCP.

For most UCIs, such market preference does not depend on asset class or investment strategy, but mostly on the flexibility given by the FCP structure. However, for investment in specific asset categories (e.g. real estate or private equity), the preference for respectively the corporate form and the co-ownership form depends on the specific tax regimes that apply to such structures.

Most UCIs that are dedicated to specific investors take generally the form of a corporate entity (e.g. SICAV, SLP, other types of companies), as it enables to implement some governance mechanisms in the benefit of investors.

4. Does the regulatory regime distinguish between open-ended and closed-ended Alternative Investment Funds (or otherwise differentiate between different types of funds or strategies (e.g. private equity vs. hedge)) and, if so, how?

The French regulatory regime distinguishes between AIFs *de jure* and AIFs *de facto* as explained above (see **1**).

As a matter of principle, most of the AIFs *de jure* are open-ended vehicles. There is only one AIF *de jure* which is purely closed-ended: the SICAF.

However, in practice, constitutive documents of AIFs whose purpose is to invest in illiquid assets (for instance real estate assets or private equity) often provide for limitation of redemption mechanisms (lock-up periods, gating, notice periods for redemption, etc.) in order to manage liquidity risks.

Moreover, as listed above (see **1**), AIFs *de jure* are categorised by type of targeted investors (retail investors or professional investors) and by main targeted asset categories (private equity, real estate assets, diversified assets, etc.).

5. Are there any limits on the manager's ability to restrict redemptions? What factors determine the degree of liquidity that a manager offers investor of an Alternative Investment Fund?

As a principle, in other open-ended AIFs, redemptions may be restricted by the AIFM only on a temporary basis, in exceptional circumstances and in the unitholders' or shareholders' interests. The governing documents of the AIF may also include gating mechanisms or lock-up periods. For AIFs qualified as European long term investment funds ("**ELTIF**") under EU Regulation No. 2015/760 of 29 April 2015 as modified by EU Regulation No. 2023/606 of 15 March 2023 ("**ELTIF 2 Regulation**") ("**ELTIF Regulation**"), redemptions may be limited under more flexible conditions specific to ELTIFs.

On the contrary, for closed-ended AIFs and AIFs eligible to professional investors, there are no limits on AIFM's ability to restrict transfers or redemptions.

The degree of liquidity is more constrained in case of illiquid assets such as real estate assets or securities of unlisted companies.

6. What are potential tools that a manager may use to manage illiquidity risks regarding the portfolio of its Alternative Investment Fund?

The liquidity of the AIF's assets can vary over time and could affect the cost or the time needed to liquidate position held on specific assets. Serious liquidity crises in a given market segment can hinder liquidation. Thus, AIFMs set up risk management tools to protect the shareholders' or unitholders' interests. They may use the following mechanisms:

- swing pricing: increasing or decreasing directly the net asset value in order to reduce the portfolio restructuring cost related to subscriptions and redemptions;
- anti-dilution levies: adjustment made to the redemption fee amount;
- notice periods: notice periods imposed on investors

wishing to redeem their shares;
- redemption gates: temporarily spreading out redemption requests over several net asset values if they exceed a pre-defined cap;
- in-kind redemptions: disposing of a portion of the overall portfolio to redeeming investors;
- side pockets: split of the AIF with segregation of the illiquid or distressed assets intended to be liquidated;
- temporary suspension of redemptions: suspension in order to maintain fair treatment in difficult market situations.

7. Are there any restrictions on transfers of investors' interests?

As a matter of principle, open-ended AIFs must not be subject to any restrictions on transfers of shares while in closed-ended AIFs and AIFs eligible to professional investors, transfers may be restricted, provided that it is provided for in the AIF's rules or articles of incorporation.

Moreover, any transferee in an AIF opened to professional investors must correspond to eligible investors in that type of AIF (e.g. be categorised as professional investor or invest more than EUR100,000 in that AIF, etc. See question **30** below).

8. Are there any other limitations on a manager's ability to manage its funds (e.g., diversification requirements)?

The AIFM must comply with specific regulatory ratios and diversification constraints (risk spreading ratios, control ratios, etc.) applicable to certain AIFs *de jure*. For example, FIVG and OPCIs are subject to strict rules regarding diversification ratios and asset stripping.

Nevertheless, specific AIFs opened to professional investors are not subject to any restriction in terms of diversification, asset stripping or control. This is the case for:

- professional specialised investment funds (FPS);
- specialised financing vehicles (OFS);
- limited partnerships (SLP); and
- special limited partnership (SLPS).

In addition, for AIFs *de jure*, several types of investment strategies or financial operations may be subject to strict limitations provided for in the MFC: cash borrowings, financial derivatives, use of guarantees, short selling, granting of loans, etc.

AIFs *de facto* are not subject to specific ratios or investment requirements provided for in the MFC.

9. What is the local tax treatment of (a) resident, (b) non-resident, and (c) pension fund investors (or any other common investor type) in Alternative Investment Funds? Does the tax treatment of the target investment dictate the structure of the Alternative Investment Fund?

As a general rule, tax treatment applicable to AIFs' investors depends on their tax residence (*i.e.* French tax resident or non-resident investors) and on the legal form of the fund in which they invest (*i.e.* corporations or mutual funds).

1. Tax treatment applicable to French tax residents

Tax treatment differs depending on whether the investor is an individual or an entity subject to corporate income tax ("**CIT**").

a) Individual investors

Whether they invest in AIFs taking the form of corporations (*e.g.* SICAVs, SCRs, SPPICAVs) or mutual funds (*e.g.* FCPs, SLPs), individual investors are subject to income tax on the distributions paid by such funds. Consequently, when profits carried out by AIFs are not distributed to their investors, no taxation occurs at the level of the investors (such profits are capitalized at the level of the fund increasing the liquidating value of the fund's shares/units) (see paragraph 1-b) "Corporate investors and other entities that are liable to CIT" below). Please note that for FCPs, said non taxation of the non-distributed profits carried out by the fund is subject to the condition that no individual investor holds more than 10% of the fund's units.

When they invest in funds existing as corporations, individual investors are treated as if they had directly derived the profits carried out by the fund and distributed to them (*i.e.* distributed capital gains are treated as capital gains and redistributed dividends are treated as dividends for tax purposes). As a result, distributions of capital gains realised by the fund and distributions of dividends perceived by the fund are both subject to a "flat tax" regime at the rate of 30% (12.8% income tax + 17.2% of social levies).

When they invest in funds existing as mutual funds, individual investors are deemed to directly derive the profits realised by such fund to the extent that these funds benefit from a tax transparency regime. Individual investors of funds existing as mutual funds generally

enjoy a tax regime which is very close to the one that applies to individual investors in funds taking the form of corporations. As a result, when they are paid to individual investors, distributions of capital gains realised by the fund and distributions of dividends perceived by the fund are both subject to the "flat tax" regime mentioned above.

Notwithstanding the above, individual investors may enjoy an income tax exemption regime (which does not apply to social security levies) in respect of dividends and gains derived from units or shares they hold in FCPRs, FPCIs, SCRs and SLPs, provided that the following conditions are met:

i. investors commit to retain their shares/units for at least five years and to reinvest in the fund the sums distributed during such a period;
ii. investors (alone or with their spouse and their relatives in the ascending and descending line) do hold not directly or indirectly more than 25% of the share capital of the companies in which the fund has invested; and
iii. the fund must invest at least 50% of its subscriptions in securities from non-listed companies established in France and/or in a EU Member State, which carry out a commercial activity and which are subject to CIT in France under standard rules (or which would be subject under the same conditions if the company was located in France).

b) Corporate investors and other entities that are liable to CIT

According to a so-called "mark-to-market" rule, entities (public or private) that are subject to French CIT (in full or in part) and that hold units in certain funds are generally subject to standard CIT rates in respect of any change in the liquidation value of the shares/units they hold in the fund. This rule applies to all funds whatever their legal form (*i.e.* mutual fund or corporation) and their location (i.e. funds located in France or outside), except to certain FCPRs and to SCRs, SLPs, SPPICAVs, FPIs and certain SICAVs and FCPs investing at least 90% of their assets in shares (known as "*fonds actions*").

As a result, and subject to the above-mentioned exceptions, entities that are subject to French CIT that hold units or shares in AIFs are generally subject to CIT at the rate of 25.83% in case of any increase (at the closing of the financial year) of the liquidation value of the share they hold in the fund.

In any case, profits and capital gains realised by AIFs that are distributed to their investors are subject to taxation at standard CIT rates (net of any mark-to-market taxation).

Note that investors may benefit from the French participation-exemption regime as regards capital gains distributed by SLPs, SCRs and FCPRs which invest at least 50% of their subscriptions in securities from certain non-listed companies established in France and/or in an EU Member State (such companies must carry out a commercial activity and be subject to CIT under standard rules).

c) Sovereign wealth funds

France does not grant a tax immunity to sovereign wealth funds. Such public bodies may only benefit from a specific tax treatment to the extent that they qualify as "not for profit organizations". In such a case, they are not subject to the above-mentioned mark-to-market rule. Capital gains they realize are not subject to taxation and dividends they receive (including via an AIF) may benefit from a 15% taxation rate.

When they do not qualify as such, they are subject to CIT under standard conditions.

2. Tax treatment applicable to non-French tax residents

A distinction should be made between distributions paid by AIFs to their investors and capital gains made by investors upon the disposal of AIFs' units or shares.

a) Taxation of income received by the fund and distributed to the investors

Alike residents, non-residents investors holding units or shares in AIFs are treated as if they had directly derived profits carried out by the fund (when the fund takes the form of a corporation) or are deemed to directly derive the profits of the fund (when the fund takes the form of a mutual fund). As a result, non-resident investors (*i.e.* individuals, companies and any other type of entity) are generally subject in France to a withholding tax ("**WHT**") on distributions paid by AIFs according to the rules applicable to each corresponding category of income they received.

Accordingly, distributions reflecting dividends received by AIFs from French companies are generally subject to a 12.8% WHT when they are distributed to individual investors, to a 15% WHT when they are distributed to entities that qualify as "not for profit organizations" and to a 25% WHT when they are distributed to corporate investors or to other entities that are liable to CIT (to be applicable, such income must not be distributed in a State or a country qualified as a non-cooperative State or

country). However, note that subject to certain conditions, such WHT can be reduced or removed under certain double tax treaties or when they are paid to non-French AIFs.

Distributions reflecting capital gains realised by AIFs upon the disposal of shares of a company located in France are generally not subject to taxation in France provided that the investor, his/her spouse and their relatives in the ascending and descending line (when the investor is an individual), do not hold, directly or indirectly, at any time during the five years period prior to the distribution, more than 25% of the rights in the underlying company (known as the "substantial participation regime"). Such rule does not hold true for distributions of capital gains realised by FPIs or by SPPICAVs (which are subject to WHT in France).

Distributions reflecting interest income received by AIFs from French companies are generally not subject to tax in France.

b) Taxation of capital gains made upon the disposal of the AIFs' units or shares

Subject to the exceptions below regarding SPPICAVs/FPIs and to specific exceptions, no taxation generally applies in France in respect of capital gains derived from the disposal of the AIFs' units or shares, provided that the investor, his/her spouse and their relatives in the ascending and descending line (when the investor is an individual), do not hold, directly or indirectly, at any time during the five years period prior to the disposal, more than 25% of the rights in one of the French companies of its portfolio (or in the fund). French regulations do not make a distinction between pension fund investors and other investors.

Notwithstanding the above, capital gains derived by non-residents from the disposal of shares held (i) in SPPICAVs in which they hold directly or indirectly 10% or more of the shares and (ii) in FPIs are generally taxable in France (subject to double tax treaties):

- at a rate of 19% for individual investors (and social contributions), or
- at a rate of 25% for other investors.

3. Impact of the target investment on the structure of the fund

When AIFs are dedicated to investing in real estate assets, they can take either the form of a corporation (*i.e.* SPPICAV) or the form of a mutual fund (*i.e.* FPI). In that case, the nature of assets in which AIFs invest have an impact on the structure of the fund and consequently on the tax regime applicable to their investors (see question 2-a) "Taxation of income received by the fund and distributed to non-resident investors").

10. What rights do investors typically have and what restrictions are investors typically subject to with respect to the management or operations of the Alternative Investment Fund?

In the first place, investors have a right to information prior to their investment. They must be provided with detailed information on the AIF's characteristics in particular through the governing documents and through the key information document ("**KID**") (if applicable) which has replaced the key investor information document ("**KIID**") since 1 January 2023. From this date, any AIF opened to non-professional clients is required to prepare and publish a KID (in accordance with EU Regulation No.1286/2014 on the key information documents for packaged retail and insurance-based investment products ("**PRIIPs Regulation**")). Such information relates to the AIF's investment strategy, the AIF's risk profile, the use of leverage, the service providers involved in the AIF's functioning (AIFM, custodian, statutory auditor, etc.) the AIF's valuation procedure, the measures taken to manage the AIF's liquidity, the incurred costs over time and estimated performance scenarios, etc. The KID must be updated at least once a year.

The investors also have a right to periodic information, i.e. the right to be informed of the AIF's performance and any events occurred during the relevant period. This duty is performed by the AIFM by the delivery of an annual report (and a semi-annual report or quarterly report for certain AIFs *de jure*) and a semi-annual or quarterly asset composition.

Furthermore, investors may obtain from the AIFM specific information on the AIFM internal policies: policy on complaints handling, voting policy, internal remuneration policy, policy on execution of orders and the way environmental, social and governance criteria are taken into account (in compliance with the requirements provided for in the EU sustainable finance disclosure Regulation No. 2019/2088 ("**SFDR**").

Moreover, as shareholders or unitholders, investors have a right to a portion of the AIF's earnings.

For AIFs in the form of a SICAV, investors have the right to vote in collective decisions pursuant to the articles of incorporation.

Finally, in some AIFs opened to professional investors, internal committees can be set up. The purpose of these committees is to give specific powers to the main investors within the AIF such as information rights, advisory rights (for instance on projects of investments or divestments), etc., it being specified that the principle of independence in the management granted to the AIFM must always prevail. For that reason, such investors committees are not authorised to give instructions to the AIFM regarding investment decisions and the AIFM, as a matter of principle, is not bound by the committee's decisions.

Regarding the restrictions to which investors are subject concerning the management or the operations of the AIF, the management of an AIF is subject to the principle of discretionary management. The AIFM must then remain independent while managing any AIF. Accordingly, investors in an AIF must not be able to interfere in investment or disinvestment decisions that must be taken exclusively by the AIFM.

11. Where customization of Alternative Investment Funds is required by investors, what types of legal structures are most commonly used?

In principle, two types of legal structures are commonly used for AIFs *de jure*: FCPs and SICAVs (see **1**).

The MFC enables AIFs to be dedicated to one or more investors or to a specific category of investors as defined in their legal documentation. Investors in a dedicated AIF might ask for customization of that AIF.

In that case, the choice of the legal structure used for a dedicated AIF could depend on (i) the investment strategy and (ii) the potential favorable tax regimes that investors might benefit.

For instance, for real estate investment funds, corporate forms are most commonly used (*i.e.* SPPICAVs). For private equity funds, co-ownership forms are most commonly used (*i.e.* FCP).

12. Are managers or advisers to Alternative Investment Funds required to be licensed, authorised or regulated by a regulatory body?

Regarding AIF managers:

Any AIFM must be authorised and regulated by its competent regulatory body in order to manage AIFs. The competent regulatory body depends on the location of the AIFM. If located in France, managers need to be authorised and regulated by the AMF as portfolio management companies entitled to manage AIFs.

If located in another member State of the European Union ("**EU**"), the local regulator must have authorised the AIFM as such ("**EU AIFM**") and the EU AIFM must have been passported pursuant to the AIFMD in order to be authorised to manage AIFs in France on a cross-border basis. The passport regime enables the EU AIFMs to operate throughout the EU or in another country party to the agreement on the European Economic Area ("**EEA**"), under the EU regime of freedom to provide services. The passporting notification procedure is harmonised at EU level and is detailed by Commission Implementing Regulation (EU) 2024/913 of 15 December 2023 and, in France, by AMF instruction No. 2008-03.If located in a third country, any portfolio management company which aims to manage French AIFs ("**Third Country AIFM**") needs a specific approval from the AMF and has to comply with all requirements set out in the MFC, the general regulations of the AMF ("**AMF General Regulations**") and the relevant AMF instructions, positions and guidelines.

By way of exemption, managers of AIFs *de facto* do not need a specific authorisation if:

- the total value of assets under management is below the thresholds provided for in the AIFMD (EUR100 million or EUR500 million under the conditions provided for in article R. 532-12-1 of the MFC (i.e. depending of the leverage level)); and
- the investors in the relevant AIFs are all professional clients.

However, such managers must be registered with the AMF (as well as AIFs *de facto*) and may not benefit from the AIFMD provisions (such as the passport regime), unless they are fully authorised to manage AIFs pursuant to the AIFMD.

Regarding AIF advisers:

In France, AIF advisers are professionals which provide investment advice to an AIFM and/or AIF. Investment advice is an investment service within the meaning of EU Directive 2014/65/EU on markets in financial instruments ("**MiFID**"). Advisers must therefore be authorised to provide such investment service, as either:

- investment services providers other than portfolio management companies, authorised and regulated in France by the French banking regulator (the "**ACPR**")

and the AMF, to provide investment advice in France;
- portfolio management companies authorised and regulated by the AMF to provide investment advice in France, subject that such activity is carried out on an ancillary basis;
- French financial investments advisers (*conseiller en investissements financiers* – "**CIF**") duly registered in the ORIAS register and affiliated with one of the professional associations authorised by the AMF. CIFs are regulated by the AMF; or
- if located outside France but in another Member State of the EU, (i) investment services providers which followed the passporting notification procedure pursuant to the MiFID or (ii) UCITS managers or AIF managers authorised to provide investment advice and which followed the passporting notification procedure pursuant to either the EU Directive 2009/65/EC ("**UCITS Directive**") or the AIFMD, duly authorised by the relevant local regulatory body.

13. Are Alternative Investment Funds themselves required to be licensed, authorised or regulated by a regulatory body?

As specified in question **1**, the MFC distinguishes between:

- AIFs *de jure* opened to both retail and professional investors which must be authorised and are regulated by the AMF;
- AIFs *de jure* opened to professional investors are regulated by the AMF. Their setting-up does not need an AMF authorisation but is subject to a notification to the AMF, except for the FPVG and the OPPCI which both need to be authorised by the AMF. "Notified" AIFs *de jure* are FPCI, FPS and SLP;
- French financing vehicles (OFS and OT) which must be notified to the AMF and are regulated by the AMF; and
- AIFs *de facto*, which are not authorised by the AMF or "notified" to the AMF. However, they are subject to specific information requirements with the AMF and their creation has to be recorded within the AMF's database (ROSA).

14. Does the Alternative Investment Fund require a manager or advisor to be domiciled in the same jurisdiction as the Alternative Investment Fund itself?

The AIFMD allows AIFMs located in an EU Member States to access the EU market, pursuant to the passporting procedure.

The passporting procedure allows any AIFM authorised by its home country regulator throughout the EU or in a State party to the EEA agreement to manage French AIF.

However, if the AIFM is located in a third country, it is obliged to apply for specific authorisation from the AMF in order to manage French AIFs.

In this case, it must comply with strict requirements as defined in the CMF, the AMF General Regulations, and the relevant AMF instructions, including, inter alia:

- Compliance with all provisions applicable to French AIFMs;
- The appointment of a legal representative in France;
- The existence of a bilateral or multilateral tax treaty between its home country and France;
- The existence of an appropriate cooperation agreement between its local regulator and the AMF.

Consequently, it is not mandatory to have a local AIFM to manage a French AIF.

15. Are there local residence or other local qualification or substance requirements for the Alternative Investment Fund and/or the manager and/or the advisor to the fund?

Any French AIFM is supposed to have the necessary financial, technical, and human resources with respect to the nature of its business and the investment services it provides.

For this purpose, the French AIFMs must in particular:

- be authorised by the AMF in order to manage AIFs;
- have two directors, one of them present on a full-time basis, the other can be present on a partial time basis (at least 20% of its working time);
- establish its registered office in France;
- have a minimum initial capital of EUR125,000;
- appoint a person responsible for compliance and internal control function;
- comply with good conduct rules in order to act in the sole interest of the AIF's shareholders or unitholders;
- have put in place an internal system to prevent, detect and manage potential conflicts of interests;
- have implemented internal policies, procedures and controls on anti-money laundering and countering the financing of terrorism ("**AML/CFT**");
- comply with own funds requirements which derive from the EU legislation.

In addition, when investment decisions are taken

collectively by a decision-making body (such as an investment committee or management committee), more than half of the financial managers involved in investment decisions must be resident or physically present in France or in a branch of the portfolio management company established in another Member State of the European Union or party to the agreement on the EEA.

As provided for in the AIFMD, the AIFM must not be considered as a letter-box entity and, therefore, must have sufficient substance. Therefore, an AIFM may not delegate or outsource the entire management of the collective investments (and mandates) for which it is responsible.

These requirements apply to portfolio management companies and self-managed vehicles.

16. What service providers are required by applicable law and regulation?

Any AIF is required by French law to appoint, at least, the following service providers:

- a custodian responsible for safeguarding the assets of the AIF and ensuring the compliance of management decisions; and
- a statutory auditor, responsible for certifying the accounts of the AIF.

For AIFs specialised in specific investment fields, additional service providers have to be appointed, such as:

- for real estate investment funds (OPCI or OPPCI): one or two external valuers for real estate assets; and
- for AIFs which are authorised to grant loans (FPS, FPCI and OFS), the AIFM may appoint an external service provider responsible for the recovery of the acquired assets. In that case, the AIFM must also put in place a specific credit risk analysis system and have dedicated staff members with sufficient experience in those matters.

17. Are local resident directors / trustees required?

For EU AIFMs authorised pursuant to AIFMD benefiting from the regime of freedom to provide services, there is no need for local resident directors or trustees.

Third Country AIFMs which do not benefit from the AIFMD passporting regime must appoint a legal representative in France acting as a local contact point. The legal representative in France ensures the compliance of the management with French laws and regulations. It is provided with the necessary resources for performing its duties.

18. What rules apply to foreign managers or advisers wishing to manage, advise, or otherwise operate funds domiciled in your jurisdiction?

Local regulatory requirements apply to foreign managers wishing to manage French AIFs. They differ according to their status: EU AIFM or Third Country AIFM.

EU AIFMs are submitted to the supervision of the competent authority of their home member State and must comply with French good conduct rules, especially rules on marketing, information and financial solicitation to investors.

In the absence of passporting route for non-EU AIFM, Third Country AIFMs need to comply with additional rules. First, the Third Country AIFM's home country must not appear in the list of countries at risk as published by the Financial Action Task Force (**"FATF"**) and the home country must have entered into a bilateral or multilateral tax agreement with France. Second, the Third Country AIFM must be authorised by the AMF to manage French AIFs, which implies to comply with all provisions applicable to French AIFs.

Regulatory regime that applies to foreign advisers wishing to provide French AIFs with investment advice is explained above (see **12**).

19. What are common enforcement risks that managers face with respect to the management of their Alternative Investment Funds?

Any breach of regulatory requirements is likely to be sanctioned by the AMF's Sanctions Committee, which has the power to sanction AIFMs for any breach of their professional obligations defined by EU regulations, French laws and professional rules approved by the AMF.

20. What is the typical level of management fee paid? Does it vary by asset type?

The AIFM's remuneration is made up of a management fee and, as the case may be, a portion of subscriptions and redemption fee and performance fees. The management fee is generally represented by a percentage

of the assets under management.

In practice, the level of management fees depends on asset types and investment strategies (i.e. venture capital, development, leverage buyout, distressed investments, funds of funds, etc.), the type of AIF managed (private equity funds, real estate investment funds, generic investment funds, etc.), the ability to raise funds and whether or not the market is liquid.

21. Is a performance fee typical? If so, does it commonly include a "high water mark", "hurdle", "water-fall" or other condition? If so, please explain.

The AIFM may also perceive a performance fee linked to the outperformance of the managed portfolio. This mechanism has to be expressly provided for in the fund's legal documentation, consistent with the management objective, and not leading to take excessive risks for the AIF. The outperformance fee is then quite common.

If the AIFM allocates an outperformance fee of more than 30%, it must provide a technical note to the AMF detailing the mechanism. When the fee is less than 30%, the technical note is only made available to the AMF upon specific request.

Besides the outperformance fee, the AIF's documentation, in particular for private equity funds, may provide for carried interest mechanisms. These are constituted of specific shares or units issued by the AIF for the exclusive benefit of the management team, the portfolio management company itself or the sponsors. Such shares give entitlement to a certain percentage of the capital gains made by the fund, according to a water-fall distribution mechanism which defines the order in which distributions are allocated between common investors and carried interest shares holders.

It is also typical that such carried interest arrangements include high water mark, hurdle and preferred returns. Pursuant to the AMF's recommendations, the payment of carried interest is subject to a minimum positive return on ordinary investor's shares or units, that is to say, the hurdle rate. A high water mark mechanism can also be included: if the AIF suffers losses over a period of time, the AIFM must get the AIF's performance above the high water mark threshold before being entitled to receive an outperformance fee from the carried interest arrangement.

22. Are fee discounts / fee rebates or other economic benefits for initial investors typical in raising assets for new fund launches?

Except for the initial investors, the price of AIF's units or shares is established on the basis of their net asset value increased or decreased, as the case may be, by fees. However, some AIFs invested in illiquid assets (such as private equity funds or real estate funds) undergo structurally what is commonly called the "J-curve". In that circumstance, later investors would be privileged if they subscribe for shares of the AIF at the bottom of that curve.

Thus, to avoid an imbalance between the first subscribers and the subsequent subscribers, it is commonly provided a lower management fee level (i.e. fee discount) for initial investors and/or the payment of a subscription premium for the subsequent subscribers.

23. Are management fee "break-points" offered based on investment size?

The practice of "break-point" management fee is rather uncommon in France.

24. Are first loss programs used as a source of capital (i.e., a managed account into which the manager contributes approximately 10-20% of the account balance and the remainder is furnished by the investor)?

Such mechanisms are not common in the French investment management industry.

25. What is the typical terms of a seeding / acceleration program?

Such programs are not commonly used in the French investment management industry.

26. What industry trends have recently developed regarding management fees and incentive/performance fees or carried interest? In particular, are there industry norms between primary funds and secondary funds?

Recently, the French government issued decrees in order to cap the level of fees incurred by some French private equity funds (local investment funds (*fonds*

d'investissement de proximité – "**FIP**") and innovation-focused investment funds (*fonds communs de placement dans l'innovation* – "**FCPI**")). Investors in such funds benefit from tax reductions but the French *Cour des Comptes* noticed some abusive practices regarding the fees incurred by such AIFs.

Therefore, in order to mitigate such abusive practices, the fees incurred by FIPs and FCPIs were capped by Decree No. 2016-1794 of 21 December 2016.

The implementation of MiFID in France also impacted the fee policies of certain portfolio management companies and investment advisers. In particular, investment advisers which provide advice on an independent basis are no longer allowed to receive and retain inducements in relation to their advice from other persons than their clients (except minor non-monetary benefits which are capable of enhancing the quality of service provided to such clients). Such prohibition also applies to investment services providers which provide portfolio management services on behalf of third parties.

In 2021, the AMF published a position which implemented the ESMA guidelines on performance fees in UCITS and certain types of AIFs. AIFs marketed to retail investors, except for closed-ended AIFs, real estate investment funds and private equity investment funds, are covered by such guidelines. ESMA guidelines, published in November 2020, aim at (i) ensuring that performance fee models used by the portfolio management companies comply with the principles of acting honestly and fairly in conducting their business activities, in such a way as to prevent undue costs being charged to the fund and its investors and (ii) establishing a common standard in relation to the disclosure of performance fees to investors.

Therefore, for AIFs covered by the ESMA guidelines on performance fees, new requirements apply in terms of calculation method, consistency between the performance fee model and the fund's investment objectives, frequency for the crystallisation of the performance fee, negative performance recovery and disclosure of the performance fee model.

Regarding carried interest practices, these may have been impacted by the rules of AIFMD and guidelines on remuneration that apply to AIFMs.

Regarding primary and secondary funds, to our knowledge, there are no specific standards in France.

27. What restrictions are there on marketing Alternative Investment Funds?

Rules and restrictions on marketing AIF are provided for in the MFC, the AMF General Regulations and the relevant AMF instructions, positions and guidelines.

Marketing AIF is defined by the AMF as an "offering" or "placement" of units or shares of an AIF, presented by various means (advertising, direct marketing, advice, etc.) with a view to encouraging investors to subscribe to or purchase them. This definition adopted by the French regulator is wider than the one provided for in the AIFMD and the MFC.

Marketing AIFs in France without being authorised to do so is subject to criminal and disciplinary sanctions.

In order to market AIFs in France, the initiator must:

- use the AIFM passporting route in order to be able to market in France the relevant AIF to professional investors; or
- obtain the prior approval by the AMF for the marketing if the relevant AIF is marketed to retail investors and/or the AIF is located in a third country.

28. Is the concept of "pre-marketing" (or equivalent) recognised in your jurisdiction? If so, how has it been defined (by law and/or practice)?

Until the recent implementation of the EU Directive No. 2019/1160, the AMF position No. 2014 04 of the AMF already recognised the concept of "pre-marketing" which is not considered as an act of marketing in France and for that reason was not subject to any authorisation or notification process with the AMF.

The EU Directive No. 2019/1160 of 20 June 2019 amended the AIFMD and introduced conditions for pre-marketing EU AIFs in the EU; the conditions are broader than the initial French concept of "pre-marketing". Such directive was implemented in France by French Ordonnance No. 2021-1009 of 31 July 2021.

AMF Position No. 2014-04 was then updated in order to include the definition of "marketing" and include the "pre-marketing scenario".

Marketing is defined in Article L. 214-24-0 of the MFC as "a direct or indirect offer or placement, at the initiative or on behalf of a French portfolio management company, a management company established in a Member State of the EU or a manager established in a third country, of units or shares of an AIF that they manage, to investors

domiciled or having their registered office in France".

The concept of pre-marketing is defined by law in Article L. 214-24-2-1 of the MFC. Pre marketing consists of contacting professional clients in France or in another EU Member State. It is defined as the provision of information or the direct or indirect communication on investment strategies by an AIFM or on its behalf, to potential professional investors in order to test their interest in an AIF (or a sub-fund) which is not yet established or which is established but not yet notified for marketing in accordance with the AIFMD in the EU Member State where the potential investors are located and which in each case does not amount to an offer or placement to the potential investor to invest in the units or shares of that AIF (or sub-fund).

Any AIFM may engage in pre-marketing in France except where the information presented to potential professional investors:

- is sufficient to allow investors to subscribe or acquire units or shares of the relevant AIF;
- amounts to subscription forms or similar documents either in a draft or a final form; or
- amounts to constitutional documents, a prospectus or offering documents.

Note that the AMF decided to maintain a specific local regime on pre-marketing (i) of UCITS and (ii) vis à vis non-professional clients (provided that such potential investors would be able to invest more than EUR100,000). Such specific regime does not derive from the implementation in France of EU Directive No. 2019/1160.

29. Can Alternative Investment Funds be marketed to retail investors?

French AIFs can be marketed to retail investors subject to a prior approval from the AMF (see **27**, above). For EU AIFs, at this stage the passporting regime as set out by the AIFMD only applies for marketing AIFs to professional investors.

30. Does your jurisdiction have a particular form of Alternative Investment Fund be that can be marketed to retail investors (e.g. a Long-Term Investment Fund or Non-UCITS Retail Scheme)?

AIFs de facto or AIFs de jure opened to non-professional investors referred to in question 1 may be marketed to retail investors without specific conditions. AIFs de jure opened to professional investors referred to in question 1 may also be marketed to retail investors, provided that such investors can invest at least EUR100,000 in such AIFs or otherwise correspond to a specific category of eligible investors in that type of AIFs (as defined by French law and regulations).

In any case, marketing AIFs to retail investors is subject to a prior authorisation from the AMF.

Moreover, ELTIF Regulation is applicable in France. French AIFs which are authorised pursuant to ELTIF Regulation may be marketed to retail investors in the UE, under the conditions set out in the ELTIF Regulation. In this respect, new provisions aimed at simplifying marketing to retail investors have been adopted under ELTIF 2 Regulation and entered into force on 10 January 2024. Further, French Law No. 2023 973 of 23 October 2023 supplementing existing provisions now allows retail investors to invest in ELTIF through unit linked products through their life insurance contract without justifying of (i) a minimum invested amount (previously EUR10,000), or (ii) diversification requirements.

31. What are the minimum investor qualification requirements for an Alternative Investment Fund? Does this vary by asset class (e.g. hedge vs. private equity)?

The qualification requirements differ depending on the type of AIFs (as categorized by law). It does not specifically differ depending on asset class.

For AIFs *de jure* opened to retail investors, there is no legal requirement on investors qualification. For AIFs de *jure* opened to professional investors, any investor must be either:

- a professional investor within the meaning of the MiFID;
- any investor provided that the amount of its initial investment is at least equal to EUR100,000;
- any investor provided that the subscription or acquisition of shares or units is performed in its name and on its behalf by an investment services provider acting in the context of the service of portfolio management;
- as the case may be, any retail investors if the AIF benefits from the "ELTIF" label pursuant to the ELTIF Regulation; or
- for specific AIFs, any member of the management team, the management company, or (for FPCI, FPS and OFS) any person (a) who (i) assists the AIFM or the targeted companies; or (ii) has sufficient knowledge in private equity in its/his/her capacity of

investor in private equity and (b) whose initial investment is at least equal to EUR30,000.

32. Are there additional restrictions on marketing to government entities or similar investors (e.g. sovereign wealth funds) or pension funds or insurance company investors?

No, there are no restrictions.

33. Are there any restrictions on the use of intermediaries to assist in the fundraising process?

Assisting in the fundraising process may qualify as investment services within the meaning of the MiFID and therefore such intermediary should be authorised to provide the relevant investment services.

34. Is the use of "side letters" restricted?

No. However, if a side letter grants preferential rights to a specific investor or a group of investors (e.g. enhanced information rights, political rights, etc.), such rights may qualify as a preferential treatment to the benefit of such investor(s). Any preferential treatment granted to one or more investors must not result in an overall disadvantage to other investors and must be disclosed to other investors.

35. Are there any disclosure requirements with respect to side letters?

Pursuant to the AIFMD, information on preferential treatments granted by an AIFM to one or more investors must be disclosed in the relevant AIF's by-laws or articles of incorporation. Hence, rights and special treatments granted in side letters are disclosed to other investors. Investors must then be provided with a description of that preferential treatment, information on the type of investors who obtain such preferential treatment and, where relevant, their legal or economic links with the AIF or AIFM.

36. What are the most common side letter terms? What industry trends have recently developed regarding side letter terms?

Terms of side letters often depend on the type of investor to which they are granted.
Side letters may include the following rights:

- additional investment constraints or limits;
- specific information rights (e.g. additional reporting);
- political rights (e.g. right to attend to a specific committee, advisory rights for certain investment decisions, etc.);
- "most favoured nation" clause (which allows the beneficiary to benefit from all the rights granted to other previous investors in other side letters).

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