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# Guide to Investment Funds in the Netherlands



Circle Partners is a global fund administrator providing a comprehensive range of fund administration and corporate services to investment funds.

## Company profile

Established in 2000 with our first office in the Netherlands, we presently offer our fund services from the world's major financial jurisdictions. Our clients range from asset managers, banks to family offices and are primarily based in Europe, Asia and the Americas. We service both traditional and alternative investment funds, based onshore and offshore. Our fund accounting and investor services teams are supported by in-house legal and IT specialists. We use state-of-the-art accounting and shareholder systems, enabling easy processing of data and swift financial reporting to both fund managers and investors. Circle Partners is privately owned and fully independent.

## WHY THE NETHERLANDS?

The Netherlands is situated in northwest Europe. It combines a high income per capita with fairly even income distribution and is one of the most open and outward-looking countries in the world. The Netherlands owes its strong economic performance in large part to its advanced transport infrastructure (Schiphol Airport and the Seaport of Rotterdam) and its highly developed internet and IT infrastructure, which makes it an excellent gateway to Europe for businesses from abroad.

Globally, the Netherlands is well-known for being one of the premier locations for international business operations. Important factors that contribute to this reputation include, among others:

- a political and economical climate, which has been stable for decades;
- excellent financial, operational and technical infrastructure, supported by first-class professional advisers;
- an exceptional number of bilateral tax treaties, low corporate tax rate and availability of favorable tax incentives;
- a positive approach taken by successive governments and the open-minded, dialogue-based attitude of the tax authorities; and
- a highly educated, flexible and multilingual workforce.

The Netherlands has positioned itself as a preferred location for investment funds. Due to changes in the regulatory landscape for investment managers, there is a trend of moving offshore funds to onshore jurisdictions. The Dutch government recognizes the importance of the financial services industry and has shown openness for initiatives to smooth out unnecessary obstacles.

The Dutch legal, tax and regulatory framework is very advantageous for structuring investment funds and there has been a steady increase in fund sponsors and asset managers setting up their fund structure in the Netherlands.

In this guide, an informative overview of key aspects of investment funds in the Netherlands is provided.

## REGULATORY FRAMEWORK

Regulated funds in the Netherlands are either “UCITS” (Undertakings for Collective Investment in Transferable Securities) or “AIFs” (Alternative Investment Funds). UCITS are based on a set of European Union (“EU”) directives that aim to allow collective investment schemes to operate freely throughout the EU on the basis of a single authorization (“passport”) from one member state. UCITS must comply with strict investment restrictions and are geared towards retail investors.

The Alternative Investment Fund Managers Directive (“AIFMD”) is a European Union directive governing the regulation of alternative investment fund managers (“AIFMs”) operating in the EU. The AIFMD regulates EU fund managers that manage alternative investment funds, essentially hedge funds and private equity funds (“AIFs”).

In the Netherlands, there are different rules that apply under AIFMD, depending on the seat of the manager of the alternative investment fund. Basically, different rules apply for:

- AIF managers domiciled in the Netherlands (“Dutch AIF manager”);
- AIF managers domiciled within the EU (but outside the Netherlands); and
- AIF managers domiciled outside the EU.

### AIF managers domiciled in the Netherlands

#### Licensing

A Dutch AIF manager wishing to manage an AIF based in the Netherlands, or offering an AIF in the Netherlands, will need to obtain a license from the Authority for the Financial Markets (“Autoriteit Financiële Markten”, or “AFM”). The Dutch AIF manager will then become subject to ongoing regulatory supervision by the AFM and also the Dutch Central Bank (“DNB”).

A Dutch AIF manager, who has obtained a license from the AFM, may use this license to also market an AIF in another EU member state or manage an AIF domiciled in another EU member state. This is referred to as the passporting regime, whereby it is not necessary to obtain a license in individual member states. The only requirement is that the

AFM is notified of the Dutch AIF manager’s wish to offer an AIF to investors in another EU member state. Currently, the passporting regime may only be used to offer an AIF to professional investors. In the coming years, however, it may also become possible to offer to retail investors.

#### Exemption

An exemption from the licensing requirement for managing or offering an AIF in the Netherlands exists for managers whose overall assets under management (in the AIF, but also in other funds and/or managed accounts) do not exceed a threshold of:

- EUR 100 million; or
- EUR 500 million, in the case of AIFs that are not leveraged and have no redemption rights exercisable during a period of five years from the date of initial investment in the relevant AIF;

whereas, at the same time:

- participations are offered to fewer than 150 investors which can be either professional or non-professional investors;
- the minimum investment amount is EUR 100,000; or
- participations are only offered to professional investors.

Dutch managers that fall within the scope of this exemption are only subject to certain registration and reporting obligations. They must include a selling restriction in a prescribed form in all advertisements and documents announcing the offer of participations in their fund. Upon registration, general information on the Dutch manager and the AIF will be published in a public register.

The registration regime (also referred to as ‘light regime’) may be attractive for managers based inside and outside the Netherlands, due to the lower costs involved. In case of a foreign manager, a management company should be incorporated in the Netherlands which will act as the Dutch AIF manager. This management company will need to have a certain degree of substance in the Netherlands.

#### Opt-in

A manager qualifying as exempt from licensing may still choose to voluntarily opt for a license. In such case, the manager will have to comply with all laws and regulations applicable to an AIFM.

# Global reach, local expertise and presence

A license can be desirable:

- to attract institutional investors that are prohibited from investing in non-licensed investment funds; or
- to benefit from the passporting regime described above, by which a Dutch AIF manager may offer the AIF's participations in the rest of the EU, taking into account local regulations.

When operating under the license granted by the AFM, special requirements will apply to the organization and procedures of the Dutch AIF manager and, amongst others, an AIFMD depositary will have to be appointed. Moreover, all fund agreements must comply with the requirements imposed under the Dutch Financial Supervision Act (the "Act").



## AIF managers domiciled in the EU

An AIF manager with its seat in the EU (but outside the Netherlands) is required to have a license in order to offer an AIF's participations or shares in the Netherlands or manage an AIF domiciled in the Netherlands. This license may then be passported to other EU member states in the same manner as described above for Dutch AIF managers.

## AIF managers outside the EU

An AIF manager with its seat outside the EU will need to apply for a license with the AFM before it can manage an AIF based in the Netherlands or offer an AIF in the Netherlands. Only for AIF managers in certain designated jurisdictions (presently the United States of America, Jersey and Guernsey), a license application is not required. In this case, the AIF manager will need to follow a notification procedure with the AFM in order to be able to manage an AIF based in the Netherlands or offer an AIF in the Netherlands.

## INVESTMENT FUND VEHICLES

Different legal structures are available in the Netherlands and investment funds can be established as one of the following:

- Corporate entity: private limited liability company (besloten vennootschap met beperkte aansprakelijkheid) ("BV") and public limited company (naamloze vennootschap) ("NV"). The capital of a BV and an NV is divided into shares, which can be ordinary, preferred or priority shares. Only shares of an NV can be listed on a stock exchange.
- Non-corporate entity: limited partnership (commanditaire vennootschap) ("CV") and fund for joint account (fonds voor gemene rekening) ("FGR"). Investors in a CV will acquire a limited partnership interest and investors in an FGR will purchase participation rights or, in short, participations.

Whereas the CV is generally used for investments in real estate and privately held companies, the most commonly used open-ended investment fund vehicle for investing in daily traded assets is the FGR.

## WHAT IS AN FGR?

The FGR is not a legal entity and it is created by way of an agreement (often referred to as “Terms and Conditions”) between the manager (“Manager”), the investors (“Participants”) and the legal owner. The latter is usually a Dutch foundation solely incorporated for the purpose of holding legal title to the FGR’s assets and thus to keep all assets segregated from those of the Manager.

The Terms and Conditions oblige the Manager to invest and manage the assets for the joint account of the Participants. Usually, the Terms and Conditions are supplemented by a Prospectus, outlining the fund’s investment strategy and restrictions, subscription and redemption terms, the costs associated with running the fund, its service providers and other matters that are of key importance to investors.

As a pooled investment vehicle, the FGR offers a great amount of flexibility, as will be explained below. The FGR is widely used for both institutional and retail funds. Moreover, Dutch pension funds frequently use the FGR as an asset pooling vehicle when co-investing with other pension funds or other institutional investors. The FGR can be set up as a (semi) open-ended or a closed-ended fund and can be structured as an umbrella fund.

The main reasons why an FGR is the most suitable legal form for an investment fund in the Netherlands are:

### ● Easy to set up

Since the formation of an FGR is by way of an agreement instead of a deed of incorporation before a notary, its set-up is usually very quickly and cost-efficient.

### ● Structured in line with desired tax status

An FGR can be structured as either a tax transparent or a non-tax transparent entity for Dutch tax purposes.

### ● Not subject to corporate income and dividend withholding tax

If the FGR is structured as a tax transparent entity, it is not subject to corporate income and dividend withholding tax in the Netherlands.

### ● Flexible regulatory regime possible

If a fund opts for an exemption from supervision, the fund will only be registered with the AFM. In the early stages of a fund’s life, there may be cost incentives for such approach. It should be noted that also funds organized as a company (BV or NV) can benefit from this exemption.

### ● Benefits from the economic environment of the Netherlands

There is a solid infrastructure of qualified service providers, who can support the fund manager.

## INVESTMENTS

Under Dutch laws, there are basically no pre-set prohibitions or limitations on the use of leverage, nor on the types of financial instruments or geographical markets that a fund may invest in, although the AFM will require certain safeguards for investors. In particular, the AFM will require that the fund’s investments will match its liquidity profile and that requests for redemption by investors can be met at all times.

In most cases, FGRs will hold portfolios of stocks, bonds, options, futures and other financial instruments and investments may comprise of exchange traded and over-the-counter instruments.

## TAXATION

An FGR can be structured as a tax transparent entity and, as such, will not be subject to Dutch corporate income and dividend withholding tax. Such a tax transparent fund will need to have a “closed” character, generally implying that participations are not transferable to third parties and can only be disposed of by way of redemption.

It is also possible to structure an FGR as a non-tax transparent vehicle, or to arrange for the structure to qualify either as an Exempt Investment Institution (“VBI”) or as a Fiscal Investment Institution (“FBI”).

VBI's are fully exempt from Dutch corporate income and dividend withholding tax. However, due to its tax exempt status, the VBI lacks treaty protection. To qualify as a VBI, some requirements have to be met:

- it must be an investment institution as defined in the Act;
- its objective and operations must be the investment of money and other assets with observance of the principle of risk spreading;
- it invests solely in certain groups of financial instruments; and
- it must have an open-ended character.

In practice, many investment funds may qualify for the VBI status. For private equity funds this is less evident: their activities generally have an 'enterprise' rather than an 'investment' character and also the open-ended test will be difficult to meet. Also funds organized as a legal entity can opt for the VBI status.

FBI's are subject to the Dutch corporate income tax, but at a rate of zero percent. An FBI benefits from tax treaty protection and the scope of activities that it may perform is broader. To qualify as an FBI, more requirements have to be met, the main one being that all of the fund's net current income should be distributed within 8 months after the fiscal year-end.

## KEY SERVICE PROVIDERS

The following service providers will typically be contracted once the fund's set-up has been completed:

### Administrator

The administrator will typically oversee day-to-day operations of the fund, calculate and determine the net asset value of the fund, process subscriptions and redemptions of the fund, act as the registrar and transfer agent, keep various records of the fund and undertake anti-money laundering procedures on behalf of the fund.

### Auditor

All regulated funds based in the Netherlands must appoint an auditor and will need to file audited financial statements with the AFM within 4 months after the end of each financial year.

### Bank

A fund will need to open a bank account, which will serve to collect subscription amounts from investors, to pay for fees and expenses and to disburse redemption proceeds to investors redeeming from the fund.

### Custodian

Depending on the financial instruments and the geographical markets in which the fund invests, it will open one or more custody accounts in which it will hold its non-cash assets. Specialist brokers may also be engaged. For certain investment activities, such as short-selling, a fund may want to have access to prime brokers for stock-lending and leverage.

### AIFM Depositary

Under AIFMD, each AIF is obliged to have a depositary. A depositary will generally, besides other tasks, ensure that the assets are held in segregated accounts in the name of the fund or the appointed legal owner (in case of an FGR). Furthermore, a depositary will monitor the cash flows of the fund and will ensure that the fund manager adheres to the fund's investment restrictions as set out in the prospectus. For a fund that falls within the scope of the aforementioned 'light regime', the appointment of a depositary is not required.

## SET-UP TIME

Establishing an FGR is a relatively fast and cost efficient process, especially where the fund manager is a pre-existing company. Once its Terms and Conditions and prospectus have been finalized, bank and custody accounts have been opened and service providers have been appointed, a registered FGR is ready to start. The timeline for this would be approximately six to eight weeks.

If the FGR falls under the scope of AIFMD or UCITS, the Manager must request a license from the AFM. Obviously, more time will be required in such case before launching the fund.



## HOW CAN CIRCLE PARTNERS HELP YOU?

We are a global, independent fund administrator with over 15 years of experience in fund administration, fund set-up and fund structuring. We offer services from most of the world's major financial jurisdictions. We can provide investment managers with practical advice and assistance in setting-up their fund in the Netherlands and introduce them to specialized legal and tax advisers, banks, brokers and auditors.

Furthermore, we have an in-depth understanding of the structural and regulatory issues surrounding the set-up of investment funds in the Netherlands and have extensive experience in fund administration.

Our range of services includes:

- advice and assistance in setting-up investment funds in the Netherlands;
- on-going corporate and legal support for the fund;
- fund accounting and administration services;
- registrar and transfer agency services; and
- financial, regulatory and tax reporting services, including FATCA and Annex IV reporting.

Our office in Amersfoort has a dedicated team that is focused on delivering a responsive and personalized service and is committed to going the extra mile in satisfying our clients' needs and exceeding their expectations.

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