



How to set up in France

Alternative Investment Fund Manager (AIFM)

This series is designed to help you understand the benefits and drawbacks of setting up your business in key European jurisdictions. Here, we provide a summary of the key issues and processes involved in setting up an AIFM in France.

Simmons & Simmons has a team of experts, skilled in assisting clients with achieving the correct authorisation to establish their businesses across Europe. We use a series of tools to help streamline the process, making it as efficient, but cost-effective as possible.

What are the pros?

- Dedicated “2WeekTicket” pre-authorisation procedure in English
- Regulator very experienced in dealing with setting up AIFMs
- Limited quantitative requirements on corporate governance
- No material super-equivalent requirements
- No examination fees

What are the cons?

- Employment law less flexible than in the UK
- Corporate and personal taxes (when taking into consideration social security charges) higher than in the UK
- Day to day correspondence with regulators typically in French



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Licence/Passport Process

- Information on the application process is available here: [AIFM Application Guidance](#)
- The process is iterative and involves submission of a template application form plus numerous supporting documents to the [Autorité des Marchés Financiers](#) (“AMF”) for review
- AMF has launched a dedicated [welcome procedure](#) to help UK AIFMs (and UK UCITS ManCos) to deal with their French authorisation process. This procedure (named “2WeekTicket”) enables UK AIFMD/ManCos to obtain a “pre-authorisation” in just two weeks with the involvement of English-speaking “coaches”
- AMF application forms are detailed, but cross referencing can be done and the forms are reasonably user-friendly
- Additional supporting documents must be provided along with these forms, including:
 - Service providers agreements
 - Relevant board members documents
 - Ownership structure
 - Details of the relevant policies
 - Lease agreement
 - Articles of association
- A pre-submission meeting with the AMF is recommended
- The AMF serves as the entry point for applications and notifications related to all authorisation procedures. An AIFM must use AMF’s forms for application or notification
- No examination fees.

Conduct of business Prudential rules

- Initial capital of €125,000 required by the General Regulations of the AMF
- Plus additional own funds equal to 0.02% of the amount by which the AIFM’s AUM exceeds €250 million
- These additional own funds cannot be less than the “fixed overheads requirement” (one quarter of audited annual expenditure)
- Further own funds of a sufficient amount to cover professional indemnity risks (or appropriate professional indemnity insurance).

Corporate governance

- The AMF in particular, will consider the experience of the board members / senior officers in light of their specific functions and responsibilities
- The AMF needs to be satisfied that the applicant firm has staff of adequate quality, skills and experience at all levels and it will consider whether the applicant firm can demonstrate that its staff has appropriate experience
- The AMF will verify that the members of the management body shall at all times be of sufficiently good repute and possess sufficient knowledge, skills and experience to perform their duties
- The AMF will verify the suitability of the shareholders
- The AIFM can delegate functions to another country subject to complying with AIFMD delegation rules and in particular the “letter-box entity test”.

Regulatory environment

- The AIFM can be authorised to carry out discretionary investment services, investment advice and the reception and transmission of orders
- The AMF charges an annual fee calculated according to the number of authorised services multiplied by a coefficient based on the company’s equity regarding the services of investment advice and reception and transmission of orders. Please note that there is also an AUM fee regarding the service of discretionary investment management.

Tax

- The French standard corporate income tax rate on income is 33.1/3%. Additional contributions are applicable, such as contribution on dividend payments of 3% and social contribution of 3.3%. In the wake of Brexit vote, the French Prime Minister announced that the standard tax rate will be cut to 28%
- Interests, royalty payments, dividends:
 - No withholding tax on interests.
 - Regarding royalty payments, in the absence of bilateral tax treaty, there is a withholding tax of 33.1/3% of the gross amount paid by the French entity to a company with no business permanent Directive ([régime mère-fille](#)) or a double tax treaty
- The French transfer pricing legislation is based on the OECD arm’s length principles

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Tax (continued)

- Income from employment is subject to income tax at progressive rates up to 45%. However, certain qualifying foreign employees that move to France may be able to benefit from a favourable regime which would allow them to exempt from French income tax – under certain conditions – the portion of their income directly related to their assignment to France. It should reduce their effective income tax rate
 - This regime currently applies for five calendar years following the year of arrival to France of the foreign worker. The Prime Minister has proposed that this should be extended to eight years after the Brexit vote
- Social security contributions rates:
 - approximately 23% of employee's gross salary
 - approximately 45% for the employer
- French standard VAT rate is 20%
- Different stamp duties are applicable in France depending on the nature of the transaction.

Employment law

- French employment law is generally very complicated, protective of employees and rather costly. It is also constantly evolving
- Most important rules (ie those rules which are most costly or most sensitive from an employer's point of view): working time, dismissals/redundancies, remuneration, holidays, discrimination and harassment, workplace discipline, and termination of employment
- Remuneration for risk takers: French rules are in line with EU Regulations: principle of balanced split between fixed and variable remuneration (but no set cap), a minimum of 40% of the variable remuneration must be deferred for a period of at least three to five years, a minimum of 50% of any variable remuneration must be granted in instruments (applied equally to the non-deferred and the deferred parts)
- Social security is also a very complex and highly regulated area of law and dealt with directly by the payroll company. Mandatory social security contributions (withheld by the employer on the employee's gross salary) cover various areas (sickness, maternity, family, work accident, state owned pension, unemployment, mandatory complementary retirement scheme, etc.). Their aggregate amount is around 50% for the employer and 25% for the employee
- The employer must also provide a complementary private health insurance scheme (*mutuelle*), a life and disability providence scheme (*prévoyance*). However, there is no mandatory company pension scheme as pensions are state owned and funded by contributions included in the 50%/25% mentioned above
- Various formalities must be complied with, either on a one-off basis or on a regular basis, both towards employees, the employment administration and the various administrations in charge of the recovery of social security contributions.

Data protection

- Legislation is based on EU directives with some French specifics compared to the UK in terms of practical application, eg requirement to file declarations or obtain authorisations from the French data protection authority prior to implementing the processing of personal data. French legislation will be subject to the terms of the EU General Data Protection Regulation which will be applicable from May 2018

Outsourcing

- Many French AIFMs have outsourcing arrangements
- The AIFM can outsource functions subject to complying with AIFMD outsourcing rules and in particular the "letter-box entity test"
- If after analysis the function is considered a strategic or core function, the AIFM must take reasonable steps in order to avoid to an aggravation of the operational risk
- The AIFM remains responsible for any outsourced activity and will be expected to retain/maintain in-house expertise to supervise/manage the outsourcing

Corporate

- Typically, firm must be incorporated in the form of a public limited company (*société anonyme* – "S.A.") or a simplified limited company (*société par actions simplifiée* – SAS).
- When incorporating the AIFM, the articles of incorporation of the AIFM must be translated in French
- Corporate considerations depending on actual structure
- No major issues to flag.

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