Germany

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RETAIL FUNDS

1. Please give a brief overview of the retail funds market in your jurisdiction. (How developed is the market? Has it been active in the past year?)

Open-end retail funds

The open-end retail fund market in Germany is well established (the first German investment company was established in 1949 and investment funds were first introduced by statute in 1957) and well developed. The open-end fund industry underwent substantial regulatory change in 2004 with the implementation of the Investment Act and the Investment Tax Act. Amendments to the Investment Act have been approved by the legislature and are expected to be enacted in January 2008. Open-end retail funds in Germany (public funds (*Publikumsfonds*)) are divided into two main types (*see Question 8, Open-end retail funds*):

- A segregated pool of assets (*Sondervermögen*) (managed by a capital investment company (*Kapitalanlagegesellschaft*) (KAG)).
- Investment stock corporations with variable capital (introduced in 2004 and do not require management by a KAG) (ICVCs).

According to figures published by the Federal Association of Investment and Asset Management (*Bundesverband Investment und Asset Management e.V.*) (BVI), as of 30 September 2007, total assets under management for German funds were approximately EUR1.713 trillion (about US$2.47 trillion), of which approximately EUR714.9 billion (about US$1.034 trillion) was invested in public funds. These figures represent dynamic growth in the German fund industry in recent years, as, according to the BVI, total assets under management for the industry as a whole in 1996 were only approximately EUR420 billion (about US$607 billion), hardly more than a quarter of the most recently published figures.

Closed-end retail funds

Statutory regulations on closed-end retail funds were introduced in July 2005. Closed-end funds had existed unregulated before then, with almost EUR13 billion (about US$18.8 billion) in assets as of 2005. German closed-end retail funds currently hold approximately EUR23.5 billion (about US$34 billion) in assets. Closed-end funds are typically organised as limited commercial partnerships (GmbH & Co KG) (referred to as public limited partnerships when intended for public investment, as in the case of a retail fund) for tax and flexibility reasons, although they can also be organised as a company constituted under civil law (*see Question 8, Closed-end retail funds*).

2. What are the key statutes, regulations and rules that govern retail funds in your jurisdiction? What regulatory bodies are involved in regulating retail funds?

Open-end retail funds

The current key statutory provisions are the:

- Investment Act (with amendments expected to come into effect in January 2008) (*Investmentgesetz*).
- Investment Tax Act (*Investmentsteuergesetz*).
- Banking Act (German investment companies are no longer subject to the Banking Act under the amendments to the Investment Act) (*Kreditwesengesetz*).
- Stock Corporation Act (for investment stock corporations with variable capital) (with amendments pending) (*Aktiengesetz*).
- Securities Trading Act (*Wertpapierhandelsgesetz*).

In addition to the statutory provisions, German investment companies are currently subject to regulatory supervision by the German Federal Financial Supervisory Authority (*Bundesanstalt für Finanzdienstleistungsaufsicht*) (BaFin) and the Deutsche Bundesbank. However, under the amendments to the Investment Act, BaFin will assume sole regulatory and supervisory authority over investment companies.

Closed-end retail funds

The key provisions are the:

- Securities Prospectus Act (*Wertpapierprospektgesetz*).
- Sales Prospectus Act (*Verkaufsprospektgesetz*).
- Ordinance on prospectuses for non-securities instruments (*Vermögensanlagen-Verkaufsprospektverordnung*).
- German Civil Code (*Bürgerliches Gesetzbuch*).
- German Commercial Code (*Handelsgesetzbuch*).

- Limited Liability Companies Act (*Gesetz betreffend die Gesellschaften mit beschränkter Haftung*).

Closed-end funds became subject to sales prospectus requirements in July 2005, subject to regulation by BaFin.

3. Do the retail funds themselves have to be authorised or licensed? If so, what are the main steps involved?

Open-end retail funds

Collective pool of assets (*Sondervermögen*). These are pools of assets that are established by KAGs. They have no legal identity of their own and are therefore managed by a KAG. KAGs require written permission from BaFin to operate. In addition, under the current law KAGs must be licensed as credit institutions under the Banking Act. Although a KAG will no longer meet the definition of a credit institution under the amended Investment Act, the regulatory requirements for granting a licence will generally remain the same.

Certain organisational and capital requirements must be met in order for BaFin to grant KAGs permission to operate:

- KAGs must be established as either:
  - limited liability companies (GmbH) (most KAGs are organised in this way);
  - stock corporations (AG).
- The statutory minimum capital requirement is EUR730,000 (about US$1.1 million) (EUR300,000 (about US$433,410) under the amendments to the Investment Act).
- KAGs that provide either custody or management services to other German or foreign investment units and KAGs that manage real property funds must have both:
  - an initial capital of at least EUR2.5 million (about US$3.6 million);
  - 0.02% of the value of the funds it manages in excess of EUR3 billion (about US$4.3 billion) (EUR1.125 billion (about US$1.625 billion) under the amendments to the Investment Act) in additional funds.

ICVCs. ICVCs must be licensed by BaFin and they must have:

- An initial minimum capital of EUR300,000 (under the anticipated amendments to the Investment Act, ICVCs are also required to have a stock capital of EUR1.25 million (about US$1.8 million) within six months of registration in the commercial register).
- A head office located in Germany.
- Suitably competent and qualified directors (the standards are the same as for directors of KAGs (*see Question 6*)).
- Articles stating that the ICVC's business is only that of investing its own assets on the basis of risk diversification.
- An appointed custodian.

Closed-end retail funds

There are no licensing requirements for closed-end retail funds. However, publicly offered closed-end funds must publish a prospectus, the content of which must pass formal inspection by BaFin before any shares are sold. Exemptions to the prospectus requirement may apply to certain offerings.

4. Who can market retail funds?

Open-end retail funds

Generally, the marketing of funds in Germany requires a licence to operate as a financial services provider. However, for registered undertakings for collective investments in transferable securities (UCITS) funds, marketing agents are exempted from the licensing requirement if they are barred from accepting payment from investors. Their activities must be limited to accepting and transmitting customers' orders to a credit or financial services institution or the relevant investment fund. This exemption does not apply to unregistered UCITS funds, but does apply to foreign and domestic registered UCITS funds. However, agents marketing registered UCITS funds are not exempt from the authorisation requirement under section 34c of the Trading Regulation Act (*Gewerbeordnung*) (section 34c authorisation) that applies generally to marketing agents. This authorisation is typically granted unless the applicant is insolvent or is shown to be unreliable.

Closed-end retail funds

Although they are not required to be licensed as financial services providers, marketing agents of publicly offered closed-end funds must also obtain section 34c authorisation (*see above, Open-end retail funds*). Most investments in closed-end funds are sold by freelance investment consultants and banks.

5. To whom can retail funds be marketed?

Open-end and closed-end funds can be marketed to German public customers.

6. What are the key requirements that apply to managers/operators of retail funds?

Open-end retail funds

KAGs. KAGs require a management board and a supervisory board (normally a supervisory board is not required for a GmbH). The management board is responsible for the day-to-day running of the company and must consist of at least two members. Directors must have adequate professional experience relating to conducting investment management business. To meet expertise requirements, a director must possess a sufficient amount of practical and theoretical knowledge about the relevant management area and have held at least a three-year post in a leading position within a comparable institution in a comparable business area. In the investment management context, BaFin generally considers a leading position to be one that is at most one level removed from full fund management and that evidences a high degree of authority and responsibility. Directors must also possess sufficient personal responsibility, which is generally assumed unless evidence arises to the contrary.

The supervisory board must have at least three members who are appointed by the shareholders to oversee the actions of the management board and who must also be suitably qualified. Both boards have a fiduciary duty to the investors in the funds managed by the KAG. A KAG must act only in the interest of investors and must, at all times, ensure that it has the appropriate knowledge and skills to act in such a manner. This can include ensuring employment of competent staff or having some tasks delegated to third parties when necessary.

ICVCs. The requirements are the same as for KAGs (*see above, KAGs*).

Closed-end retail funds

Although they are subject to standard corporate rules, there are no regulatory requirements that apply to directors of closed-end retail funds.

7. Who holds the portfolio of assets? What regulations are in place for its protection?

Open-end retail funds

A credit institution must have custody of the assets of both ICVCs and funds managed by KAGs. The custodian must have its registered office or a registered branch in Germany, and the selection of the custodian is subject to approval by BaFin. BaFin has authority to place conditions on a custodian appointment or require a new appointment altogether. The custodian may not itself be a KAG.

A fund's operation is subject to the custodian's supervision, and the custodian must approve certain transactions. The custodian must also assert claims of investors against a KAG or ICVC in case of a breach. While the custodian is not required to report what it perceives to be statutory or contractual breaches by the fund to regulators, it may refuse the KAG or ICVC's offending instructions. The custodian must act solely in the best interest of investors.

Closed-end retail funds

For limited commercial partnerships, assets are usually kept within the company and in company accounts established for investors. This system of investors' accounts, known as capital share accounts, is established by statute.

8. What are the main legal vehicles used to set up a retail fund and what are the key advantages and disadvantages of using these structures? What are the participants' interests in the fund called (for example, share or unit)?

Open-end retail funds

Collective pool of assets (*Sondervermögen*). Assets in a collective pool are held separately from those of the KAG. They are open-end investment funds in which investors purchase units. The legal basis for these asset pools is a contract between the KAG and the investors in which the fund rules, including the basis on which the KAG holds and invests the assets, are set out. The contractual terms and conditions that determine the legal relationship between the fund and the investors must be set out in writing and submitted to BaFin for approval, in addition to any relevant amendments to it.

BaFin can give its approval, subject to conditions, and fund rules cannot be released to investors without approval from BaFin. Sample fund rules have been prepared by the BVI and approved by BaFin. Funds managed by KAGs are typically set up in one of two ways:

- Joint ownership, in which the investor holds joint title to the portfolio assets in fractions proportionate to its holding.

- Beneficial ownership, in which the KAG holds title to the portfolio assets as a trustee.

The main advantage of this approach is that it is well established. For example, templates exist that can be used to easily obtain approval for a fund from BaFin.

ICVCs. ICVCs were established by the Investment Act in 2004. Title to the underlying assets is held by the investment company. In addition, an ICVC does not require a KAG or separate investment manager, although it can delegate certain functions if it chooses. Investors in an ICVC purchase shares in the company directly, and all shares have voting rights attached. Under the anticipated amendments to the Investment Act, there is a distinction between corporate shares and investment shares. Investment shares do not grant voting rights if not expressly provided for by the company's articles.

Although ICVCs were established as a way to achieve greater efficiency and flexibility in a fund vehicle, in practice it is still easier to set up a collective asset pool managed by a KAG. Perhaps in recognition of this, the anticipated amendments to the Investment Act provide further relief for ICVCs.

Closed-end retail funds

Closed-end retail funds are predominantly set up as either:

- Limited commercial partnerships.

- Companies constituted under civil law.

Limited commercial partnerships. In a German limited commercial partnership there are both:

- Limited partners (*Kommanditist*), whose liability to the creditors of the company is basically limited to their capital contribution entered in the commercial register.

- General partners (*Komplementär*), whose liability for the company's debts cannot be limited.

To achieve limited liability for general partners as well, a limited liability company is often used as the sole general partner. Its share capital frequently only amounts to the minimum capital of EUR25,000 (about US$36,118) currently required by law (this will be reduced to EUR10,000 (about US$14,447) under expected amendments to the Limited Liability Companies Act).

In this case, only the limited liability company is liable for the company's debt. Investors become either direct or indirect limited partners. Partnership agreements generally follow a standard form.

Companies constituted under civil law. These companies have no separate legal identity from their investors, but simply refer to contractual associations of people pursuing a joint purpose. These companies are also governed by a partnership agreement.

Aside from potential tax benefits, limited commercial partnerships are easier to set up than corporate forms and the flexible structure allows for limited liability for investors and a separation between management and investors in guiding a fund's affairs. Companies constituted under civil law operate similarly. Interests in closed-end funds can be referred to as units or as capital shares.

9. Describe the investment and borrowing restrictions to which retail funds are subject.

Open-end retail funds

Investment and borrowing restrictions differ depending on how a fund is categorised and are set out in detail in the Investment Act.

UCITS compliant funds. For a UCITS compliant retail fund, the restrictions include, among others, the following:

- Investments in domestic fund, ICVC or foreign fund units can only be made if no more than 10% of the domestic fund, ICVC or foreign fund's assets can in total be invested in units of other domestic funds, ICVCs or foreign funds.

- No more than 10% of the fund's assets in total can be invested in:

  - securities which are not admitted to the official market on an exchange or included in an organised market;

  - money market instruments that do not comply with certain set requirements;

  - securities whose admission to the official market on an exchange or whose inclusion in an organised market must be applied for;

  - receivables from money loans not subject to requirements regarding money market instruments.

- Only short-term loans can be borrowed and only up to a limit of 10% of the fund's assets.

- The fund cannot engage in short sales.

- The fund can only invest up to 5% of its assets in securities and money market instruments of the same issuer, although up to 10% of its value can be invested in these assets if this is provided for in its contractual terms and conditions and the total value of investments in such issuers does not exceed 40% of the fund's assets.

- The fund can only invest up to 35% of its assets in government or public securities.

- The fund can only invest up to 20% of its assets in units of a single investment asset pool.

Investment restrictions for funds that do not comply with the UCITS directive vary depending on whether the fund is a(n):

- Real property fund.

- Mixed fund.

- Other fund.

Closed-end retail funds

Unlike open-end retail funds, closed-end funds are not subject to any statutory restrictions on their ability to invest or borrow. However, the sales prospectus must contain all factual and legal details necessary to enable the investor to make an informed investment, which may include investment and/or borrowing restrictions depending on the circumstances.

10. Can the manager/operator place any restrictions on the issue and redemption of interests in retail funds?

Open-end retail funds

Investors in retail funds can redeem their fund units, but these redemptions are governed by a fund's contractual terms and conditions. Such terms and conditions may provide for the suspension of redemption if unusual circumstances make it necessary in order to protect investors' interests. In these cases, the fund must immediately notify the suspension to BaFin (and the Deutsche Bundesbank, until the anticipated amendments to the Investment Act are put into effect) and the relevant regulatory bodies of each EU or European Economic Area (EEA) member state where the units are publicly distributed. Funds must also publish notice of the suspension in the electronic *Federal Gazette* and a widely circulated newspaper. BaFin can also order a suspension if necessary in the investor's interests. In the absence of a suspension, funds must offer redemption at a freshly calculated redemption price on each exchange day.

Closed-end retail funds

Units of closed-end funds organised as limited commercial partnerships that exist for a definite period of time cannot be redeemed (that is, the partnership cannot be withdrawn from) except for good cause. Indefinite partnerships may be withdrawn from on six months' notice of termination at the end of the fiscal year. However, this redemption right may be limited for an extended period (for example, 20 years or more) under the partnership agreement, though not permanently. In addition, units of closed-end funds organised as limited commercial partnerships cannot be transferred due to rules governing partnerships.

Units of otherwise organised closed-end funds are not redeemable but can be freely transferred, for example on an exchange, without influence from the investment manager.

11. Describe any restrictions on the rights of participants in retail funds to transfer or assign their interests to third parties.

Open-end retail funds

Transfer is possible within statutory guidelines and cannot be restricted by the fund.

Closed-end retail funds

Whether or not fund units can be transferred to third parties depends upon whether or not the fund is organised as a partnership, in which case transfer is prohibited (*see Question 10, Closed-end retail funds*).

12. Describe the periodic reporting requirements to:

- **Investors.**
- **Regulators.**

Open-end retail funds

Investors. Sales prospectuses with up-to-date material information must be offered to prospective investors before purchase. Under current law, a sales prospectus must be provided in both full and simplified form. Under the anticipated amendments to the Investment Act, a simplified prospectus alone is sufficient if the full prospectus is made available free of charge on request.

Funds must also publish in the electronic *Federal Gazette*:

- An annual report within three months of the fiscal year end.
- A semi-annual report within two months of the reference date.
- A dissolution report within three months of the reference date.

The sales prospectus must specify where the reports will be published in addition to the *Federal Gazette*. Funds must also provide on request detailed information on their risk management programme including:

- Investment limits.
- Up-to-date risks associated with the fund's main investments.

The availability of, as well as the means of requesting, risk management information must be noted in the full prospectus.

Regulators. Sales prospectuses, annual reports, semi-annual reports and dissolution reports must be submitted to BaFin (and the Deutsche Bundesbank until implementation of the anticipated amendments to the Investment Act) without undue delay after their first use. ICVCs must also notify Bafin and the Deutsche Bundesbank of any repurchases of their own shares at the end of each month, although, under the anticipated amendments to the Investment Act ICVCs cannot repurchase their own shares. The current Investment Act also requires burdensome notification with respect to the composition of the portfolio that is not required under the anticipated amendments.

Closed-end retail funds

Investors. Investors in closed-end funds must receive a sales prospectus. In addition, investors in closed-end funds organised as limited partnerships have the right to receive (on request) annual financial statements and check them against business records. A court can also authorise the disclosure of balance sheets or other documents if good cause is shown. Closed-end funds organised as limited liability partnerships that, due to their size, are not legally required to be audited, may either voluntarily undergo an audit or disclose the fact that they have not been audited in their prospectus.

Regulators. A closed-end retail fund is not required to make regular reports to a regulatory body. Subject to certain conditions, limited liability partnerships must also file their financial reports in the *Federal Gazette*.

13. Describe the tax treatment for:

- **Funds.**
- **Resident investors.**
- **Non-resident investors.**

Open-end retail funds

- **Funds.** The fund pays no corporate tax (*Körperschaftsteuer*) and no trade tax (*Gewerbesteuer*). The taxable income is taxed on the level of the investor.
- **Resident investors.** Taxation operates on the principle of transparency. Investors are treated as if they invested directly in the assets of the fund. All retail investors are exempt from capital gains tax (*Kapitalertragsteuer*) for as long as the gains remain in the fund and are not distributed. For the transparency model to operate, the fund must disclose the components of its distributions and deemed distributions both to investors and the *Federal Gazette*. If a fund does not comply or only partially complies with transparency requirements, investors may be subject to punitive tax treatment.
- **Non-resident investors.** The transparency regime also applies to non-resident investors. In relation to capital gains tax, they may be able to benefit from any double tax treaties between their home jurisdiction and Germany. In addition, if share profits are kept in a German bank, a full credit is applied to the tax on bank interest (*Zinsabschlagsteuer*).

Closed-end retail funds

- **Funds.** As a partnership, taxable income is taxed on the level of the investor. The fund itself is subject to any applicable trade tax.
- **Resident investors.** Investors are subject to taxation on their profit shares as a result of their investment. The amount of tax may vary based on the nature of the income, which depends on a determination of the nature of the fund's activities.
- **Non-resident investors.** Non-resident investors are taxed on income based on the nature of the fund's activities but

may be able to benefit from any double tax treaties between their home country and Germany.

14. Please summarise any proposals for the reform of retail fund regulation in your jurisdiction.

Amendments to the Investment Act are expected to enter into effect in January 2008 (*see Question 1*). These amendments are generally intended to align the German investment regulation regime with EU directives, and include the following:

- KAGs will no longer be considered credit institutions, and will no longer be subject to the Banking Act (though certain banking rules will continue to apply to them by analogy).
- Capital requirements will be reduced.
- The approval timeline will be shortened.
- Provisions governing real estate funds will become more flexible.
- Infrastructure funds, primarily investing in public private partnerships and properties that serve public purposes, will be introduced.
- Conditions that allow for private placements will be defined.

HEDGE FUNDS

15. Please give a brief overview of the hedge funds market in your jurisdiction. (How developed is the market? Has it been active in the past year?)

Single hedge funds (referred to by statute as funds with additional risks (*Sondervermögen mit zusätzlichen Risiken* or *Hedgefonds*)) and funds of hedge funds (*Dachsondervermögen mit zusätzlichen Risiken*) have been available since the implementation of the Investment Act in 2004. Single hedge funds are only available through private placement, while funds of hedge funds may be offered either publicly or through private placement. Foreign single hedge funds and funds of hedge funds are also available subject to certain requirements, typically similar to requirements for domestic hedge funds.

Currently, total assets invested in domestic hedge funds are approximately EUR2.7 billion (about US$3.9 billion). Although regulatory efforts have been made with respect to the German hedge fund market, the market cannot yet be considered well developed.

16. What are the key statutes and regulations that govern hedge funds in your jurisdiction? What regulatory bodies are involved in regulating hedge funds?

The key statutes in relation to hedge funds are the:

- Investment Act (with amendments expected to come into effect in January 2008).
- Investment Tax Act.

Hedge funds are currently subject to the regulatory supervision of BaFin and the Deutsche Bundesbank (only BaFin under the anticipated amendments to the Investment Act).

17. How are the following areas regulated (if at all) in relation to hedge funds:

- **Risk.**
- **Valuation and pricing.**
- **Systems and controls.**
- **Insider dealing and market abuse.**
- **Transparency.**
- **Money laundering.**

- **Risk.** A hedge fund's prospectus must prominently disclose a statutorily mandated warning from the Federal Minister of Finance that an investment in the fund may be entirely lost. Under the anticipated amendments, the prospectus must contain additional risk disclosure if assets are held by a prime broker as opposed to a custodian.
- **Valuation and pricing.** Similar valuation rules that apply to public funds apply to hedge funds. The value of a fund unit is determined by dividing the fund's value by the number of circulated units, and the fund's value may be determined by either the fund's custodian bank or the fund itself. However, hedge funds, unlike public funds, may choose to value fund units only on certain redemption days, provided there is at least one redemption day per calendar quarter.
- **Systems and controls.** The Federal Ministry of Finance can issue an ordinance in relation to the structure of a hedge fund's risk management systems (*Investment Act*), but this ordinance has not yet been issued. Under current general rules, a hedge fund's risk management system should involve at least the following:
  - the detection, assessment and control of risks associated with hedge funds on an ongoing basis using state-of-the-art risk management techniques, or, if such techniques are not possible for certain types of risks, the implementation of a skilled estimate;
  - a clearly documented limit system appropriate for the fund's risk profile;
  - a department expressly responsible for risk management that is organisationally independent of the portfolio management department on all levels, including the managerial level.
- **Insider dealing and market abuse.** There are no requirements that apply exclusively to hedge funds, but hedge funds are subject to general regulatory requirements.
- **Transparency.** Although single hedge funds are not distributed publicly, certain sales documents and financial reports are still

required. Funds of hedge funds must be distributed with a sales prospectus. In addition, the degree of transparency may affect a fund's tax treatment (*see Questions 13 and 25*).

- **Money laundering.** Investment companies that offer hedge funds are subject to the standard German regulatory regime in relation to money laundering under the Money Laundering Act (*Geldwäschegesetz*). In addition, German funds of hedge funds cannot invest in foreign target funds of states that do not co-operate with international agreements regarding curtailing money laundering.

18. Who can market hedge funds?

Marketing funds in Germany generally requires a licence to operate as a financial services provider (*see Question 4, Open-end retail funds*). However, as for registered UCITS funds, agents marketing registered funds of hedge funds are exempted from this requirement if the providers are barred from accepting payment from investors. Unregistered funds of hedge funds and single hedge funds (that is, funds placed privately) can only be promoted through German-licensed financial services providers or foreign financial services providers operating under the relevant EU passport.

19. To whom can hedge funds be marketed?

Single hedge funds are only available through private placement. Investors may be private or institutional investors, and there is no limit regarding the number of investors or other investor thresholds.

Funds of hedge funds may be distributed by either private placement or public offering to private or institutional investors.

20. Who holds the portfolio of assets? What regulations are in place for its protection?

Assets can be held by either a:

- Credit institution with its registered office or a registered branch in Germany.
- Prime broker with its registered seat within the EEA.

If a prime broker holds the assets the prospectus must contain an additional risk disclosure.

21. Describe the key disclosure or filing requirements (if any) that must be done by the fund (for example, in relation to the prospectus or offering memorandum and side letters).

Generally, investment companies that offer hedge funds are subject to the normal reporting requirements of the Investment Act (*see Question 12*). However, the following differences apply:

- All required sales materials must not only be offered to, but also actually received by, investors.
- Investors must be expressly made aware of the risks of investing in the fund.
- Hedge funds can only offer full prospectuses.

22. What are the key requirements that apply to managers/operators of hedge funds?

German hedge funds must be offered by German investment companies, which are subject to regulation under the Investment Act and the Investment Tax Act. The directors are subject to the same requirements as directors of a KAG or ICVC that manages an open-end retail fund (*see Questions 3, Open-end retail funds* and *6, Open-end retail funds*). In addition, the director of a fund of hedge funds must demonstrate additional expertise particular to hedge fund management. Under the anticipated amendment to the Investment Act, this demonstration will also be required of single hedge fund directors.

23. What are the main legal vehicles used to set up a hedge fund and what are the key advantages and disadvantages of using these structures? What are the participants' interests in the fund called (for example, share or unit)?

This is the same as for open-end retail funds (*see Question 8, Open-end retail funds*).

24. What are the advantages and disadvantages of using onshore and offshore structures?

Under the Investment Act, there are no distinct tax advantages favouring investing in either onshore or offshore funds. The German regime also regulates the investment policies of domestic and foreign funds of hedge funds similarly. Therefore, advantages and disadvantages, from an investor's point of view, depend on individual circumstances more than legal structure.

25. Describe the tax treatment for:

- **Funds.**
- **Resident investors.**
- **Non-resident investors.**

Hedge funds are subject to the same tax treatment as public funds (*see Question 13, Open-end retail funds*).

26. Can participants redeem their interest? Are there any restrictions on the right of participants to transfer their interests to third parties?

Hedge funds can limit redemption at their discretion provided that redemption occurs at least once every calendar quarter. Notice must precede a redemption date by at least 40 days for single hedge funds and at least 100 days for funds of hedge funds.

27. Please summarise any proposals for the reform of hedge fund regulation in your jurisdiction.

The anticipated amendments to the Investment Act include changes that affect hedge funds (*see Question 14*). Additionally, rules regarding sales documentation for single hedge funds are clarified under the amendments.

In addition, the Risk Limitation Act, which will be implemented shortly, requires increased disclosure regarding the acquisition of at least 10% interest in a company and applies to hedge funds.