

Retail investment funds in Armenia: regulatory overview

Narine Beglaryan, Concern Dialog law firm

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MARKET STRUCTURE

1. What is the structure of the retail funds market? What have been the main trends over the last year?

The Law on Investment Funds adopted on 22 December 2010 (Investment Funds Law) defines the following investment fund classifications:

- Specialised, unclassified or standard funds (based on the investment policy). Specialised funds are funds classified by investment policy as one of the following:
 - real estate funds;
 - funds with additional risks (hedge funds);
 - securitisation funds;
 - funds of funds;
 - private equity funds;
 - venture capital funds;
 - funds targeted to be 30% or more invested in certain type of asset.
- Unclassified funds are specialised funds where the investment policy does not comply with the specific asset investment classification for a particular type of specialised fund (*Article 3, Investment Funds Law*).
- All other funds are classified as standard funds.
- Open-ended, closed-ended or time-ranged funds (based on the issuing and repurchase of shares).
- Contractual or corporate funds (based on organisational form). Open-ended, closed-ended or time-ranged standard funds can be formed as either contractual funds or as joint stock companies. An open-ended fund joint-stock company has floating capital equal to the fund's net asset value. A closed-ended or time-ranged fund can be a company with either fixed or floating capital. However, if a time-ranged corporate fund stipulates the repurchase time range more than once per year, it must be formed as a joint-stock company with fixed capital (*Article 11, Investment Funds Law*).

- Public or private (based on the capacity to offer shares to an indefinite number of investors). Open-ended, closed-ended or time-ranged standard retail funds can be either public or private.

(*Articles 3 and 4, Investment Funds Law.*)

According to the Central Bank of Armenia (CBA) website (www.cba.am), there are more private funds in Armenia than public funds, and the vast majority of currently registered public funds are pension funds. There are more registered standard private funds than specialised funds. There are similar numbers of open-ended, closed-ended and time-ranged funds. The period 2017 to 2020 saw a significant increase in private funds, which are mostly standard funds.

Overall, the Armenian market, including the retail fund market, remains small and is still in the initial stages of development despite increases in activity over the past few years (although the market saw lessened activity in 2020).

2. How are interests in the open and closed-ended funds accessed and priced?

For public funds, the net asset value (NAV) per unit/share, as well as the allocation and buyback prices of units, must be calculated and published according to the rules set out in Article 29 of the Investment Funds Law. There is no similar requirement for private funds.

The NAV per unit/share is the difference between the total market value of the fund assets (less liabilities) divided by the total number of units/shares of the fund (or sub-fund) that are allocated and not bought back (*Article 3, Investment Funds Law*).

In open-ended funds, the manager must calculate and publish the NAV per unit/share, and the allocation and buyback prices of the fund's units/shares, each working day. These values are calculated as of the cut-off point set by the fund rules. The cut-off point cannot be earlier than the end of the preceding working day (*Article 29(1), Investment Funds Law*).

In closed-ended and time-ranged funds, the managers must calculate and publish the asset value per unit/share, and the allocation and buyback prices of the units/shares for the time periods specified in the fund rules. These values are calculated as of the cut-off point of the end of the preceding working day (*Article 29(2), Investment Funds Law*). The net allocation and buyback prices of the units/shares must be calculated and published at least once a month.

The unit/share allocation and buyback prices are calculated based on the NAV per given unit/share as published for that day (*Article 29(4), Investment Funds Law*). Allocation prices can exceed the NAV per given unit published for the given day (or time period) by the amount of fees and expenses prescribed by the fund rules, except where these have already been taken into account when calculating the NAV of the fund (*Article 29(5), Investment Funds Law*).

A unit/share is generally given the allocation price of the first unit/share calculated and published as prescribed by the Investment Funds Law. Exceptionally, the rules of closed-ended and time-ranged funds may envisage that a unit/share is allocated at the allocation price of the last unit/share calculated and published as prescribed by the Investment Funds Law (*Articles 29(4) and 28, Investment Funds Law*). However, the allocation prices of a unit/share allocated by a closed-ended fund cannot be less than the NAV per given unit published for the given day or time period (*Article 29 (4), Investment Funds Law*).

The buyback price of a unit/share can also be lower than the NAV per given unit/share published for the given day (or time period) by the amount of fees and expenses prescribed by the fund rules (that is, a discount), except where these have already been taken into account when calculating the NAV of the fund (*Article 29(6), Investment Funds Law*).

Private funds cannot have more than 49 units holders or publicly offer their units (*Article 8, Investment Funds Law*).

3. Are there any other retail fund options not mentioned in

Articles 42 and 43 of the Investment Funds Law also allow for two further types of funds (which are less common):

- Index funds, that is, those that are:
 - sufficiently diversified in structure;
 - sufficiently representative of that particular security market;
 - published in a proper manner.
- Money market funds, that is, where at least 90% of assets may be invested in money market instruments, including:
 - debt securities with maturity of more than one year;
 - debt securities with maturity of less than a year;
 - short-term bank deposits;
 - derivative instruments; and
 - units or shares of other money-market funds.

FUND VEHICLES AND STRUCTURES

4. 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?

Open-Ended Retail Funds

Legal Vehicles. Open ended public funds can be set up as either:

- Contractual funds.
- Public joint stock companies with floating capital.

Open-ended private funds cannot be formed as a public joint stock company.

Fund units certify participation in a contractual fund, while fund shares certify participation in a joint stock company (*Articles 8, 11 and 13, Investment Funds Law*).

Advantages. The units/shares of an open-ended fund need not have par value. The units/shares of an open-ended fund are issued on a continuous basis, ensuring their daily supply in the primary market. The value and number of units/shares of an open-ended fund are not fixed (*Articles 27 and 28, Investment Funds Law*).

In open-ended contractual funds, the unit holder has rights only to:

- Transfer units through the procedures for alienation and legal succession.
- Receive dividends from profits generated through management of fund assets.
- Receive their stake in the assets of the fund on termination of the fund.

The unit holders therefore have no rights to participate in the governance of the fund.

(*Article 10, Investment Funds Law*.)

Disadvantages. A unit holder/shareholder of an open-ended fund can request the buyback of fund units/shares each working day (*Article 32, Investment Funds Law*).

Assets of an open-ended fund cannot be invested in precious metals or securities representing acquisition of precious metals (*Article 40, Investment Funds Law*).

Closed-Ended Retail Funds

Legal Vehicles. Closed-ended retail public funds are formed as either a:

- Contractual fund.
- Joint stock company, with either;
 - floating capital (open joint stock company); or
 - fixed capital (closed joint stock company).

A closed-ended private fund cannot be formed as a public joint stock company (*Articles 8, 11 and 13, Investment Funds Law*).

Advantages. The unit holders of a closed-ended contractual fund normally cannot request buyback of their units/shares from the fund.

However, they can request buyback of their units/shares if they:

- Voted against the merger of the fund or amendment or supplements to the fund rules restricting their rights or did not participate in the voting.
- Voted at the fund meeting against the transfer of fund management or did not participate in the voting.

(Articles 32 and 71, Investment Funds Law.)

Disadvantages. Unit holders/shareholders can participate in the governance of a fund by voting in fund meetings, even if it is a contractual fund (unless the contractual fund rules state otherwise) (Articles 10 and 50, Investment Funds Law).

REGULATORY FRAMEWORK AND BODIES

Key Statutes, Regulations and Rules

5. What are the key statutes, regulations and rules that govern retail funds? Which regulatory bodies regulate retail funds?

Open-Ended Retail Funds

Regulatory Framework. Retail funds are governed by the:

- Investment Funds Law.
- Law of Armenia on the Security Market adopted on 11 October 2007.
- Law of Armenia on Joint Stock Companies adopted on 25 September 2001.
- Civil Code of Armenia adopted on 5 May 1998.
- Tax Code of Armenia adopted on 4 October 2016.
- Regulation 10/01 on Registration and Licensing of Investment Fund Managers and Branches of Foreign Investment Fund Managers.
- Regulation 10/02 on Prudential Standards for Management Companies.
- Regulation 10/04 on the Procedure of Calculation of Net Asset Value of Investment Funds.
- Regulation 10/06 on Minimum Requirements to Internal Controls and Risk Management Mechanisms for Investment Fund Managers.
- Regulation 10/10 on Investment Limits of Investment Funds.
- Regulation 10/11 on Terms and Conditions for Registration of Investment Fund (Fund Rules), Issuing Permission to Sell Securities of Foreign Investment Fund in the Republic of Armenia.
- Regulation 10/14 on the Procedure for Calculation of Net Asset Value for Determining Taxable Profit.
- Resolution 323-N on Defining net assets.

Regulatory Bodies. The CBA regulates all investment funds in Armenia.

Closed-Ended Retail Funds

Regulatory Framework. The regulatory framework is the same as for open-ended funds (see above, *Open-Ended Retail Funds*).

Regulatory bodies. The CBA regulates all investment funds in Armenia.

Local or State Legislation

6. Within the jurisdiction, are there local state, provincial or similar laws that could apply to retail funds?

The Armenian state is divided administratively into provinces (*marzs*), which include local self-governing communities. However, only the National Assembly of Armenia and CBA can adopt regulations on investment funds, and there are no local state, provincial or similar laws that apply to retail funds.

Authorisation/Licensing of Funds

7. Do retail funds themselves have to be authorised, licensed or registered?

Open-Ended Retail Funds

A fund is deemed to be founded when the CBA either:

- Registers the fund, in the case of a corporate fund.
- Registers the fund's rules in the case of a contractual fund.

(Article 21, Investment Funds Law.)

No other authorisation or licence is required for the investment fund itself. Fund managers require separate authorisation (see *Question 8*).

To register the fund, the fund's founder (for a corporate fund) or manager (for a contractual fund) must submit the following documents to the CBA:

- Application for registering the fund (or fund's rules) and its firm name.
- Decision of the founder (or founders' meeting) on founding a fund (in the case of a corporate fund).
- Decision from the fund manager's board of directors to found and manage the fund (not applicable if a corporate fund is being founded, which is not on the initiative of the manager).
- Six copies of the draft of the fund's rules or charter.
- Fund manager's board decision to approve the fund's rules (in the case of a contractual fund).
- Draft of the fund manager's contract and its approval at the founders' meeting.
- Draft of the fund custody contract entered into by the manager and the custodian (in the case of a contractual fund), or the fund's custody contract presented by the custodian and approved (in the case of a corporate fund) at the founders' meeting.

- The decision of the founder (or founders' meeting) (in the case of a corporate fund) or the fund's meeting (in the case of a contractual fund whose rules require a meeting) to approve the fund's rules and draft custodian contracts.
- Receipt evidencing payment of state duty.
- Any other documents as stipulated from time to time by the CBA's regulations (these are currently set out under Regulation 10/11).

(Article 21, *Investment Funds Law*.)

For open-ended public funds (including retail funds), there is no specific requirement to submit a prospectus to the CBA for registration. The fund's rules are sufficient and the requirement to provide a prospectus under the Law on the Securities Market is not applicable (*Articles 4 and 10, Investment Funds Law*).

To sell foreign fund securities in Armenia, the foreign fund or its manager must submit an application to and acquire preliminary authorisation from the CBA. The following must be submitted to the CBA to obtain its prior consent:

- An application form.
- A statement by the authorised foreign body exercising control over the foreign manager and/or fund that they are authorised to carry out the corresponding activity and act in compliance with the legislation of the foreign state.
- Translations into Armenian, certified by a notary, of the:
 - fund's registration certificate;
 - fund rules or charter, or other founding documents;
 - licence of the manager; and//or
 - contract, in a contractual fund.
- These must be in accordance with the legislation of the country of the foreign manager or fund.
- A business plan of the fund or manager.
- A prospectus (except for securities issued by open-ended or a classified investment funds).
- Recent annual and quarterly reports (where a quarterly report has been drawn on the recent annual report) approved by a person carrying out an external audit.
- A detailed description of the procedure for sale and buyback of units or shares in Armenia, including the terms for making payments.
- Information on the agent or a manager operating in Armenia through which sale and buyback of securities will be performed, and the relevant agreement with them.
- Receipt evidencing payment of state duty.
- Any other documents as stipulated from time to time by the CBA's regulations (these are currently set out under Regulation 10/11).

(Article 98, *Investment Funds Law*.)

Sales of foreign fund securities must be performed through either:

- An agent registered in Armenia.
- A manager in Armenia.
- A branch of a foreign manager in Armenia.

(Article 98, *Investment Funds Law*.)

Closed-Ended Retail Funds

As with open-ended funds, closed-ended funds are subject to registration with the CBA (*see above, Open-Ended Retail Funds*).

The process for application is the same as for open-ended retail funds (both for registration of the fund and the requirement for a foreign fund to receive preliminary authorisation before selling its securities in Armenia), except for the requirement for a prospectus, which must also be submitted for closed-ended public funds.

In addition, unlike open-ended funds, a register of the unit holders of closed-ended public funds must be surrendered to and registered with the Central Depository (*Article 70(4), Investment Funds Law*).

Authorisation/Licensing of Managers/Operators

8. Do the operators of retail funds have to be authorised, licensed or registered? What are the key requirements that apply to managers and operators of retail funds?

Open-Ended Retail Funds

Authorisation/Licensing/Registration Requirements. The manager of a public open-ended retail fund must be a company licensed by the CBA. Unlike public open-ended retail funds, the manager of a private retail fund can be any legal entity registered and licensed as a fund manager (subject to approval by the CBA) (*Articles 8 and 58, Investment Funds Law*). A foreign manager can manage a local retail fund exclusively through setting up a subsidiary or a branch founded and licensed in Armenia (*Article 60, Investment Funds Law*).

Other Key Requirements. A fund manager can be formed either as joint stock company or a limited liability company (*Article 52, Investment Funds Law*). The manager must be registered and licensed by the CBA (*Article 54, Investment Funds Law*). The licence is granted for an indefinite time and the rights granted under the licence cannot be pledged, transferred or otherwise alienated (*Article 53, Investment Funds Law*).

The business activities of fund managers are limited to the management of funds. Any activities other than the managing of funds must relate to the securities market and can only be implemented subject to the CBA's permission (*Article 52, Investment Funds Law*).

For registration and licensing of the manager, the founders must submit the following to the CBA (in the form and procedure prescribed by the CBA regulations):

- Application for registration and licensing.
- Application for authorisation to provide the services defined in the Investment Funds Law.

- Business plan of the manager.
- Charter and foundational documents of the manager approved by the meeting of the founders of the manager.
- Request for registration of the trade name of the manager (except for a branch of a foreign manager set up in Armenia).
- List of founders of the manager and information required by the CBA.
- Resolution of the meeting of founders of the manager on appointing the heads of the manager.
- Information on the heads of the manager, samples of signatures of the executives ratified by a notary, and carbon copies of their professional qualification certificates.
- Application for receiving the preliminary consent of the major shareholders of the manager enclosing the required documents.
- Drafts of the manager's bye-laws regulating the activity of the executives and employees (rules of activity).
- Document certifying the payment of the authorised capital of the manager to an account opened with the CBA or any bank operating in Armenia not affiliated to the manager (see Question 11).
- List of employees carrying out fund management activity inside the structure of the manager or on its behalf, and carbon copies of the documents certifying their professional qualifications.
- Statement on the compliance of the premises of the manager with the criteria defined by the CBA.
- Receipt evidencing payment of state duty.
- Other documents required by the Law on Funded Pensions, if the manager will manage pension funds.
- Any other documents prescribed by the CBA.

(Article 53, *Investment Funds Law*.)

The fund manager must register with the CBA any changes to:

- The rules or charter of the subsidiary/branch of the foreign manager or manager.
- Its top management.

(Article 61, *Investment Funds Law*.)

The manager can outsource certain functions to a third party to ensure more efficient management, where the fund's rules allow for this (Article 70, *Investment Funds Law*).

There are a few minor differences in relation to the decision-making procedures for open-ended contractual funds (for example, where prior approval for a general meeting may be required) (Article 63, *Investment Funds Law*).

Foreign managers can manage a local retail fund but must also comply with further requirements in relation to (among other things):

- Qualified and certified management (Articles 65 and 66, *Investment Funds Law*).
- Minimum charter capital (that is, capital the founders put into the fund when first established) and total capital (Article 67, *Investment Funds Law*).
- Reporting obligations to the CBA (Article 92, *Investment Funds Law*) (see Question 16).
- A business plan for each three-year period (Article 58, *Investment Funds Law*).
- The establishment of an internal board and systems of internal control (Articles 63 and 64, *Investment Funds Law*).
- The participation rate in managed funds (Article 67, *Investment Funds Law*).

The CBA can require further documents or define exceptions for foreign managers, non-resident major shareholders and executives, for example where the possibility to submit documents or information is restricted by the legislation of the foreign country, or the requirements do not apply to that particular person (Article 54, *Investment Funds Law*).

Closed-Ended Retail Funds

Authorisation/Licensing/Registration Requirements. The regulation for closed-ended retail funds is the same as for the open-ended funds (see above, *Open-Ended Retail Funds*).

Other Key Requirements. The regulation for closed-ended retail funds is the same as for the open-ended funds (see above, *Open-Ended Retail Funds*).

Active and Passive Management

9. Are the different types of retail funds typically actively managed or passively managed? Or can they be either?

Under Article 51 of the *Investment Funds Law*, the management of a fund includes:

- Investment management, which implies making decisions within the scope of the fund investment policy on the investment of the fund's assets, and their implementation.
- Managerial functions, including:
 - organising the issuance and buyback of units/shares;
 - legal functions related to the fund management and accounting;
 - calculating the fund net asset value, as well as net asset value per share/unit and allocation and buyback price of the fund units or shares;
 - maintaining the register of fund unit holders;
 - fund profit determination and organising the profit distribution among investors;

- acting as a tax agent for investors in relation to profits generated by the contractual fund, as well as dividends generated from securities issued by a corporate investment fund and profits generated through the buyback of those securities;
- providing necessary information to the fund unit holders.
- Marketing the fund.

A fund can only have one manager. However, a manager can manage more than one fund. If contractual funds are managed by the same manager, the funds must differ from one another as to the type, investment policy and the fund unit holders' rights attached to the units and/or limitation of the scope of the fund unit holders (*Article 51, Investment Funds Law*).

The definition of management applies to all types of funds.

Whether a fund is actively or passively managed will depend on the specific fund and does not depend on the type of fund.

MARKETING OF FUNDS

10. Who can market retail funds?

Open-Ended Retail Funds

The authorisation to manage a fund covers marketing the fund (*see Question 9*). The marketing of a fund is therefore carried out by the fund manager.

Any advertisement or announcement about any type of fund, action directed towards the offer and/or sale of a fund's shares, document or means of communicating information relating to the fund must include a clearly visible and separate statement that the fund and its manager cannot guarantee the fulfilment of purposes declared by the fund (*Article 95, Investment Funds Law*).

When making any such marketing announcement, the fund manager is prohibited from:

- Making any misleading assumptions and statements in relation to the fund.
- Giving guarantees in relation to the fund.
- Making any unjustified/misleading promises in relation to the fund.
- Using unfair competition methods.

(*Article 95, Investment Funds Law*.)

Foreign retail funds can be marketed locally if both:

- The foreign fund manager obtains prior consent from the CBA for marketing the foreign fund in Armenia.
- Sales of foreign fund securities are performed through:
 - an agent registered in Armenia;
 - a manager operating in Armenia deemed to be a manager of the fund; or
 - a branch of a foreign manager created in Armenia.

(*Article 98, Investment Funds Law*.)

Closed-Ended Retail Funds

The same rules on marketing requirements for open-ended retail funds apply to closed-ended retail funds (*see above, Open-Ended Retail Funds*).

11. To whom can retail funds be marketed?

Open-Ended Retail Funds

Local and foreign retail funds can be marketed to the general public and are not subject to general restrictions on marketing to specific kinds of retail investors (*see Question 10*).

A private fund cannot publicly offer its units/shares. The number of holders of the private fund's units/shares cannot be more than 49. If it exceeds this limit, the fund must re-register within 90 calendar days as a public fund or reduce the number of the unit holders/shareholders. Otherwise, it is subject to liquidation through a judicial procedure (*Article 8, Investment Funds Law*).

For both open-ended and closed ended public retail funds, the following persons cannot be unit holder/shareholders in the fund:

- The fund custodian.
- The fund registrar (if this function is carried out by a person other than the fund manager).
- The independent auditor of the fund.
- Any persons affiliated with those listed above (*Article 13, Investment Funds Law*).

Two or more persons are considered to be affiliated where:

- One directly or indirectly owns 20% or more of the equity securities carrying voting rights of the other.
- More than half of the members of the board of directors, directors or other similar officials, are also at the same time members of the board of directors, directors or other similar officials of the other entity.
- One of them is the subsidiary of the other or they are under common supervision (for example, where they are both subsidiaries of the same parent company).
- One of them has an actual or contractual ability to influence the decisions of the other in accordance with criteria set out by the CBA regulations.
- They are members of the same family (father, mother, spouse, parents-in-law, grandmother, grandfather, sister, brother, children, sister's and brother's spouses and children).
- They have been acting in concert in a given situation, for a common economic interest.

(*Article 3, Law on the Securities Market*.)

The shares of an open-ended fund must be issued continuously, ensuring their everyday supply in the primary market. The value of the shares of an open-ended fund cannot be fixed (*Article 28, Investment Funds Law*).

The holder of unit/share of public fund does not have a preference right to newly issued shares (*Article 14, Investment Funds Law*).

Closed-Ended Retail Funds

In addition to the regulations applicable to open-ended retail funds, which also apply to closed-ended retail funds (*see above, Open-Ended Retail Funds*), there are a few additional requirements for closed-ended retail funds, including that:

- The rules of the closed-ended fund cannot limit the right of shareholders to sell their shares on the regulated markets.
- The shares of the closed-ended fund are subject to the mandatory authorisations for sale on the relevant regulated market.

(Article 15, *Investment Funds Law*.)

ASSETS PORTFOLIO

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

Open-Ended Retail Funds

The fund assets must be transferred to a custodian under a custody contract. The custodian must be either the Central Depository or a bank operating in Armenia that provides securities custody services pursuant to the Law on the Securities Market. Custody of assets of a single fund can only be taken by a single custodian, personally or through a sub-custodian (*Article 86, Investment Funds Law*).

The custodian:

- Deposits, keeps safe and records the fund's assets.
- Services the transactions conducted on behalf of the fund.
- Transfers the assets (subject to these requirements).

(Article 87, *Investment Funds Law*.)

To protect the assets, the Investment Funds Law sets out the following rules in relation to the custodian:

- The custodian must not be affiliated with the fund manager (*see Question 11*). During the period of the custody contract, the manager and the custodian must take reasonable measures to prevent circumstances leading to affiliation between themselves, and if such circumstances arise, deal with them within six months (*Article 86*).
- If the custodian finds any violation of the requirements of the law, regulations and/or the fund's rules while implementing its responsibilities, it must inform the CBA and the fund manager of the violation in writing within one working day (*Article 87*).
- When carrying out its obligations, the custodian must act in accordance with the interests of fund's shareholders, and has the fiduciary duty to act towards the fund's shareholders in good faith and with a reasonable and adequate level of professionalism (*Article 88*).
- The custodian is liable for any damages (including lost income) to the manager or fund or to the unit holders/shareholders of fund that result from its actions or inaction unless it can prove that it acted within its fiduciary duties. The fund manager can directly or indirectly bring a claim for such damages caused to the fund or its unit holders/shareholders (*Article 87*).

- The contract signed between the fund (or fund manager of a contractual fund) and the custodian cannot limit the responsibilities of the manager set out in the Investment Funds Law and/or other laws (*Article 88*).

Closed-Ended Retail Funds

Assets of closed-ended retail funds transferred to a custodian under a custody contract are generally subject to the same rules as for open-ended retail investment funds (*see above, Open-Ended Retail Funds*).

INVESTMENT AND BORROWING RESTRICTIONS

13. Are there any investment or diversification restrictions for retail funds? If so, what are they?

Open-Ended Retail Funds

The general investment and diversification restrictions under the Investment Funds Law are as follows:

- Public funds' assets can only be invested in the asset types envisaged by that fund's rules and allowed for that fund type (*Article 35*).
- Fund investments must be diversified enough for that particular type of fund so that the risks are distributed efficiently (*Article 35*).
- The manager must ensure that the total risk related to the derivative instruments in which the fund assets have been invested does not exceed the fund's net asset value (*Article 36*).
- Fund assets cannot be invested in securities issued, held and/or sold by the manager of that particular fund, the custodian, their heads, the registrar of the fund unit holders and its independent auditors, as well as persons affiliated with them, except for cases specifically prescribed under the Investment Funds Law (*Article 37*).
- Fund assets can only be invested in the units/shares of another fund managed (directly or by delegation) by the fund manager (or a person affiliated with them) where the requirements stipulated in the Investment Funds Law are complied with (*Article 37*).
- Fund assets cannot be invested in equity securities issued by non-commercial organisations (*Article 37*).

Article 40 of the Investment Funds Law sets out a list of assets in which standard funds can invest, which include:

- Securities permitted for trading on a regulated market in Armenia or on regulated markets operating in foreign states listed by the CBA, including:
 - shares and other securities granting rights equivalent to the rights vested in shares;
 - bonds and other debt securities;
 - depository receipts;
 - documents verifying the right to subscription or acquisition of securities and money market instruments.
- Securities allowed for trading on foreign regulated markets if those markets are open to the public and operate on a regular basis, and this is permitted in the rules of the fund.

- Newly issued securities, where the issuing and/or offering conditions allow trading on a regulated market within 12 months of their issuance.
- Units or shares of open-ended standard funds operating in Armenia or foreign open-ended funds complying with the CBA's requirements.
- Money market instruments if they are either:
 - securities issued or guaranteed by the state of Armenia, CBA or the Armenian municipalities, as well as any international organisation or foreign country, central bank or local government included in the list established by the CBA; or
 - securities of an issuer authorised to trade on regulated markets that complies with or is guaranteed by an organisation that complies with the CBA's regulations.
- A demand or time deposit, with a maturity of more than one year in banks operating in Armenia or foreign banks that comply with the CBA's regulations.
- Derivative financial instruments that are permitted for trading on regulated markets.
- Derivative financial instruments traded outside of the regulated markets that:
 - have their object securities, bank deposits, fund's shares, exchange indexes, interest rates, foreign currency exchange rates or currency in which the fund can invest in accordance with its fund's rules;
 - are part of transactions entered into by an entity that is subject to financial supervision, and whose value can be reliably and dependably estimated each day; and
 - can be sold at any moment by the initiative of the fund at a fair price (that is, the closing of the position through an offset transaction).
- Other liquid assets as permitted by the CBA.
- Securities other than those listed above, provided their total value does not exceed 10% of the fund's assets.

Assets of an open-ended fund cannot be invested in precious metals or instruments allowing the acquisition of precious metals.

The CBA may limit the investment risk for standard funds by imposing asset diversification requirements, such as restrictions on the:

- Maximum amount of fund assets that can be invested in securities issued by one person or persons belonging to the same group or affiliated persons, including based on the class of securities.
- Maximum amount of securities issued by one person or persons belonging to the same group or affiliated persons that can be acquired by the fund, including based on the class of securities.
- Maximum amount of fund assets that can be deposited with one bank.
- Extent of the risk against the fund assets related to a transaction using a derivative instrument concluded with one person or persons belonging to the same group or affiliated persons, depending on the type of the counterparty to the transaction.

- Conditions and maximum amounts of investments in units or shares of other funds.
- Maximum ratio between the value of the fund assets and the total value of securities issued by, bank deposits placed with, or derivative instruments concluded with, one person or persons belonging to the same group or affiliated persons.

(Article 41, *Investment Funds Law*.)

Such restrictions can include those of temporary effect. Certain restrictions may not apply to newly established standard funds within the first year after the fund's formation (Article 41, *Investment Funds Law*).

The fund's assets cannot be formed through the sale of securities or other financial instruments that the fund does not possess at the time of the transaction (short sales) (Article 40, *Investment Funds Law*).

Closed-Ended Retail Funds

The regulation for closed-ended retail funds is generally the same as for open-ended retail funds (see above, *Open-Ended Retail Funds*) except for investments in precious metals (closed-ended funds are permitted to invest in precious metals and instruments allowing the purchase of precious metals).

14. Are there borrowing restrictions or conditions for retail funds? If so, what are they?

Open-Ended Retail Funds

For open-ended retail funds, the fund's assets cannot be formed through debt, unless both:

- The amount of the debt does not exceed of the 10% of the fund's assets.
- The debt is either short-term (not exceeding three months) or for the purpose of acquiring property directly necessary for the corporate fund's operations (Article 39, *Investment Funds Law*).

Therefore, assets of the fund cannot be subject to loans, guarantees or assurances, and cannot be collateralised or used as security.

A fund cannot extend a loan to, borrow from, or receive or provide a guarantee or surety to persons that affiliated to the fund's:

- Manager.
- Custodian.
- Registrar of fund unit holders.
- Independent auditor.

This extends to persons affiliated to these persons.

(Article 37, *Investment Funds Law*.)

Closed-Ended Retail Funds

The regulation for closed-ended retail funds is generally the same as for open-ended retail funds (see above, *Open-Ended Retail Funds*).

REDEMPTION OF INTERESTS

15. Can participants redeem their interest? Can the manager or operator place any restrictions on the issue and redemption of interests in retail funds? Are there any restrictions on the rights of participants to transfer or assign their interests to third parties?

Open-Ended Retail Funds

Restrictions on Redemption of Interest. In general, a unit holder or shareholder of an open-ended fund can submit the units/shares they hold to the fund for buyback each working day. At the request of the holder, the open-ended fund must buy back the units/shares it has issued within the time limit provided for by the fund rules, which cannot exceed three working days (*Article 32, Investment Funds Law*). The fund manager cannot place any restrictions on the redemption of share interests in an open-ended fund.

Restrictions on Rights to Transfer or Assign Interests to Third Parties. Unlike closed-ended funds (*see below*), the Investment Funds Law does not prohibit limitations by the rules of a contractual fund on the right of open-ended fund unit holders/shareholders to resell the units/shares held by them on a regulated market (*Article 15, Investment Funds Law*). However, there cannot be restrictions on the shareholders' right to transfer or assign their interests to third parties in open-ended retail funds formed as open joint stock companies.

Under the CBA rules, the manager of an open-ended retail fund can suspend the redemption of shares for up to three months if prior notification is made to both the CBA and to the fund's custodian, and this is allowed under the fund's rules. However, the CBA can request the fund manager to resume redemption on its own initiative if the reasons for suspending redemption no longer exist. The CBA can also instruct the manager of a corporate fund to suspend the issuance, placement and repurchase of the shares until the grounds for suspension have been remedied (*Article 33, Investment Funds Law*).

Under the general rules applicable for both open-ended and closed-ended funds, the issuance and buyback of units/shares must be prohibited if:

- No manager or custodian is in place.
- The manager or the custodian has been declared insolvent.
- The fund is going through the termination (liquidation) process.

(*Article 34, Investment Funds Law*.)

Closed-Ended Retail Funds

Restrictions on Redemption of Interest. The unit holders of a closed-ended contractual fund generally have no right to request early buyback of units/shares from the fund. However, those holders will be entitled to request buyback of their units/shares if they:

- Voted against the merger of the fund or the amendment or supplement to the fund rules restricting their rights or did not participate in the voting.
- Voted at the fund meeting against the transfer of fund management or did not participate in the voting.

(*Articles 32 and 71, Investment Funds Law*.)

Restrictions on Rights to Transfer or Assign Interests to Third Parties.

The right of unit holders/shareholders of closed-ended funds to resell on a regulated market cannot be restricted (except for interests in certain pension funds that are banned from free alienation) (*Article 15, Investment Funds Law*). Such transfers are otherwise not prohibited except for funds formed as open joint stock companies.

The CBA can decide to order the manager of the corporate fund to suspend the issuance, allocation or buyback of units/shares where:

- The requirements prescribed by the law and normative legal acts have been violated or there is an explicit possibility of their violation.
- This is necessary for protecting the lawful interests of the investors.

In its decision the CBA must also set out a time period for suspension (*Article 33, Investment Funds Law*).

The general rules on the prohibition of issuance and buyback of units/shares for closed-ended retail funds are the same as for open-ended retail funds (*see above, Open-Ended Retail Funds*).

REPORTING REQUIREMENTS

16. What are the general periodic reporting requirements for retail funds?

Open-Ended Retail Funds

Investors. On request, the fund manager must provide the fund's shareholders with any information subject to publication (for example, the fund's last annual report and the auditor's conclusion on it, as well as the fund rules). No specific period for doing so is determined (*Article 93, Investment Funds Law*). The fund manager must also publish a list of the following information on its website:

- Financial statements (at least the recent annual and the recent quarterly) and external audit opinions on those statements.
- NAV of each fund and the recent NAT per share, allocation and buyback prices of their issued units/shares.
- Announcement on convening regular and extraordinary meetings of a fund, as well as decisions made by the meeting of a fund.
- Decisions on paying dividends to fund unit holders.
- Information on the manager's:
 - major shareholders;
 - executives, including the scope of their duties and responsibilities.
- Rules (charter) of a manager and each fund, as well as any amendments and supplements made to them.
- Information on the custodian of each fund.
- Other information provided for by the Law on Funded Pensions (where pension funds are managed).
- Other information not deemed to be a trade secret or other secrecy or proprietary information.

(*Article 94, Investment Funds Law*.)

Regulators. A manager of open-ended and closed-ended funds must prepare, publish and submit complete and accurate financial and other reports to the CBA in the form and with the content required by the CBA (*Article 92, Investment Funds Law*) on an annual and intermediate basis for each fund that it manages and for the fund manager company itself.

Closed-Ended Retail Funds

Investors. The rules are the same for both open-ended and closed-ended funds (*see above, Open-Ended Retail Funds*).

Regulators. The rules are the same for both open-ended and closed-ended funds (*see above, Open-Ended Retail Funds*).

TAX TREATMENT

17. What is the tax treatment for retail funds?

Open-Ended Retail Funds

Funds. Under Armenian tax law, the seat of an investment fund is the seat of its fund manager (*Article 23, Tax Code of Armenia*). For all matters in relation to the payment of taxes (except for pension funds), the fund manager acts on behalf and on account of the investment fund that it manages (*Article 28, Tax Code*).

Investment funds are subject to income tax (*Article 103, Tax Code*). The tax base for the calculation of income tax for funds where the manager is registered in Armenia is the total amount of the fund's net assets less allowable deductions under the rules established by the Armenian tax authorities and the CBA. No deductions from the sum distributed to shareholders as dividends are permitted while determining the tax base (*Article 105, Tax Code*). The income tax rate for investment funds is 0.01% on the tax base (*Article 12*).

The following transactions are not subject to VAT:

- The provision of services for the allocation and/or buyback of securities issued by investment funds.
- The provision of investment fund custody services.
- The disposal (sale) of real estate to shareholders of a fund where the investor invests in exchange for shares in the fund.

(*Article 64, Tax Code*.)

Resident investors. Investment from a natural person into a fund and profit received on the sale of securities that make up a fund are not disposals subject to profit tax (*Article 108, Tax Code*). In addition, income received from securities held in funds is not considered to be part of their taxable income (*Article 112, Tax Code*).

Expenses related to the purchase, sale or other activities related to the shares of funds are not considered to be expenses for the calculation of income tax base for legal entities.

Non-resident investors. The rules for resident investors (*see above*) also apply to non-resident investors.

Non-resident organisations subject to income tax in Armenia include non-resident natural persons carrying out activities in Armenia through a permanent establishment and/or deriving income from Armenian sources through a permanent establishment (*Article 103, Tax Code*).

The income tax base for non-resident organisations and non-resident natural persons carrying out activities in Armenia through a permanent establishment and/or deriving income from Armenian sources through a permanent establishment is determined as the positive difference between gross income and deductible outgoings under the Tax Code (*Article 105*).

Closed-Ended Retail Funds

Funds. The rules are the same for both open-ended and closed-ended funds (*see above, Open-Ended Retail Funds*).

Resident investors. The rules are the same for both open-ended and closed-ended funds (*see above, Open-Ended Retail Funds*).

Non-resident investors. The rules are the same for both open-ended and closed-ended funds (*see above, Open-Ended Retail Funds*).

REFORM

18. What proposals are there (if any) for the reform of retail fund regulation?

There are no current draft or upcoming proposals for reform of the retail fund regulation.

Contributor Profile

Narine Beglaryan, Partner

Concern Dialog Law Firm

T +37 499 353 452

F +37 460 278 888

E narine.beglaryan@dialog.am

W www.dialog.am

Professional Qualifications. Attorney, Armenia

Areas of Practice. Banking; capital market; corporate law.

Recent Transactions

- Managed equity participation transactions in Armenian companies, including the implementation of legal audit prior to those transactions.
- Responsible for banking and financial consulting services (one of the current projects is advising shareholders on the acquisition of shares of one of the Armenian banks).

Languages. Armenian, Russian, English

Professional Associations/Memberships. Chamber of advocates of Armenia

Publications

- *Doing Business in Armenia, Global Guide, Practical Law, Thomson Reuters.*
- *Retail investment funds in Armenia: a regulatory overview, Thomson Reuters.*
- *Corporate Governance, The Legal 500, Country Comparative Guide, 2020.*
- *Data protection in Armenia 2019, Practical Law, Thomson Reuters.*
- *Hedge funds in Armenia, Thomson Reuters.*
- *Corporate M&A, Thomson Reuters.*

