

A large, abstract graphic of a network or sphere made of interconnected blue nodes and lines, positioned in the upper right background of the page.

Austria

Regulation

FUNDS AND FUND MANAGEMENT 2008

2.1 Types of funds

Open-end investment funds are organized either as public funds or special funds.

Both types of funds are established under co-ownership according to the rules of the Austrian Investment Fund Act 1993 (see below 2.2). The units of a special fund must be held by no more than 10 unit holders, who must be known to the investment fund management company (in case of a natural person, the minimum amount invested must be EUR 250.000).

Any transfer of unit certificates by the unit holders requires the consent of the investment management company.

Non-distributing types of funds are permitted. A special type of non-distributing funds is the pension investment fund according to Section 23 of the Austrian Investment Fund Act 1993 (see below 2.2).

2.2 Laws

Funds are organized under Austrian Investment Fund Act 1993 (Federal Gazette) BGBl 532/1993, last amended by 69/2008.

The Austrian Investment Fund Act 1993 complies with European Community Law; in particular the Undertakings for Collective Investments in Transferable Securities (UCITS) directives on the coordination of laws, regulations, and administrative provisions relating to UCITS (directives 2001/107/EC and 2001/108/EC).

2.3 Managers, administrator, and custodians

Investment management companies are eligible to act as administrators and managers of funds. These companies must be organized either as a public limited company or as a private limited company holding a banking license and minimum capital stock of EUR 2.5 million.

The investment management company must appoint a domestic custodian (principle of segregation of powers). The custodian could be either a domestic

credit institution or affiliate of a credit institution of the European Economic Area (EEA) holding a banking license.

Generally there is no limit laid down by law as to the fees which managers or trustees may charge but the individual regulations of each fund and the (limited) prospectus stipulate these fees.

2.4 Investment restrictions

The principal restrictions on investments are as follows:

- A fund is only allowed to acquire securities (shares and bonds), money market instruments, and other liquid financial instruments which are quoted or traded on a generally recognized securities market. A maximum of 10 percent of the fund assets may be invested in other securities and money market instruments.
- Securities / money market instruments of one issuer may be purchased up to 10 percent of the fund assets, whereas the total value of holdings exceeding 5 percent of the fund assets of the same issuer may not exceed 40 percent of the fund assets. Securities / money market instruments issued by a Member State of the EU or the EEA (including its federal states) or another country may be acquired up to 35 percent of the fund assets. Debt securities issued by a credit institution domiciled in the EEA Member States may be acquired up to 25 percent of the fund assets.

Certificates of other UCITS may be acquired up to 20 percent of fund assets, non-UCITS to an overall limit of 30 percent. The formation of funds of funds is possible.

Deposits with credit institution (up to 12 months) are allowed up to 20 percent of the fund assets. In total the investments made in securities, money market instruments, or derivatives of the same issuer or in deposits with this issuer may not exceed 20 percent of fund assets.

In addition to the above mentioned investments, the fund is, to a certain extent, which must be stipulated in the individual regulations and the prospectus of the fund, permitted to acquire and sell derivatives. It is also permitted to swap interest payments (interest rate swaps), fund assets denominated in a different currency (currency swaps), and credit default (credit default swaps). Repurchase agreements and securities lending (up to 30 percent of the fund assets) are permitted if expressly provided for in the fund rules. The global exposure relating to derivative Instruments shall not exceed the total net value of the fund assets.

The investment limits may be exceeded by 100 percent in the case of special funds if this is expressly provided for in the funds rules.

2.5 Borrowing

Short term borrowings are permitted up to 10 percent of the fund assets.

2.6 Accounts and prospectus

The investment fund management company shall prepare an annual report for each financial year and each investment fund as well as a half-yearly report for the first six months of each financial year.

The annual report shall include a profit and loss account, a statement of assets and liabilities as well as the fund rules; the annual report shall also include a statement of changes in the fund assets and indicate the number of units at the beginning and at the end of the financial year.

Furthermore, the annual report shall contain a report on the activities in the past financial year and all data provided for in Annex B of the Austrian Investment Fund Act 1993, as well as any essential information enabling investors to make an informed assessment of the development of activities and results of the investment funds.

The half-yearly report shall contain at least the information provided for in Chapters 1 to 4 of Annex B of the Austrian Investment Fund Act 1993. The annual report must be approved by a certified public accountant.

A fund may select any accounting period end that suits it but accounts (except in the first year) must be for a period of one year.

Prior to the offer of units to the public, the fund rules have to be approved by the Financial Market Authority.

A notice on the establishment of a new investment fund has to be published in an official gazette of the *Wiener Zeitung* newspaper.

A prospectus and a simplified prospectus is required and has to be sent to the Oesterreichische Kontrollbank AG (Austria's main financial and service provider for the capital market and export industry) at least one day before the first issue of units, but it does not have to be approved by the regulatory authority.

2.7 Supervision

The supervisory authority for funds is the Financial Market Authority (Finanzmarktaufsicht, Praterstraße 23, A - 1020 Vienna).

A duty has to be paid for the registration of a fund and for every approval of changes in the fund regulations. Supervisory fees must be paid by the capital investment company. For the first issue of units no capital duty falls due.

2.8 Fund ownership

There are no restrictions on the percentage of units in the fund which may be held by one person or group of persons.

2.9 Fund structure

Index funds

Funds which copy an accepted stock or bond index are permitted. The funds regulations must explicit include such an investment objective.

Umbrella funds

Umbrella funds are not permitted.

Other portfolios of assets

According to Section 20a of the Austrian Investment Fund Act 1993 a fund may invest (in addition to the before mentioned investments):

- in certificates of one UCITS up to 50 percent of the fund assets;
- up to 50 percent of the fund assets in one and the same domestic special fund;
- up to 10 percent in units of other collective investment undertakings (e.g. hedge funds); and
- up to 10 percent of the fund assets in units of one and the same real estate investment fund managed by an investment fund management company having its registered office in the EEA .

Other portfolios of assets are non-UCITS.

2.10 Stock exchange

The funds are not quoted on the stock exchange.

2.11 Bank secrecy

The money laundering regulations implemented avoid misuse of the banking system. For cash transactions including deposits of EUR 15,000 or more, the bank is expected to verify the name and address of the customer.

2.12 Fund set-up

It takes approximately between two to four months to set up a fund. Professional fees and fees payable to regulatory authorities amount to approximately EUR 1,500.

2.13 Foreign funds

There are certain restrictions on the marketing within Austria of units in mutual funds organized under the laws of a territory outside Austria.

For funds organized in an EEA Member State, the following restrictions apply:

- An Austrian bank must be named as paying agent
- Publication of the annual and semi annual report, the prospectus, and the simplified prospectus in the German language in Austria
- Publication of the issue - and redemption - price in Austria at least twice a month
- Approval by the Austrian Financial Market Authority (the supervisory authority)

Additional restrictions apply to funds organized in other countries:

- An Austrian Bank must be named as representative of the foreign investment company in Austria.

2.14 Bearer shares

There are no restrictions on the issue of units in bearer form. Bearer units are common in practice.

2.15 Use of the internet

We are not aware of any legal regulations in place preventing the use of the internet as a marketing tool.

The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act upon such information without appropriate professional advice after a thorough examination of the particular situation.