

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.

Denmark

Regulation

FUNDS AND FUND MANAGEMENT 2009

2.1 Type of funds

In Denmark open-ended mutual funds (UCITS) are named investment associations (Investeringsforeninger). These funds may be organized either as accumulating, distributing, or account-based funds. The accumulating and distributing funds issue certificates to the investors.

2.2 Laws

Investment associations (UCITS) and special-purpose funds (placement associations, money market associations, SME associations, and funds of funds), restricted associations, and hedge associations are established in accordance with the Act on Investment Associations and Special-Purpose Associations as well as other collective investment schemes etc.

In 2005 amendments in the legislation has been made regarding hedge associations. A change in the legislation has been made in 2007 regarding professional's associations, which only is intended to apply for professional's investors.

The Act is available in an English translation at the homepage of the Danish FSA: www.ftnet.dk

The Danish regulations for investment associations correspond to the regulations of the EC UCITS Directive.

Investment management companies are ruled by the Financial Business Act, which set rules for authorization, management, solvency, accounting etc.

2.3 Managers, trustees, and custodians

Resident banks or registered branches of foreign banks are the primary custodians/trustees of funds operating in the Danish market. The funds may be either self-managed or management may be out-sourced to an external administration company. An external administration company will have to be approved by the Danish FSA in order to conduct the management of the funds.

An investment management company must be established as a limited liability company and has to be granted authorization to carry out its activities.

There are no stated quantitative limits on the fees charged by the administration companies.

2.4 Investment restrictions

A number of restrictions on the investment associations investment activities exist.

In general the funds are allowed to invest in:

- listed securities;
- securities traded on certain regulated markets;
- new issues of securities that will become listed or traded on a regulated market;
- unlisted mortgage backed securities in real estate up to 80 percent of the value of the real estate;
- derivatives subject to certain conditions;
- money market related securities; or
- cash for temporary use only

The following general restrictions must be observed:

- The fund must not invest more than 5 percent of its funds in securities issued by the same issuer. However, this limit is 10 percent if the total sum of investments in these securities does not exceed 40 percent of the total funds.
- The fund must only invest in up to 10 percent of the stocks in one single limited liability company.
- A fund or sub fund must not grant loans or provide guarantees.
- A fund must not participate in or conduct speculative investments.

2.5 Borrowing

As a general principle, investment funds are not allowed to borrow money. However, for the redemption of units, for the exercise of subscription rights, or for the establishment of office facilities borrowing is permitted. The total borrowings must not exceed 10 percent of the total funds.

Hedge associations are not subject to the restriction in borrowing money.

2.6 Accounts and prospectus

Investment funds must prepare annual report for the calendar year. This report is subject to auditing. An interim statement as of 30 June of the total funds must be prepared.

A fund offering units to the general public must prepare a prospectus complying with the regulations of the Danish FSA and the stock exchange. The prospectus must be kept up to date.

Prior approval of a prospectus from the Danish FSA is not needed. The Danish FSA must, however, receive a copy of the proposal no later than the day after its publication.

2.7 Supervision

The supervisory authority for UCITS and special-purpose associations is the Danish Supervisory Authority of Financial Affairs (Finanstilsynet), Århusgade 110, DK-2100 København Ø. Homepage: <http://www.ftnet.dk>

2.8 Fund ownership

There is no maximum limit on the number of units owned by one single person or entity. However, investment associations must be offered to the general public.

2.9 Hedge funds

In 2005 amendments in the legislation has been made regarding hedge associations. Hedge associations are not subject to the above mentioned investments restrictions. A hedge association shall lay down its risk policy and risk profile in the articles of association and risk framework set by the board of directors.

If a hedge association exceeds any of the risk frameworks specified in the articles of association or by the board of directors, notice thereof shall without delay be submitted to the Danish FSA together with a report on the background for exceeding the risk framework and a description of how the association intends to avoid similar incidents in the future.

In the event that the risk framework is exceeded, the risk shall immediately be reduced to a level within the risk framework specified and the registered members of the association shall be informed. In special cases, the Danish FSA may lay down a time limit for reducing the risk. Where the risk is not reduced within such time limit laid down by the Danish FSA, the Danish FSA may withdraw the approval of the hedge association.

2.10 Stock exchange

The funds may be listed on a stock exchange. The requirements for being listed are generally the same as those applicable for other listed companies.

2.11 Bank secrecy

For tax purposes the Danish banks are obliged to supply information to the Danish tax authorities on the deposits of the bank. Also the EU directive on money laundering has been implemented into Danish legislation.

2.12 Fund set-up

If the fund is established as a limited liability entity the cost of setting up in Denmark is approximately DKK 500,000 (accountancy and legal fees). The minimum capital requirement is DKK 10 million or DKK 25 million for hedge associations. If the fund is divided into sub-funds each sub-fund must comply with the minimum capital requirement. The establishment of a fund may take from one to six months. Besides having the formal approval from the Danish FSA the fund must be registered at the Danish Commerce and Company Agency (Erhvervs- og Selskabsstyrelsen).

2.13 Foreign funds

Foreign investment funds are allowed to market themselves to Danish investors provided that the marketing activity is based on an international agreement approved by the Danish FSA. Others will need a prior approval from the Danish FSA.

The overall rules are as follows: For UCITS licensed in and operating from another EU Member State there are, in principle, no restrictions. The foreign UCITS will have to inform the Danish FSA of its intentions to market on the Danish market. A number of documents will have to be sent to the Danish FSA including a prospectus in an authorized Danish translation and a statement from the authorities in the home country of the fund. If the Danish FSA has no objections within a period of two months, the UCITS may start its activities in Denmark. For collective investment undertakings not UCITS licensed a formal prior approval from the Danish FSA is needed. The fund will have to provide at least the same documentation as the UCITS to the Danish FSA, however, further statements from the authorities of the home country are needed.

The marketing requirements for UCITS from other EC countries and other investment undertakings are stated in the Act on Investment Associations and Special-Purpose Associations as well as other investment schemes. An executive Order on Marketing Carried out by Certain Foreign Investment Undertakings in Denmark has been issued. This order is available in English on the homepage of the Danish FSA: www.ftnet.dk.

There are no exchange control restrictions that prevent marketing of foreign funds.

When Danish residents invest in foreign securities and the securities are deposited outside Denmark, the Danish reporting requirements must be observed. The foreign depositor will be required to provide the Danish tax authorities with information for tax purposes. This information is similar to what a Danish bank/depositor must provide.

2.14 Bearer shares

The units may be in bearer form. The investor must be registered by name in order to receive a distribution in the form of dividends.

2.15 Use of the internet

There are no specific regulations for the marketing of funds on the internet, however, the general Danish marketing regulations must be observed. For foreign investment funds: see above.

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