

A large, abstract graphic of a network or sphere made of interconnected blue nodes and lines, positioned in the upper right background. The nodes are 3D cubes, and the lines are thin, connecting them in a complex, spherical pattern.

# Germany

## Accounting

FUNDS AND FUND MANAGEMENT 2009

### 1.0 Accounting

The fundamental law for the investment industry in Germany is the Investment Act (Investmentgesetz, InvG) which is effective since January 2004. In December 2007 the Investment Act has been substantially revised by an amendment (Investmentänderungsgesetz, InvÄndG).

German tax law has further implications for fund accounting (for more information on this issue see the Germany taxation survey).

### 1.1 Requirement to produce financial statements

#### Requirements to maintain the books and records in the local jurisdiction

The requirement to maintain the books and records derives from the Investment Act. The duty to determine and publish the value of a fund on each exchange day according to § 36 (1) of the Investment Act requires an accurate and timely maintenance of books and records.

Funds authorized under the Investment Act are not required to maintain the accounting records in Germany. According to § 16 of the Investment Act outsourcing of accounting activities to a third party is possible.

#### Production of financial statements

Under the requirements of § 44 (1) of the Investment Act, an investment management company must issue annual reports for all funds under its management at the close of the funds' financial year. This report must include:

- a report about the business activities;
- a schedule of assets and liabilities;
- a statement of transactions executed during the reporting period;

- the net asset value of the fund;
- the number and value of units outstanding;
- a profit and loss statement;
- a statement of changes in the net assets during the reporting period;
- the decided profit distribution of the fund; and
- a comparative overview of the last three financial years (see also Requirements for comparatives below).

Under § 44 (2) of the Investment Act there is a duty to issue a semi-annual report on the first two quarters of the financial year.

A report must also be issued when a fund is dissolved or transferred to another investment management company. According to § 44 (3) and (4) of the Investment Act these reports must include information corresponding to the information in the annual report.

Investment stock corporations have to prepare an annual report including a management report in accordance with certain regulations of the German GAAP (Handelsgesetzbuch, HGB). The BMF may promulgate more specific rules concerning additional content, scope, and presentation of the management report.

### Choice of period/year-end for collective investment funds

The fund can freely choose the end of its reporting year (usually a month end). The date has to be reported in the prospectus according to § 42 (1) No. 4 of the Investment Act.

A reporting period longer than one year for the first reporting period is not allowed.

### Requirements for comparatives

The annual report must include a comparative overview of the value of the fund and the value of the units shown for the end of the actual financial year and the last three financial years.

### Restrictions on the currency under which financial statements must be prepared

There are no restrictions on the reporting currency.

#### Accounting publications specific to the funds industry (as issued by accounting bodies or regulators)

Accounting publications specific to the investment industry are published infrequently by the Federal Agency for Financial Services Supervision (Bundesanstalt für Finanzdienstleistungsaufsicht, BaFin) and the German Federal Investment Management Companies' Association (Bundesverband Investment und Asset Management e.V., BVI).

#### Use of short form accounts

There are no regulations regarding short form accounts.

#### Umbrella schemes

Until now the accounting rules for an umbrella fund follow the general funds accounting rules and there is no specific regulation for the accounting treatment of sub-funds.

According to § 34 (3) of the Investment Act, the Federal Ministry of Finance (Bundesfinanzministerium, BMF) is granted the authority to promulgate more specific rules for sub-funds concerning accounting treatment, accounting methods, and valuation.

#### Classes of shares

The Unit Class Regulation (Anteilklassenverordnung, AntKIV) which is effective since March 2005 comprises specific rules for the accounting treatment of multiple unit classes.

The annual report has to provide the following information for each unit class:

- the rights associated with the respective unit class;
- NAV per share;
- number of shares;
- a profit and loss statement regarding the profits and losses caused by the respective share class;
- details on distributed or retained profits, over- or undervalue of assets and funds in- or outflows caused by the respective share class (statement of changes in the net assets); and
- a comparative overview of the last three financial years.

Additionally, the annual report must contain information on the requirements under which unit classes with different rights may be issued.

For semi-annual reports only information for NAV per share and for number of shares must be reported. In case of an interim profit distribution all information has to be provided.

In addition, investment management companies may issue separate annual and semi-annual reports for each unit class according to § 3 (3) of the Unit Class Regulation.

### 1.2 Requirement to audit financial statements

The Investment Act requires the audit of financial statements of funds. The auditor of the fund and the auditor of the investment management company may not be the same.

The audit assignment comprises the audit of the annual, interim and dissolution reports. The semi-annual report is not subject to audit.

The scope of the audit is defined in § 44 (5) and (6) of the Investment Act. More details contain the new regulation regarding the auditing of investment funds (Investment-Prüfungsberichtsverordnung), which has been issued by BaFin in December 2008 according to § 44 (7) of the Investment Act. The auditor shall summarize the findings and results of the audit of financial statements in a special opinion. The auditor must also determine whether the fund has been managed in accordance with regulatory requirements and contractual rules of the fund.

### 1.3 Publication of financial statements

The annual, semi-annual, and dissolution report must immediately be submitted to the regulator. The annual report has to be published in the electronic Federal Gazette within four months following the expiration of the financial year. For semi-annual reports, the time limit is two months after the end of the financial year. Dissolution reports have to be published three months after the dissolution date.

### 1.4 Accounting standards

Financial statements required by the Investment Act are prepared under certain fund-specific accounting principles. The BMF may promulgate more specific rules concerning additional content, scope, and presentation of the annual report.

If required by the investor, some investment management companies also prepare financial statements under IFRS-accounting rules.

## 1.5 Contents of financial statements

Requirements for inclusion in annual financial statements:

	Required by law	Required by German GAAP	Complied with for Best Practice
A statement which includes all income less expenses plus realized and unrealized gains and losses	Yes	No	Yes
A statement which only includes income less expenses	No	No	No
A statement which only includes income less expenses plus realized gains and losses	No	No	No
Statement of net assets and liabilities	Yes	No	Yes
Statement of changes in net assets	Yes	No	Yes
Cash flow statement	No	No	No
Statement of accounting policies	No	No	No
3-year net asset value table	Yes	No	Yes

## 1.6 Accounting treatments and disclosures

The following items must be included in the annual financial statements:

	Required by Law	Required by German GAAP	Complied with for Best Practice
Futures are shown on balance sheet using the grossed up notional amount	No	No	No
Futures are shown on the balance sheet based on the margin outstanding <sup>1</sup>	Yes	No	Yes
Futures are shown on the balance sheet based on the margin outstanding and the margin paid to date <sup>1</sup>	Yes	No	Yes
Organization costs are amortized immediately	No	No	No

	Required by Law	Required by German GAAP	Complied with for Best Practice
Organization costs are amortized over one year	No	No	No
Organization costs are amortized over more than one year	No	No	No
Issue costs are charged to the statement of operations	No	No	No
Issue costs are netted off against creation proceeds	No	No	No
Contingent deferred sales charges are recorded as income	No	No	No
Contingent deferred sales charges are netted off against redemption proceeds	No	No	No
Holdings in other collective investment funds are consolidated if the fund holds > 50 percent of the underlying collective investment fund's shares	No	No	No
Methods used in financial statement presentation to measure listed investments are:			
Cost	No	No	No
Market value	Yes	No	Yes
The financial statements distinguish between income and capital	No	No	No

## Notes

- Both treatments are used in practice.
- Real estate funds (Immobilien-Sondervermögen) are exempt from this requirement. The value of real estate property and real estate property companies are appraised by an expert committee.

## Appendix

### Reference material

The following details the relevant laws and regulations for collective investment funds and fund management companies and provides Web addresses (in certain instances) for where this material can be located:

#### Regulator

[www.bafin.de](http://www.bafin.de)

#### Association

[www.bvi.de](http://www.bvi.de)

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