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June 2010, GlobalDenmark Translations

Executive Order on Marketing Carried out by Foreign Investment Undertakings in Denmark[1)]

Executive Order no. 505 of 12 May 2010

The following shall be laid down pursuant to section 11(5) and section 16(2) of the Investment Associations, Special-Purpose Associations and other Collective Investment Schemes etc. Act, cf. Consolidating Act no. 807 of 21 August 2009:

Scope

1. This Executive Order shall apply to foreign investment undertakings, cf. section 3(1), no. 9 of the Investment Associations and Special-Purpose Associations as well as other Collective

[1] This Executive Order contains provisions that implement parts of Council Directive 85/611/EEC of 20 December 1985 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS Directive), (Official Journal 1985 L 375, p. 3); parts of Council Directive 88/220/EEC of 22 March 1988 amending, as regards certain administrative provisions relating to undertakings for collective investments in transferable securities (UCITS), (Official Journal 1988 L 100, p. 31); parts of European Parliament and Council Directive 95/26/EC of 29 June 1995 amending Directives 77/780/EEC and 89/646/EEC in the field of credit institutions, Directives 73/239/EEC and 92/49/EEC in the field of non- life insurance, Directives 79/267/EEC and 92/96/EEC in the field of life assurance, Directive 93/22/EEC in the field of investment firms and Directive 85/611/EEC in the field of undertakings for collective investment in transferable securities (UCITS), with a view to reinforcing prudential supervision (BCCI Directive), (Official Journal 1995 L 168, p. 7); parts of Directive 2001/107/EC of the European Parliament and of the Council of 21 January 2002 amending Council Directive 85/611/EEC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) with a view to regulating management companies and simplified prospectuses (Services Directive), (Official Journal 2002 L 41, p. 20); parts of Directive 2001/108/EC of the European Parliament and of the Council of 21 January 2002 amending Council Directive 85/611/EEC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS), with regard to investments of UCITS, (Official Journal 2002 L 41, p. 35); and parts of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC (MiFID Directive), (Official Journal 2004 L 145, p. 1).

Investment Schemes etc. Act, which intend to market their units directly or indirectly in Denmark, and which

1) have been approved by a competent authority in another country within the European Union or a country with which the Community has entered into an agreement for the financial area in pursuance of Council Directive 85/611/EEC (UCITS),
2) have been approved and are under public supervision by a competent authority in another country within the European Union or a country with which the Community has entered into an agreement for the financial area but which are not covered by Council Directive 85/611/EEC (UCITS),
3) have been approved and are under public supervision by a competent authority in a country outside the European Union and outside countries with which the Community has entered into an agreement for the financial area, and which
    a. have as their object to receive funds from a wide circle or from the general public which, in accordance with a principle of risk-spreading, are placed in instruments mentioned in section 3(1), no. 1 of the Investment Associations and Special-Purpose Associations as well as other Collective Investment Schemes etc. Act or in instruments mentioned in annex 5 of the Financial Business Act and at the request of a unit-holder redeem the unit-holder's share of the assets with funds derived therefrom, or
    b. have as their object to receive funds from a wide circle or from the general public which are not placed in accordance with the principle of risk-spreading and which place the funds in liquid funds, including currency, or in instruments as mentioned in annex 5 of the Financial Business Act, in accordance with the investment policy and risk profile of the investment undertaking, and redeem the unit-holder's share of the assets with funds derived therefrom.

Notification of foreign investment undertakings covered by Council Directive 85/611/EEC (UCITS)

2.-(1) A foreign investment undertaking covered by section 1(1), no. 1, which intends to market its units directly or indirectly in Denmark, shall submit the following to the Danish FSA:

1) A statement from the supervisory authorities of the investment undertaking verifying that the undertaking has been approved as an investment undertaking in accordance

with Council Directive 85/611/EEC (UCITS), stating any sub-funds of the investment undertaking.

2) Fund regulations or articles of association.
3) Complete and simplified prospectus including any supplements.
4) The most recent annual report, unless the investment undertaking has not yet operated for a full accounting period, and any half-yearly statement of assets or interim report.
5) Statement of planned marketing (marketing plan), including information on the target group the undertaking is aiming at.
6) Information on the measures the investment undertaking intends to implement in Denmark with a view to securing the unit-holders' rights to receive dividends and redeem units.
7) Information on the information the investment undertaking is required to provide for its unit-holders according to the regulations in its home country, including the information the investment undertaking is required to provide if it ceases marketing in Denmark.
8) Information
    a. on the taxation regulations applicable to Danish unit-holders of the investment undertaking,
    b. on the extent to which tax is withheld on any distributions, and
    c. on the taxation regulations applying to the investment undertaking in its home country.
9) A digital document stating the names and ISIN codes of the sub-funds and classes covered by the notification.
10) Information on the Danish representative of the investment undertaking, cf. section 6, if the undertaking has such a representative.

(2) The information in subsection (1), nos. 6, 7 and 10 may be included in the marketing plan, cf. subsection (1), no. 5. The information mentioned in subsection (1), nos. 8 and 10 shall be included in both the complete and the simplified prospectus or as a supplement to these, cf. subsection (1), no. 3.

(3) For subsequent notifications of sub-funds in a foreign investment undertaking covered by section 1(1), no 1, the investment undertaking shall submit

1) the information and documents mentioned in subsection (1), nos. 1 and 3-8, if they have been amended, or, if they have not been amended, the investment undertaking shall refer to previously submitted information and documents, and

2) a digital document stating the names and ISIN codes of the sub-funds and classes covered by the notification.

(4) For subsequent registrations of classes in sub-funds which have already been notified, the investment undertaking shall submit a digital document stating the names and ISIN codes of the sub-funds and classes covered by the notification.

(5) The documents specified in subsection (1) shall be available as an authorised Danish translation or in English, Norwegian or Swedish. The simplified prospectus, cf. subsection (1), no. 3, and any supplements to this, shall, however, always be available as an authorised Danish translation.

(6) An authorised Danish translation, cf. subsection (5), shall be a translation completed by a state-authorised translator or a corresponding foreign language expert.

Application by other foreign investment undertakings for approval of marketing activities

3.-(1) A foreign investment undertaking covered by section 1(1), nos. 2 and 3, which intends to market its units directly or indirectly in Denmark, shall submit the following to the Danish FSA:

1) A statement from the supervisory authorities of the investment undertaking to the effect that said investment undertaking has been approved in accordance with the legislation of the home country and falls within the scope of the supervisory authority of said country, including as regards said investment undertaking's activities in Denmark, and information on the scope of the approval granted.
2) Fund regulations or articles of association.
3) Prospectus including any supplements.
4) The most recent annual report, unless the investment undertaking has not yet operated for a full accounting period, and any half-yearly statement of assets or interim report.
5) A statement of planned marketing (marketing plan), including information on the target group the investment undertaking is aiming at.
6) Information on the measures the investment undertaking intends to implement in Denmark with a view to securing the unit-holders' rights to receive dividends and redeem units.

7) Information on the information the investment undertaking is required to provide for its unit-holders according to the regulations in its home country, including the information the investment undertaking is required to provide if it ceases marketing in Denmark.
8) Information
    a. on the taxation regulations applicable to Danish unit-holders of the investment undertaking,
    b. on the extent to which tax is withheld on any distributions, and
    c. on the taxation regulations applying to the investment undertaking in its home country.
9) A statement from the supervisory authorities of the investment undertaking to the effect that the home country is prepared to grant similar Danish associations access to market their units in the country in question.
10) Any other documents which the investment undertaking is under an obligation to make public in its home country.
11) A digital document stating the names and ISIN codes of the sub-funds and classes covered by the notification.
12) Information on the Danish representative of the investment undertaking, cf. section 6, if the undertaking has such a representative.

(2) The information in subsection (1), nos. 6, 7 and 12 may be included in the marketing plan, cf. subsection (1), no. 5. The information in subsection (1), nos. 8 and 12 shall be included in the prospectus or as a supplement to this, cf. subsection (1), no. 3.

(3) For subsequent application for approval to carry out marketing activities for sub-funds of a foreign investment undertaking covered by section 1(1), nos. 2 and 3, the investment undertaking shall submit

1) the information and documents mentioned in subsection (1), nos. 1 and 3-9, and
2) a digital document stating the names and ISIN codes of the sub-funds and classes covered by the notification.

(4) For subsequent application for approval to carry out marketing activities for classes in sub-funds, the marketing of which has already been approved, the investment undertaking shall submit a digital document stating the names and ISIN codes of the sub-funds and classes covered by the notification.

(5) The documents specified in subsection (1) shall be available as an authorised Danish translation or in English, Norwegian or Swedish. The prospectus, cf. subsection (1), no. 3, and any supplements to this, shall, however, always be available as an authorised Danish translation.

(6) An authorised Danish translation, cf. subsection (5), shall be a translation completed by a state-authorised translator or a corresponding foreign language expert.

Common provisions

4.-(1) The following of the documents mentioned in section 2(1) and section 3(1) shall be original documents or copies which have been certified by persons who have been authorised in writing to act on behalf of the investment undertaking in this connection:

1) A statement from the supervisory authorities of the investment undertaking verifying that the investment undertaking is an investment undertaking
    a. approved in accordance with Council Directive 85/611/EEC (UCITS), stating any sub-funds of the investment undertaking, cf. section 2(1), no.1, or
    b. approved in accordance with the legislation of the home country and falling within the scope of the supervisory authority of the said country, including as regards said investment undertaking's activities in Denmark, and information on the scope of the approval granted, cf. section 3(1), no. 1.
2) The prospectus and the simplified prospectus, cf. section 2(1), no. 3 and section 3(1), no. 3.
3) The statement from the supervisory authorities of the investment undertaking to the effect that the home country is prepared to grant similar Danish associations access to market their units in the country in question, cf., section 3(1), no. 9.

5.-(1) The marketing plan, cf. section 2(1), no. 5 and section 3(1), no. 5, shall

1) contain the name and address of the investment undertaking and, if relevant, its management company,
2) describe the planned marketing activities in Denmark, including the types of investors to which the investment undertaking intends to refer, for example retail investors or professional investors etc. and whether there is to be direct or indirect marketing to

retail investors and whether the investment undertaking has entered into, or intends to enter into, agreements with Danish securities dealers on sales to retail investors and surrender, redemption or conversion of units, as well as other relevant information, and

3) contain the name, address, tasks and obligations of the representative mentioned in section 6.

(2) A professional investor shall be as defined in section 3(1), no. 18 of the Investment Associations and Special-Purpose Associations as well as other Collective Investment Schemes etc. Act. Retail investors are investors who are not professional investors.

(3) If the foreign investment undertaking only intends to market units to professional investors, and the investment undertaking does not intend to have a representative, the marketing plan, cf. subsection (1), shall state how the investment undertaking will ensure that the units are not resold to retail investors.

Representatives

6.-(1) Foreign investment undertakings, the units of which are marketed to retail investors in Denmark, shall have a representative with an office in Denmark in order to secure retail investors access to information and redemption of units. This requirement shall not, however, apply for foreign investment undertakings which only market their units to retail investors through unit-linked schemes established by undertakings which are under supervision by the Danish FSA, cf. section 1 of the Financial Business Act, or through a branch, cf. section 5(1), no. 19 of the Financial Business Act.

(2) The representative shall have a licence as a securities dealer, cf. section 9 of the Financial Business Act, or as an investment management company, cf. section 10 of the Financial Business Act. The representative may also be a branch, cf. section 5(1), no. 19 of the Financial Business Act.

(3) At the request of a retail investor, the representative shall provide information about the investment undertaking and assist the retail investor in redemption, payment of dividends and conversion of units etc. by helping the investor in contact with the investment undertaking or by the representative himself performing these tasks.

(4) Enquiries from a retail investor to the representative shall be considered as enquiries to the foreign investment undertaking.

Recognition by the Danish FSA of direct or indirect marketing of investment undertakings covered by Council Directive 85/611/EEC (UCITS)

7.-(1) The Danish FSA shall recognise notifications by the investment undertaking or new sub-funds, when investment undertakings covered by section 1(1), no. 1 have submitted the documents and information mentioned in section 2(1) to the Danish FSA. The Danish FSA may, however, obtain further information, if the documents and information submitted pursuant to section 2(1) are not satisfactory.

(2) Units in foreign investment undertakings covered by section 1(1), no. 1 may, however, be marketed two months after submission to the Danish FSA of the documents and information required in section 2(1) and, if relevant, section 2(3), unless

1) the Danish FSA has already decided that the planned guidelines for marketing the units, cf. section 2(1), no. 5, fail to secure adequately the rights of the investors in accordance with section 2(1), nos. 6 and 7, or
2) the marketing planned will be contrary to legislation within areas which do not fall within the scope of the Investment Associations and Special-Purpose Associations as well as other Collective Investment Schemes etc. Act.

8.-(1) Foreign investment undertakings covered by section 1(1), no. 1 shall be entitled to use the same designation for their activities as that they use in their home country.

(2) Where such designation entails a risk of confusion, the Danish FSA may require that the undertaking add an explanatory note to the designation.

Approval by the Danish FSA of direct or indirect marketing of investment undertakings which are not covered by Council Directive 85/611/EEC (UCITS)

9. Before the Danish FSA can approve marketing of a foreign investment undertaking covered by section 1(1), nos. 2 and 3, the Danish FSA requires authority to cooperate with the supervisory authority in the home country of the investment undertaking.

10.-(1) The Danish FSA shall approve direct or indirect marketing when investment undertakings covered by section 1(1), nos. 2 and 3 have submitted the documents and information mentioned in section 3(1) to the Danish FSA. The Danish FSA may, however, request further information deemed necessary to decide whether the interests of investors are adequately secured.

(2) Units in foreign investment undertakings covered by section 1(1), nos. 2 and 3 may be marketed when the Danish FSA has approved the marketing, cf. subsection (1).

11.-(1) Foreign investment undertakings covered by section 1(1), nos. 2 and 3 shall be entitled to use the same designation for their activities as that they use in their home country.

(2) Where such designation entails a risk of confusion, the Danish FSA may require that the undertaking add an explanatory note to the designation.

Changes in information etc.

12.-(1) Foreign investment undertakings shall notify the Danish FSA of changes in the name and address of the investment undertaking as well as the marketing plan, cf. section 2(1), no. 5 and section 3(1), no. 5, no later than 14 days after the decision to make the change has been made.

(2) Foreign investment undertakings shall notify the Danish FSA without delay if they suspend redemption of units.

Publication of information

13.-(1) The documents and information which foreign investment undertakings are under an obligation to make public on an ongoing basis in their home country shall also be made public in Denmark. Publication shall be in the same way as in the home country. Investment

undertakings themselves shall be responsible for publication in Denmark, however, if it is the supervisory authority of the home country that publishes certain information in the home country. The prospectus or a supplement to this shall state where publication is to take place.

(2) The documents and information dealt with in subsection (1) shall be available as an authorised Danish translation or in English, Norwegian or Swedish.

(3) An authorised Danish translation, cf. subsection (2), shall be a translation completed by a state-authorised translator or a corresponding foreign translation.

Cessation of marketing of units

14. The Danish FSA may demand that a foreign investment undertaking cease marketing its units in Denmark, if

1) the measures of the investment undertaking to secure the rights to receive dividends and redeem units, cf. section 2(1), no. 6 and section 3(1), no. 6 fail to secure adequately the rights of unit-holders,
2) the investment undertaking fails to comply with its marketing plan, cf. section 2(1), no. 5 and section 3(1), no. 5,
3) the approval or supervision of the investment undertaking from the competent authorities of the home country ceases to apply,
4) the access of Danish associations to marketing activities in the country in question, cf. section 3(1), no. 9, is changed or ceases to apply,
5) the authority of the Danish FSA to cooperate with the supervisory authority in the home country of the investment undertaking, cf. section 9, ceases to apply, or
6) the investment undertaking is guilty of gross or repeated violation of the provisions laid down in this Executive Order or in other Danish legislation.

15. When an investment undertaking or a sub-fund of such discontinues or ceases to market its units in Denmark, said investment undertaking shall immediately notify the Danish FSA hereof, stating the date of cessation. At the same time the investment undertaking shall notify how it will implement the measures to secure the rights of Danish unit-holders mentioned in section 2(1), no. 6 or section 3(1), no. 6.

Entry into force

16.-(1) This Executive Order shall enter into force on 1 June 2010.

(2) At the same time, Executive Order no. 1350 of 5 December 2007 on Marketing Carried out by Certain Foreign Investment Undertakings in Denmark shall be repealed.

(3) Foreign investment undertakings covered by section 1, which after 1 June 2010 notify marketing or apply for approval of marketing for themselves or sub-funds or classes respectively, and which themselves intend to market their units to retail investors in Denmark, shall no later than 1 October 2010 have a representative, cf. section 6.

(4) Foreign investment undertakings covered by section 1, the units of which are marketed to retail investors in Denmark, and which are either notified before entry into force of this Executive Order, or have been approved for marketing activities by the Danish FSA before entry into force of this Executive Order shall, no later than 1 January 2011, have appointed a representative and notified this to the Danish FSA.

Danish FSA, 12 May 2010

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