

While this translation was carried out by a professional translation agency, the text is to be regarded as an unofficial translation based on the latest official Executive Order no. 799 of 26 June 2014. Only the Danish document has legal validity.

July 2014, GlobalDenmark Translations

Executive Order on Licencing Alternative Investment Fund Managers from a Third Country to market Alternative Investment Funds from a Member State of the European Union or a Country with which the Union has Entered into an Agreement for the Financial Area in Denmark¹

Executive Order no. 799 of 26 June 2014

The following shall be laid down pursuant to section 130(5) and section 190(4) of Act no. 598 of 12 June 2013 on Alternative Investment Fund Managers etc., as amended by Act no. 268 of 25 March 2014 and Act no. 403 of 28 April 2014:

Scope

1.-(1) This Executive Order shall apply to alternative investment fund managers with registered office in a third country which have been licensed to manage alternative investment funds in a Member State of the European Union or in a country with which the Union has entered into an agreement for the financial area and which intend to market units in these alternative investment funds to professional investors in Denmark.

Definitions

2. For the purpose of this Executive Order:

- 1) "Alternative investment fund" shall mean an entity as defined in
 - a) section 3(1) of the Alternative Investment Fund Managers etc. Act as well as regulations issued pursuant to section 3(9) of the Alternative Investment Fund Managers etc. Act, or
 - b) regulations implementing Article 4(1)a of Directive 2011/61/EU of 8 June 2011 on alternative investment fund managers.
- 2) "Retail investor" shall mean an investor as defined in section 3(1), no. 40 of the Alternative Investment Fund Managers etc. Act.
- 3) "Alternative investment fund manager" shall mean an entity as defined in section 3(1), no. 3 of the Alternative Investment Fund Managers etc. Act.
- 4) "Professional investor" shall mean an investor as defined in section 3(1), no. 37 of the Alternative Investment Fund Managers etc. Act.
- 5) "Third country" shall mean: a country as defined in section 3(1), no. 32 of the Alternative Investment Fund Managers etc. Act.

¹ This Executive Order implements parts of Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on alternative investment fund managers and amending Directives 2003/41/EC and 2009/65/EC as well as Regulation (EC) no. 1060/2009 and (EU) no. 1095/2010, Official Journal 2011, no. L 174, p. 1.

While this translation was carried out by a professional translation agency, the text is to be regarded as an unofficial translation based on the latest official Executive Order no. 799 of 26 June 2014. Only the Danish document has legal validity.

July 2014, GlobalDenmark Translations

Application

3.-(1) An alternative investment fund manager from a third country intending to market units in an alternative investment fund with registered office in a Member State of the European Union or a country with which the Union has entered into an agreement for the financial area, to professional investors in Denmark shall apply for authorisation from the Danish FSA.

(2) The application shall contain the following:

- 1) Documentation that the manager is licensed to manage the alternative investment fund.
- 2) A programme of operations clearly identifying the alternative investment fund the manager intends to market and information on the country in which the alternative investment fund has its registered office.
- 3) Fund rules, articles of association or other articles of establishment for the alternative investment fund.
- 4) The information available to the investors on the alternative investment fund, cf. section 62 of the Alternative Investment Fund Managers etc. Act, for example a prospectus or similar documents.
- 5) Information on the arrangements established to prevent units of the alternative investment fund from being marketed to retail investors, including if the alternative investment fund relies on activities of independent entities to provide investment services in respect of marketing the fund.
- 6) The name and address of the depositary of the alternative investment fund.
- 7) The most recent annual report, unless the alternative investment fund has not yet operated for a full accounting period, and any interim financial report.
- 8) Application form from the Danish FSA on licencing managers from a third country to market alternative investment funds with registered office in a Member State of the European Union or a country with which the Union has entered into an agreement for the financial area, including
 - a) the name and address of both the alternative investment fund and the manager,
 - b) information on the measures the manager intends to implement in Denmark with a view to securing the investors' rights to receive dividends and redeem units,
 - c) information on the information the alternative investment fund is required to provide for its investors according to the regulations of its home country, including the information which the alternative investment fund is required to provide if it ceases marketing activities in Denmark,
 - d) names of the sub-funds and share classes covered by the application, and
 - e) information on where the master fund is established if one of the alternative investment funds is a feeder fund.
- 9) Any other documents which the alternative investment fund is under an obligation to make public in its home country.

(3) The documents mentioned in subsection (2), nos. 1, 3, 7 and 9 shall be original documents or copies which have been certified by persons who have been authorised in writing to act on behalf of the alternative investment fund in this connection.

While this translation was carried out by a professional translation agency, the text is to be regarded as an unofficial translation based on the latest official Executive Order no. 799 of 26 June 2014. Only the Danish document has legal validity.

July 2014, GlobalDenmark Translations

(4) The documents and information mentioned in subsection (2) shall be drafted in either Danish or English.

(5) Within three months after submission of a complete application on authorisation to market units in an alternative investment fund or a sub-fund hereof in Denmark, cf. subsection (2), the Danish FSA shall inform the manager whether or not a licence has been granted. The Danish FSA may prolong this period for up to three months, where the Danish FSA considers this necessary due to the specific circumstances of the case and after having notified the manager. The manager may begin marketing units in the alternative investment fund to professional investors in Denmark when the manager has received a licence from the Danish FSA.

(6) On subsequent application for a licence to market further sub-fund in an alternative investment fund which has already been authorised for marketing in Denmark, the manager shall submit the information and documents mentioned in subsection (2), nos. 3-4 and 7-8.

(7) For subsequent application for a licence to carry out marketing activities for share classes in sub-funds, the marketing of which has already been licensed, the manager shall submit a digital document stating to which sub-funds the share classes belong as well as the names and possible ISIN codes of the sub-funds and share classes covered by the application.

Changes

4.-(1) An alternative investment fund manager shall, before implementation, notify the Danish FSA of any planned significant changes to the information received by the Danish FSA in connection with granting a licence to market units to professional investors, including material changes in information received by the Danish FSA in connection with the application. The notification shall take place prior to implementation of the changes. Unplanned changes shall be notified to the Danish FSA immediately after the change has taken place.

(2) If the Danish FSA is unable to approve the changes referred to in subsection (1), the Danish FSA shall, within one month of receipt of that notification, inform the manager. The Danish FSA may prolong this period for up to one month where this is deemed necessary because of the specific circumstances of the case. In such case, the Danish FSA shall, within one month after the Danish FSA has received notification according to subsection (1), notify the manager about any extension of the period.

(3) Further to notification of the manager according to subsection (2), the Danish FSA may decide to impose restrictions or reject the changes planned by the manager. Furthermore, the Danish FSA may order the manager to rectify the changes if these have already been made. The manager may establish and maintain the changes, if the Danish FSA does not oppose the changes within the relevant period.

Publication of information

5.-(1) An alternative investment fund manager shall ensure publication in Denmark of documents and information which by the alternative investment fund shall publish regularly in the home country of the fund. Publication shall be made in the same manner as in the home country.

(2) The manager shall insure publication in Denmark in the event that the supervisory authority of the home country is to publish certain information in the home country.

(3) The prospectus or a supplement to this shall state where publication is to take place.

While this translation was carried out by a professional translation agency, the text is to be regarded as an unofficial translation based on the latest official Executive Order no. 799 of 26 June 2014. Only the Danish document has legal validity.

July 2014, GlobalDenmark Translations

Cessation of marketing of units

6.-(1) The Danish FSA may require that an alternative investment fund manager with registered office in a third country ceases to market the units of the fund in Denmark if:

- 1) The measures of the manager to secure the rights of investors to receive dividends and redeem units fail to secure adequately the rights of the Danish investors.
- 2) The manager fails to pay the fee in due time, cf. section 8.
- 3) The licence of the manager to manage alternative investment funds is withdrawn or otherwise ceases to be valid.
- 4) The manager is guilty of gross or repeated violation of the provisions laid down in this Executive Order or in other relevant Danish legislation.
- 5) The possibility to cooperate with the supervisory authority of the home country of the manager, cf. section 130(3), no. 2 of the Alternative Investment Fund Managers etc. Act, ceases to apply.

7.-(1) When an alternative investment fund manager ceases to market the alternative investment fund or sub-funds thereof in Denmark, said manager shall, no later than 14 days after the decision was made, notify all Danish investors and notify the Danish FSA about this and the date of cessation. The same shall apply correspondingly if the Danish FSA requires the manager to cease to market the alternative investment fund, cf. section 6.

(2) At the same time a manager shall notify how it initiates the measures to secure the rights of Danish investors mentioned in section 3(2), no. 8b.

Fee

8. Alternative investment fund managers licensed to market alternative investment funds pursuant to this Executive Order shall pay a fee to the Danish FSA in accordance with section 361(1), no. 31 of the Financial Business Act.

Penalties

9.-(1) Any person violating section 3(1), section 4, 5 and 7 shall be liable to a fine.

(2) Companies, etc. (legal persons) may incur criminal liability under the rules of Part 5 of the Criminal Code.

Entry into force

11. This Executive Order shall enter into force on 15 July 2014.

Danish Financial Supervisory Authority, 26 June 2014

Ulrik Nødgaard

/ Anna Frost-Jensen