

Investment Associations etc. Act<sup>1)</sup>

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Consolidating Act no. 1051 of 25 August 2015 **EXCLUDING MINOR AMENDMENTS**

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This is an Act to consolidate Act no. 597 of 12 June 2013 on investment associations etc., as amended by section 7 of Act no. 268 of 25 March 2014, section 9 of Act no. 403 of 28 April 2014 and section 4 of Act no. 1490 of 23 December 2014.

**I**

**General provisions**

**Part 1**

*Scope*

<sup>1)</sup>This Act contains provisions that implement Directive 2009/65/EC of 13 July 2009 of the European Parliament and of the Council on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (investment undertakings) (the UCITS Directive), Official Journal 2009, no. L 302, p. 32, Commission Directive 2007/16/EC of 19 March 2007 implementing Council Directive 85/611/EEC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investments in transferable securities (investment undertakings) with regard to clarification of certain definitions, Official Journal 2007, no. L 79, p. 11, Commission Directive 2010/43/EC of 1 July 2010 implementing Directive 2009/65/EC of the European Parliament and of the Council as regards organisational requirements, conflicts of interest, conduct of business, risk management and content of the agreement between a depositary and a management company, Official Journal 2010, no. L 176, pp. 42-61 and Commission Directive 2010/44/EC of 1 July 2010 implementing Directive 2009/65/EC of the European Parliament and of the Council as regards certain provisions concerning fund mergers, master-feeder structures and notification procedure, Official Journal 2010, no. L 176, pp. 28-41. This Act replicates part of Commission Regulation (EU) no. 583/2010 of 1 July 2010 implementing Directive 2009/65/EC of the European Parliament and of the Council as regards key investor information and conditions to be met when providing key investor information or the prospectus in a durable medium other than paper or by means of a website, Official Journal 2010, no. L 176, pp. 1-15, and Commission Regulation (EU) no. 584/2010 of 1 July 2010 implementing Directive 2009/65/EC of the European Parliament and of the Council as regards the form and content of the standard notification letter and UCITS attestation, the use of electronic communication between competent authorities for the purpose of notification, and procedures for on-the-spot verifications and investigations and the exchange of information between competent authorities, Official Journal 2010, no. L 176, pp. 16-27. According to Article 288 of the EC Treaty, a Regulation applies immediately in each Member State. The reproduction of these provisions in this Act is therefore exclusively due to practical considerations and shall not affect the direct applicability of the regulations in Denmark.

**1.-(1)** This Act shall apply to units in collective investment schemes which are Danish UCITS.

**(2)** Danish UCITS shall cover:

- 1) Investment associations.
- 2) Investment companies with variable capital (SICAVs).
- 3) Securities funds.

**(3)** Danish UCITS may be:

- 1) Master UCITS.
- 2) Feeder UCITS.
- 3) Money-market associations, money-market SICAVs and money-market funds.
- 4) Short-term money-market associations, short-term money-market SICAVs and short-term money-market funds.

**(4)** Part 4 and sections 29, 161, 162, 167-171, 178, 179, 182 and 184-187 shall apply to marketing carried out by foreign UCITS in Denmark.

## **Part 2**

### *Definitions*

**2.-(1)** For the purposes of this Act, the following definitions shall apply:

1) "Financial instruments" shall mean:

- a) Securities.
- b) Money-market instruments.
- c) Units issued by Danish UCITS and investment undertakings, cf. section 143(1), nos. 2 and 3.
- d) Derivative financial instruments.
- e) Deposits with credit institutions.

2) "Securities" shall mean:

- a) Shares and other securities equivalent to these.
- b) Bonds and other standardised debt instruments (debt securities).
- c) All other negotiable securities giving the right to acquire such securities by subscription or exchange.

3) "Money-market instruments" shall mean: Financial instruments, that are normally traded on the money market, that are liquid, and that have a value which can be measured at any time, cf. sections 139 and 140.

4) "UCITS" shall mean: An undertaking for collective investment in transferable securities authorised according to the regulations implementing Directive 2009/65/EC of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (investment undertakings) (the UCITS Directive), and which, pursuant to Article 1(3) of the Directive may be restored

- a) in accordance with contracts as investment funds managed by investment management companies or management companies (in Denmark: securities funds),
- b) as trusts (unit trusts) or
- c) according to articles of association as investment firms (in Denmark: investment associations and companies for investment with variable capital (SICAVs)).

5) "Home country of an EU investment undertaking (UCITS)" shall mean: The EU Member State in which the investment undertaking has obtained authorisation according to Article 5 of Directive 2009/65/EC of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (the UCITS Directive).

- 6) "Host country of an undertaking for collective investment in transferable securities (UCITS)" shall mean: An EU Member State, which is not the home country of the investment undertaking, where the units in the investment undertaking are marketed.
- 7) "Investment management company" shall mean: A company that has been authorised as investment management company in pursuance of section 10 of the Financial Business Act.
- 8) "Management company" shall mean: A company which can manage UCITS (in Denmark: investment management companies).
- 9) "Home country of management company" shall mean: The EU Member State in which the management company has its registered office.
- 10) "Host country of a management company" shall mean: A Member State which is not the home country of a management company, and where the management company has a branch or provides services.
- 11) "Depository" shall mean: A bank with registered office in Denmark or a corresponding foreign credit institution with a branch in Denmark with registered office in another Member State of the European Union or a country with which the Union has entered into an agreement for the financial area, as well as depositaries, cf. Article 2(1)(a) of Directive 2009/65/EC of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (investment undertakings) (the UCITS Directive), for UCITS with registered office in other EU or EEA countries, which have been entrusted with
- a) all the financial assets of a UCITS and
  - b) the tasks referred to in sections 106 and 107 of the Financial Business Act and Chapter IV and V, Section 3 of Directive 2009/65/EC of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (the UCITS Directive).
- 12) "Credit institution" shall mean: An undertaking whose business is to receive deposits or other repayable funds from the public and to grant credit for its own account.
- 13) "Parent undertaking" shall mean: An undertaking that has one or more subsidiary undertakings.
- 14) "Subsidiary undertaking" shall mean: An undertaking that is subject to controlling influence by a parent undertaking.
- 15) "Group" shall mean: A parent undertaking and its subsidiary undertakings, cf. sections 5a and 5b of the Financial Business Act.
- 16) "Regulated market" shall mean A market that is covered by Article 4(1), no. 14 of Directive 2004/39/EC of the European Parliament and Council on markets in financial instruments amending Directive 85/611/EEC and Directive 93/6/EEC of the European Parliament and the Council and Directive 2000/12/EC of the European Parliament and the Council and repealing Directive 93/22/EEC of the Council (the MiFID Directive).
- 17) "Other market" shall mean: A market in regular operation, recognised, and open to the public, but not covered by the definition in Article 4(1), no. 14 of the MiFID Directive.
- 18) "OTC market" shall mean: A market in which to trade financial instruments that are not covered by the markets mentioned in nos. 16 and 17.
- 19) "Close links" shall mean:
- a) direct or indirect links of the nature described in no. 15,
  - b) participating interests such that an undertaking is in direct or indirect ownership of 20% or more of the voting rights or capital of another undertaking, or
  - c) joint links with an undertaking of several undertakings or persons, cf. a), with an undertaking.
- 20) "Master UCITS" shall mean: A UCITS, cf. no. 4, including a Danish UCITS or a sub-fund hereof, which
- a) has, at least one feeder UCITS among its investors, cf. no. 21,
  - b) is not itself a feeder UCITS, and
  - c) does not invest in a feeder UCITS.
- 21) "Feeder UCITS" shall mean:

- a) a UCITS, cf. no. 4, or a sub-fund thereof, which, in its home country, is authorised to invest at least 85 percent of its funds in another UCITS, or
  - b) a Danish UCITS or a sub-fund thereof, which is authorised pursuant to section 12(2), and section 15(3), section 16(3), or section 17(3), respectively.
- 22) "Master-feeder-structure" shall mean: A feeder UCITS and the master UCITS in which the feeder UCITS has invested.
- 23) "Competent authorities" shall mean: Authorities which the individual EU Member States or a country with which the European Union has entered into an agreement for the financial area have designated pursuant to Article 97 of Directive 2009/65/EC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (the UCITS Directive).
- 24) "Capital association" shall mean An association covered by Part 23 of the Alternative Investment Fund Managers etc. Act.

## II

### **Authorisation, approval of articles of association, depositary, exclusive rights and master-feeder-structure**

#### **Part 3**

*Authorisation for Danish UCITS, approval of articles of association etc.*

#### *Danish UCITS and master UCITS*

**3.-(1)** Undertakings shall be authorised by the Danish FSA as Danish UCITS, cf. however section 4, in order to carry out a business activity which

1) involves

- a) receiving, from a wide circle or from the public, funds which, in accordance with a principle of risk-spreading, are placed in financial instruments in accordance with the regulations in part 14, or
- b) as a master UCITS, cf. section 2, no. 20, either receiving funds from a wide circle or the public and having a feeder UCITS among its investors, or having at least two feeder UCITS among its investors and placing the funds in financial instruments in observance of a principle of risk-spreading in accordance with the regulations laid down in Part 14, and which

2) upon request from an investor, involves redeeming said investor's share of the assets with funds derived therefrom.

**(2)** A Danish UCITS which receives funds as a master UCITS,

1) may not itself be a feeder UCITS,

2) shall within three business days notify the Danish FSA about the name of each of the feeder UCITS from which it is receiving funds, and

3) shall ensure that the feeder UCITS, its investment management company or management company, its depositary and the competent authorities due access to all information required under legislation or other regulations issued with a view to implementing Directive 2009/65/EC of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (the UCITS Directive).

**(3)** Danish UCITS and foreign UCITS which have followed the procedure, cf. section 27(1) shall have exclusive right to approach a wide circle or the public for the purpose of receiving funds for the activities referred to in subsection (1).

**(4)** Investment associations may only carry out the activities mentioned in subsections (1) and (3) and section 26 and shall have exclusive right to use the word »investeringsforening« (investment association) in their name in letters and on other business papers, including electronic newsletters and on the website of such association, cf. however section 4(2). Other undertakings may not use names or expressions that may create the impression that they are investment associations.

**(5)** Investment associations that exclusively invest in money-market instruments, shall add the word »pengemarkedsforening« (money-market association) after their name, and sub-funds that exclusively invest in money-market instruments shall add the word »pengemarkedsafdeling« (money-market sub-fund) after their name. If the investment association adds the words »kort pengemarkedsforening« (short-term money-market association), or a compartment which invests in money-market instruments adds the word »kort« (short-term) to its name, the association or compartment shall meet the conditions in the provisions issued by the Danish FSA according to section 146.

**(6)** SICAVs may only carry out the activities mentioned in subsections (1) and (3) and section 26 and shall have exclusive right to use the word "SIKAV" (SICAV) in their name in letters and on other business papers, including electronic newsletters and on the website of such company, cf., however, section 4(2). Other undertakings may not use names or expressions that may create the impression that they are SICAVs.

**(7)** SICAVs that exclusively invest in money-market instruments shall add the word »pengemarkeds-SIKAV« (money-market SICAV) after their name, and sub-funds that exclusively invest in money-market instruments shall add the word »pengemarkedsafdeling« (money-market sub-fund) after their name. If the SICAV add »kort pengemarkeds-SIKAV« (short-term money-market SICAV) or a compartment which invests in money-market instruments adds the word »kort« (short) to its name, the SICAV or compartment shall meet the conditions in the provisions issued by the Danish FSA pursuant to section 146.

**(8)** Securities funds may only carry out the activities referred to in subsections (1) and (3) and section 26(1), and shall have exclusive right and duty to use the word »værdipapirfond« (securities fund) in their name in correspondence and on other business papers, including electronic newsletters and on the website of such securities fund, cf., however, section 4(2). Pursuant to section 8(4), the obligations in the 1st clause shall be incumbent upon the investment management company or management company managing the securities fund. Other undertakings may not use names or expressions that may create the impression that they are securities funds.

**(9)** Securities funds that exclusively invest in money-market instruments, shall add the word »pengemarkedsfond« (money-market fund) after their name, and sub-funds that exclusively invest in money-market instruments shall add the word »pengemarkedsafdeling« (money market sub-fund) after their name. If the securities fund adds the words »kort pengemarkedsforening« (short money-market fund), or a compartment which invests in money-market instruments adds the word »kort« (short) to its name, the securities fund or compartment shall meet the conditions in the provisions issued by the Danish FSA according to section 146.

**(10)** An investment association seeking approval under subsection (1) shall have assets of at least DKK 10 mill. in each sub-fund. Intangible assets shall not be included in these assets.

**(11)** The Danish FSA shall forward the information referred to in subsection (2), no. 2 to the competent authorities in another Member State of the European Union or a country with which



the Union has entered into an agreement for the financial area if the feeder UCITS is established there.

#### *Feeder UCITS*

**4.-(1)** In addition to authorisation under section 3, Danish UCITS shall be authorised by the Danish FSA as a feeder UCITS before the individual sub-funds in the Danish UCITS may invest at least 85% of their assets in units in a sub-fund of another UCITS (master UCITS). Authorisation by the Danish FSA shall include authorisation for said Danish UCITS (the feeder UCITS) to invest more than 20% of its assets in the master UCITS concerned.

**(2)** Danish UCITS which are feeder UCITS may only carry out the activities mentioned in subsection (1) and section 26.

**(3)** The feeder UCITS, its investment management company or its management company shall be obliged to submit all necessary information from the master UCITS to the depositary of the feeder UCITS, in order for the depositary to comply with its obligations.

**(4)** If a Danish UCITS is included in a master-feeder-structure, the following written agreements shall be entered into in order to ensure investor protection:

- 1) The board of directors of an investment association, a SICAV or an investment management company or management company managing a securities fund shall enter into an agreement where the master UCITS shall provide the feeder UCITS with all documents and information necessary for the latter to meet its requirements laid down under legislation and ensure that the master UCITS complies with the placement limits.
- 2) The depositary of the master UCITS and the depositary of the feeder UCITS shall, if the undertakings have different depositaries, enter into an information-sharing agreement in order to ensure fulfilment of the duties of both depositaries.
- 3) Elected external auditors of the master UCITS and the feeder UCITS shall, if the undertakings have different auditors, enter into an information-sharing agreement in order to ensure fulfilment of the duties of both auditors.

**(5)** If the master UCITS and the feeder UCITS have the same investment management company or management company, the board of directors of the two Danish UCITS or of the relevant investment management companies or management companies may decide that the contents of the agreements shall be specified instead in the procedures of the investment management company or management company.

**(6)** The Danish FSA shall lay down more detailed regulations regarding the contents of the agreements referred to in subsection (4), nos. 1-3 and the procedures referred to in subsection (5).

#### *Storage of financial assets by depositaries*

**5.** Financial assets belonging to Danish UCITS shall be managed and stored separately for the individual sub-funds in a depositary approved by the Danish FSA. The depositary shall be able to provide sufficient financial and professional security such that it is capable of performing its duties for the Danish UCITS.

#### *Organisation etc. of investment associations*

**6.-(1)** Investment associations shall be self-managed associations. Investors in the association shall be any owner of a share of the association's assets.

**(2)** Investment associations shall be divided into one or more sub-funds, each based on a particular part of the assets in accordance with the provisions in the articles of association.

**(3)** Each sub-fund shall only be liable for its own obligations. Each sub-fund shall, however, also be liable for its share of the common costs. If legal proceedings have been effected without results, or if it is otherwise evident that a sub-fund is unable to fulfil its obligations under the 2nd clause, the other sub-funds shall be jointly and severally liable for said compartment's share of the common costs.

**(4)** A sub-fund may be divided into unit classes according to the provisions of the articles of association.

**(5)** An investor in a sub-fund shall not be personally liable for the commitments of the investment association or the sub-fund. The investor shall only be liable for its own share of the assets (contribution).

**(6)** All investors in an investment association shall have the same rights in relation to aspects which concern all the investors in the investment association. All investors in a sub-fund shall have the same rights in relation to aspects which only concern the investors in the sub-fund. The provisions in the 1st and 2nd clauses may be derogated from as a consequence of establishing unit classes, cf. section 18, issuing units without a right to dividend (ex coupon), cf. section 19, no. 7 and determining regulations on limitations of voting rights, cf. section 19, no. 11.

#### *Organisation etc. of SICAVs*

**7.-(1)** A SICAV shall have a share capital which may vary on the terms determined by the articles of association of the SICAV, cf. section 20(1), no. 19. Anyone owning a unit in a sub-fund of a SICAV shall be considered an investor in the SICAV.

**(2)** A SICAV may be established by one or more founders. A founder shall not be subject to bankruptcy or financial reconstruction. Where a founder is a natural person, said person shall be legally competent, and the person must not be under guardianship pursuant to section 5 of the Danish Guardianship Act ("værgemålsloven") or under guardianship pursuant to section 7 of the Danish Guardianship Act. If the founder is a legal person, said person shall be empowered to acquire rights, make commitments and be a party to legal proceedings.

**(3)** The founders shall sign articles of incorporation which shall include information about the date at which the establishment shall take legal effect, and shall include the articles of association of the SICAV. If, in connection with the establishment of the SICAV, no board of directors and auditor have been elected, the founders shall, no later than two weeks from signing the articles of incorporation, hold a general meeting for the purpose of electing a board of directors and an auditor.

**(4)** SICAVs shall be divided into one or more sub-funds, each based on a particular part of the assets in accordance with the provisions in the articles of association.

**(5)** Each sub-fund in a SICAV shall only be liable for its own obligations. Each sub-fund shall, however, also be liable for its share of the common costs. If legal proceedings have been effected without results, or if it is otherwise evident that a sub-fund is unable to fulfil its obligations under the 2nd clause, the other sub-funds shall be jointly and severally liable for said compartment's share of the common costs.

**(6)** A sub-fund in a SICAV may be divided into unit classes according to the provisions of the articles of association.

**(7)** An investor in a sub-fund shall not be personally liable for the commitments of the SICAV or the sub-fund. The investor shall only be liable for its own contribution.

**(8)** All investors in a SICAV shall have the same rights in relation to aspects which concern all the investors in the SICAV. All investors in a sub-fund shall have the same rights in relation to aspects which only concern the investors in the sub-fund. The provisions in the 1st and 2nd clauses may be derogated from as a consequence of establishing unit classes, cf. section 18, issuing units without a right to dividend (ex coupon), cf. section 20(1), no. 7 and determining regulations on limitations of voting rights, cf. section 20(1), no. 12.

*Organisation etc. of securities funds.*

**8.-(1)** Securities funds shall comprise one or more sub-funds which are separate financial units. Securities funds and the sub-funds of such are not independent legal persons. Securities funds may only be established and managed by investment management companies, cf. section 10 of the Financial Business Act, or management companies. Anyone owning a unit in a sub-fund of a securities fund shall be an investor in the securities fund.

**(2)** Each sub-fund in a securities fund shall be based on a specific part of the assets according to fund rules in this respect.

**(3)** Each sub-fund in a securities fund shall only be liable for its own obligations. Each sub-fund shall, however, also be liable for its share of the common costs. If legal proceedings have been effected without results, or if it is otherwise evident that a sub-fund is unable to fulfil its obligations under the 2nd clause, the other sub-funds shall be jointly and severally liable for said compartment's share of the common costs.

**(4)** To the extent that this Act or regulations issued pursuant to this Act impose obligations on securities funds or the sub-funds of such, this obligation shall be incumbent upon the investment management company or management company managing the fund.

**(5)** A sub-fund in a securities fund may be divided into unit classes pursuant to fund rules.

**(6)** An investor in a sub-fund shall not be personally liable for the obligations of the securities fund or the sub-fund. The investor shall only be liable for its own contribution.

**(7)** All investors in a securities fund shall have the same rights in relation to aspects which concern all the investors in the securities fund. All investors in a sub-fund shall have the same rights in relation to aspects which only concern the investors in the sub-fund. The provisions in the 1st and 2nd clauses may be derogated from as a consequence of establishing unit classes, cf. section 18, issuing of units without a right to dividend (ex coupon), cf. section 21, no. 8.

*Authorisation for investment associations*

**9.-(1)** The Danish FSA will authorise an investment association to carry out activities provided that

- 1) the foundation of the association is legal,
- 2) the requirements of section 3(1)-(5) have been fulfilled,
- 3) the members of the board of directors and the board of management of the investment association meet the requirements of section 57, or, if the board of directors has not employed a board of management, when the Danish FSA has approved the investment



association's delegation of the day-to-day management to an investment management company or a management company, cf. section 22.

4) the Danish FSA has approved the articles of association of the investment association,  
5) the Danish FSA has approved the depositary chosen by the investment association, cf. section 25.

6) the activity plan, organisation, risk management, procedures as well as administrative conditions of the investment association are appropriate,

7) there are no close links, cf. section 2, no. 19, between the applicant and other undertakings or persons that could complicate performance of the tasks of the Danish FSA,

8) legislation in a country outside the European Union with which the Union has not entered into an agreement for the financial area, regarding an undertaking or person with whom the applicant has close links will not complicate performance of the tasks of the Danish FSA,

9) the assets of the individual sub-funds, which are required to be no less than DKK 10 mill. for each sub-fund are subscribed at the first general meeting and deposited in a blocked account in the depositary, or an unconditional guarantee is provided by a bank or insurance company for subscription of units in each sub-fund up to a minimum amount of no less than DKK 10 mill.,

10) the investment association has its registered office in Denmark, and

11) the application for authorisation meets the requirements laid down in subsection (2).

**(2)** An application for authorisation under section 3(1)-(5) shall include all information necessary for assessment by the Danish FSA of whether the conditions in subsection (1) have been met.

**(3)** If the Danish FSA has granted authorisation under subsection (1), the investment association may commence its activities of investing funds received from investors.

#### *Authorisation for SICAVs*

**10.-(1)** The Danish FSA will authorise a SICAV to carry out activities, provided that

1) the foundation of the SICAV is legal pursuant to section 7(2)-(4),

2) the requirements in section 3(1)-(3), (6) and (7) have been fulfilled,

3) the members of the board of directors of the SICAV fulfil the requirements in section 39 and the Danish FSA has approved the SICAV's choice of investment management company or management company, cf. section 23,

4) the Danish FSA has approved the articles of association of the SICAV,

5) the Danish FSA has approved the depositary chosen by the SICAV, cf. section 25,

6) the activity plan, organisation, risk management, procedures and administrative conditions of the SICAV are appropriate,

7) there are no close links, cf. section 2, no. 19, between the applicant and other undertakings or persons that could complicate performance of the tasks of the Danish FSA,

8) legislation in a country outside the European Union with which the Union has not entered into an agreement for the financial area, regarding an undertaking or person with whom the applicant has close links will not complicate performance of the tasks of the Danish FSA,

9) the SICAV has its registered office in Denmark, and

10) the application for authorisation meets the requirements laid down in subsection (2).

**(2)** An application for authorisation under section 3(1)-(3), (6) and (7) shall include all information necessary for assessment by the Danish FSA of whether the conditions in subsection (1) have been met.

**(3)** If the Danish FSA has granted authorisation under subsection (1), the SICAV may commence its activities of investing funds received from investors.

*Authorisation for securities funds*

**11.-(1)** The Danish FSA will authorise a securities fund to carry out activities, provided that

- 1) the requirements in section 3(1)-(3), (8) and (9) have been fulfilled,
- 2) the Danish FSA has approved the fund rules for the securities fund,
- 3) the Danish FSA has approved the management by the investment management company or management company of this securities fund, cf. section 24,
- 4) the Danish FSA has approved the depositary chosen by the investment management company or management company, cf. section 25,
- 5) the activity plan concerning the securities fund of the investment management company or management company is appropriate,
- 6) there are no close links, cf. section 2, no. 19, between the applicant and other undertakings or persons that could complicate performance of the tasks of the Danish FSA,
- 7) legislation in a country outside the European Union with which the Union has not entered into an agreement for the financial area, regarding an undertaking or person with whom the applicant has close links will not complicate performance of the tasks of the Danish FSA,
- 8) the application for authorisation meets the requirements laid down in subsection (2).

**(2)** An application for authorisation under section 3(1)-(3), (8) and (9) shall include all information necessary for assessment by the Danish FSA of whether the conditions in subsection (1) have been met.

**(3)** If the Danish FSA has granted authorisation undertaking subsection (1), the securities fund may commence its activities of investing funds received from investors.

*Authorisation as feeder UCITS or to change master UCITS*

**12.-(1)** A Danish UCITS applying for authorisation under sections 9, 10 or 11, and which applies for authorisation to invest as a feeder UCITS or to invest in a new master UCITS, shall submit

- 1) its own articles of association or fund rules, as well as those of the master UCITS,
- 2) prospectus and document containing key investor information for the relevant Danish UCITS and for the master UCITS,
- 3) procedures of the investment management company or management company regarding management of the master-feeder-structure, cf. section 4(5) or the agreement between the feeder UCITS and the master UCITS if such are not required to be managed by the same company, cf. section 4(4), no. 1,
- 4) the information, cf. subsection (4), which shall be provided to the investors, if the feeder UCITS is already authorised as a Danish UCITS,
- 5) the information-sharing agreement entered into between the depositaries of the feeder UCITS and the master UCITS, cf. section 4(4), no. 2, if they do not have the same depositary,
- 6) the information-sharing agreement entered into between the auditors of the feeder UCITS and the master UCITS, cf. section 4(4), no. 3, if they do not have the same auditor, and
- 7) a statement in Danish, English, Norwegian or Swedish from the competent authorities in the home country of the master UCITS, if the association is not authorised in Denmark, stating that it is not a feeder UCITS nor does it own units in a feeder UCITS.

**(2)** The Danish FSA shall authorise feeder UCITS, cf. section 4, to carry out activities, including invest more than the 20% limit set in section 154, if the feeder UCITS has submitted the documents and information mentioned in subsection (1) and the Danish FSA assesses that the feeder UCITS, its depositary and auditor, as well as the master UCITS fulfil the requirements in subsections (1) and (4) and section 4, including the regulations issued by the

Danish FSA pursuant to subsection (6) and section 4(6). The Danish FSA shall make a decision no later than 15 business days after the Danish FSA has received a complete application.

**(3)** An application for authorisation under section 4 shall include all information necessary for assessment by the Danish FSA of whether the conditions in subsections (1) and (4) have been met.

**(4)** A Danish UCITS which is already carrying out activities, and which is subsequently authorised as a feeder UCITS, or which has been authorised to invest in a new master UCITS, shall no later than 30 days prior to the date mentioned in no. 3 provide its investors with the following:

- 1) A statement that the Danish FSA has authorised the investment of the Danish UCITS as feeder UCITS in the master UCITS.
- 2) The key investor information for the feeder UCITS and the master UCITS mentioned in section 103.
- 3) Information on the date when the investment association will begin investing as a feeder UCITS in the master UCITS, or if the investment association has already invested herein, information on the date its investments will exceed the limits set in section 154(1) and (2).
- 4) A statement that within 30 days the investors will be entitled to demand redemption of their units without other costs than the costs incurred in connection with the redemption. This right to redemption shall take effect from the time when the feeder UCITS has provided the information referred to in this subsection.

**(5)** Upon authorisation by the Danish FSA under subsection (2), a Danish UCITS may commence its activities as feeder UCITS by investing the funds received from the investors. A Danish UCITS authorised as a Danish UCITS, or as a feeder UCITS and which is granted authorisation to invest in a new master UCITS may, however, not make an investment exceeding the limit set in section 154(1) until after expiry of the 30 day period referred to in subsection (4).

**(6)** The Danish FSA shall lay down more detailed regulations regarding the format and the manner in which to provide the information and documents referred to in subsection (4) to investors.

#### *Refusing requests for authorisation*

**13.-(1)** The Danish FSA shall reject the application for authorisation if, for legal reasons, the Danish UCITS is prevented from marketing its units in Denmark, including reasons arising from provisions in its articles of association or fund rules.

**(2)** If the Danish FSA rejects an application for authorisation from an investment association, cf. section 9, the association shall be notified no later than six months following receipt of the application or, if the application is incomplete, no later than six months after the association has submitted the information necessary to make a decision. At all events, the Danish FSA shall make a decision no later than 12 months after receipt of the application. Where the Danish FSA has not, within six months after receipt of a complete application for authorisation, issued a statement regarding the application, the association may bring the matter before the courts.

**(3)** If the Danish FSA rejects an application for authorisation for a SICAV, cf. section 10, or a securities fund, cf. section 11, the investment management company or management company of the SICAV or securities fund shall be notified by no later than two months following receipt of the application or, if the application is incomplete, no later than two months after the Danish FSA has received the information necessary to make a decision. At all

events, the Danish FSA shall make a decision no later than 12 months after receipt of the application. Where the Danish FSA has not, within two months after receipt of a complete application for authorisation, issued a statement regarding the application, the investment management company or management company of the SICAV or securities fund may bring the matter before the courts, cf. section 8(4).

**(4)** Rejection by the Danish FSA of an application from a Danish UCITS to become a feeder UCITS or to invest in a new master UCITS, cf. section 12, shall be given no later than 15 business days after the Danish FSA has received a complete application.

*Notifications of investment associations and SICAVs to the Danish Business Authority*

**14.-(1)** Once the Danish FSA has authorised an investment association or a SICAV, or has approved amendments to the articles of association of an association or a SICAV, the Danish Business Authority shall make the registrations necessary, cf. subsection (3).

**(2)** Simultaneously with its notification for registration with the Danish Business Authority, cf. subsection (1), and when applying for approval of amendments to its articles of association, an association or a SICAV shall submit a dated and signed copy of its articles of association with the full wording to the Danish FSA. Where the Danish FSA has authorised the association or the SICAV or has approved the amendments to the articles of association, the Danish FSA shall forward one copy of said articles of association including its stamp of approval to the Danish Business Authority and return the stamped articles of association to said association or SICAV.

**(3)** Part 2, section 366, section 367(1) and (4), and section 371 of the Companies Act shall apply to investment associations and SICAVs with the changes necessary. Notwithstanding section 9(1) of the Companies Act, notification of amendments to the articles of association shall be received by the Danish Business Authority no later than four weeks after the decision to amend the articles of association has been made.

**(4)** Instead of sending a dated and signed copy of the articles of association together with the full wording to the Danish FSA, as stated in subsection (2), the investment association or SICAV may send the articles of association to the Danish FSA using digital communication, cf. section 185.

*Approval of the amendments to articles of association and fund rules as well as authorisation of new sub-funds*

**15.-(1)** The Danish FSA shall approve amendments of an investment association's articles of association when the amendments have been legally adopted and are in compliance with this Act.

**(2)** The Danish FSA will grant authorisation of new sub-funds in investment associations if

- 1) the foundation of the sub-fund is legal,
- 2) the Danish FSA has approved the provisions in the articles of association regarding the sub-fund,
- 3) the sub-fund has assets worth at least DKK 10 mill., and
- 4) the minimum assets of the sub-fund have either been subscribed and deposited in a frozen account in the depositary, or an unconditional guarantee has been provided by a bank or an insurance company for subscription of units up to a minimum of DKK 10 mill. in the sub-fund.

**(3)** The Danish FSA will authorise that new sub-funds in investment associations, cf. section 3(1), and section 4, invest as feeder UCITS, or that a sub-fund which invests as a feeder UCITS, invests in a new master UCITS if the Danish FSA assesses that the requirements in section 4(1) and section 12(1)-(4) have been fulfilled with the changes necessary. The Danish FSA shall make a decision no later than 15 business days after the Danish FSA has received a complete application, cf. section 12(2) and section 13(4).

**16.-(1)** The Danish FSA shall approve amendments of a SICAV's articles of association when the amendments have been legally adopted and are in compliance with this Act.

**(2)** The Danish FSA will grant authorisation of new sub-funds in a SICAV if

- 1) the foundation of the sub-fund is legal, and
- 2) the Danish FSA has approved the provisions in the articles of association regarding the sub-fund.

**(3)** The Danish FSA will authorise new sub-funds in a SICAV, cf. section 3(1) and section 4, to invest as feeder UCITS, or a sub-fund which invests as a feeder UCITS to invest in a new master UCITS, if the Danish FSA assesses that the requirements in section 4(1), and section 12(1)-(4) have been fulfilled with the changes necessary. The Danish FSA shall make a decision no later than 15 business days after the Danish FSA has received a complete application, cf. section 12(2) and section 13(4).

**17.-(1)** The Danish FSA shall approve the amendments of the fund rules of a securities fund when the amendments have been legally adopted by the board of directors of the investment management company or management company managing the securities fund and when the amendments are in compliance with this Act. An amendment of the fund rules may not enter into force until said amendment has been approved by the Danish FSA. The investment management company or management company managing the relevant securities fund shall notify the investors of the fund about said amendments as soon as approval by the Danish FSA has been granted.

**(2)** The Danish FSA will grant authorisation of new sub-funds in a securities fund if the foundation of the sub-fund is legal and the Danish FSA has approved fund rules concerning the sub-fund.

**(3)** The Danish FSA will authorise new sub-funds in securities funds, cf. section 3(1), and section 4, to invest as feeder UCITS, or a sub-fund which invests as feeder UCITS to invest in a new master UCITS, if the Danish FSA assesses that the requirements in section 4(1), and section 12(1)-(4) have been fulfilled with the changes necessary. The Danish FSA shall make a decision no later than 15 business days after the Danish FSA has received a complete application, cf. section 12(2) and section 13(4).

#### *Unit classes*

**18.-(1)** The articles of association or fund rules in a Danish UCITS may include provisions that the sub-funds of the Danish UCITS may be divided into unit classes and that the board of directors may establish unit classes in a sub-fund. In an existing sub-fund of an investment association or SICAV, the investors of the sub-fund shall, however, previously have made a decision about division of the sub-fund into unit classes at a general meeting. In the event of a securities fund, the board of directors of the investment management company or management company of the securities fund shall make the decision. The name of the sub-fund shall state whether the board of directors may establish unit classes in the sub-fund.



**(2)** A unit class in an investment association shall have assets of no less than DKK 10 mill. The assets of the unit class shall, no later than six months after the board of directors has reached a decision on establishment, either be subscribed or deposited in a blocked account in the depository, or there shall be an unconditional guarantee from a bank or an insurance company to subscribe for units for no less than DKK 10 mill.

**(3)** No later than eight business days after the board of directors has reached a decision on establishment of a unit class, the Danish UCITS shall send notification to the Danish FSA. The notification shall contain information regarding the characteristics of the unit class and the principles for allocating costs, cf. subsection (5). The Danish UCITS shall also send a statement from its auditor or the auditor of the investment management company stating that the procedures, administrative systems, including registration systems, control environments and accounting practices of the Danish UCITS or investment management company are adequate in relation to administration of the types of unit classes that may be established according to the articles of association, or which the board of directors have decided to offer. The audit opinion may be submitted subsequently, but the Danish UCITS may not offer unit classes until the Danish FSA has informed the association that the Danish FSA has no comments.

**(4)** A unit class shall not have preferential right over any unit of the assets of the sub-fund, including class-specific assets. It shall only have right to a share of the return on the assets, including a share of the return on the joint portfolio and the return on the class-specific assets.

**(5)** Where a sub-fund is divided into unit classes, the board of directors shall lay down principles for allocating costs between the unit classes such that each unit class only bears its own share of the common costs of the sub-fund, as well as the particular costs connected to the specific characteristics of the unit class.

**(6)** The regulations in subsections (1)-(5) and section 109 shall not apply for ex-coupon unit classes.

**(7)** The Danish FSA may lay down more detailed regulations regarding unit classes, including that certain types of unit class may not be established.

#### *Articles of association for investment associations*

**19.-(1)** The articles of association of investment associations shall include provisions regarding

- 1) the object of the association,
- 2) the category of investors from which the association receives funds,
- 3) the name of the association and any secondary names,
- 4) the municipality in Denmark where the association shall have its registered office (main office) or, if an association has delegated its day-to-day management to an investment management company a management company, provisions regarding registered office and main office pursuant to section 22(2),
- 5) the association's division into sub-funds and the characteristics of each sub-fund, and whether the board of directors may establish new sub-funds,
- 6) whether the association's sub-funds may be divided into unit classes, and the board of directors' possibility to establish unit classes, including which types of unit class the board of directors may establish and the characteristics of these unit classes, cf. section 18(1),
- 7) any issue by the association of units without dividend rights (ex coupon),
- 8) whether the decision of change depository of the association shall be made by the general meeting or the board of directors,
- 9) convening of general meetings as well as time and place for such general meetings,
- 10) the business to be discussed at the ordinary general meeting,

- 11) voting rights and how to exercise them, including any restrictions on such voting rights,
- 12) the regulations applicable for adoption of proposals at general meetings, including amendments to the articles of association, the dissolution of the association and transfer of sub-funds to another Danish UCITS,
- 13) the board of directors, board of management, or the possibility of delegating tasks in connection with the day-to-day management to an investment management company or a management company as well as audit,
- 14) the persons entitled to sign for the association, including the persons entitled to exercise the voting rights in relation to the association's securities holdings,
- 15) whether the individual sub-fund is the issuer of certificates or account-holding or both, due to the sub-fund being able to divide into unit classes,
- 16) whether the units shall be issued with a nominal value or as units without a nominal value, and in the first-mentioned case, the denomination of the units (nominal value) and the design of any certificates,
- 17) whether the units are to be made out in someone's name or may be made out to a bearer, and whether the units are to be subject to any restrictions as regards negotiability,
- 18) unit issues and redemptions,
- 19) whether profit of the sub-funds is to be distributed, including whether interim dividends shall be distributable several times annually, and whether the general meeting of sub-funds paying dividends may decide that the amount distributed is to be carried forward in full or in part for distribution in subsequent financial years,
- 20) how the assets of the association are to be valued,
- 21) how to fix the issue and redemption price of the units,
- 22) which costs shall be chargeable to the individual sub-funds and the maximum amount of costs allowed in proportion to the average asset amount during the financial year,
- 23) whether a sub-fund is to be allowed to pay a dividend from the assets in order to secure a stable distribution percentage,
- 24) any annual contribution of no more than 2% of the total assets of a sub-fund to humanitarian or charitable organisations, cf. section 26(2),
- 25) the extent to which the association may raise loans on behalf of its sub-funds, cf. section 68,
- 26) the investment policy of the sub-funds and the general rules for investment of assets by the individual sub-fund,
- 27) the markets in which the individual sub-fund may invest the funds, cf. section 139, if the Danish FSA has not approved the relevant market, and
- 28) specification of the countries and public international bodies issuing or guaranteeing the securities in which a sub-fund intends to invest more than 35% of the assets of the sub-fund.

#### *Articles of association for SICAVs*

**20.-(1)** Articles of association for SICAVs shall include provisions regarding

- 1) the object of the SICAV,
- 2) the category of investors from which the SICAV receives funds,
- 3) the name of the SICAV and any secondary names,
- 4) the municipality in Denmark in which the SICAV has its registered office (main office), cf. subsection (2),
- 5) the SICAV's division into sub-funds, the characteristics of the individual sub-funds, and whether the board of directors may establish new sub-funds,
- 6) whether the SICAV's sub-funds may be divided into unit classes, and the board of directors' possibility to establish unit classes, including which types of unit class the board of directors may establish and the characteristics of these unit classes, cf. section 18(1),
- 7) any issue by the SICAV of units without dividend rights (ex coupon),

- 8) decisions by the board of directors regarding the investment management company or management company of the SICAV and replacement hereof,
- 9) whether the general meeting or the board of directors shall make a decision about replacement of the depositary of the SICAV,
- 10) convening of general meetings as well as time and place for such general meetings,
- 11) the business to be discussed at the ordinary general meeting,
- 12) voting rights and how to exercise them, including any restrictions on such voting rights,
- 13) the regulations applicable for adoption of proposals at general meetings, including amendments to the articles of association, the dissolution of the SICAV and transfer of sub-funds to another Danish UCITS,
- 14) the board of directors and the auditors,
- 15) the persons entitled to sign for the SICAV, including the persons entitled to exercise voting rights in relation to the securities holdings of the SICAV.
- 16) whether the individual sub-fund is the issuer of certificates or account-holding or both, due to the sub-fund being able to divide into unit classes,
- 17) whether the units shall be issued with a nominal value or as units without a nominal value, and in the first-mentioned case, the denomination of the units (nominal value) and the design of any certificates,
- 18) whether the units are to be made out in someone's name or may be made out to a bearer, and whether the units are to be subject to any restrictions as regards negotiability,
- 19) issue and redemption of units and the possibilities of suspending redemption of units of the SICAV,
- 20) whether profit of the sub-funds is to be distributed, including whether interim dividends shall be distributable several times annually, and whether the general meeting of sub-funds paying dividends may decide that the amount distributed is to be carried forward in full or in part for distribution in subsequent financial years,
- 21) how the assets of the SICAV are to be valued,
- 22) how to fix the issue and redemption price of the units,
- 23) which costs shall be chargeable to the individual sub-funds and the maximum amount of costs allowed in proportion to the average asset amount during the financial year,
- 24) whether a sub-fund is to be allowed to pay a dividend from the assets in order to secure a stable distribution percentage,
- 25) any annual contribution of no more than 2% of the total assets of a sub-fund to humanitarian or charitable organisations, cf. section 26(2),
- 26) the extent to which the SICAV may raise loans on behalf of its sub-funds, cf. section 68,
- 27) the investment policy of the sub-funds and the general rules for investment of assets by the individual sub-fund,
- 28) the markets in which the individual sub-fund may invest the funds if the Danish FSA has not approved the relevant market, and
- 29) specification of the countries and public international bodies issuing or guaranteeing the securities in which a SICAV intends to invest more than 35% of the assets of one or more sub-funds.

**(2)** A SICAV shall have its registered office (main office) where the investment management company of the SICAV has its registered office (main office). If a SICAV is managed by a management company, the SICAV shall, however, have its main office where the management company has its main office. The SICAV shall, when managed by a management company, enter into an agreement with a representative in Denmark and have its registered office in the same municipality as the address of the representative. The representative shall represent the SICAV in Denmark.

#### *Fund rules for securities funds*

**21.-(1)** The fund rules for securities funds shall include provisions regarding

- 1) the object of the securities fund,
- 2) the category of investors from which the securities fund receives funds,
- 3) the name and any secondary names of the investment management company or management company,
- 4) the municipality in Denmark in which the investment management company has its registered office (main office), or the address of the management company of the securities fund,
- 5) the name and any secondary names of the securities fund,
- 6) the securities fund's division into sub-funds and the characteristics of the individual sub-funds, and whether the board of directors of the investment management company or management company may establish new sub-funds,
- 7) whether the securities fund's sub-funds may be divided into unit classes, and the board of directors' possibility to establish unit classes, including which types of unit class the board of directors may establish and the characteristics of these unit classes, cf. section 18(1),
- 8) any issue by the securities fund of units without dividend rights (ex coupon),
- 9) appointment and replacement of the securities fund's depository,
- 10) the regulations applicable for adoption of fund rules, dissolution of the securities fund and transfer of the sub-funds to another Danish UCITS,
- 11) that the investment management company or the management company are entitled to subscribe the securities fund in accordance with the subscription rules of the company and who shall exercise the voting right on securities belonging to the securities fund,
- 12) whether the individual sub-fund is the issuer of certificates or account-holding or both, due to the sub-fund being able to divide into unit classes,
- 13) whether the units shall be issued with a nominal value or as units without a nominal value, and in the first-mentioned case, the denomination of the units (nominal value) and the design of any certificates,
- 14) whether the units are to be made out in someone's name or may be made out to a bearer, and whether the units are to be subject to any restrictions as regards negotiability,
- 15) issue and redemption of units and the possibilities of suspending redemption of units of the securities fund,
- 16) whether profit of the sub-funds is to be distributed, including whether interim dividends shall be distributable several times annually, or whether the profit shall be accumulated,
- 17) how the assets of the securities fund are to be valued,
- 18) how to fix the issue and redemption price of the units,
- 19) which costs shall be chargeable to the individual sub-funds and the maximum amount of costs allowed in proportion to the average asset amount during the financial year,
- 20) whether a sub-fund is to be allowed to pay a dividend from the assets in order to secure a stable distribution percentage,
- 21) the extent to which the investment management company or management company may raise loans on behalf of the sub-funds of the securities fund, cf. section 68,
- 22) the investment policy of the sub-funds and the general rules for investment of assets by the individual sub-fund,
- 23) the markets in which the individual sub-fund may invest the funds if the Danish FSA has not approved the relevant market, and
- 24) specification of the countries and public international bodies issuing or guaranteeing the securities in which a securities fund intends to invest more than 35% of the assets of one or more sub-funds.

*Delegation by investment associations of the day-to-day management to an investment management company or a management company*

**22.-(1)** The Danish FSA shall approve delegation by an investment association of the day-to-day management to an investment management company or management company, cf. section 47(4), if

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- 1) the board of directors of the association has decided to enter into an agreement about delegation of day-to-day management to an investment management company or a management company,
- 2) the board of directors has stated that the delegation results in more efficient administration of the activities of the investment association,
- 3) the investment management company or management company has been authorised to manage investment associations,
- 4) the board of management of the investment management company or management company has declared that the company has sufficient resources and qualified employees to manage the association,
- 5) the investment management company or the management company is required to perform so many of the association's duties that it does not merely function as a letter-box entity with regard to the association in question,
- 6) the management company, the depositary and the investment association have entered into an agreement on regulation of the exchange of information necessary for the depositary to perform its duties pursuant to section 106 of the Financial Business Act, if the day-to-day management has been delegated to a management company, and
- 7) the Danish FSA does not have any remarks to the application.

**(2)** An investment association which has delegated the day-to-day management to an investment management company shall have its main office where the investment management company has its main office. If an investment association has delegated its day-to-day management to a management company, the association shall have its main office where the management company has its address. The association shall enter into an agreement with a representative in Denmark and have its registered office in the same municipality as the address of the representative. The representative shall represent the investment association in Denmark.

*Approval of SICAVs' investment management company or management company*

**23.-(1)** A SICAV's choice of investment management company or management company shall be subject to approval by the Danish FSA, cf. section 49(2), if

- 1) the board of directors of the SICAV has entered into an agreement on management with an investment management company or a management company,
- 2) the investment management company or management company has been authorised to manage SICAVs,
- 3) the board of management of the investment management company has declared that the company has sufficient resources and qualified employees to manage the SICAV,
- 4) the investment management company is required to perform so many of the SICAV's duties that it does not merely function as a letter-box entity with regard to the SICAV in question,
- 5) the management company, the depositary and the SICAV have entered into an agreement on regulation of the exchange of information necessary for the depositary to perform its duties pursuant to section 106 of the Financial Business Act, if the board of directors of the SICAV has entered into an agreement with a management company, and
- 6) the Danish FSA does not have any remarks to the application.

*Approval of management of securities funds by investment management companies or management companies*

**24.-(1)** The Danish FSA shall approve the management of a securities fund by an investment management company or a management company if

- 1) the investment management company or the management company are authorised to manage securities funds,



- 2) the board of management of the investment management company or management company has declared that the company has sufficient resources and qualified employees to manage the securities fund,
- 3) the investment management company or the management company is required to perform so many of the securities fund's duties that it does not merely function as a letter-box entity with regard to the securities fund in question,
- 4) the management company and the depositary have entered into an agreement on regulation of the exchange of information necessary for the depositary to perform its duties pursuant to section 106 of the Financial Business Act, if the securities fund is managed by a management company, and
- 5) the Danish FSA does not have any remarks to the application.

*Approval of the depositary of a Danish UCITS*

- 25.-(1)** The Danish FSA shall approve a Danish UCITS' choice of depositary, if
- 1) pursuant to the articles of association or the fund rules, a legal decision has been made to enter into an agreement with the depositary, cf. section 19, no. 8, section 20(1), no. 9 or section 21, no. 9,
  - 2) the depositary complies with the conditions in section 2, no. 11,
  - 3) the board of management of the depositary or the manager responsible for the depositary function has declared that the depositary is able to provide sufficient financial and professional security that it is capable of performing its duties,
  - 4) the procedures of the depositary for the depositary function, cf. section 106(2) of the Financial Business Act, are adequate,
  - 5) the depositary for a Danish UCITS has entered into an agreement on regulation of the exchange of information necessary for the depositary to perform its duties pursuant to section 106 of the Financial Business Act, with
    - a) the board of directors and management company for an investment association which has delegated the day-to-day management to the management company,
    - b) the board of directors and the management company for a SICAV which has entered into an agreement on management with the company, or
    - c) the management company for a securities fund,
  - 6) the depositary has entered into an agreement, cf. section 4(4), no. 2, if the Danish UCITS is a feeder UCITS which forms part of a master-feeder-structure where the master UCITS and the feeder UCITS have different depositaries, and
  - 7) the Danish FSA does not have any remarks to the application.

*Access of Danish UCITS to own shares in an investment management company and to provide contributions for humanitarian or charitable organisations*

**26.-(1)** A Danish UCITS may alone or together with other Danish UCITS and capital associations own an investment management company which exclusively and only on behalf of the relevant Danish UCITS and capital association carry out management, investment or marketing activities.

**(2)** Investment associations and SICAVs may, when permitted by their articles of association, grant an annual contribution of no more than 2% of their assets to humanitarian or charitable organisations with which the investment association or SICAV has made an agreement hereon.

**Part 4**

*Cross-border activities*

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### *Foreign investment undertakings*

**27.-(1)** Foreign investment undertakings, which have been authorised pursuant to the regulations in Directive 2009/65/EC of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (the UCITS Directive) to carry out the activity referred to in sections 3 and 4 by the competent authorities in another Member State of the European Union or a country with which the Union has entered into an agreement for the financial area pursuant to Directive 2009/65/EC of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (the UCITS Directive), and which intend to market their units directly or indirectly in Denmark, may begin marketing their units when the Danish FSA has received notification hereof with complete documentation from the competent authorities in the home country of the undertaking.

**(2)** The Danish FSA may lay down more detailed regulations regarding marketing of units by such foreign investment undertakings in Denmark.

### *Cross-border marketing by Danish UCITS*

**28.-(1)** A Danish UCITS intending to market its units in another Member State of the European Union or in a country with which the Union has entered into an agreement for the financial area, shall submit notification hereon to the Danish FSA. The notification shall comply with the requirements in Commission Regulation No. 584/2010 implementing Directive 2009/65/EC of the European Parliament and of the Council as regards the form and content of the standard notification letter and UCITS attestation, the use of electronic communication between competent authorities for the purpose of notification, and procedures for on-the-spot verifications and investigations and the exchange of information between competent authorities. In its notification the Danish UCITS shall provide information about where the competent authorities in the host country can familiarise themselves with the documents to be enclosed by the Danish UCITS in its application, any translations hereof and the most recent changes to the documents.

**(2)** The Danish FSA shall forward the complete documentation submitted by the Danish UCITS with the notification in subsection (1) to the competent authorities in the country in which the Danish UCITS intends to market its units. The Danish FSA shall forward this documentation no later than ten business days after the Danish FSA has received the notification and the complete documentation.

**(3)** A Danish UCITS intending to market its units in a country which is not a member of the European Union or in a country with which the Union has not entered into an agreement for the financial area, shall submit notification hereon to the Danish FSA and to the competent authorities in said other country in accordance with the requirements applicable there.

**(4)** The Danish FSA shall lay down more detailed regulations regarding the marketing by the Danish UCITS of units abroad.

## **III**

### **Good business practice**

#### **Part 5**

#### *Good business practice*

**29.-(1)** Danish UCITS shall be operated in accordance with honest business principles and good practice with their respective fields of activity. The same shall apply to foreign UCITS which are legal persons marketing their units in Denmark.

**(2)** The Minister for Business and Growth shall lay down more detailed regulations regarding honest business principles and good practice for the marketing of units in Denmark by Danish and foreign UCITS.

#### **IV**

#### **General meetings and management etc.**

##### **Part 6**

##### *General meetings in investment associations*

**30.-(1)** The notice convening a general meeting in an investment association shall be available to the public and in accordance with the provisions of the articles of association. The press shall have access to the general meetings. The general meeting may decide that the press shall have no right to make audio and film recordings.

**(2)** The notice convening a general meeting shall be submitted to investors who have requested notification.

**31.-(1)** If an investment association does not have a board of directors or if an investment association fails to convene a general meeting to be held according to law, the articles of association or a resolution passed by the general meeting, the general meeting shall be convened by the Danish FSA upon request from one member of the board of directors or board of management of the association, the auditor elected by the general meeting or an investor. The Danish FSA may lay down the agenda of the general meeting.

**(2)** A general meeting convened by the Danish FSA shall be chaired by a person whom the Danish FSA has authorised for the task, and the board of directors of the investment association or the board of management of the investment management company shall submit the minutes of the proceedings of the general meeting and the audit book. Expenses for the general meeting shall be paid in advance by the Danish FSA but ultimately paid by the association or the investment management company or management company of said association.

**32.-(1)** The general meeting shall be the ultimate authority of the investment association.

**(2)** The right of investors to make decisions regarding the affairs of the association shall be exercised at the general meeting, cf. however subsections (3) and (4).

**(3)** The powers exercised by the general meeting of the investment association shall be vested in the investors of a sub-fund at the general meeting in respect of

- 1) approval of the annual financial statements of the sub-fund,
- 2) amendment of the regulations laid down in the articles of association concerning placement of the compartment's assets,
- 3) the winding-up or merger of said sub-fund, and
- 4) any other business that is exclusively relevant to the sub-fund.

**(4)** The powers exercised by the general meeting of the investment association shall, at the general meeting, be due to the investors of a unit class in a sub-fund with regard to

- 1) changes in the specific characteristics of the unit class,
- 2) winding up the unit class, and
- 3) other matters relating exclusively to the unit class.

**(5)** Any investors shall be entitled to demand that a particular issue be placed on the agenda in accordance with the relevant regulations of the articles of association.

**(6)** The board of directors and the board of management shall, at the request of an investor and provided that this, in the opinion of the board of directors, may be effected without serious detriment to the association, submit to the general meeting any available information regarding all matters of importance to the evaluation of the annual report and the position of the association in other respects or to issues on which the general meeting shall decide.

**33.-(1)** Unless otherwise stipulated in the articles of association, the board of directors of the investment association may decide, as a supplement to physical participation at the general meeting, that investors are given access to participate in the general meeting electronically, including voting electronically, without being physically present at the general meeting, this means that a partial electronic general meeting is held, cf. subsections (3) and (4).

**(2)** The general meeting may decide that the general meeting is to be held solely electronically without the possibility of physical participation, i.e. as a completely electronic general meeting, cf. subsections (3)-(5). The resolution shall include information about the use of electronic media in connection with participation in the general meeting. Section 35 shall apply to the resolution and the changes herein.

**(3)** The board of directors of the investment association shall lay down further requirements for the electronic systems used in connection with partial or complete electronic general meetings. The notice convening a general meeting shall include information about the requirements, including information about how the investors can register for electronic participation, and where they can find information about the procedures in connection with electronic participation in the general meeting.

**(4)** A prerequisite for convening a partial as well as a complete electronic general meeting is that the board of directors provide for adequate execution of the general meeting. The system used shall be organised such that the statutory requirements for holding the general meeting are complied with, including the possibility of investors to participate, express opinions and vote at the general meeting. The system used shall also be able to determine reliably which investors will be participating in the general meeting, the capital and voting rights they represent, and the result of votes.

**(5)** If an investment association has issued bearer units and not introduced a date of registration, in the notice convening the general meeting the association shall provide information about how the owners of such units are to document their identity in order to be able to participate in the electronic general meeting. This shall also be stated in the articles of association of the association.

**34.-(1)** Every investor shall be ensured voting rights at the general meeting proportional to his number of units. Every investor shall, however, have at least one vote. The articles of association may provide that no investor may vote for more than a certain percentage of the assets or for more than a certain amount.

**(2)** If the voting rights are conditional upon an entry in the investment association's register, the time limit for registration shall not exceed one week.

**35.-(1)** The resolution on amending the articles of association shall only be valid if it is endorsed by no less than two-thirds of the votes cast as well as the amount of the assets represented at the general meeting. The resolution on amending the articles of association shall also comply with any extra provisions stipulated in the articles of association.

**(2)** Any amendment of the articles of association of an investment association may not enter into force before such amendment has been approved by the Danish FSA.

**36.** The general meeting may authorise the board of directors to set up sub-funds and unit classes.

**37.-(1)** A resolution regarding the sale by an investment association of shares in its investment management company, cf. however subsection (2), shall be made by the general meeting of the association in accordance with the same regulations that apply to amendments to the articles of association. The board of directors of the investment association may, however, decide on the sale of shares in the investment management company of said association to other associations, cf. section 26(1) that have chosen the relevant company as their investment management company.

**(2)** The board of directors of the investment association shall prepare a statement of the advantages and disadvantages in relation to the expected development of the association from selling shares in the investment management company of the association, cf. subsection (1), 1st clause. The statement shall be sent to investors of the association registered at a central securities depository and in the books of the association at the same time as the general meeting is convened. From this time the statement shall also be available for inspection at the offices of the association.

**38.-(1)** The association shall record the minutes of the proceedings of the general meeting. This minute book shall be signed by the chairperson of the meeting.

**(2)** The minutes of the proceedings of the general meeting or a certified transcript thereof shall be made available to investors at the offices of the association no later than fourteen days after the general meeting.

## **Part 7**

### *General meetings in SICAVs*

**39.-(1)** The notice convening a general meeting in a SICAV shall be available to the public and in accordance with the provisions of the articles of association. The press shall have access to the general meeting. The general meeting may decide that the press shall have no right to make audio and film recordings.

**(2)** The notice convening a general meeting shall be submitted to investors who have requested notification.

**40.-(1)** If a SICAV does not have a board of directors or if a SICAV fails to convene a general meeting to be held according to law, the articles of association or a resolution passed by the general meeting, the general meeting shall be convened by the Danish FSA upon request from one member of the board of directors or board of management of the SICAV's investment management company or management company, the auditor elected by the



general meeting or an investor. The Danish FSA may lay down the agenda of the general meeting.

**(2)** A general meeting convened by the Danish FSA shall be chaired by a person whom the Danish FSA has authorised for the task, and the board of directors of the SICAV shall submit the minutes of the proceedings of the general meeting and the audit book. Expenses for the general meeting shall be paid in advance by the Danish FSA but ultimately paid by the SICAV or the investment management company or management company of the SICAV.

**41.-(1)** The general meeting shall be the ultimate authority of a SICAV.

**(2)** The right of investors to make decisions regarding the affairs of the SICAV shall be exercised at the general meeting, cf. however, subsections (3) and (4).

**(3)** The powers exercised by the general meeting of the SICAV shall be vested in the investors of a sub-fund at the general meeting in respect of

- 1) approval of the annual financial statements of the sub-fund,
- 2) amendment of the regulations laid down in the articles of association concerning placement of the compartment's assets,
- 3) the winding-up or merger of said sub-fund, and
- 4) any other business that is exclusively relevant to the sub-fund.

**(4)** The powers exercised by the general meeting of the SICAV shall, at the general meeting, be due to the investors of a unit class in a sub-fund with regard to

- 1) changes in the specific characteristics of the unit class,
- 2) winding up the unit class, and
- 3) other matters relating exclusively to the unit class.

**(5)** Any investors shall be entitled to demand that a particular issue be placed on the agenda in accordance with the relevant regulations of the articles of association.

**(6)** The board of directors shall, at the request of an investor and provided that this, in the opinion of the board of directors, may be effected without serious detriment to the SICAV, submit to the general meeting any available information regarding all matters of importance to the evaluation of the annual report and the position of the SICAV in other respects or to issues on which the general meeting shall decide.

**42.-(1)** Unless otherwise stipulated in the articles of association, the board of directors of the SICAV may decide, as a supplement to physical participation at the general meeting, that investors are given access to participate in the general meeting electronically, including voting electronically, without being physically present at the general meeting, this means that a partial electronic general meeting is held, cf. subsections (3) and (4).

**(2)** The general meeting may decide that the general meeting is to be held solely electronically without the possibility of physical participation, i.e. as a completely electronic general meeting, cf. subsections (3)-(5). The resolution shall include information about the use of electronic media in connection with participation in the general meeting. Section 44 shall apply to the resolution and the changes herein.

**(3)** The board of directors of the SICAV shall lay down further requirements for the electronic systems used in connection with partial or complete electronic general meetings. The notice convening a general meeting shall include information about the requirements, including information about how the investors can register for electronic participation, and

where they can find information about the procedures in connection with electronic participation in the general meeting.

**(4)** A prerequisite for convening a partial as well as a complete electronic general meeting is that the board of directors provide for adequate execution of the general meeting. The system used shall be organised such that the statutory requirements for holding the general meeting are complied with, including the possibility of investors to participate, express opinions and vote at the general meeting. The system used shall also be able to determine reliably which investors will be participating in the general meeting, the capital and voting rights they represent, and the result of votes.

**(5)** If the SICAV has issued bearer units and not introduced a date of registration, in the notice convening the general meeting the company shall provide information about how the owners of such units are to document their identity in order to be able to participate in the electronic general meeting. This shall also be stated in the articles of association of the SICAV.

**43.-(1)** Every investor shall be ensured voting rights at the general meeting proportional to his number of units in the SICAV. Every investor shall, however, have at least one vote. The articles of association may provide that no investor may vote for more than a certain percentage of the share capital or for more than a certain amount.

**(2)** If the voting rights are conditional upon an entry in the SICAV's register, the time limit for registration shall not exceed one week.

**44.-(1)** The resolution on amending the articles of association of the SICAV shall only be valid if it is endorsed by no less than two-thirds of the votes cast as well as the amount of the capital of the SICAV represented at the general meeting. The resolution on amending the articles of association shall also comply with any extra provisions stipulated in the articles of association.

**(2)** Any amendment of the articles of association of the SICAV may not enter into force before such amendment has been approved by the Danish FSA.

**45.** The general meeting of the SICAV may authorise the board of directors to set up sub-funds and unit classes.

**46.-(1)** The SICAV shall record the minutes of the proceedings of the general meeting. This minute book shall be signed by the chairperson of the meeting.

**(2)** The minutes of the proceedings of the general meeting or a certified transcript thereof shall be made available to investors at the offices of the investment management company or management company no later than fourteen days after the general meeting.

## **Part 8**

### *Management etc.*

#### *General provisions regarding management of investment associations*

**47.-(1)** Investment associations shall have a board of directors and a board of management. The board of directors shall be responsible for the overall management of the activities of the association. The board of directors and board of management shall be in charge of the affairs of the association. The board of directors and the board of management shall act independently and solely in the interests of the association.

**(2)** The board of directors shall appoint a board of management to be in charge of the day-to-day management of the investment association. The board of management shall follow the guidelines and instructions given by the board of directors. The day-to-day management shall not include operations that are of an unusual nature or of great importance considering the circumstances of the association. The board of management may only carry out such operations according to special authority from the board of directors unless the resolution of the board of directors cannot be awaited without causing great disadvantage to the association's activities. In this case, the board of directors shall be informed of such operations as soon as possible.

**(3)** The board of directors shall ensure that the investment association is in possession of adequately qualified staff and the technical expertise required to carry out the administration of the association and to assess the tasks delegated by the board of directors. The association shall also make decisions about investments concerning the assets of the association. If the board of directors has entered into agreements on portfolio management, the association shall have staff who are able to assess the investments made as well as the results achieved.

**(4)** The board of directors may instead of employing a board of management, cf. subsection (2), delegate the day-to-day management of the investment association to an investment management company or to a management company. Such delegation shall be approved by the Danish FSA, cf. section 22 and be in compliance with sections 64 and 65.

**(5)** The board of directors shall consist of at least three members to be elected by the general meeting. A member of the board of directors of an investment association may neither be a member of the board of directors nor an employee of the depositary or any other company with which the association has entered into significant agreements, or with companies of a group in which such companies are members, cf. however subsections (6)-(8).

**(6)** Notwithstanding subsection (5), a minority of the members of the board of directors of the investment association may be a member of the board of directors in the investment management company or management company to which the board of directors has delegated day-to-day management of the association. A member of the board of directors may, however, not be chairman of the board of directors of the investment management company or the management company.

**(7)** Notwithstanding subsection (5), members of the board of directors may be members of the board of directors of an investment management company or a management company to which the board of directors has delegated the day-to-day management, provided the investment association alone or with other Danish UCITS or capital associations owns said company.

**(8)** An employee of an investment management company, who has been elected in accordance with the provisions in the Companies Act relating to group representation may, notwithstanding the provisions in subsection (5), be a member of the board of directors of an association, provided that the association in question alone or with other associations owns the investment management company.

*Delegation by investment associations (board of directors)*

**48.-(1)** If the board of directors has delegated the day-to-day management, cf. section 47(4), the members of the board of management of the investment management company or management company shall carry out the duties otherwise incumbent on the members of board of management of the association.

**(2)** The board of directors may, in compliance with sections 64-66, delegate tasks that are part of the association's administration to a company which is authorised to carry out the tasks in question.

**(3)** The board of directors may, however, only enter into agreements on portfolio management with an undertaking that complies with the provisions in section 64(1), and which is not a depositary for the investment association or another company whose interests may conflict with those of the association concerned and the interests of its investors.

**(4)** If the board of directors of an investment association makes a decision on delegation, cf. subsections (2) and (3) and section 47(4), the delegation shall include a more efficient operation of the association's activities and comply with the provisions in sections 64-66.

**(5)** The obligations of the board of directors, any investment management company or the management company and the depositary shall not be affected by any delegation of tasks to a third party by the board of directors.

**(6)** The board of directors and the investment management company or management company shall ensure monitoring of the execution of the delegated tasks, cf. sections 64-66.

**(7)** The board of directors may not delegate so many of the administrative tasks that the investment management company or management company becomes a letter-box entity with regards to tasks in connection with administration of the investment association.

**(8)** The board of directors of an investment association which invests as a feeder UCITS shall ensure that the association carries out efficient control of the activity of the master UCITS. The association may use information and documents received from the master UCITS or its investment management company or management company, depositary and auditor, unless the association has reason to doubt the accuracy of the information and documents from the master UCITS.

**(9)** The board of directors and the investment management company may enter into an agreement to the effect that the investment management company may sub-delegate tasks which are not significant.

#### *General provisions regarding management of SICAVs*

**49.-(1)** SICAVs shall have a board of directors comprising at least three members elected by the general meeting. The board of directors shall carry out management of the activities of the SICAV. The board of directors shall act independently and exclusively in the interest of the SICAV.

**(2)** The board of directors shall choose an investment management company or management company to manage the SICAV, cf. section 52(1), no. 4. The board of directors in the SICAV shall assess that the investment management company or the management company is qualified and capable of managing. A management agreement entered into between a SICAV and an investment management company or a management company shall be made in writing.

#### *The tasks of the board of directors in investment associations and SICAVs*

**50.-(1)** The board of directors shall ensure good and safe organisation of the activities of the investment association or SICAV in relation to the tasks to be managed by the board of directors for the investment association or the SICAV. The undertaking shall be in compliance with this Act and the articles of association. The board of directors shall ensure that the financial circumstances of the sub-funds are at all times adequate in view of the operations of the association or SICAV. The board of directors shall ensure that bookkeeping and asset management are checked in a satisfactory manner considering the circumstances of the investment association or SICAV.

**(2)** By means of rules of procedure, the board of directors shall lay down more detailed provisions with regard to the performance of its tasks.

**(3)** The Danish FSA may lay down more detailed regulations regarding the content of the rules of procedure.

**51.-(1)** The board of directors of an investment association shall

- 1) lay down an overall policy for the activities of the association,
- 2) identify significant risks of the individual sub-funds and any unit classes, as well as establish their risk profile on the basis of the investment policy laid down in the articles of association.
- 3) lay down a policy on conflicts of interest and be able to demonstrate conflicts of interest which may be prejudicial to the interests of the investment association and its investors, between the association and other Danish UCITS or capital associations, between the sub-funds and unit classes and between the association and its parties, as well as ensure that such conflicts of interest are limited as far as possible,
- 4) choose the depositary which shall deposit the financial assets of the association, unless the general meeting chooses the depositary according to the articles of association, and
- 5) lay down a policy for diversity in the board of directors which promotes adequate diversity in qualifications and competences among the members of the board of directors.

**(2)** On the basis of this Act and on the framework of the articles of association as well as a risk assessment by the board of directors, and any risk profile of the individual sub-funds and any unit classes, cf. subsection (1), nos. 2 and 3, the board of directors shall provide the board of management with written guidelines which shall, as a minimum, include

- 1) controllable framework for which and how much risk the board of management may impose on the individual sub-funds and any unit classes,
- 2) the principles for determining the calculation of the individual risk types,
- 3) regulations on the transactions requiring decision-making by the board of directors and which transactions the board of management may make as part of its position, and
- 4) regulations on how and the extent to which the board of management shall report to the board of directors about the risk of sub-funds and any unit classes, including the utilisation of the limits of this Act and the guidelines for the board of management, as well as compliance with the restrictions laid down in this Act and the articles of association.

**(3)** The board of directors shall regularly consider whether the articles of association of the association and the risk profile of the sub-funds and of any unit classes as well as the guidelines for the board of management are adequate in relation to the organisation and resources of the association, the size of investments, liquidity and complexity, as well as the market conditions to which the association is subject.

**(4)** The board of directors shall ensure that its members have adequate collective knowledge, professional competence and experience to be able to understand the activities of the investment association and the associated risks.



**(5)** The board of directors shall regularly assess whether the board of management is performing its duties in line with the risk profile laid down for the sub-funds and any unit classes, as well as the guidelines for the board of management. The board of directors shall take appropriate steps if this is not the case. Furthermore, the board of directors shall regularly assess whether the tasks delegated by the board of directors are being carried out as agreed, and whether the delegation makes the activities of the association more efficient.

**(6)** The board of directors shall regularly assess whether the depositary carries out its tasks in compliance with the agreement entered into. The board of directors shall take appropriate steps if this is not the case.

**(7)** The Danish FSA may lay down more detailed regulations regarding the obligations incumbent on the board of directors and the board of management of an investment association pursuant to subsections (1)-(6).

**52.-(1)** The board of directors of a SICAV shall

- 1) lay down an overall policy for the activities of the SICAV,
- 2) identify significant risks of the individual sub-funds and any unit classes, as well as establish their risk profile on the basis of the investment policy laid down in the articles of association,
- 3) lay down a policy for identification and management of any conflicts of interest of the board of directors,
- 4) choose the investment management company or management company which shall manage the SICAV,
- 5) choose the depositary which shall deposit the financial assets of the SICAV, unless the general meeting chooses the depositary according to the articles of association, and
- 6) establish a policy for diversity in the board of directors which promotes adequate diversity in qualifications and competences among the members of the board of directors.

**(2)** The board of directors shall regularly consider whether the articles of association of the SICAV and the risk profile of the sub-funds and any unit classes are adequate in relation to the size, liquidity and complexity of the investments as well as the market conditions to which the SICAV is subject.

**(3)** On the basis of the articles of association, the board of directors shall, in investment guidelines for the investment management company or management company, lay down investment frameworks which shall apply to the SICAV.

**(4)** The board of directors shall ensure that its members have adequate collective knowledge, professional competence and experience to be able to understand the activities of the SICAV and the associated risks.

**(5)** The board of directors shall regularly assess whether the investment management company or the management company carry out its tasks in compliance with the agreement entered into and the investment guidelines, including whether the investments made and results achieved are in accordance with the agreement made. The board of directors shall take appropriate steps if this is not the case.

**(6)** The board of directors shall regularly assess whether the depositary carries out its tasks in compliance with the agreement entered into. The board of directors shall take appropriate steps if this is not the case.

**(7)** The Danish FSA may lay down more detailed regulations regarding the obligations incumbent on the board of directors of a SICAV pursuant to subsections (1)-(6).

*Tasks of the board of directors and board of management in investment management companies managing securities funds, and management of securities funds*

**53.-(1)** The board of directors of an investment management company managing a securities fund shall

- 1) lay down an overall policy for the securities fund, and
- 2) identify significant risks of the individual sub-funds and any unit classes, as well as establish their risk profile on the basis of the investment policy laid down in the fund rules.

**(2)** On the basis of the framework of the fund rules and a risk assessment by the board of directors, and the risk profile of the individual sub-funds and any unit classes, the board of directors shall provide the board of management with written guidelines concerning the securities fund. The guidelines shall, as a minimum, include

- 1) controllable framework for which and how much risk the board of management may impose on the individual sub-funds and any unit classes,
- 2) the principles for determining the calculation of the individual risk types,
- 3) regulations on the transactions requiring decision-making by the board of directors and which transactions the board of management may make as part of its position, and
- 4) regulations on how and the extent to which the board of management shall report to the board of directors about the risk of sub-funds and any unit classes, including the utilisation of the limits of this Act and the guidelines for the board of management, as well as compliance with the restrictions laid down in this Act and the fund rules.

**(3)** The board of directors shall regularly consider whether the fund rules for the securities fund and the risk profile of the sub-funds and any unit classes, as well as the guidelines for the board of management are adequate in relation to the resources of the company and the size of the securities fund's investments, liquidity and complexity, as well as the market conditions to which the investment management company and the securities fund are subject.

**(4)** The board of directors shall regularly assess whether the board of management is performing its duties in line with the fund rules of the securities fund and the risk profile laid down for the sub-funds and any unit classes, as well as the guidelines for the board of management. The board of directors shall take appropriate steps if this is not the case.

**(5)** The board of directors shall choose the depositary which shall store the financial assets of the securities fund. The board of directors shall regularly assess whether the depositary carries out its tasks in compliance with the agreement entered into. The board of directors shall take appropriate steps if this is not the case.

**(6)** The Danish FSA may lay down more detailed regulations regarding the obligations incumbent on the board of directors and the board of management of an investment management company pursuant to subsections (1)-(5) and of the company's management of securities funds.

*Meetings of the board of directors etc. in investment associations and SICAVs*

**54.-(1)** The chairperson of the board of directors shall ensure that the board of directors convenes when necessary, and shall ensure that all members are summoned. Any member of the board of directors, a member of the board of management, an external auditor, and the chief internal auditor may demand that the board of directors convene. A member of the board of management, an external auditor, and the chief internal auditor shall be entitled to attend and speak at the meetings of the board of directors unless otherwise stipulated by the board of directors in the individual case. External auditors and the chief internal auditor shall always be

entitled to attend meetings of the board of directors when matters relevant to auditing or the presentation of the annual report are addressed.

**(2)** External auditors and the chief internal auditor shall participate in the board of directors' treatment of matters where such participation is requested by one or more members of the board of directors.

**(3)** The board of directors shall ensure that the negotiations of the board of directors be minuted, and the document shall be signed by all members present. Members of the board of directors, members of the board of management, external auditors, or the chief internal auditor who do not agree with decisions made by the board of directors shall be entitled to have their views included in the minutes.

**(4)** The board of directors of an investment association or SICAV may decide that the board of directors shall hold joint meetings of the board of directors for several investment associations or SICAVs with the same board of directors. The minute book of the board of directors mentioned in subsection (3) shall then explicitly state which reports, proceedings and decisions pertain to the individual investment association or SICAV.

**(5)** The board of directors of an investment association may, to the appropriate extent, decide that the association and other investment associations with the same board of directors may have the following joint documents:

- 1) rules of procedure of the board of directors, cf. section 50(2).
- 2) guidelines for the board of management on the activities of the association, cf. section 51(2).
- 3) management agreement.
- 4) depositary agreement.
- 5) agreements on investment advice.
- 6) marketing agreements.

**(6)** The board of directors of a SICAV may, to the appropriate extent, decide that the SICAV and other SICAVs with the same board of directors may have the following joint documents:

- 1) rules of procedure of the board of directors, cf. section 50(2).
- 2) management agreement.
- 3) depositary agreement.

**(7)** If the board of directors makes a decision pursuant to subsections (5) or (6), the documents shall explicitly state which provisions are joint and which provisions relate to the individual association or SICAV.

**(8)** The Danish FSA may lay down more detailed regulations regarding the conditions relating to investment associations or SICAVs with joint documents, cf. subsections (5) and (6).

*The impartiality of members of management of Danish UCITS*

**55.-(1)** Members of the management of an investment association or a SICAV, its depositary and an investment management company or management company, if any, may not, without the consent of the board of directors of the investment association or SICAV, be allowed to transfer securities or other assets to the investment association or SICAV or acquire such assets from the investment association or SICAV. Consent shall be obtained in each individual case and shall be entered in the minute book of the board of directors.

**(2)** Members of the management of a securities fund's depositary, investment management company or management company may not, without the consent of the board of directors of the securities fund's investment management company or management company, transfer securities or other assets to the securities fund or acquire such assets from the securities fund. Consent shall be obtained in each individual case and shall be entered in the minute book of the board of directors.

**(3)** A member of the management may not participate in consideration of issues concerning agreements between the investment association or SICAV and said member, or concerning any legal actions brought against said member or any legal actions brought against any third party, or concerning agreements between the investment association or SICAV and any third party if said member of the management has major interests therein which may be in conflict with those of the investment association or SICAV.

**(4)** A member of the board of directors or a member of the board of management of a securities fund's investment management company or management company may not participate in consideration of issues concerning agreements between the securities fund and said member, or concerning any legal actions brought against said member or any legal actions brought against any third party if the member of the board of directors or the board of management has major interests therein which may be in conflict with those of the securities fund.

*Duty of Danish UCITS to provide information about special conditions to the Danish FSA*

**56.-(1)** An investment association and a SICAV or their investment management company or management company shall immediately notify the Danish FSA of matters which are of material significance to the continued operation of said association or SICAV or a sub-fund. The investment management company or the management company of a securities fund shall notify the Danish FSA of matters which are of material significance to the continued operation of said securities fund or a sub-fund.

**(2)** The same shall apply correspondingly to every member of the management of a Danish UCITS and every member of the board of directors or the board of management of an investment management company or management company managing a Danish UCITS.

**(3)** If a member of the board of directors or the board of management of an investment association or the external auditor has cause to believe that a sub-fund does not meet the capital requirements in section 3(10), the Danish FSA shall be notified thereof immediately.

*Requirements for individual members of the management in investment associations and SICAVs*

**57.-(1)** A member of the board of directors or board of management of an investment association or a member of the board of directors of a SICAV shall, at all times, have sufficient knowledge, professional competences and experience to be able to carry out the duties and responsibilities of his position in the relevant investment association or SICAV.

**(2)** A member of the board of directors or board of management of an investment association or a member of the board of directors of a SICAV shall, at all times, have a sufficiently good reputation and demonstrate propriety, integrity and independence adequate to be able to effectively assess and dispute decisions made by the day-to-day management.

**(3)** A member of the board of directors or the board of management may not

- 1) have been or be held criminally liable for violation of the Criminal Code, or the financial legislation, if such violation entails a risk that the person in question may fail to carry out his duties and responsibilities adequately.
- 2) have filed for financial reconstruction, have filed for bankruptcy or debt restructuring, or be subject to financial reconstruction, bankruptcy proceedings or debt restructuring.
- 3) because of his financial situation or through a company which the person in question owns, participates in the operation of, or has a significant influence on, have caused or cause losses or risks of losses for the investment association or SICAV.
- 4) have behaved or behaves in such a manner that there is reason to assume that the person in question will not perform the duties and responsibilities of such position adequately.

**(4)** In the assessment of whether a member of the board of directors or board of management meets the requirements laid down in subsections (2) and (3), nos. 1, 3 and 4, emphasis shall be on maintaining confidence in the financial sector.

**(5)** Members of the board of directors or the board of management of an investment association or members of the board of directors of a SICAV shall notify the Danish FSA about the circumstances referred to in subsections (1) and (3) in connection with their appointment to the management of the association or the SICAV, and if the circumstances mentioned in subsections (2) and (3) subsequently change.

*Target figures and policies for the under-represented gender*

**58.-(1)** In investment associations and SICAVs where the value of the assets of the association or the SICAV are DKK 500 mill. or more for two consecutive financial years, the board of directors shall

- 1) set target figures for the percentage of the under-represented gender in the board of directors, and
- 2) prepare a policy to increase the percentage of the under-represented gender in the other management levels of the investment association or SICAV.

**(2)** Investment associations which, in the most recent financial year, had less than 50 employees, may omit to prepare a policy to increase the percentage of the under-represented gender in their other management levels, cf. subsection (1), no. 2.

*Prohibition against the board of management being members of the board of directors*

**59.-(1)** A member of the board of directors of an investment association shall not be a member of the board of management, chief internal auditor or deputy chief internal auditor of the association nor of its investment management company or management company. In the absence of a member of the board of management of the association, however, the board of directors may temporarily appoint a member of said board of directors as a member of the board of management. In this event, the relevant person may not exercise voting rights in the board of directors.

**(2)** A member of the board of directors shall not be a member of the board of management, chief internal auditor or deputy chief internal auditor of a SICAV nor of its investment management company or management company.

*Prohibition against speculation by employees*

**60.-(1)** Persons employed by the board of directors of an investment association according to legislation or provisions in the articles of association and employees for whom there is a



significant risk of conflicts between their own interests and the interests of the association may not, at their own expense, or through companies they control,

- 1) raise a loan or draw on credit already approved in order to acquire securities if the securities acquired are provided as collateral for the loan or the credit,
- 2) acquire, issue or trade in derivative financial instruments, except to hedge risk,
- 3) acquire holdings, except for units in Danish UCITS, capital associations and foreign investment undertakings, cf. section 143(1), nos. 2 and 3, with a view to selling such units less than six months after the date of acquisition, or
- 4) acquire positions in foreign currency, except for euros, if taking the position takes place with a view to anything other than payment for the acquisition of securities, goods or services, acquisition or management of real property, or for use when travelling.

**(2)** The group of persons mentioned in subsection (1) may not acquire equity investments in companies that carry out activities as mentioned in subsection (1), nos. 1-4. This shall not apply, however, to the acquisition of shares in banks, insurance companies, mortgage-credit institutions or investment firms and units in Danish UCITS, capital associations and foreign investment undertakings, cf. section 143(1), nos. 2 and 3.

**(3)** The board of directors shall decide which employees have a significant risk of conflicts between their own interests and the interests of the association, and who shall therefore be covered by the prohibition. The board of directors shall ensure that the relevant employees know of this decision. The penalty provision in section 190 shall apply from the time when the employee in question has received information hereof.

**(4)** The board of directors shall, for the persons covered by subsection (1), draw up guidelines regarding compliance with the prohibitions in subsections (1) and (2), 1st clause, including reporting of investments.

**(5)** The external auditors shall once a year review the association's guidelines under subsection (4) and in the audit book comments relating to the annual report state whether the guidelines are adequate and have functioned appropriately, as well as whether the association's control procedures have given rise to observations.

**(6)** An account-holding institution shall, upon request from the board of directors of the association, provide the external auditors of said association with access to information on accounts and deposits and provide printed statements herefrom with regard to persons covered by subsection (1).

*Authorisation to participate in the management of another undertaking etc.*

**61.-(1)** Persons employed by the board of directors of an association in pursuance of legislation or provisions in the articles of association may not, without the consent of the board of directors, own or operate an independent business undertaking, or in the capacity as a member of the board of directors, an employee, or in any other way, participate in the management or operation of another enterprise than said association, cf. however subsections (4) and (5) as well as section 98(8) and (9).

**(2)** Other employees in an association for whom there is a significant risk of conflicts between the interests of the employee and those of the association may not, without the consent of the board of management, own or operate an independent business undertaking, or in the capacity as a member of the board of directors, employee, or in any other way, participate in the management or operation of another enterprise than said association. The board of directors shall be informed of any authorisation granted by the board of management.

**(3)** The board of directors shall decide for which employees there is a significant risk of conflicts between the interests of the employee and those of the investment association, and who shall consequently obtain the authorisation of the board of management, cf. subsection (2), to own or operate an independent business undertaking, or in the capacity as member of the board of directors, employee, or in any other way, participate in the management or operation of another enterprise than the association. The board of directors shall ensure that the relevant employees know of this decision. The penalty provision in section 190 shall apply from the time when the employee in question has received information hereof.

**(4)** Members of the board of management and other senior employees may not be members of the board of directors of the depositary or any other company with which the association has entered into significant agreements, nor may they be employees in another company which is in the same group as these companies.

**(5)** The persons mentioned in subsections (1) and (2) may, however, have similar positions in other investment associations if the majority of the board of directors are the same persons in all the associations.

**(6)** All authorisations granted by the board of directors in pursuance of subsection (3) shall appear in the minute book of the board of directors.

**(7)** The association shall at least annually publish information on the duties and positions authorised by the board of directors under subsection (1). Furthermore, the external auditors shall make a statement in the audit book comments on the annual report stating whether the association owns securities issued by business undertakings covered by subsections (1) and (2).

#### *Disclosure of confidential information*

**62.-(1)** Members of the board of directors, members of the board of management, other employees, and auditors of a Danish UCITS, of its depositary and of its investment management company or management company may not, without due cause, disclose or use confidential information obtained during the performance of their duties.

**(2)** Any person receiving information pursuant to subsection (1) shall fall within the scope of the duty of confidentiality specified in subsection (1).

**(3)** Auditors of Danish UCITS receiving funds as master UCITS, and auditors of Danish UCITS investing as feeder UCITS, may, pursuant to subsection (1) exchange information according to an agreement under section 4(4), no. 3.

**(4)** Depositaries of investment associations receiving funds as master UCITS, and depositaries of investment associations investing as feeder UCITS, may, pursuant to section 4(4), no. 2 exchange information according to an agreement.

#### *Organisation of investment associations and SICAVs etc.*

**63.-(1)** An investment association shall have effective forms of corporate management, including

- 1) a clear organisational structure with a well-defined, transparent and consistent division of responsibilities,
- 2) good administrative and accounting practices,
- 3) written procedures for all significant areas of activity,

- 4) effective procedures to identify, manage, monitor and report on the risks to which the association is or can be exposed,
- 5) the resources necessary for proper carrying out of its activities, and use these appropriately,
- 6) procedures with a view to separating functions in connection with management and prevention of conflicts of interest,
- 7) full internal control procedures, and
- 8) adequate IT control and security measures.

**(2)** A SICAV shall have effective forms of corporate management, including a clear organisational structure with well defined, transparent and consistent division of responsibilities.

**(3)** An investment association shall structure and organise its business in such a way as to minimise the risk of conflicts of interest as far as possible. In the event that the association is managed together with other associations, conflicts of interest between these shall be minimised as far as possible.

**(4)** The Danish FSA may lay down more detailed regulations regarding

- 1) the conditions mentioned in subsections (1) and (2),
- 2) remuneration and fees when the board of directors, the board of management and staff of an investment association or the board of directors of a SICAV, the investment management company or management company of a Danish UCITS or investment advisors are remunerated or compensated in some other way than with a fixed amount,
- 3) how investment associations and SICAVs shall demonstrate and limit conflicts of interest,
- 4) transactions concluded between an investment association or its investment management company or management company and a company with which said association or its investment management company or management company has entered into significant agreements, or other companies in the same group as said company.
- 5) transactions concluded between a SICAV or its investment management company or management company and a company with which said SICAV or its investment management company or management company has entered into significant agreements, or other companies in the same group as said company, and
- 6) transactions concluded between an investment management company or management company on behalf of a securities fund or a company with which said investment management company or management company has entered into significant agreements, or other companies in the same group as said company.

**(5)** Transactions carried out in contravention of the regulations laid down pursuant to subsection (4), nos. 4-6 shall be invalid. Payments from an investment association or SICAV or their investment management company or management company or an investment management company or management company on behalf of a securities fund made in connection with transactions carried out in contravention of the regulations laid down pursuant to subsection (4) shall be returned with an annual interest corresponding to the interest rate stipulated pursuant to section 5(1) and (2) of the Interest on Overdue Payments Act.

### **Reporting scheme**

**63a.-(1)** An investment association and a SICAV shall have a scheme under which, through a specific, independent and separate channel, their employees can report infringements or potential infringements of the financial regulations committed by the investment association or the SICAV, including infringements committed by employees or members of the board of

directors of the investment association or the SICAV. It shall be possible to submit reports anonymously.

**(2)** The scheme in subsection (1) may be established through collective agreements.

**(3)** Subsection (1) shall only apply for investment associations and SICAVs which employ more than five employees. The scheme mentioned in subsections (1) and (2) shall be established by no later than three months after the undertaking has employed the sixth employee.

**(4)** In exceptional circumstances, in which the Danish FSA deems that it would be pointless to establish a scheme, the Danish FSA may grant exemption from the requirement in subsection (1).

**63b.-(1)** An investment association and a SICAV may not expose an employee to unfavourable treatment or unfavourable consequences as a consequence of the employee having reported infringement or potential infringement by the investment association or SICAV of the financial regulations to the Danish FSA or through a scheme in the investment association or the SICAV.

**(2)** Employees whose rights have been violated through infringement of subsection (1) may be awarded reimbursement in accordance with the principles in the Danish Act on equality of treatment of men and women with regard to employment (*lov om ligebehandling af mænd og kvinder med hensyn til beskæftigelse m.v.*). The amount of reimbursement shall be set on the basis of the length of employment of the employee and on the circumstances of the case otherwise.

**(3)** Subsections (1) and (2) may not be derogated from to the detriment of the employee.

*Investment associations' access to delegate administrative tasks other than day-to-day management*

**64.-(1)** An investment association shall ensure that undertakings to which the association delegates tasks are qualified and capable of carrying out the relevant tasks. In cases where the delegation of tasks relates to investment management, only the board of directors may delegate said tasks to undertakings that are authorised for, or registered with a view to, asset management, cf. however section 48(3), and that are subject to supervision.

**(2)** The undertaking to which the investment association has delegated tasks, may only with authorisation in individual cases from the board of directors of the association further delegate the delegated tasks or part of the tasks to another undertaking, and only if such delegation results in more effective management of the association, cf. however, section 48(9).

**(3)** The delegation of tasks by the investment association may not hinder the effectiveness of supervision of the association and may not hinder the management of the association from acting, or the association from being managed in the best interests of its investors.

**(4)** The association may only delegate tasks in connection with investment management to undertakings domiciled in a country outside the European Union or countries with which the Union has entered into an agreement for the financial area, if the Danish FSA may cooperate with the supervisory authorities in the relevant country.

**65.-(1)** When delegating tasks an investment association shall ensure that the delegation agreement, at all times provides the management of the association with a possibility of de facto monitoring activities carried out by the undertaking to which the task is delegated.

**(2)** The agreement regarding delegation may not hinder the association from giving further instructions at any time to the undertaking to which the task has been delegated, nor from terminating the agreement with immediate effect, if this is in the interest of the association.

**66.-(1)** An investment association shall, no later than eight business days after entering into an agreement on delegation, cf. section 48(2), notify the Danish FSA in writing about the contents and conditions of the agreement. The same shall apply if an undertaking to which an investment association delegates tasks, with the consent of the board of directors, sub-delegates a task, cf. section 64(2).

**(2)** The Danish FSA shall lay down more detailed regulations regarding

- 1) the conditions under which subsection (1), section 48(2)-(4) and (6), section 64 and section 65 have been met,
- 2) the conditions under which the investment management company or management company shall be deemed to have delegated their functions to the extent that they become a letter-box entity pursuant to section 48(7) and can no longer be considered to be the manager of the investment association, and
- 3) the tasks considered significant in relation to delegation.

## V

### General provisions

#### Part 9

##### *Granting and raising loans etc.*

**67.-(1)** A Danish UCITS may not grant loans or put up guarantees for a third party.

**(2)** A Danish UCITS may, however, accept the liability associated with the acquisition of shares not fully paid up. Such liabilities may not exceed 5% of a compartment's total assets.

**68.-(1)** A Danish UCITS may not raise loans.

**(2)** The Danish FSA may, however, on behalf of a sub-fund, permit that a Danish UCITS

- 1) raises short-term loans of a maximum of 10% of a compartment's assets in order to redeem investors' units or in order to utilise subscription rights or for temporary financing of transactions entered into, and
- 2) raise loans of up to 10% of the compartment's assets for the acquisition of real property necessary for performance of the activities of the Danish UCITS.

**(3)** The loans mentioned in subsection (2), nos. 1 and 2, may together not exceed 15% of a compartment's assets.

**69.** A Danish UCITS may not carry out uncovered sales of securities, money-market instruments, units in collective investment undertakings, derivative financial instruments and other money-market instruments.

**70.** Instruments admitted to trading on a regulated market, or on another market, shall, if traded outside the regulated markets in countries within the European Union or in countries with which the Union has entered into an agreement for the financial area, or similar markets



in other countries, be traded at the same or a more favourable price than the one obtainable on the relevant market, taking into account the volume of business.

**71.** A Danish UCITS may acquire the chattels and real property necessary for pursuit of its business.

#### *Issue of units*

**72.** The board of directors of an investment association and SICAV shall decide when a sub-fund shall issue units. In relation to securities funds, the decision shall be made by the board of directors of the investment management company or management company.

**73.-(1)** Units in a sub-fund of a Danish UCITS may only be subscribed against concurrent payment of the issue price. Subscription may not be with reservations or at a discount. Bonus units shall not be covered by the 1st clause.

**(2)** The Danish FSA may order a Danish UCITS to postpone issue of units in a sub-fund, if the postponement serves the best interest of the investors or the public.

**(3)** The Danish FSA shall lay down regulations regarding calculation of the issue price, as well as the information which a Danish UCITS shall make available to the public.

#### *Unit redemption*

**74.-(1)** A Danish UCITS shall redeem units when so requested by an investor.

**(2)** A Danish UCITS may postpone redemption of units provided that

- 1) the association is unable to determine the net asset value on account of market conditions, or
- 2) the consideration of equal treatment of investors provides that the equity value cannot be determined until the assets necessary for redemption of the units have been realised.

**(3)** A feeder UCITS may, in addition to the cases mentioned in subsection (2), postpone redeeming its units, if the master UCITS in which the feeder UCITS is investing, at its own initiative or according to orders given by the Danish FSA or another competent authority, has postponed redeeming its units.

**(4)** A Danish UCITS shall immediately after postponement of redemption notify the Danish FSA hereof, and state the reason for the postponement.

**(5)** A Danish UCITS shall, immediately after such postponement, give notification regarding said postponement to the competent authorities in other Member States of the European Union or in countries with which the Union has entered into an agreement for the financial area if the Danish UCITS markets its units there.

**(6)** The Danish FSA may order a Danish UCITS to postpone issue of units if the postponement serves the best interests of the investors or the public.

**(7)** The Danish FSA shall lay down regulations regarding calculation of the issue price, as well as the information which a Danish UCITS shall make available to the public.

**75.-(1)** If a Danish UCITS has made errors when calculating the issue or redemption price that have resulted in a deviation of 0.5% or more, the Danish UCITS shall ensure that affected investors are informed of the error and publish information about the error. Within three

business days after the error was discovered, the Danish UCITS shall commence correcting the error and report the matter to the Danish FSA. The notification to the Danish FSA shall contain an account of the background for the error and a description of how the Danish UCITS intends to avoid similar errors in future.

**(2)** The Danish FSA may lay down more detailed regulations regarding the reporting obligations of Danish UCITS for errors in calculations of issue and redemption prices of 0.5% or more.

**76.** When a compartment in a Danish UCITS invests in units in other compartments or foreign investment undertakings managed directly or through delegation by the same investment management company or by another company with which said investment management company has links through joint administration or control or through a significant direct or indirect participation, said investment management company or said other company may not charge subscription or redemption fees for the compartment's investments in units in the other compartments or in the foreign investment undertakings.

**77.** A master UCITS may not

- 1) charge a subscription fee for investment by a feeder UCITS in units in the master UCITS, or
- 2) charge a redemption fee for redemption by a feeder UCITS of units in the master UCITS.

**78.** If a feeder UCITS, its investment management company or management company or any person acting on behalf of the feeder UCITS receive sales fees, commission or money from the investment made by the feeder UCITS in units in a master UCITS, the fee, commission or monetary benefit shall be paid into the assets of the feeder UCITS.

## **Part 10**

### *Investment certificates etc.*

**79.** If a sub-fund issues certificates, it shall issue one or more investment certificates to each individual investor. If a sub-fund is account-holding, the Danish UCITS shall keep a register of investors' units and submit to said investors a printout of said register as documentation of the investors' unit in the assets of the sub-fund.

**80.-(1)** If the units of a sub-fund, according to a decision by board of directors, are issued through a central securities depository, all costs incurred shall be paid by the sub-fund. The Danish UCITS shall make an agreement with one or more account-holding institutions stipulating that on the compartment's account, the investors may

- 1) have their units etc. registered and deposited there, and
- 2) receive information on dividends etc. and annual statements of account.

**(2)** The investors shall be entitled to select an account-holding institution which, on the compartment's account carries out the tasks referred to in subsection (1), nos. 1 and 2 if the institution assumes the tasks at the same cost as the sub-fund would have paid an institution with which the Danish UCITS has made an agreement.

**81.** If an investment certificate is transferred in ownership or as security, section 14(1) and (2) of the Debt Instruments Act ("*lov om gældsbreve*") shall apply correspondingly. This shall not, however, apply if, in accordance with a provision of the articles of association or fund rules of the Danish UCITS, an unambiguous and conspicuous reservation has been made in the investment certificate, to the effect that the certificate shall be a non-negotiable instrument.

## VI

### Annual report, audit and appropriation of the profit for the year

#### Part 11

##### *Annual report and audit*

**82.-(1)** Danish UCITS shall prepare an annual report, which as a minimum shall comprise a management's review and a statement by management for the Danish UCITS, as well as annual financial statements for each sub-fund comprising an income statement, a balance sheet and notes, including a report on accounting policies. When the annual financial statements have been audited, the auditors' report shall be included in the annual report.

**(2)** Disclosure of accounting policies may, however, notwithstanding subsection (1), be prepared as a joint statement for all sub-funds.

**(3)** The annual report shall be prepared in accordance with the regulations referred to in this part and regulations issued in pursuance of section 95.

**83.-(1)** The board of directors and the board of management shall present the annual report of an investment association. The board of directors shall present the annual report of a SICAV. In relation to securities funds, the annual report shall be presented by the board of directors and the board of management of the investment management company or management company.

**(2)** Each individual member of the management shall be responsible for ensuring that the annual report is prepared in accordance with the legislation and any further accounting and reporting requirements provided for by articles of association, fund rules or by agreement. Further, each individual member of management shall be responsible for ensuring that the annual financial statements can be audited on time and that the annual report can be approved on time. Finally, each individual member of the board of directors shall be responsible for ensuring that the annual report is submitted to the Danish FSA within the time limits stipulated in legislation.

**84.-(1)** All members of the management, cf. section 83(1), shall sign and date the annual report when this has been prepared. They shall affix their signatures to a statement by management in which the name and function at the Danish UCITS of each member shall be clearly stated and in which they shall declare whether

- 1) the annual report has been presented in accordance with the requirements provided for by legislation and any requirements provided for by the articles of association, fund rules or by agreement,
- 2) the annual financial statements give a fair presentation of the assets and liabilities, financial position and results for the year of the sub-funds of the Danish UCITS, and
- 3) the management's review includes a true and fair report of the developments in the activities and financial situation of the sub-funds of the Danish UCITS, as well as a description of the most significant risks and uncertainty factors that may influence the Danish UCITS or sub-funds respectively.

**(2)** If the management has added supplementary reports to the annual report, the management shall, in its statement by management, state whether the report provides a true review in accordance with generally accepted guidelines for such reports.

**(3)** Even if a member of the management disagrees with an annual report in full or in part or has objections to the annual report being approved with the contents decided upon, said

member shall not be entitled to omit to sign the annual report. However, such member of the management may state their objections giving specific and adequate grounds in connection with their signature and the statement by management.

**85.-(1)** The annual financial statements shall give a fair presentation of the assets and liabilities, financial position and results for the year of the sub-funds of the Danish UCITS. The management's review shall contain a fair review of the circumstances dealt with in the review.

**(2)** If the application of the regulations of this Act or regulations issued pursuant to section 95 is not sufficient to give a fair presentation in accordance with in subsection (1), further disclosure shall be made in the annual financial statements.

**(3)** If, in special cases, the application of the regulations set out in this part of this Act or the application of regulations issued pursuant to section 95 conflicts with the requirement of subsection (1), 1st clause such regulations shall be derogated from so that the requirement can be met. Any such derogation shall be disclosed in the notes for each year, giving specific and adequate grounds and indicating the effect, including, if possible, the effect in terms of amounts, of the derogation on the assets and liabilities as well as the financial position and the results of the sub-funds of the Danish UCITS.

**86.-(1)** In order for the annual financial statements to give a fair presentation and for the management review to contain a fair review, cf. section 85, the regulations referred to in subsections (2) and (3) must be complied with.

**(2)** The annual report shall be prepared so as to support users of financial statements in their financial decisions. Such users are private individuals, undertakings, organisations and public authorities, etc., whose financial decisions must normally be expected to be affected by an annual report, including present and prospective investors, creditors, employees, customers, alliance partners, the local community, authorities providing government grants, and fiscal authorities. As a minimum, the decisions in question shall concern

- 1) investment of the user's own resources,
- 2) the management's management of the resources of the Danish UCITS and
- 3) distribution of the resources of the Danish UCITS.

**(3)** The annual report shall disclose information about matters which are normally relevant to users, cf. subsection (2). The information disclosed must also be reliable in relation to users' normal expectations.

**87.-(1)** The annual report shall be prepared in accordance with the basic assumptions set out below:

- 1) It shall be prepared in a clear and understandable manner (clarity).
- 2) The substance of transaction rather than formalities without any real content shall be taken into account (substance over form).
- 3) All relevant matters shall be included in the annual report unless they are insignificant (materiality), but where several insignificant matters are deemed to be significant when combined, they must be included.
- 4) The operation of an activity is based on a going concern assumption unless it is to be discontinued or it is assumed that it will not be possible to be continued. If an activity is discontinued, classification and presentation as well as recognition and measurement must be adjusted accordingly.
- 5) Any change in value must be shown irrespective of the effect on the assets and income statement (neutrality).
- 6) Transactions, events and changes in value shall be recognised when they occur, irrespective of the time of payment (accrual basis).

7) Methods of recognition and measurement basis shall be applied uniformly to the same category of matters (consistency).

8) Each transaction, event and change in value shall be recognised and measured individually, and individual matters shall not be offset against each other (gross presentation).

9) The opening balance sheet for the financial year shall correspond to the closing balance sheet for the previous financial year (formal consistency).

**(2)** Presentation and classification, method of consolidation, method of recognition and measurement basis as well as the monetary unit applied must not be changed from period to period (actual consistency). However, a change may be made if this results in a more true and fair view being given, or if the change is necessary in order to comply with new regulations in pursuance of an Act or in case of new regulations issued pursuant to section 95.

**(3)** The provisions in subsection (1), nos. 6-9, and subsection (2) may be derogated from in exceptional cases. In such cases, section 85(3), 2nd clause shall apply correspondingly.

**88.** Assets and liabilities shall, unless otherwise provided for pursuant to section 95, be measured at fair value. Assets and liabilities shall be depreciated and revalued in accordance herewith and depreciation and revaluation amounts shall be recognised in the income statement unless otherwise specified pursuant to section 95.

**89.-(1)** Supplementary reports, for example reports on knowledge and know-how and employee conditions, environmental issues, the social responsibility of the Danish UCITS, and ethical objectives and follow-up to same of the Danish UCITS, shall give a fair review in accordance with generally accepted guidelines for such reports. Such reports shall meet the quality requirements in section 86(3) and the basic assumptions set out in section 87(1) and (2) subject to the special terms required by the nature of the case.

**(2)** The methods and measurement basis used for the preparation of the supplementary reports shall be disclosed in the reports.

**90.-(1)** The financial year shall be the calendar year.

**(2)** The first accounting period may comprise a period which is shorter or longer than 12 months, subject however to a maximum of 18 months.

**(3)** The Danish UCITS shall ensure that subsidiary undertakings have then same financial year as the Danish UCITS, unless this is not possible due to circumstances beyond the control of the Danish UCITS and the subsidiary undertaking.

**91.** Recognition, measurement and disclosure in monetary units shall be denominated in Danish kroner (DKK) or in Euro (EUR). The Danish FSA may, in regulations issued pursuant to section 95, stipulate that these amounts shall be stated in other foreign currencies relevant to the sub-funds of the Danish UCITS or unit classes.

**92.** The annual report shall be audited by the external auditors of the Danish UCITS, cf. section 98. Such audit shall not apply to the management's review and the supplementary reports included in the annual report, cf. section 89. The auditor shall, however, issue a statement on whether the information in the management's review is in accordance with the annual financial statements.

**93.-(1)** The annual report shall, in the form presented to and approved by the board of directors, be submitted in a duplicate to the Danish FSA without undue delay after the meeting of the board of directors at which the annual report was finally approved.



**(2)** The external auditors' audit book comments and the audit book comments from the chief internal auditor shall be submitted to the Danish FSA at the same time as the annual report is submitted pursuant to subsection (1).

**94.-(1)** The audited and approved annual report shall be submitted to the Danish FSA in two duplicates without undue delay after final approval. The annual report shall be received by the Danish FSA no later than four months after the end of the financial year.

**(2)** The annual report submitted shall as a minimum include the compulsory elements and the full auditors' report. Where the undertaking wishes to publish supplementary reports as specified in section 89, such reports shall be submitted with the compulsory elements of the annual report, so that the compulsory elements and the supplementary reports jointly form a single document, designated as the "*årsrapport*" (annual report).

**(3)** The Danish FSA shall submit one copy of the annual report of an investment association or SICAV, cf. subsection (1), to the Danish Business Authority where the annual report will be made public according to the regulations laid down by the Authority in this respect.

**(4)** Upon request, the Danish UCITS shall make available the latest audited annual report and the latest interim financial report free of charge.

**(5)** A feeder UCITS with a foreign master UCITS shall submit the annual report and the interim financial report of the master UCITS to the Danish FSA.

**95.-(1)** The Danish FSA shall lay down more detailed regulations on the annual report, including regulations on the recognition and valuation of assets, liabilities, revenue and expenditure, presentation of the income statement and balance sheet, and requirements regarding notes and the management's review.

**(2)** The Danish FSA shall also lay down regulations on consolidated financial statements, including regulations on when the annual report shall include consolidated financial statements.

**(3)** The Danish FSA may lay down regulations on the drafting and publication of financial reports covering shorter periods than the annual report.

**(4)** The Danish FSA may lay down more detailed regulations on publication of the annual report of securities funds.

**(5)** Where electronic communication is used, the requirement for submission of multiple copies of annual reports, cf. section 94(1), may be departed from.

**96.** In order to ensure that the annual reports of Danish UCITS are in accordance with the regulations of this part of this Act and the regulations issued in pursuance of section 95, the Danish FSA may

- 1) provide guidance,
- 2) take action against violations, and
- 3) order that errors be corrected and that violations be remedied.

**97.-(1)** Danish UCITS shall regularly submit accounts to the Danish FSA in accordance with formats and guidelines in this respect prepared by the Danish FSA. Submissions shall be sent to the Danish FSA in electronic form.

**(2)** The Danish FSA may grant exemption from the requirement of subsection (1), 2nd clause.

**98.-(1)** The Danish UCITS shall have at least one auditor who is a state-authorised public accountant. The Danish FSA may, in exceptional cases, appoint an additional auditor. This auditor shall act on the same terms and in accordance with the same regulations as the auditors elected by the general meeting.

**(2)** The auditors of a Danish UCITS shall also be the auditors of its subsidiary undertakings.

**(3)** The Danish FSA may dismiss an auditor who is deemed clearly unfit to perform his duties and instead appoint another auditor, cf. subsection (1), who shall act until a new auditor can be elected.

**(4)** On a change of auditors, the Danish UCITS and auditor shall submit separate accounts of the change to the Danish FSA if the change is due to exceptional circumstances.

**(5)** The Danish FSA may order the auditor and the chief internal auditor to disclose information about a Danish UCITS or the subsidiary undertakings of a Danish UCITS.

**(6)** The Danish FSA may order that an extraordinary audit be carried out of a Danish UCITS or of one of its subsidiary undertakings. The Danish UCITS may be ordered to pay for such audit. The Danish FSA shall approve the size of the fee.

**(7)** The provisions laid down in sections 144-149 of the Companies Act on the audit shall, with the changes necessary, apply to Danish UCITS.

**(8)** The board of directors may not permit that the chief and deputy chief internal auditors perform audit tasks in undertakings outside the group, cf. section 61(1). Neither may the board of directors permit that the chief and deputy-chief internal auditor perform work other than audit tasks within the Danish UCITS or group. In exceptional circumstances, the Danish FSA may grant exemptions from the 1st clause.

**(9)** The board of directors may not permit, cf. section 61(1), the chief and deputy chief internal auditors to assume duties that mean that they come into conflict with provisions on legal capacity corresponding to those that apply to external auditors in the Danish Approved Auditors and Audit Firms Act.

**(10)** The Danish FSA shall lay down more detailed regulations regarding performance of the audit of Danish UCITS and their subsidiary undertakings. In so doing, the Danish FSA may lay down more detailed regulations regarding internal audits and system auditing in common data centres.

**99.-(1)** If Danish UCITS that are part of a master-feeder-structure do not have the same auditor, the auditors shall enter into an information-sharing agreement, cf. section 4(4), no. 3 to ensure that the obligations of the auditors can be met, including the obligations stated in subsection (2).

**(2)** The auditor of the feeder UCITS shall, when writing his endorsement, take into account the endorsement or any preliminary statement, cf. 2nd clause, in the master UCITS and particularly in his endorsement disclose information regarding reservations or supplementary information stated in the auditors' report and the preliminary statement, respectively, in the master UCITS, and provide a statement about the significance of such information for the feeder UCITS. If the master UCITS and the feeder UCITS have different financial years, the

auditor of the master UCITS shall prepare a preliminary statement on the final date of the feeder UCITS' financial year.

**100.** The external auditor and the chief internal auditor shall immediately notify the Danish FSA of matters which are of material importance to the continued operation of the Danish UCITS and its sub-funds, including matters which may be observed by the auditors while performing their audit in undertakings with which the Danish UCITS is closely linked, the investment management company, the management company or the depository.

*Appropriation of the profit for the year in Danish UCITS*

**101.-(1)** The profit (net income) of a sub-fund or a unit class shall either be distributed to the investors by way of dividend or be appropriated to increase the capital in accordance with the articles of association or the fund rules to that effect, cf. however, section 19, no. 24 in relation to investment associations, and section 20(1), no. 25 in relation to SICAVs. The sub-fund or a unit class shall pay dividends at least once a year or, in the event of appropriations, inform the investors of the size of the appropriated amount.

**(2)** The general meeting of an investment association or SICAV may, according to the provisions of articles of association to that effect, decide that the amount distributed shall be carried forward in full or in part for distribution in subsequent financial years.

**(3)** In relation to securities funds, according to the fund rules, the board of directors of the investment management company or management company may decide that the amount distributed shall be carried forward in full or in part for distribution in subsequent financial years.

**VII**

**Prospectuses, key investor information and information about unit classes**

**Part 12**

*Information*

*Prospectus*

**102.-(1)** When offering units for sale, a Danish UCITS shall make public a prospectus for the Danish UCITS or for each sub-fund or group of sub-funds in the same Danish UCITS.

**(2)** The Danish UCITS shall deliver the prospectus free of charge to the investors or interested investors upon request.

**(3)** The Danish UCITS shall regularly keep essential elements of the key information up-to-date.

**(4)** Prospectuses and amendments hereto shall be submitted to the Danish FSA and be received by the Danish FSA no later than three business days after publication.

**(5)** The Danish FSA shall lay down more detailed regulations regarding the information to be included in the prospectuses, how and when the prospectus shall be delivered, and regarding updating prospectuses.

*Key investor information*

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**103.-(1)** When offering units for sale in a Danish UCITS, the Danish UCITS shall prepare a document with key investor information for each sub-fund or unit class. The key investor information shall be submitted to interested retail investors and shall include information about essential characteristics of the Danish UCITS, the sub-fund or the unit class so that a real investor is able to understand the nature of, and the risks involved in, investing in the units offered for sale.

**(2)** The Danish UCITS shall keep essential elements of the key investor information up-to-date.

**(3)** The key investor information shall be published on the website of the Danish UCITS.

**(4)** The document with key investor information and later amendments hereto shall be submitted to the Danish FSA and be received by the Danish FSA no later than three business days after publication.

**(5)** The Danish FSA shall lay down provisions regarding submission of the key investor information to the Danish FSA.

**(6)** The Minister for Business and Growth shall lay down more detailed regulations regarding the contents and form of the key investor information and submission hereof.

#### *Obligations for master UCITS*

**104.-(1)** A master UCITS shall, in good time, provide each of the feeder UCITS that invests the majority of its funds in the master UCITS with all documents and information necessary for the feeder UCITS to meet its obligations as laid down under this Act.

**(2)** Upon request, the feeder UCITS shall submit the agreement referred to in section 4(4), no. 1, as well as the annual report and the interim financial report free of charge to the investors of the feeder UCITS or interested investors.

#### *Publication of issue and redemption prices and other significant matters*

**105.-(1)** A Danish UCITS shall publish the issue price and the redemption price at least twice a month.

**(2)** The Danish FSA may permit publication to take place once a month only if this is not to the detriment of the interests of the investors.

**106.** For every subscription or redemption of units in a Danish UCITS, the Danish UCITS or intermediaries of units in the Danish UCITS shall provide the investor with information about the issue or redemption price.

#### *Other information*

**107.** A Danish UCITS, which has unit classes shall, on its website, state which unit classes have been established, including provide information regarding the characteristics applicable for each unit class and regarding the principles for allocating costs. If the undertaking has no website, the information mentioned about the unit classes shall be submitted upon request.

**108.** A Danish UCITS shall, within three business days, publish information about suspension or postponement of redemption of units, change of depositary or investment

management company or management company, amendments to fee rates in relation to the investors, and about changes to other significant matters.

## VIII

### Cessation

#### Part 13

*Winding-up, withdrawal of authorisation, liquidation, simplified winding-up, bankruptcy, merger, demerger, transfer, change of status and conversion*

#### *Winding up of unit classes*

**109.-(1)** The decision on winding-up of a unit class in an investment association or SICAV shall be made by the investors of the unit class at a general meeting, cf., however, subsections (2) and (3). If the investors of the unit class do not want their units transferred to another unit class, the winding-up shall be carried out in a procedure by which the sub-fund redeems all units which have been issued in the unit class.

**(2)** If a unit class in an investment association or SICAV has never had investors, the board of directors may make a decision on winding-up the unit class.

**(3)** If a new unit class in an investment association fails to fulfil the requirements regarding minimum assets within six months after the board of directors has decided to establish the class, the association shall wind up the unit class by compulsory redemption of all the units which have been issued for the unit class without a prior resolution by the general meeting. If an existing unit class in an investment association fails to fulfil the minimum assets requirements and it has not raised the required assets before a time limit stipulated by the Danish FSA, the association shall similarly wind up the unit class by compulsory redemption of all the units which have been issued for the unit class without a prior resolution by the general meeting. In the event of compulsory redemption, however, the investors shall have the option of transferring their units to another unit class.

**(4)** The decision to wind up a unit class in a securities fund shall be made by the board of directors of the investment management company or management company managing the fund. Before winding-up is carried out, the board of directors shall notify the Danish FSA, which shall approve the winding-up and the terms hereof. If the investors of the unit class do not want their units transferred to another unit class, the winding-up shall be carried out in a procedure by which the sub-fund redeems all units which have been issued in the unit class.

**(5)** The Danish FSA may order a Danish UCITS to wind up a unit class, if the unit class has not commenced its activities no later than 12 months after the board of directors decided to establish the unit class.

**(6)** When a unit class has been wound up, the Danish UCITS shall immediately notify the Danish FSA hereof. In the event of a winding-up of a unit class in an investment association or SICAV, the notification referred to in the 1st clause shall state the reason for the decision as well as who made the decision.

**(7)** The Danish FSA may strip a Danish UCITS of its right to have unit classes, if the administrative systems, accounting practice or management and prevention of conflicts of interests of the Danish UCITS or its investment management company or management company fail to ensure the interests of the investors.



*Withdrawal of authorisation*

**110.-(1)** The Danish FSA may withdraw the authorisation of a Danish UCITS or sub-fund, if the Danish UCITS or sub-fund

- 1) so requests,
- 2) no longer meets the conditions under which the authorisation was granted,
- 3) does not commence activities within 12 months after notification of authorisation
- 4) does not carry out activities for a period exceeding six months, or
- 5) commits gross or repeated violation of the regulations of this Act or of regulations issued pursuant to this Act.

**(2)** The Danish FSA may withdraw the authorisation of an investment association if all sub-funds of the association fail to fulfil the minimum assets requirement and if the sub-funds have not established the minimum assets within a time limit set by the Danish FSA.

**(3)** The Danish FSA may withdraw the authorisation of an investment association's sub-fund if the sub-fund fails to fulfil the minimum assets requirement and if the sub-fund has not established the minimum assets within a time limit set by the Danish FSA.

**(4)** If the authorisation of an investment management company or management company to manage the securities fund is withdrawn, the Danish FSA shall appoint an administrator to take the securities fund under administration. The administrator shall be an investment management company which shall manage the interests of the securities fund and its investors. The administrator shall, without undue delay, ensure that the securities fund is transferred to an investment management company which is able to takeover and carry on management of the securities fund. If the Danish FSA is unable to appoint an administrator, or if it is not possible for the securities fund to be transferred to another investment management company, the securities fund shall be wound up by liquidation.

**(5)** Remuneration for administrators and other costs in connection with the administration shall be paid by the initial investment management company or management company. If such company does not have the funds necessary, the costs mentioned shall be paid by way of the funds of the securities fund. The size of the remuneration shall be fixed after negotiations with the Danish FSA.

**111.** When the Danish FSA, pursuant to section 110, withdraws the authorisation of a Danish UCITS or sub-fund, these shall be wound up.

*Winding up*

**112.-(1)** The decision to wind up an investment association, SICAV or sub-fund of one of these shall be made by the general meeting, cf. however, section 116.

**(2)** Decisions at the general meeting on winding-up pursuant to subsection (1) shall state whether the winding-up is to take place by liquidation or by simplified winding-up. A sub-fund may not make a decision on simplified winding-up if the minimum assets requirement is not fulfilled.

**(3)** The decision of winding-up a securities fund or a sub-fund of a securities fund shall be made by the board of directors of the investment management company or management company managing the fund. The board of directors shall, immediately after having made a decision on winding-up, inform the investors hereof and also inform about when the winding-up is expected to be carried out.

**(4)** The decision by the board of directors on winding-up pursuant to subsection (3) shall state whether winding-up is to take place by liquidation or by simplified winding-up.

**(5)** The Danish FSA may lay down a time limit for the adoption of a decision pursuant to subsections (1) and (3). If the time limit is exceeded, the Danish FSA may decide that winding-up is to take place by liquidation and appoint a liquidator.

**(6)** The Danish FSA may, where the conditions in relation to the investors or creditors of a Danish UCITS support this, decide that winding-up is to take place by liquidation.

**(7)** The regulations in subsections (1)-(6) shall not apply for winding-up pursuant to section 119(7), section 125(7) and section 130(4).

### *Liquidation*

**113.-(1)** Decisions by the general meeting or the board of directors on liquidation shall include a provision concerning the liquidator. The liquidator shall take the place of the management.

**(2)** The Danish FSA may, if regard for the interests of the investors or creditors of the association so favours, appoint a liquidator who, instead of, or together with, the person or persons elected by the general meeting, shall carry out the liquidation.

**(3)** The liquidator may, at any time, be removed by the authority which has appointed the person concerned.

**114.-(1)** The liquidator shall, within two weeks after the decision made by the general meeting or the board of directors on liquidation, notify the Danish FSA about this decision.

**(2)** A Danish UCITS or a sub-fund hereof under liquidation, shall keep its name adding the words »i likvidation« (under liquidation).

**(3)** As soon as possible, and at no less than three months' notice, the liquidator shall, through an announcement in the Danish Official Gazette, request that the creditors of a Danish UCITS notify their claims. Requests to notify claims shall, at the same time, be sent to all known creditors.

**(4)** If a liquidator cannot accept a notified claim, the liquidator shall notify the creditor by recommended letter indicating that if the creditor wishes to dispute the decision, said creditor must bring the matter before a court of law within four weeks after the letter is sent.

**(5)** The liquidator may not distribute the proceeds of liquidation and finalise the liquidation processing until the time limit fixed in the announcement mentioned in subsection (3) has expired and

- 1) possible disputes under subsection (4) have been settled and
- 2) all debt to creditors has been paid.

**(6)** The liquidator shall ensure that liquidation accounts are prepared to be audited by the auditor of the Danish UCITS.

**(7)** Upon liquidation of an investment association or SICAV or a sub-fund of these, the audited liquidation accounts shall be approved by the general meeting. Within two weeks after approval by the general meeting of the audited liquidation accounts, the liquidator shall notify the Danish FSA and enclose one copy of the liquidation accounts.

**(8)** Upon liquidation of a securities fund or a sub-fund of a securities fund, the liquidator shall, on presentation of audited liquidation accounts, submit one copy of these accounts to the Danish FSA.

*Simplified winding-up*

**115.-(1)** The Danish FSA may, upon application from a Danish UCITS, permit the Danish UCITS or sub-fund hereof to be wound up by simplified winding-up if the Danish FSA decides that this is appropriate and in the interests of the investors.

**(2)** The application shall include

- 1) a plan for how the Danish UCITS wishes to conduct the winding-up,
- 2) a statement from the depositary of the Danish UCITS or another bank that the bank will assume liability for debt due and not yet due as well as debt in dispute, and
- 3) the articles of association of the association in which the association has added »under winding-up« (*»under afvikling«*) to the name of the association or sub-fund.

**(3)** When the Danish FSA has permitted simplified winding-up, the association may commence winding-up.

**(4)** A simplified winding-up of a Danish UCITS or sub-fund hereof shall not be valid until after the Danish FSA has made its final approval of the winding-up.

**(5)** Before the Danish FSA may finally approve a simplified winding-up according to subsection (4), the management of the Danish UCITS shall submit a statement to the Danish FSA stating that all debt to creditors has been paid and that the investors have received distribution of the proceeds of the winding-up. If the wound up entity is liable to tax, the Danish UCITS shall also send a statement from the customs and tax authorities that no tax and duties claims concerning the wound up entity exist.

**(6)** The Danish FSA may grant exemptions from the requirements in subsection (2), no. 2 and subsection (5) if the Danish FSA assesses that this does not conflict with the interests of the investors or creditors.

*Winding-up of investment associations, SICAVs and sub-funds in these without investors*

**116.-(1)** Where the investment association or SICAV or sub-fund thereof has never had investors, a decision on winding-up shall be made by the board of directors.

**(2)** The board of directors shall notify the Danish FSA about the decision made under subsection (1). The notification shall include a statement from the board of directors stipulating that the investment association, SICAV or sub-fund thereof has no debt and has never had any investors.

**(3)** Winding-up of an investment association, SICAV or sub-fund thereof which has never admitted investors shall not be valid until the Danish FSA has approved the winding-up.

**(4)** The Danish FSA may lay down a time limit for adoption of the decision mentioned in subsection (1). If the time limit is exceeded, the Danish FSA may decide to wind up an investment association, SICAV or sub-fund thereof by liquidation and appoint a liquidator.

*The powers of the Danish FSA and the duties of the Danish UCITS under winding up*

**117.** The provisions of this Act regarding the power of the Danish FSA and regarding the obligations of the Danish UCITS towards the Danish FSA shall apply correspondingly to Danish UCITS and sub-funds thereof in the process of winding-up.

#### *Bankruptcy*

**118.-(1)** The regulations applicable for companies on bankruptcy laid down in section 233(1), (2) and (4) and section 234(2), 1st and 3rd clauses of the Companies Act, shall, with the changes necessary, apply correspondingly to Danish UCITS and sub-funds thereof.

**(2)** Section 233, section 234(1) and (3) and section 235 on bankruptcy in the Financial Business Act shall, with the changes necessary, apply to Danish UCITS and sub-funds thereof.

**(3)** If an investment management company or a management company managing a securities fund is declared bankrupt, the Danish FSA shall appoint an administrator to take the securities fund under administration. The administrator, which shall be an investment management company, shall protect the interests of the investors, as the investors shall collectively be secured creditors in the estate in bankruptcy. The administrator shall, without undue delay, together with the liquidator, ensure that the securities fund is transferred to an investment management company which is able to takeover and carry on management of the fund. Assets in the securities fund shall not be subject to individual proceedings. If the Danish FSA is unable to appoint an administrator, or if it is not possible for the securities fund to be transferred to another investment management company, the liquidator shall wind up the securities fund.

**(4)** Remuneration for administrators and other costs in connection with the administration shall be paid by the funds of the securities fund. The size of the remuneration shall be fixed after negotiations with the Danish FSA.

#### *Mergers*

**119.-(1)** A Danish UCITS may merge with another Danish UCITS, and a sub-fund of a Danish UCITS may merge with another sub-fund of a Danish UCITS. Prior to the merger, the merging entities shall publish a merger plan. Merger may be carried out without the consent of the creditors.

**(2)** A merger of Danish UCITS or of sub-funds thereof shall not be valid until the Danish FSA has approved the merger.

**(3)** A merger of Danish UCITS shall be carried out by the expiring Danish UCITS transferring its sub-funds to the receiving Danish UCITS.

**(4)** A merger of sub-funds shall be carried out by the expiring sub-fund transferring its assets and liabilities as a whole to the receiving sub-fund.

**(5)** In a merger of sub-funds the investors of the expiring sub-fund shall have their units exchanged with units in the receiving sub-fund. In an exchange of units the investors in the expiring sub-fund shall become investors in the receiving sub-fund.

**(6)** Excess amounts arising from the exchange of units in a merger between sub-funds shall be paid to the investors in the expiring sub-fund.

**(7)** A decision to merge the only or last sub-fund of a Danish UCITS, where this is expiring, shall also be regarded as a decision to wind-up the Danish UCITS. An application to the Danish

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FSA for authorisation of such a merger shall enclose a declaration from the management of the Danish UCITS that all debt to creditors, which is not taken over by the receiving entity as part of the merger, has been paid.

**120.-(1)** In an investment association, SICAV or sub-fund thereof decisions regarding merger in the expiring entity shall be made by the general meeting and in the receiving entity by the board of directors.

**(2)** Decisions regarding merger of a securities fund or sub-fund thereof shall be made by the board of directors of the fund's investment management company or management company.

**121.** The expiring entities in a merger shall be considered wound up when the Danish FSA has approved the merger and the merger has been completed.

**122.** The Danish FSA may lay down more detailed regulations regarding mergers.

#### *Cross-border mergers*

**123.-(1)** The regulations on cross-border mergers in sections 124 and 125 shall apply to a merger of

- 1) a sub-fund in a Danish UCITS and one or more UCITS or sub-funds thereof established in one or more other EU Member States,
- 2) two or more sub-funds in one or more Danish UCITS, whereby a new investment undertaking shall be constituted, to be established in another EU Member State, or
- 3) two or more sub-funds in one of more Danish UCITS where at least one of the undertakings has notified to market its units in another EU Member State.

**124.-(1)** The decision that a sub-fund shall carry out a cross-border merger shall, in a SICAV or investment association, be made by the general meeting if the sub-fund is expiring.

**(2)** The decision that a sub-fund shall carry out a cross-border merger shall, in a SICAV or investment association, be made by the board of directors if the sub-fund is the receiving sub-fund.

**(3)** The decision on a cross-border merger of a sub-fund in a securities fund shall be made by the board of directors of the investment management company or management company of the securities fund.

**125.-(1)** A sub-fund in a Danish UCITS may carry out a cross-border merger with another UCITS or sub-funds thereof. Prior to the merger, the merging entities shall publish a merger plan. Merger may be carried out without the consent of the creditors.

**(2)** A cross-border merger where the expiring entity is authorised in Denmark shall not be valid until the Danish FSA has approved the merger.

**(3)** The expiring entities in a merger shall be considered wound up when the Danish FSA has approved the merger and the merger has been completed.

**(4)** A merger shall be completed by the expiring entity or the expiring entities transferring assets and liabilities as a whole to the receiving entity.

**(5)** In a merger, investors of the expiring entity shall exchange their units to units in the receiving entity. When exchanging units, investors in the expiring entity shall become investors of the receiving entity.



**(6)** Excess amounts arising from exchange of units in the expiring entity with units in the receiving entity shall be paid to investors in the expiring entity. Such amounts may not exceed 10% of the value of the units exchanged from the expiring entity.

**(7)** A decision to merge the only or last sub-fund of a Danish UCITS, where this is expiring, shall also be regarded as a decision to wind-up the Danish UCITS. An application to the Danish FSA for authorisation of such a merger shall enclose a declaration from the management of the Danish UCITS that all debt to creditors, which is not taken over by the receiving entity as part of the merger, has been paid.

**(8)** The Danish FSA may lay down more detailed regulations regarding cross-border mergers.

#### *Demerger*

**126.-(1)** A sub-fund of a Danish UCITS may be demerged. Prior to the demerger, the Danish UCITS shall publish a demerger plan.

**(2)** A demerger of a sub-fund shall not be valid until the Danish FSA has approved the demerger.

**(3)** A demerger may be carried out by transferring part or all of the assets and liabilities of a sub-fund to one or more

- 1) existing sub-funds, or
- 2) newly established sub-funds.

**(4)** Demerger may be carried out without the consent of the creditors. If a creditor's claims in the demerged sub-fund are not satisfied, each of the other sub-funds participating in the demerger shall be joint and severally liable for the obligations existing at the date of publication of the demerger plan. The remaining participating sub-funds shall, however, be liable for a maximum amount corresponding to the net value received in connection with the demerger.

**(5)** When demerging, the investors in the demerged sub-fund shall have their units converted to units in one of the receiving sub-funds. On conversion the investors of the demerged sub-fund shall become investors in one of the receiving sub-funds. The 1st and 2nd clauses shall not apply to investors who remain investors in a sub-fund which on demerger only surrenders part of its assets and liabilities.

**(6)** Any excess amounts arising from the exchange of units shall be paid to the investors of the demerged sub-fund.

**127.** In a sub-fund of an investment association or SICAV, a decision to demerge shall be made by the general meeting and the decision to receive part of the assets and liabilities of another sub-fund as part of a demerger shall be made by the board of directors.

**128.** A decision to demerge a sub-fund of a securities fund or a compartment's receipt of part of the assets and liabilities of another sub-fund as part of a demerger shall be made by the board of directors of the fund's investment management company or management company.

**129.** The Danish FSA may lay down more detailed regulations regarding demergers.

*Transfers of a sub-fund*

**130.-(1)** A sub-fund in a Danish UCITS may be transferred to another Danish UCITS.

**(2)** A transfer of a sub-fund shall not be valid until the Danish FSA has approved the transfer.

**(3)** In connection with a transfer, investors in the transferred sub-fund shall become members of the Danish UCITS to which the sub-fund is transferred.

**(4)** A decision to transfer the only or last sub-fund of a Danish UCITS shall also be regarded as a decision to wind-up the Danish UCITS. An application to the Danish FSA for authorisation of such a transfer shall enclose a declaration from the management of the Danish UCITS that all debt to creditors, which is not the liability of the sub-fund after the transfer, has been paid.

**131.-(1)** A decision on transfer of a sub-fund shall be made in the investment association or SICAV from which the sub-fund is transferred at a general meeting.

**(2)** A decision on transfer of a sub-fund shall be made in the investment association or SICAV to which the sub-fund is transferred by the board of directors.

**(3)** For securities funds, a decision to transfer a sub-fund, shall be made by the board of directors of the investment management company or management company managing the relevant securities fund.

**(4)** A decision about transfer of a sub-fund shall state the time and reason for the transfer.

**132.-(1)** The board of directors of the ceding and the receiving investment association or SICAV and the board of directors of the investment management company or management company managing the ceding and receiving securities fund shall, after the transfer has been decided, submit a request for approval of the transfer to the Danish FSA.

**(2)** The request shall include

- 1) documentation that a decision on transfer has been made, and
- 2) a statement from the board of directors of the ceding association or SICAV or from the board of directors of the investment management company or management company managing the ceding securities fund that the sub-fund has paid its share of the common costs relating to the ceding association, SICAV or securities fund.

**133.** Where the Danish FSA approves a transfer of a sub-fund, the sub-fund shall be considered transferred at the time laid down in the decision to transfer.

**134.** The Danish FSA may lay down more detailed regulations regarding transfer of sub-funds.

*Change of status and conversion*

**135.-(1)** A Danish UCITS or sub-fund thereof may not change its status such that the entity no longer complies with the conditions for being a Danish UCITS or sub-fund thereof.

**(2)** A Danish UCITS or sub-fund thereof may only be converted to another type of Danish UCITS or sub-fund thereof if this is part of a merger, demerger or transfer, cf. however, subsection (3).

(3) An investment association may be converted to a SICAV following a resolution by the general meeting to this effect.

*Cessation of master-feeder-structure*

**136.-(1)** A master UCITS may not enter into liquidation until at least three months after the undertaking has notified all its investors, the Danish FSA and the competent authorities in the home countries of the undertaking's feeder UCITS. The 1st clause shall not apply if the Danish FSA makes a decision on liquidation, cf. section 112(5).

(2) If the master UCITS of a feeder UCITS enters into liquidation, the feeder UCITS shall make a decision on

- 1) entering into liquidation,
- 2) investing at least 85% of the undertaking's assets in another master UCITS, or
- 3) convert to a Danish UCITS of the same type which is not a feeder UCITS.

(3) The decision pursuant to subsection (2) shall be made by the general meeting in feeder UCITS which are investment associations and SICAVs, and for feeder UCITS which are securities funds, by the board of directors of the investment management company or management company managing the securities fund.

**137.-(1)** If the master UCITS of a feeder UCITS merges with another investment undertaking or is demerged, the feeder UCITS shall make a decision on

- 1) continuing investing in the master UCITS,
- 2) entering into liquidation,
- 3) investing at least 85% of the undertaking's assets in another master UCITS, or
- 4) converting to a Danish UCITS of the same type which is not a feeder UCITS.

(2) The decision pursuant to subsection (1) shall be made by the general meetings of feeder UCITS which are investment associations and SICAVs, and for feeder UCITS which are securities funds, by the board of directors of the investment management company or management company managing the securities fund.

**138.-(1)** A master UCITS shall make it possible for a feeder UCITS to redeem all units in the master UCITS before a merger or demerger of the master UCITS is carried out.

(2) The Danish FSA may lay down more detailed regulations regarding liquidation, merger and demerger of a master UCITS.

**IX**

**Investment of funds by Danish UCITS and their liquidity etc.**

**Part 14**

*Provisions on instruments*

*Securities and money-market instruments*

**139.-(1)** A sub-fund may invest in securities and money-market instruments which

- 1) have been admitted to trading or are traded on a regulated market, cf. section 2, no. 16,
- 2) are traded on another market in an EU Member State, cf. section 2, no. 17, or
- 3) are admitted to official listing on a stock exchange in a third country, or dealt in on another regulated market in a third country which operates regularly and is recognised and

open to the public provided that the choice of stock exchange or market has been approved by the Danish FSA or is provided for the articles of association or fund rules of the Danish UCITS.

**(2)** A sub-fund may, notwithstanding subsection (1), invest in new issues of securities provided

- 1) the terms of issue include a pledge that application will be made for admission to trading on the markets mentioned in subsection (1), and
- 2) authorisation for admission to trading is obtained within a year of the issue.

**(3)** Where a board of directors of an investment association or SICAV, or the board of directors of an investment management company managing a securities fund, has made a decision that a sub-fund of a Danish UCITS may invest in one of the markets mentioned in subsection (1), nos. 2 and 3, the Danish UCITS shall notify the Danish FSA hereof, stating whether the market fulfils the conditions of being regulated, operated regularly, recognised and open to the public.

**(4)** A sub-fund may invest up to 10% of its assets in other securities or money-market instruments than those referred to in subsections (1) and (2) and section 140. The sub-fund shall, however, continue to invest within its investment policy.

**140.** A sub-fund may invest in other money-market instruments than those traded on a regulated market, if the issue or issuer of such money-market instruments is itself regulated for the purpose of protecting investors and savings, provided that these instruments are:

- 1) issued or guaranteed by a central, regional or local authority or central bank 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,
- 2) issued or guaranteed by a third country or, in the case of a federation, one of its federal states,
- 3) issued or guaranteed by the European Central Bank, the European Investment Bank or a public international body in which one or several of the Member States participate,
- 4) issued or guaranteed by undertakings subject to supervision according to the criteria stipulated in the EU regulations, or subject to and following supervision regulations which the Danish FSA considers at least as strict as the EU regulations, if such undertakings are situated in a country with which the Union has entered into an agreement for the financial area, or in another country,
- 5) issued by a bond-issuing institution established in pursuance of special legislation and situated in a Member State of the European Union or a country with which the Union has entered into an agreement for the financial area, or
- 6) issued by issuers whose securities are traded on a market mentioned in security 139(1) or (2).

#### *Deposits*

**141.-(1)** A compartment may, as part of its investment policy, deposit funds in a credit institution with registered office in a Member State of the European Union, in a country with which the Union has entered into an agreement for the financial area, or in a country where credit institutions are subject to and follow supervision regulations which the Danish FSA considers as strict as the EU regulations. Such deposits shall

- 1) be made on terms of demand, or
- 2) be withdrawable or due after no more than 12 months.

**(2)** A sub-fund may have ancillary liquid assets.

*Derivative financial instruments*

**142.-(1)** A sub-fund may use derivative financial instruments and similar cash-settled instruments, which are traded on the markets mentioned in section 139(1) and (2) as well as derivative financial instruments traded OTC.

**(2)** In addition to the conditions mentioned in subsection (1), the following shall apply to derivative financial instruments traded OTC

- 1) the counterparties shall be institutions subject to supervision and belonging to categories approved by the Danish FSA,
- 2) the derivative financial instruments shall be measurable on a daily basis in a reliable and verifiable manner, and
- 3) the derivative financial instruments can be sold, liquidated or closed by an offsetting transaction at any time at their fair value at the initiative of the Danish UCITS or sub-fund.

**(3)** The Danish FSA shall lay down more detailed regulations regarding the access of sub-funds of a Danish UCITS to use derivative financial instruments and regarding instruments that may be underlying assets for the derivative financial instruments.

**(4)** Danish UCITS shall notify the Danish FSA about the types of derivative financial instruments in which the sub-funds of the Danish UCITS have invested, underlying risks, quantitative restrictions and methods used by the Danish UCITS to assess the risks connected with transactions in derivative financial instruments.

**(5)** The Danish FSA may lay down more detailed regulations regarding the manner and frequency at which Danish UCITS shall notify according to subsection (4), and on the content of the notifications.

*Units in Danish UCITS and other investment undertakings*

**143.-(1)** A sub-fund may invest units in

- 1) sub-funds in Danish UCITS,
- 2) investment undertakings with their registered office 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 have been approved pursuant to Directive 2009/65/EC of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (the UCITS Directive), and
- 3) investment undertakings,
  - a) the object of which is, from a wide circle or from the general public, to receive funds which, in accordance with a principle of risk-spreading, are placed in securities in accordance with the regulations in this part of this Act and with the risk-spreading rules in part 15 of this Act,
  - b) whose units are to be or redeemed directly or indirectly with funds deriving from the assets upon the request of any participant,
  - c) which provides their participants with protection corresponding to the protection of investors in a Danish UCITS, and which, without cover, meet the requirements of the provisions pertaining to separate asset management, borrowing, lending and trading in securities and money-market instruments of Directive 2009/65/EC of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (the UCITS Directive), and
  - d) which publish an annual report as well as an interim financial report.

**(2)** A sub-fund may only invest units in the sub-funds referred to in subsection (1) in Danish UCITS and investment undertakings, if these, according to their articles of association



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or fund rules, are not allowed to place more than 10% of their assets in units in sub-funds in Danish UCITS and investment undertakings.

#### *Mortgages*

**144.-(1)** A sub-fund may invest in registered mortgages in real property in Denmark in so far as such mortgages, at any time, are either secured within 80% of the market value of the property or are secured by a guarantee set by a bank, insurance company or pension fund.

**(2)** A sub-fund holding registered mortgages of the type mentioned in subsection (1) may, in the event of breach of the mortgage, temporarily take over the mortgaged property through compulsory sale. The Danish UCITS shall report any takeover of real property to the Danish FSA.

**(3)** The Danish FSA shall lay down more detailed regulations for approval of guarantees, determination of market value and calculation of prior mortgages.

#### *General limitations*

**145.-(1)** A sub-fund may not enter into agreements reducing the liquidity of the instruments in which the sub-fund has placed assets.

**(2)** A sub-fund may neither acquire precious metals nor certificates representing them.

**146.** The Danish FSA may lay down more detailed regulations regarding

- 1) placement by sub-funds of Danish UCITS of funds in financial instruments, including the conditions the individual financial instrument shall fulfil, and the measures the Danish UCITS shall implement before the sub-fund places funds in a specific financial instrument,
- 2) the criteria with which an index shall comply in order to be included in the investment policy of a compartment, and the measures which shall be launched by the Danish UCITS, in order for a compartment of the Danish UCITS to place funds in accordance with the composition of an index, and
- 3) placement of funds by sub-funds of short-term money-market associations, money-market SICAVs and money-market funds.

#### *Submission of information on assets, investments, liquidity, etc.*

**146a.** The Danish FSA may lay down more detailed regulations regarding submission of information on the assets, investments, liquidity, etc. of a Danish UCITS.

### **Part 15<sup>(OBJ)</sup>**

#### *Risk-spreading rules*

##### *Securities and money-market instruments*

**147.-(1)** A sub-fund may, as a maximum, invest its assets in securities and money-market instruments issued by a single issuer or by issuers in the same group, within the following limits

- 1) 5% of the assets of the sub-fund. This limit may, however, be increased to 10%, if the total value of investments exceeding 5%, does not exceed 40% of the assets of the sub-fund. When calculating the limit of 40%, securities and money-market instruments covered by nos. 2-4 shall not be included as investments exceeding 5%.
- 2) 25% of the assets of the sub-fund in bonds issued by KommuneKredit, bonds issued by Danmarks Skibskredit A/S, mortgage-credit bonds issued by Danish mortgage-credit institutions and similar mortgage-credit bonds issued by credit institutions approved by a Member State of the European Union or by a country with which the Union has entered into an agreement for the financial area, when a competent authority has notified the bonds issues and issuers to the Commission. If a sub-fund invests more than 5% of its assets in such bonds issued by the same issuer or issuers in the same group, the total value of such investments shall not exceed 80% of the assets of the sub-fund.
- 3) 25% of the assets of the sub-fund in covered bonds (SDO) and covered mortgage-credit bond (SDRO) issued by banks, mortgage-credit institutions or Danmarks Skibskredit A/S or in corresponding covered bonds issued by similar credit institutions approved by a Member State of the European Union or a country with which the Union has entered into an agreement for the financial area, provided a competent authority has notified the bonds issue and the issuers to the Commission. If a sub-fund invests more than 5% of its assets in such bonds issued by the same issuer or issuers in the same group, the total value of such investments shall not exceed 80% of the assets of the sub-fund.
- 4) 35% of the compartment's assets in securities or money-market instruments issued or guaranteed by
  - a) a country or
  - b) a public international body in which more or several Member States participate and which has been approved by the Danish FSA.

**(2)** Subject to observance of the placement limits of subsection (1), no. 1, a sub-fund may, however, invest up to 20% of the compartment's assets in securities and money-market instruments issued by issuers within the same group.

**(3)** The investments of a sub-fund under subsection (1), nos. 2 and 3 may not exceed 25% of the assets of the sub-fund when the bonds have been issued by the same issuer or by issuers in the same group.

**148.-(1)** Notwithstanding the risk-spreading rule in section 147(1), no. 4, a sub-fund may, however, invest up to 100% of the assets of the sub-fund in securities or money-market instruments covered by section 147(1), no. 4 provided that the holdings include securities or money-market instruments from at least six different issues, and the securities or money-market instruments from the same issue do not exceed 30% of the total assets of the sub-fund.

**(2)** If the option in subsection (1) is exercised, a sub-fund may not invest in other financial instruments issued by the same issuer or by issuers in the same group.

**149.-(1)** Notwithstanding the risk-spreading limits set in section 147, a sub-fund may invest up to 20% of the assets of the sub-fund in shares or bonds issued by the issuer or issuers in the same group, if such investments, according to the articles of association of the Danish UCITS, are intended to copy specific share or bond indexes which are approved by the Danish FSA for this purpose.

**(2)** The Danish FSA may approve a share or bond index, provided the index

- 1) has a sufficiently varied composition,
- 2) constitutes a suitable benchmark for the market it refers to, and
- 3) is made public in a suitable manner.

**(3)** The Danish FSA may authorise that the limit in subsection (1) is increased up to 35% of the assets of a sub-fund when this is justified on the basis of unusual market conditions. The Danish FSA may only authorise investments up to this limit for an issuer or issuers in a group.

**(4)** A sub-fund shall, no later than one month following changes to the index replicated, adapt its portfolio of shares or bonds to said changes. If the index replicated by the Danish UCITS or sub-fund ceases, the Danish UCITS shall, within six months, either have adopted amendments to its articles of association such that they replicate the new index, or commence winding-up the sub-fund.

**(5)** In cases of investments under subsections (1) and (3), sections 157 and 158 shall apply.

*Deposits and ancillary liquid assets*

**150.-(1)** A sub-fund may invest no more than 20% of its assets in deposits and ancillary liquid assets in one credit institution or in credit institutions in the same group. Newly established sub-funds may, however, exceed the limit in the 1st clause for up to six months from the date of authorisation of the sub-fund.

**(2)** In the case of deposits under subsection (1), section 156 shall apply.

**(3)** Where the general meeting of an investment association or SICAV or the board of directors of an investment management company or management company managing a securities fund has decided to close down a sub-fund, and the Danish FSA has granted authorisation for this, the sub-fund may deviate from the placement limits in subsection (1) if the board of directors deems that this is appropriate.

*Derivative financial instruments*

**151.-(1)** A sub-fund may use derivative financial instruments which are traded on the markets mentioned in section 139(1) and (2), as well as derivative financial instruments traded OTC, if the exposure in the underlying assets and direct investments in the same assets, towards individual issuers or issuers in the same group, does not in total exceed the placement limits laid down in sections 147, 148 and 150.

**(2)** The risk-spreading limits in subsection (1) shall not apply when a sub-fund uses derivative financial instruments based on an index approved in pursuance of section 149(2).

**(3)** In relation to investments under subsections (1) and (2), sections 157 and 158 shall apply correspondingly. Furthermore, section 156 shall apply to investments under subsection (1).

**152.-(1)** If a sub-fund uses derivative financial instruments traded OTC, the counterparty risk on the contract counterparty may not exceed

- 1) 10% of the assets of the sub-fund if the counterparty is a credit institution that meets the conditions laid down in section 141(1), or
- 2) 5% of the assets of the sub-fund in other cases.

**(2)** In relation to investments under subsection (1), section 156 shall apply.

**153.** The Danish FSA shall lay down more detailed regulations regarding calculation of risks in connection with derivative financial instruments.

*Units in Danish UCITS and other investment undertakings*

**154.-(1)** A sub-fund of a Danish UCITS may invest no more than 20% of its assets in a single sub-fund of a Danish UCITS or an investment undertaking mentioned in section 143(1), nos. 2 and 3. Where an investment undertaking referred to in section 143(1), nos. 2 or 3, is divided into sub-funds, the limit in the 1st clause shall apply at sub-fund level.

**(2)** A sub-fund may in total invest no more than 30% of its assets in investment undertakings referred to in section 143(1), no. 3.

**(3)** In relation to investments under subsection (1), section 157 shall apply correspondingly.

**155.** When a sub-fund of a Danish UCITS invests in units in investment undertakings and sub-funds thereof mentioned in section 143, the portfolios of instruments of these shall not be included in the calculation of the placement limits for the compartment's own portfolio of instruments.

*General limitations*

**156.-(1)** Upon compliance of the limits in section 147(1), no. 1, and subsection (2), and sections 150 and 151, the investments and placements of a sub-fund under section 147(1), no. 1, and subsection (2), and sections 150 and 151, may together not exceed 20% of the compartment's assets where the same issuer or issues in the same group have issued the instruments invested in and the credit institution or credit institutions in which the sub-fund has placed its deposits or ancillary liquid assets.

**(2)** Upon compliance of the limits in section 147 and sections 150 and 151 investments and placement of a sub-fund under section 147 and sections 150 and 151, may together not exceed 35% of the compartment's assets where the same issuer or issues in the same group have issued the instruments invested in and the credit institution or credit institutions in which the sub-fund has placed its deposits or ancillary liquid assets.

**157.-(1)** A Danish UCITS may not acquire shares with voting rights in a single limited company which give the Danish UCITS the possibility to exercise significant influence over said limited company.

**(2)** Several Danish UCITS with the same board of directors or investment management company may not be in a position to exercise significant influence over a single limited company.

**(3)** A sub-fund of a Danish UCITS may not acquire more than

- 1) 10% of the shares without voting rights from a single issuer,
- 2) 10% of the bonds from a single issuer,
- 3) 10% of the money-market instruments from a single issuer, or
- 4) 25% of the units from one single sub-fund of a Danish UCITS or one single investment undertaking referred to in section 143(1), nos. 2 and 3.

**(4)** The limits laid down in subsection (3), nos. 2-4 shall not apply at the acquisition if, at that time, it is not possible to calculate the gross amount for the bonds or the money-market instruments or the net amount for the securities issued.

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**158.-(1)** The limits stipulated in section 157 shall not apply acquisition of

- 1) securities and money-market instruments issued or guaranteed by
  - a) a country or
  - b) a public international body in which one or more Member States participate, and
- 2) shares in companies which solely carry out investment management or advisory services or marketing activities and only if this is done on behalf of the relevant Danish UCITS and any capital associations.

**159.-(1)** The limits mentioned in section 139(4) or in this part of this Act may be exceeded when such transgressions are due to reasons the Danish UCITS or sub-fund has no control over, or when a sub-fund exercises subscription rights attached to instruments included in the assets of the sub-fund.

**(2)** If the limits mentioned in section 139(4) or in this part are exceeded for reasons mentioned in subsection (1), and if such transgressions are not reduced within eight business days after transgression, the Danish UCITS shall immediately notify the Danish FSA. In this case, the Danish FSA may exceptionally permit that such transgression is reduced over a longer period of time if this is in the interests of the investors.

#### *Master-feeder-structures*

**160.-(1)** A Danish UCITS which is part of a master-feeder-structure as feeder UCITS shall invest at least 85% of its assets in units in another Danish UCITS or in an investment undertaking covered by Directive 2009/65/EC of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (the UCITS Directive) or a sub-fund thereof and up to 15% of its assets in

- 1) ancillary liquid assets, cf. section 141(2),
- 2) derivative financial instruments which can only be used for hedging purposes, cf. section 142, or
- 3) chattels or real property significant to the direct exercise of the activities of the feeder UCITS,

**(2)** The risk-spreading rules in section 3(1), no. 1, sections 147, 150, 154 and 155 and section 157(3), no. 4 shall not apply to feeder UCITS.

**(3)** When determining whether a feeder UCITS is in compliance with section 151, the feeder UCITS shall add direct exposures in derivative financial instruments of the feeder UCITS, cf. subsection (1), no. 2, to either

- 1) the indirect exposure of the feeder UCITS in the actual holding of derivative financial instruments of the master UCITS, or
- 2) the indirect exposure of the feeder UCITS in the potential maximum holding of derivative financial instruments of the master UCITS pursuant to the articles of association of the master UCITS or to fund rules.

## **X**

### **Supervision and fees etc.**

#### **Part 16**

##### *Supervision and fees etc.*

##### *General regulations regarding supervision*



**161.-(1)** The Danish FSA shall supervise compliance with regulations issued pursuant to Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (the UCITS Directive), compliance with this Act and compliance with regulations laid down pursuant to this Act, except for section 60(1) and (2) and section 63b. The Danish FSA shall also supervise compliance with the articles of association or fund rules of Danish UCITS when the Danish FSA has approved the articles of association or fund rules. The Danish FSA shall also supervise compliance with the regulations issued pursuant to section 31(8) of the Approved Auditors and Audit Firms Act. The Danish Business Authority shall, however, supervise compliance with section 14(1) and (3). The Danish FSA shall check that the regulations regarding financial information in annual reports and interim financial reports laid down in section 82-92, and pursuant to section 95 are observed by the Danish UCITS that has issued securities admitted for trading on a regulated market, cf. section 83(2)-(5) and section 83b of the Securities Trading etc. Act.

**(2)** In its supervisory activities, the Danish FSA shall examine in particular the viability of the business model of the individual Danish UCITS. The organisation of supervisory activities shall take materiality into consideration so that the supervision effort is proportionate to the potential risks or damage.

**(3)** In exceptional circumstances, the Danish FSA may use foreign assistance.

**(4)** The Minister for Business and Growth may, for the purpose of implementing Union law, lay down more detailed regulations for the procedures of the Danish FSA.

**162.** The Governing Board of the Danish FSA shall be involved in the supervision of Danish UCITS with corresponding authority conferred on the Governing Board pursuant to section 345 of the Financial Business Act.

**163.-(1)** The Danish FSA shall examine the circumstances of Danish UCITS, including reviews of regular reports and inspections of the individual Danish UCITS.

**(2)** Following on-site inspection of a Danish UCITS, the Danish FSA shall convene a meeting for attendance by the management, the investment management company or management company of the Danish UCITS as well as the external auditor and the chief internal auditor, unless the on-site inspection pertains solely to well-defined fields of activity of the Danish UCITS. At said meeting, the Danish FSA shall announce its conclusions regarding the on-site inspection.

**(3)** Following an on-site inspection, the Danish FSA shall submit significant conclusions in the form of a written report to the Danish UCITS' board of directors, board of management, the external auditor, and the chief internal auditor.

**164.-(1)** Danish UCITS shall submit such information to the Danish FSA as is necessary for its activities.

**(2)** The Danish FSA may, at all times, on proof of identity and without a court order, gain access to a Danish UCITS with a view to obtaining information, including during on-site inspections.

**(3)** To the extent required to assess the financial position of a Danish UCITS, the Danish FSA shall be entitled to obtain information and, at any time, on proof of identity and without a court order, have access to undertakings with which said Danish UCITS has special direct or indirect links.

**(4)** The Danish FSA may ask for any information, including financial statements, accounting records, printouts of books, other business records and electronically stored data deemed necessary for the activities of the Danish FSA or for deciding whether a natural or legal person is covered by the provisions of this Act.

**(5)** The Danish FSA may, at any time, on proof of identity and without a court order, have access to a supplier or a sub-supplier in order to obtain information about the outsourced activity.

**(6)** The Danish FSA may collect information pursuant to subsections (1)-(4) for use by the authorities mentioned in section 175(6), nos. 14 and 18.

**165.-(1)** The Minister for Business and Growth may lay down regulations on the duty of Danish UCITS and branches of foreign credit institutions which are depositaries for Danish UCITS, cf. section 2, no. 11 to publish information on the assessment made by the Danish FSA on the Danish UCITS or the branch of the foreign credit institution and that the Danish FSA may publish such information before the Danish UCITS or branch of the foreign credit institution.

**(2)** The Danish FSA may lay down regulations implementing the guidelines issued by the European Securities and Markets Authority.

**166.-(1)** The Danish FSA may order a Danish UCITS to arrange for and pay the costs of holding an impartial investigation of one or more aspects relating to the Danish UCITS, if the Danish FSA deems that this is significant for supervision of the Danish UCITS and for the Danish FSA this is not a routine investigation. The results of the impartial investigation shall be given in a written report which must be available within a time limit set by the Danish FSA. The Danish FSA may decide that the experts, cf. subsections (2)-(6), are to carry out regular reporting to the Danish FSA about matters in connection with the investigation.

**(2)** The impartial investigation shall be carried out by one or more experts. The Danish UCITS shall appoint experts within a time limit set by the Danish FSA. The proposed experts shall be subject to approval by the Danish FSA.

**(3)** The Danish UCITS shall provide the experts with such information as is necessary for the performance of the impartial investigation.

**(4)** The experts shall submit a copy of the written report of the investigation to the Danish FSA no later than at the time the report is submitted to the Danish UCITS.

**(5)** The experts shall immediately provide the Danish FSA with information about conditions they observe during the impartial investigation, if the information is of significant importance to the manager's risk profile or business model and may result in a not insignificant risk that these conditions could develop such that the Danish UCITS or a sub-fund will lose its authorisation.

**(6)** If, because of his special situation, the expert cannot disclose the information under subsections (4) and (5) to the Danish FSA, notification of the Danish FSA may be effected by others than the expert, including by the Danish UCITS.

**(7)** The Financial Council shall make decisions in cases on orders pursuant to subsection (1).

**167.** The Danish FSA may cooperate with other Danish authorities on ensuring compliance with this Act and the regulations issued pursuant to this Act. The Danish FSA may delegate tasks to other Danish authorities, as well as bodies or persons.

**168.-(1)** The Danish FSA may request the competent authorities in another Member State of the European Union or in a country with which the Union has entered into an agreement for the financial area, to help ensure compliance with this Act and the regulations laid down pursuant to this Act through supervision activities, on-the-spot checks or on-site inspections in the territory of another EU Member State.

**(2)** If a foreign investment undertaking performs or has performed activities in Denmark which contravene other provisions not harmonised pursuant to Directive 2009/65/EC of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (the UCITS Directive), the Danish FSA may take action against the investment undertaking in accordance with existing regulations.

**(3)** If the competent authorities in another EU Member State or in a country with which the Union has entered into an agreement for the financial area, and which is the home country of a foreign investment undertaking, fail to take action or fail to react within a reasonable time and the investment undertaking persists in acting in a manner that is prejudicial to the investors in Denmark, the Danish FSA may

- 1) after informing the competent authorities in the Member State of the investment undertaking take all appropriate measures needed to protect the investors, and the Danish FSA may, in this connection, prevent the investment undertaking concerned from carrying out any further marketing of units in Denmark, or
- 2) bring the matter to the attention of the Committee of European Securities Regulators.

**(4)** If the Danish FSA has good reason to assume that foreign investment undertakings perform or have performed activities within the territory of another EU Member State that are in contravention of the provisions laid down in Directive 2009/65/EC of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (the UCITS Directive), the Danish FSA shall provide the competent authorities of the other EU Member State with information that is as accurate as possible.

**169.-(1)** The Danish FSA shall cooperate with the competent authorities of other EU Member States or in countries with which the Union has entered into an agreement for the financial area regarding supervision activities, on-site inspections or on-site inspections in Denmark in the case of foreign UCITS or Danish UCITS subject to Danish supervision but which have activities in other EU Member States.

**(2)** If a competent authority in another EU Member State or in a country with which the Union has entered into an agreement for the financial area requests the Danish FSA to assist in verification or investigation of a foreign UCITS or a Danish UCITS, cf. subsection (1), the Danish FSA may

- 1) carry out the verification or investigation itself,
- 2) allow the requesting authority to carry out the verification or investigation, or
- 3) allow an auditor or other expert to carry out the verification or investigation.

**(3)** If a Danish investment management company opposes the investigation made by a competent foreign authority, cf. subsection (2), the investigation may only proceed with the participation of the Danish FSA.

**(4)** The Danish FSA may lay down more detailed regulations regarding cooperation with competent authorities in other EU Member States or in countries with which the Union has entered into an agreement for the financial area.

**170.-(1)** The Consumer Ombudsman may institute legal proceedings regarding actions contrary to honest business principles and good practice, cf. section 29, including proceedings on prohibitions and orders, compensation and claims for repayment of unlawfully charged amounts. The provisions of section 20, section 22(2), section 23(1), section 27(1) and section 28 of the Marketing Practices Act shall apply correspondingly to legal proceedings which the Consumer Ombudsman wishes to institute in pursuance of the provision of the 1st clause. The Consumer Ombudsman may be appointed as group representative in group actions, cf. part 23a of the Administration of Justice Act.

**(2)** The Danish FSA may order that matters which are contrary to section 29 shall be rectified. In this connection the Danish FSA may carry out inspection visits at branches of management companies and investment undertakings.

**171.-(1)** The Danish FSA shall notify the Consumer Ombudsman if it comes to the attention of the Danish FSA that a customer of an undertaking may have suffered a loss as a consequence of the undertaking having violated section 29.

**(2)** Notwithstanding section 175, the Consumer Ombudsman shall have access to all the information in Danish FSA cases covered by subsection (1).

**172.-(1)** The Danish FSA may order that the board of directors of an investment association removes a member of the board of management within a time limit specified by the Danish FSA, if, pursuant to section 57(2) and (3), said person may not occupy the position.

**(2)** The Danish FSA may order a member of the board of directors of an investment association or SICAV to resign his position within a time limit specified by the Danish FSA, if, pursuant to section 57(2) and (3), said person may not occupy the position.

**(3)** The Danish FSA may order the board of directors of an investment association to remove a member of the board of management when legal proceedings have been instigated against said member in a criminal procedure relating to violation of the Criminal Code, this Act or other financial legislation, until the criminal procedure has been concluded, if a conviction would mean that said member does not meet the requirements of section 57(3), no. 1. The Danish FSA shall lay down a time limit within which the requirements of the order shall be met. The Danish FSA may, under the same conditions as in the 1st clause, order a member of the board of directors of an investment association or SICAV to resign their position. The Danish FSA shall lay down a time limit within which the requirements of the order shall be met.

**(4)** The duration of the order issued pursuant to subsection (2) shall appear on the order on the basis of section 57(3), nos. 2, 3 or 4.

**(5)** Orders issued pursuant to subsections (1)–(3) may be brought before the courts at the request of the board of directors or the person to whom the order relates. Such request shall be submitted to the Danish FSA within four weeks from the date on which the order was issued to the person. A request to bring the matter before the courts shall not act as stay of proceedings for the order, but the court may, by court order, decide that the relevant member of the board of management or the relevant member of the board of directors may retain his position during the legal proceedings. The Danish FSA shall bring the case before the courts within four weeks of receiving a request. The case shall be brought through civil proceedings.

**(6)** The Danish FSA may at its own initiative, or on application, revoke an order pursuant to subsection (2) and subsection (3), 3rd clause. If the Danish FSA refuses a request to revoke, the applicant may request that the refusal be brought before the courts. Such request shall be submitted to the Danish FSA within four weeks from the date on which the refusal was notified to the person. Requests for judicial review may, however, only be submitted if the order has no time limit, and no less than five years have elapsed from the date of issue of the order, or no less than two years after the refusal of withdrawal by the Danish FSA was affirmed by judgement. In the case of access to judicial review under the 4th clause, the Danish FSA shall bring the case before the courts within four weeks of receiving a request. The case shall be brought through civil proceedings.

**(7)** If the board of directors of an investment association does not remove the member of the board of management before the expiry of the time limit, the Danish FSA may withdraw the authorisation of the undertaking. The Danish FSA may also withdraw the authorisation of the investment association or SICAV if a member of the board of directors fails to comply with an order notified pursuant to subsections (2) and (3).

**173.** The Danish FSA may independently or in collaboration with other authorities carry out such investigations as are appropriate to promote transparency within the investment area and publish the results of such investigations.

**174.-(1)** In cases where a Danish UCITS or a sub-fund thereof has gone bankrupt or the main part of the activities of the Danish UCITS or sub-fund have ceased or been transferred, the Danish FSA shall prepare a report on the reasons for this if the state, in connection with or for a shorter period prior to this, has provided a guarantee or made funds available to the Danish UCITS or the sub-fund, its creditors or an acquirer of the whole or parts of the Danish UCITS.

**(2)** The Danish FSA shall publish the statement pursuant to subsection (1). Section 175 shall not apply in connection with publication, unless the information relates to customer relationships or third parties who are or have been involved in attempts to save the Danish UCITS or sub-fund.

**(3)** The report pursuant to subsection (1) shall describe the role of the Danish FSA during the course of events up to the bankruptcy, etc.

**175.-(1)** By virtue of sections 152-152e of the Criminal Code, employees of the Danish FSA shall be obliged to keep secret any confidential information they receive in the course of their supervisory duties. The same shall apply to persons performing services as part of the operations of the Danish FSA, and experts acting on behalf of the Danish FSA. This shall also apply after the termination of the employment contract or any other contract. The 1st to 3rd clauses shall also apply to employees of the Danish Business Authority with regard to information they receive through the dissolution pursuant to section 83(2) and (3) of the Securities Trading etc. Act.

**(2)** Consent from the individual who the duty of confidentiality aims to protect shall not entitle the persons mentioned in subsection (1) to divulge confidential information.

**(3)** Subsection (1) shall not apply, however, to information in cases regarding:

- 1) good business practice, cf. section 29, and executive orders issued in pursuance of section 29(2).
- 2) decisions pertaining to amendments to the articles of association, cf. section 35(2) and section 44, and amendments to fund rules, cf. section 17(1).



- 3) decisions pertaining to the administrative and accounting practices, business procedures and control procedures of investment associations and SICAVs, cf. section 63, and decisions pertaining to the administrative and accounting practices, business procedures and control procedures of investment management companies managing securities funds, cf. section 71 of the Financial Business Act.
- 4) prohibitions on double-charging fees, cf. sections 76-78.
- 5) the duty to report errors in calculations, cf. section 75.
- 6) payment of costs in connection with issuing units through a central securities depository, cf. sections 80 and 111.
- 7) prospectuses and announcements of prospectuses, cf. section 102.
- 8) publication of issue and redemption prices, cf. sections 105-107.
- 9) withdrawal of the authorisation of Danish UCITS, cf. section 111.
- 10) placing of funds by Danish UCITS, cf. parts 14 and 15.

**(4)** The provision in subsection (1) shall not prevent the Danish FSA from disclosing, on its own initiative, confidential information in the form of summaries, insofar as neither the individual Danish UCITS or its investors are identifiable.

**(5)** Confidential information may be disclosed during civil legal proceedings, where a Danish UCITS or sub-fund thereof has been declared bankrupt or is being compulsory wound up, and provided such information does not concern investor relationships or third parties where said investors or third parties are or have been involved in attempts to save the Danish UCITS or sub-fund.

**(6)** The provision of subsection (1) shall not prevent confidential information from being divulged to:

- 1) The Systemic Risk Council.
- 2) Public authorities, including the prosecution service and the police, in connection with investigations and legal prosecution of possible criminal offences covered by the Criminal Code or the supervision legislation.
- 3) The Minister concerned as part of their overall supervision.
- 4) Administrative authorities and courts hearing decisions made by the Danish FSA.
- 5) The Ombudsman of the Danish Parliament.
- 6) A parliamentary commission set up by the Danish Parliament, cf. however, subsection (12).
- 7) Courts of inquiry set up by law or in accordance with the Courts of Inquiry Act (*lov om undersøgelseskommissioner*), cf. however, subsection (12).
- 8) The standing committee of the Folketinget (the Danish Parliament) regarding the general financial situation of a Danish UCITS or sub-fund with respect to crisis management of Danish UCITS when a decision is to be made on the extent to which the government is to grant guarantees or make funds available. The same shall apply correspondingly in connection with parliamentary supervision in cases covered by the 1st clause.
- 9) Members of the Public Accounts Committee and the Danish National Audit Office.
- 10) Interested parties, including authorities involved in attempts to save a failing Danish UCITS or sub-fund thereof, if the Danish FSA has received a mandate from the Minister for Business and Growth, provided that the recipients of information need said information.
- 11) The bankruptcy court, cf. however, subsection (12), other authorities participating in liquidation, bankruptcy proceeding or similar procedures regarding the Danish UCITS or a sub-fund, as well as liquidators and persons responsible for the statutory audit of the accounts of a Danish UCITS, provided that such recipients of information need said information to perform their duties.
- 12) The Danish Business Authority in its capacity as the supervisory authority for observance of company law, when disclosure is in order to strengthen the stability and integrity of the financial systems, and the Danish Business Authority, the Supervisory



Authority on Auditing and the "*Revisornævnet*" (the disciplinary board for state-authorised public accountants and registered public accountants) in their capacity as the supervisory authority for the statutory audit of the financial statements of a Danish UCITS or a sub-fund of such, provided that the recipients have a need for the information in order to perform their duties, cf. however, subsection (12).

13) Experts, who assist the Danish FSA, the Danish Business Authority, the Supervisory Authority on Auditing, the "*Revisornævnet*" (the disciplinary board for state-authorised public accountants and registered public accountants) and institutions which manage depositor, investor or insurance guarantee schemes in performance of their supervisory tasks, provided that the recipients have a need for the information to perform their duties, cf. however, subsection (12).

14) Danmarks Nationalbank (Denmark's central bank), central banks in countries within the European Union or countries with which the Union has entered into an agreement for the financial area, the European System of Central Banks and the European Central Bank in their capacity as monetary-policy authorities, as well as public authorities which monitor payment systems in Denmark and in other countries within the European Union or countries with which the Union has entered into an agreement for the financial area, provided that the information is necessary for them to meet their statutory obligations, including performance of monetary policy, monitoring of payment and securities management systems as well as safeguarding the stability of the financial system.

15) An institution which carries out clearing proceedings for securities or money, provided that it is necessary to ensure that said institution reacts appropriately to non-compliance or potential non-compliance within the market where said institution is responsible for clearing proceedings.

16) Financial supervisory authorities in other countries within the European Union or in countries with which the Union has entered into an agreement for the financial area which are responsible for the supervision of investment undertakings, financial undertakings, finance institutions, or of the financial markets, authorities and bodies which are responsible for maintaining financial stability through macro-prudential regulation, authorities or bodies with the purpose of securing financial stability, deposit guarantee schemes established by agreement or law as mentioned in Directive 94/19/EU on deposit guarantee schemes, bodies involved in the liquidation, bankruptcy proceedings of financial undertakings and investment undertakings or in other similar procedures, and persons responsible for carrying out statutory audits of the accounts of the investment undertaking, provided that these recipients of information need it to perform their duties.

17) Bodies in other countries within the European Union or in countries with which the Union has entered into an agreement for the financial area which supervise bodies involved in the liquidation, bankruptcy proceedings or similar procedures for a Danish UCITS or sub-fund hereof, authorities which are responsible for supervising deposit guarantee schemes established by agreement or law as mentioned in Directive 94/19/EU on deposit guarantee schemes, and authorities which supervise persons who are responsible for carrying out statutory audits of the accounts of a Danish UCITS or a sub-fund hereof, provided that these recipients of information need it to perform their duties, cf. however, subsection (12).

18) Bodies in other countries within the European Union or in countries with which the Union has entered into an agreement for the financial area which are responsible for demonstrating violations of company law, provided that these recipients of information need it to perform their duties and disclosure is with a view to strengthening the stability and integrity of the financial system, cf. however, subsection (12).

19) Experts who assist authorities in other countries within the European Union or in countries with which the Union has entered into an agreement for the financial area which supervise bodies involved in the liquidation, bankruptcy proceedings or similar procedures for a Danish UCITS or sub-fund hereof, authorities which are responsible for supervising deposit guarantee schemes established by agreement or law as mentioned in Directive 94/19/EU on deposit guarantee schemes, and authorities which supervise persons who are

responsible for carrying out statutory audits of the accounts of a Danish UCITS or a sub-fund hereof, provided that these recipients of information need it to perform their duties, cf. however, subsection (12).

20) Bodies in other Member States of the European Union or in countries with which the Union has entered into an agreement for the financial area which are responsible for supervising compliance with the regulations for financial information from issuers of securities admitted to trading on a regulated market.

21) Ministers with responsibility for the financial legislation in Member States of the European Union or in countries with which the Union has entered into an agreement for the financial area, in connection with crisis management of a Danish UCITS.

22) The European Systemic Risk Board, the European Securities and Markets Authority as well as bodies established by the European Securities and Markets Authority, provided that recipients of information need said information to perform their duties.

23) Financial supervisory authorities in countries outside the European Union with which the Union has not entered into an agreement for the financial area which are responsible for the supervision of foreign investment undertakings, financial undertakings, finance institutions, or of the financial markets, authorities and bodies which are responsible for maintaining financial stability through macro-prudential regulation, authorities or bodies with the purpose of securing financial stability, deposit guarantee schemes established by agreement or law as mentioned in Directive 94/19/EU on deposit guarantee schemes, bodies which manage deposit guarantee schemes and investor compensation schemes, bodies involved in the liquidation, bankruptcy proceedings of financial undertakings and investment undertakings or in similar procedures, and persons responsible for carrying out statutory audits of the accounts of the investment undertaking, cf. however, subsections (11) and (12).

24) Bodies in other countries outside the European Union with which the Union has not entered into an agreement for the financial area which supervise bodies involved in the liquidation, bankruptcy proceedings or similar procedures for a Danish UCITS or sub-fund hereof, authorities which are responsible for supervising deposit guarantee schemes established by agreement or law as mentioned in Directive 94/19/EU on deposit guarantee schemes, and authorities which supervise persons who are responsible for carrying out statutory audits of the accounts of a Danish UCITS or a sub-fund hereof, cf. however, subsections (11) and (12).

25) Bodies in other countries outside the European Union with which the Union has not entered into an agreement for the financial area which are responsible for demonstrating violations of company law, provided that disclosure is with a view to strengthening the stability and integrity of the financial system, cf. however, subsections (11) and (12).

26) Experts who assist authorities in other countries outside the European Union with which the Union has not entered into an agreement for the financial area which supervise bodies involved in the liquidation, bankruptcy proceedings or similar procedures for a Danish UCITS or sub-fund hereof, authorities which are responsible for supervising deposit guarantee schemes established by agreement or law as mentioned in Directive 94/19/EU on deposit guarantee schemes, and authorities which supervise persons who are responsible for carrying out statutory audits of the accounts of a Danish UCITS or a sub-fund hereof, cf. however, subsections (11) and (12).

**(7)** All those receiving confidential information from the Danish FSA under subsections (5) and (6) shall fall under the duty of confidentiality mentioned in subsection (1) with regard to said information.

**(8)** Confidential information received pursuant to subsection (6), no. 21, may, notwithstanding the duty of confidentiality, directly be exchanged between the European Securities and Markets Authority and bodies established by said authority on the one hand, and by the European Systemic Risk Board on the other hand.

**(9)** Confidential information received by the Danish FSA shall only be used in the course of its supervisory duties, to impose sanctions, or where appeals are made against the decision of the Danish FSA to a higher administrative authority or where such a decision is brought before the courts of law.

**(10)** Access to issue confidential information to the standing committee of the Folketinget (the Danish Parliament) under subsection (6), no. 8 shall be limited to documents in cases which have been established in the Danish FSA after 16 September 1995.

**(11)** Information may only be disclosed pursuant to subsection (6), nos. 23-26.

1) on the basis of an international cooperation agreement, and

2) provided that the recipients of said information are, at a minimum, subject to a statutory duty of confidentiality corresponding to the duty of confidentiality pursuant to subsection (1) and that said recipients require said information to perform their duties.

**(12)** Confidential information from Member States of the European Union or countries with which the Union has entered into an agreement for the financial area shall only be disclosed pursuant to subsection (6), nos. 6, 7, 11-13, 17-19 and 23-26 where the authorities submitting said information have granted express permission to do so, and said information shall only be used for the purposes specified by said permission. On disclosure of information pursuant to subsection (6), nos. 13, 19 and 26, the Danish FSA shall notify the authorities or bodies which have disclosed information of to which experts the information will be disclosed, stating the authority of the expert.

**175a.-(1)** Employees of the Danish FSA may not disclose information about a person, if said person has notified an investment association, a SICAV or a person to the Danish FSA for infringement, or potential infringement, of the financial regulation supervised by the Danish FSA, cf. however, subsection (2).

**(2)** The provision in subsection (1) shall not prevent disclosure of personal data pursuant to section 175(6).

**(3)** All those receiving personal data pursuant to subsection (2) shall be subject to the duty of confidentiality mentioned in subsection (1) with regard to said information.

**176.-(1)** Reactions made pursuant to section 162 of this Act, cf. section 345(7), no. 4 of the Financial Business Act, or reactions made by the Danish FSA following delegation from the Governing Board of the Danish FSA, to a Danish UCITS under supervision shall be published stating the name of the Danish UCITS, cf. however, subsection (4). The Danish UCITS shall make this information public on its website in a place where it naturally belongs without delay and no later than three business days after the relevant Danish UCITS has received notification of the reaction, or no later than the time of publication required according to the Securities Trading etc. Act. At the time of publication, the relevant Danish UCITS shall insert a link which provides direct access to the reaction, on the home page of the relevant Danish UCITS's website in a visible manner, and the link and any attached text shall clearly state that this is a reaction from the Danish FSA. If the relevant Danish UCITS comments on the reaction, this shall be further to the reaction, and the comments shall be clearly separated from the reaction. Removal of the link on the home page and the information from the website of the relevant Danish UCITS shall take place according to the same principles as the relevant Danish UCITS uses for other messages, however, the link and the information shall be available on the website for three months as a minimum and shall not be removed until after the first-coming

general meeting or meeting of the board of representatives at the earliest. The duty of Danish UCITS to disclose information on the website of the Danish UCITS shall only apply to legal persons and other financial entities, including securities funds. The Danish FSA shall publish the information on the website of the authority. Reactions made pursuant to section 162, cf. section 345(7), no. 6 of the Financial Business Act, and decisions made by the Danish FSA to pass on cases for police investigation shall be made public on the website of the Danish FSA, stating the name of the Danish UCITS, cf. however subsection (4).

**(2)** Reactions made pursuant to section 162, cf. section 345(7), nos. 4 and 6 of the Financial Business Act, or reactions made by the Danish FSA following delegation from the Governing Board of the Danish FSA to an undertaking which is not under supervision shall be made public, stating the name of the undertaking, cf. however subsection (4).

**(3)** If a case is passed on for police investigation and a conviction has been made in full or in part or a fine has been accepted, the verdict, acceptance of fine or a summary hereof shall be made public, cf. however subsection (4). If the verdict is not final, or if it has been appealed, this shall be stated in the publication. Publication made by the Danish UCITS shall be on the website of the relevant Danish UCITS in a place where it naturally belongs, as soon as possible and no later than ten business days after a verdict has been made or a fine has been issued, or no later than at the time of publication pursuant to the Securities Trading etc. Act. At the time of the publication, the relevant Danish UCITS shall insert a link which provides direct access to the verdict, the fine or the summary on the home page of the relevant Danish UCITS's website in a visible manner, and the link and any attached text shall clearly state that this is a verdict, fine or summary. If the relevant Danish UCITS comments on the verdict, the fine or the summary, this shall take place further to this, and the comments shall be clearly separated from the verdict, the fine or the summary. Removal of the information from the website of the relevant Danish UCITS shall take place according to the same principles as the relevant Danish UCITS uses for other messages, however, the link and the information shall be available on the website for three months as a minimum and shall not be removed until after the first-coming general meeting or meeting of the board of representatives at the earliest. The relevant Danish UCITS shall notify the Danish FSA about the publication, and forward a copy of the verdict or acceptance of fine. The Danish FSA shall subsequently publish the verdict, acceptance of fine or a summary hereof on its website. The duty of Danish UCITS to disclose information on the website of the Danish UCITS shall only apply to legal persons and other financial entities, including securities funds. Publication pursuant to the 1st and 2nd clauses, which pertains to undertakings which are not subject to supervision, shall only be on the website of the Danish FSA.

**(4)** Publication pursuant to subsections (1)-(3) may not, however, take place if it will mean disproportionate damage for the Danish UCITS, or issues relating to investigations make publication inadvisable. Publication may not contain confidential information about client relationships or information covered by the provisions in the Access to Public Administration Files Act on exemption of information about private relationships and operations or business matters, etc. Confidential information from financial supervisory authorities in other countries within or outside the European Union may not be divulged unless the authorities submitting said information have granted express permission to do so.

**(5)** If publication is omitted pursuant to subsection (4), 1st clause, publication pursuant to subsections (1)-(3) shall be effected when the considerations necessitating omission no longer apply. This shall only apply, however, for up to two years after the date of the reaction.

**177.-(1)** The Danish FSA shall inform the public about cases dealt with by the Danish FSA, the prosecution service or the courts, and which are of public interest or of significance for interpretation of the following provisions:

- 1) good business practice, cf. section 29, and executive orders issued in pursuance of section 29(2),
- 2) decisions pertaining to amendments to the articles of association, cf. section 35(2) and section 44, and amendments to fund rules, cf. section 17(1).
- 3) decisions pertaining to the administrative and accounting practices, business procedures and control procedures of investment associations and SICAVs, cf. section 63, and decisions pertaining to the administrative and accounting practices, business procedures and control procedures of investment management companies managing securities funds, cf. section 71 of the Financial Business Act.
- 4) prohibitions on double-charging fees, cf. sections 76-78.
- 5) the duty to report errors in calculations, cf. section 75.
- 6) payment of costs in connection with issuing units through a central securities depository, cf. sections 80 and 111.
- 7) prospectuses and announcements of prospectuses, cf. section 102.
- 8) publication of issue and redemption prices, cf. sections 105-107.
- 9) withdrawal of the authorisation of Danish UCITS, cf. section 111.
- 10) placing of funds by Danish UCITS, cf. parts 14 and 15.

**(2)** The Danish FSA shall also inform the public about the name of undertakings which carry out activities as investment association, SICAV or securities fund without a authorisation.

**177a.-(1)** If a Danish UCITS discloses information about the Danish UCITS, and if the public has become aware of the information, the Danish FSA may order the Danish UCITS to publish corrective information within a time limit stipulated by the Danish FSA, if

- 1) the Danish FSA deems the information to be misleading, and
- 2) the Danish FSA deems that the information may damage investors in the Danish UCITS, the other creditors, the financial market on which units issued by the Danish UCITS are traded, or financial stability in general.

**(2)** If the Danish UCITS fails to correct the information in accordance with the order from the Danish FSA and within the time limit stipulated by the Danish FSA, the Danish FSA may publish the order issued according to subsection (1).

**178.-(1)** The Danish FSA shall notify a Danish UCITS which as feeder UCITS invests in a Danish UCITS which is a master UCITS about the following:

- 1) any decision or supervisory reaction made by the Danish FSA in respect of the master UCITS.
- 2) ascertainment by the Danish FSA that the master UCITS has breached the provisions laid down for master UCITS in this Act or regulations issued pursuant to this Act.
- 3) information notified by the auditor of the master UCITS to the Danish FSA, cf. section 100, regarding the master UCITS, its investment management company, management company, depository or auditor.

**(2)** The Danish FSA shall notify the competent authorities in the home country of a feeder UCITS, if the feeder UCITS invests in a Danish UCITS which is a master UCITS about the following:

- 1) any decision or supervisory reaction made by the Danish FSA in respect of the master UCITS.
- 2) ascertainment by the Danish FSA that the master UCITS has breached the provisions laid down for master UCITS in this Act or regulations issued pursuant to this Act.



3) information notified by the auditor of the master UCITS to the Danish FSA, cf. section 100, regarding the master UCITS, its investment management company, management company, depositary or auditor.

**(3)** The competent authority notified by the Danish FSA pursuant to subsection (2) may notify the feeder UCITS about the information provided by the Danish FSA.

**(4)** If the Danish FSA receives information referred to in subsection (2) from the competent authorities of another EU Member State, the Danish FSA shall immediately disclose this information to the one or more Danish UCITS which, as feeder UCITS, have invested in the relevant master UCITS.

**179.-(1)** Only the investment association, SICAV, the investment management company or management company of the securities fund or the foreign investment undertaking against which a decision has been made by the Danish FSA under this Act or regulations laid down in pursuance of this Act shall be considered a party in relation to the Danish FSA, cf. however, subsections (2) and (3).

**(2)** The parties below shall also be considered a party to the decision made by the Danish FSA as regards the parts of the case which concern said person:

- 1) Any person violating the requirements stipulating that activities as Danish UCITS may only be performed following authorisation from the Danish FSA.
- 2) An undertakings applying for authorisation as a Danish UCITS.
- 3) A member of the management of an investment association, SICAV or the investment management company or management company managing a securities fund, if the Danish FSA refuses to grant authorisation, cf. section 9, or withdraws the authorisation, cf. section 111.
- 4) An auditor of a Danish UCITS where the Danish FSA removes said auditor or orders said auditor to provide information on the status and circumstances of the UCITS, cf. section 98(4) and (5), as well as in cases where the external auditors have not met their obligation to provide information to the Danish FSA, cf. section 100.
- 5) Any person from whom the Danish FSA obtains information to determine whether said person falls within the scope of the provisions of this Act, cf. section 164(3).

**(3)** The following natural persons shall also be considered a party where decisions made by the Danish FSA are aimed specifically at said person:

- 1) A member of the board of directors, an auditor, a member of the board of management or other senior employees of an investment association.
- 2) A member of the board of directors or an auditor of a SICAV.
- 3) An auditor of a securities fund.
- 4) A member of the board of directors, an auditor, a member of the board of management or other senior employees of an investment management company or a management company managing a Danish UCITS.

**(4)** Status as party and authorities as party according to subsections (2) and (3) shall be limited to matters where the Danish FSA makes decisions after 8 October 1998. With regard to disclosure of confidential information, cf. section 62, status as a party and assigned authorities as party shall be limited to matters where the decision of the Danish FSA is made after 1 February 2004.

**180.** In cooperation with the Danish Competition and Consumer Authority, the Danish FSA shall submit an annual report on the status regarding issue of regulations on good practice and regarding experience with application of such regulations to the Minister for Business and Growth, cf. section 29(2).



**181.** Section 356 of the Financial Business Act shall apply correspondingly to the employees of the Danish FSA in respect of its activities according to this Act.

#### *Fees*

**182.** Danish UCITS and foreign investment undertakings covered by section 27 shall pay a fee to the Danish FSA. The fee shall be set pursuant to part 22 of the Financial Business Act.

**183.-(1)** SICAVs and securities funds supervised according to this Act, shall pay a fee to the Danish Business Authority on establishment. This fee shall cover the customs and tax administration costs incurred by the Danish Business Authority in connection with registration of company information and allocation of business registration number (CVR number) to SICAVs and SE number to securities funds, sub-funds thereof and any unit classes in the relevant sub-funds.

**(2)** SICAVs and securities funds shall pay an annual charge to the Danish Business Authority. This fee shall cover the customs and tax administration costs incurred by the Danish Business Authority in connection with administration of legislation, including registration tasks in connection with changes to company information and SE numbers.

**(3)** The fee, cf. subsection (1) and the charge, cf. subsection (2) may be subject to annual regulation according to cost developments in the form of price and wage regulation corresponding to the general price and wage developments.

**(4)** The Danish Business Authority shall collect the fee, cf. subsection (1) and the fee, cf. subsection (2) from the SICAV and the investment management company or management company managing the securities fund.

**(5)** The Danish Business Authority shall fix the size of the fee on establishment, cf. subsections (1) and (3), and the annual charge, cf. subsections (2) and (3), through an executive order. Furthermore, the Danish Business Authority shall lay down more detailed regulations regarding collection of such fees and charges. It may also be decided that fees may be set for reminders in the event of late payment.

#### *Time limits*

**184.-(1)** The time limits fixed in or pursuant to this Act shall take effect from the day following the day when the event triggering the time limit occurred. This shall apply to the calculation of time limits involving days, weeks, months, and years.

**(2)** Where the time limit is indicated in weeks, said time limit shall expire on the day in the week when the event occasioning the time limit occurred, cf. subsection (1).

**(3)** If the time limit is indicated in months it shall expire on the day in the month when the event triggering the time limit occurred, cf. subsection (1). If the day when the event occasioning the time limit occurred is the last day of a month or if the time limit expires on a date which does not exist, the time limit shall always expire on the last day of the month, irrespective of its length.

**(4)** Where the time limit is indicated in years, said time limit shall expire on the day in the year when the event occasioning the time limit occurred, cf. subsection (1).

**(5)** Where a time limit expires during a weekend, on a public holiday, 5 June, 24 December or on 31 December, the time limit shall be extended to the next business day.

### *Digital communication*

**185.-(1)** The Minister for Business and Growth may lay down regulations stipulating that communication to and from the Danish FSA and to and from the Danish Business Authority about circumstances covered by this Act or regulations issued in pursuance of this Act, shall be digital.

**(2)** The Minister for Business and Growth may lay down detailed regulations regarding electronic communication, including the use of specific IT systems, special electronic formats and electronic signatures or the like.

**(3)** A digital notification shall be considered to have arrived when it is available to the addressee.

**186.-(1)** The Minister for Business and Growth may lay down regulations stipulating that the Danish FSA and the Danish Business Authority may issue decisions and other documents according to this Act or regulations issued in pursuance of this Act without a signature, with a digital or similarly provided signature or by means of a technique that clearly identifies the person who has issued the decision or document. Such decisions and documents shall be treated as decisions and documents provided with a personal signature.

**(2)** The Minister for Business and Growth may lay down regulations to the effect that decisions and other documents which are exclusively made or issued on the basis of electronic data processing be issued solely with specification of the Danish FSA or the Danish Business Authority as the sender.

**187.-(1)** Where this Act or regulations issued in pursuance of this Act require a document issued by other parties than the Danish FSA or the Danish Business Authority to be signed, such requirement may be satisfied by use of a technique which clearly identifies the person who has issued the document, cf., however, subsection (2). Such documents shall be equivalent to documents with a personal signature.

**(2)** The Minister for Business and Growth may lay down detailed regulations regarding derogation from the signature requirement. In that connection, it may be decided that the personal signature requirement cannot be departed from for particular types of documents.

## **Part 17**

### *Provisions concerning delegation and appeals*

**188.** If the Minister for Business and Growth delegates his powers under this Act to the Danish FSA, the Minister may lay down regulations concerning the right of appeal, including regulations to the effect that appeals cannot be made to another administrative authority.

**189.** Decisions made by the Danish FSA or the Danish Business Authority under this Act or regulations issued pursuant to this Act may be brought before the Danish Company Appeals Board by the against whom said decision is directed no later than four weeks after the person concerned has been notified about the decision.

## **XI**

### **Penalties, entry into force and transitional provisions, etc.**

## **Part 18**

*Penalties, etc.*

**190.-(1)** Any person violating section 3(1)-(9); section 4(1)-(4); section 5; section 9(3); section 10(3); section 11(3); section 12(4) and (5); section 18(3) and (5); section 28(1) and (3); section 37(1), 1st clause; section 47(1)-(3); section 48(1), (6) and (7); section 49; section 50(1) and (2); section 51(1)-(6); section 52(1)-(6); section 53(1)-(5); section 54(1), 1st clause and subsection (3); section 55; section 56(2); section 57(5), cf. subsection (3), nos. 1 and 2; section 58(1), no. 1; section 62(1) and (2); section 64(1), (2) and (4); section 65; section 66(1); section 67(1); section 68(1), section 69; section 73(1); section 74(1)-(4); section 75(1); sections 76-78; section 82(1), 1st clause; section 83(1); section 84(1) and (2), and subsection (3), 1st clause; section 85; section 86(1) and (2); section 87(1), subsection (2), 1st clause, and subsection (3), 2nd clause; sections 88-90, section 91, 1st clause; section 92, 1st clause; section 93; section 94(1) and (5); section 97(1), 1st clause; section 98(1), 1st clause, and subsection (2) and (4); sections 99 and 100; section 102(1), (3) and (4); section 103(1); section 104(1); section 105(1); sections 107 and 108; section 109(3) and (6); section 114(1), (5) and (6); section 116(2); section 132(1); sections 139-141; section 142(1), (2) and (4); section 143; section 144(1) and (2), 2nd clause; sections 145, 147 and 148; section 149(1), (4) and (5), section 150; section 151(1) and (3), sections 152, 154 and 156, section 157(1)-(3); section 159(2), 1st clause, and section 160(1) shall be liable to a fine or imprisonment for up to four months unless more severe penalty is due under other legislation. Violation of sections 38 and 46, section 51(1), no. 5, section 52(1), no. 6, section 59(1), 1st clause and subsection (2), section 60(1), (2), 1st clause and subsection (3), 1st and 2nd clauses, section 61(1), subsection (2), 1st clause, subsection (3), 1st and 2nd clauses and subsections (4) and (6), section 63(1) and (2), section 63a(1), section 166(3), section 176(1), 1st-5th clauses, subsection (3), 1st-7th clauses and subsection (5), and section 199(1) shall be liable to a fine.

**(2)** Any person who fails to comply with an order issued pursuant to section 170(2), 1st clause shall be liable to a fine. Furthermore, members of the board of directors who do not comply with an order issued pursuant to section 172(2) and (3), 3rd clause shall be liable to a fine.

**(3)** In regulations issued pursuant to this Act, fines or imprisonment up to four months may be stipulated for any violation of the provisions of said regulations.

**(4)** If a member of the management of an investment association or SICAV, or a member of the management of an investment management company or management company of a Danish UCITS fails to take the steps necessary in the event of losses or imminent danger of material losses, such member shall be liable to a fine or imprisonment for up to four months unless more severe penalty is incurred under other legislation.

**(5)** Persons who are connected to a Danish UCITS and who submit incorrect or misleading information on matters pertaining to the Danish UCITS to public authorities, the general public, any company organ, or to investors in the Danish UCITS, or who are guilty of gross or frequent negligence or carelessness which may entail losses for the Danish UCITS shall be liable to a fine or imprisonment for up to four months unless more severe penalty is incurred under other legislation.

**(6)** The period of limitation for criminal liability for violation of the provisions of this Act or regulations issued pursuant to this Act shall be five years.

**191.** If the board of directors, board of management, auditor, investment management company or management company, depositary or liquidator of a Danish UCITS fail to comply within the proper time with the duties and obligations in relation to the Danish FSA or the

Danish Business Authority imposed on them under this Act or regulations issued pursuant to this Act, as a coercive measure the Danish FSA or the Danish Business Authority respectively may impose daily or weekly fines on the persons concerned.

**192.-(1)** If a Danish UCITS which has issued units which are admitted to trading on a regulated market does not meet its obligations under the provisions of sections 82-92 or provisions laid down in pursuance of section 95, the Danish FSA may order the relevant Danish UCITS to rectify the matter, including an order to make public amended or supplementary information. If deemed appropriate, the Danish FSA itself may make public the relevant information or the order, or suspend or remove the units involved from trading on a regulated market.

**(2)** An investment management company or management company of the investment association, SICAV or securities fund not complying with an order issued pursuant to subsection (1) or which issues incorrect or misleading information to the Danish FSA in relation to the tasks of the authority pursuant to subsection (1) shall be liable to a fine, provided that the offence does not carry a more severe penalty under other legislation.

## **Part 19**

### *Entry into force, transitional provisions, the Faeroe Islands and Greenland*

#### *Entry into force*

**193.-(1)** This Act shall enter into force on 22 July 2013, cf. however, subsection (2).

**(2)** Sections 1-134, section 135(1) and (2), sections 136-164, section 165(1), and sections 166-192 shall enter into force on 22 July 2014.

**(3)** At the same time as this Act enters into force, section 19(1) and (2) of the existing Investment Associations etc. Act, cf. Consolidating Act no. 333 of 20 March 2013 shall be repealed. In relation to applications received by the Danish FSA by no later than 21 July 2013, the regulations hitherto in force shall apply.

**(4)** Foreign investment associations authorised to market their units directly or indirectly pursuant to section 19 of the existing Investment Associations etc. Act, cf. Consolidating Act no. 333 of 20 March 2013, shall comply with the provisions laid down in the existing Investment Associations etc. Act and in Executive Order no. 1298 of 14 December 2012 on marketing by foreign investment undertakings in Denmark. These may continue marketing activities under this provision until their management company is authorised as a manager by their home country pursuant to the regulations implementing article 7(1), or article 37(1) of Directive 2011/61/EU of 8 June 2011 on alternative investment fund managers, and has notified marketing of units in the relevant investment undertaking pursuant to the regulations implementing article 32(2), article 35(3), article 39(2), or article 40(3) of Directive 2011/61/EU of 8 June 2011 on alternative investment fund managers, or has been authorised by the Danish FSA to market units in the relevant investment undertaking pursuant to title VI, cf. section 5(4) of the Alternative Investment Fund Managers etc. Act; however, only until 22 July 2014. The provision in the 1st clause shall apply correspondingly if the investment undertaking changes management company to a manager authorised under section 11(3) of the Alternative Investment Fund Managers etc. Act to manage alternative investment funds, including previous investment undertakings authorised to market their units by the Danish FSA pursuant to section 19 of the Investment Associations etc. Act, cf. Consolidating Act no. 333 of 20 March 2013.

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**(5)** The existing Investment Associations etc. Act, cf. Consolidating Act no. 333 of 20 March 2013 shall be repealed on 22 July 2014.

**(6)** Administrative regulations issued pursuant to the Investment Associations etc. Act, cf. Consolidating Act no. 333 of 20 March 2013 shall be maintained until repealed by administrative regulations issued in pursuance of this Act.

**(7)** Sections 82-101 on Danish UCITS' annual report, auditing and appropriation of the profit for the year shall apply for the first time for annual reports and interim reports for accounting periods commencing on 1 January 2015 or later. The regulations in the existing Investment Associations etc. Act, cf. Consolidating Act no. 333 of 20 March 2013 shall apply to annual reports and interim reports covering periods up to and including 31 December 2014.

#### *Transitional provisions*

##### *Special-purpose associations and hedge associations*

**194.-(1)** Special-purpose associations and hedge associations shall, by no later than 1 April 2014, notify the Danish FSA that their activities have been brought into compliance with part 23 of the Alternative Investment Fund Managers etc. Act and have changed their articles of association at a general meeting, or decided to terminate the association, cf. part 12 of the existing Investment Associations etc. Act, cf. Consolidating Act no. 333 of 20 March 2013.

**(2)** If a special-purpose association or hedge association, cf. subsection (1) fails to bring their activities into compliance with part 23 of the Alternative Investment Fund Managers etc. Act by 1 April 2014 by amending its articles of association such that the association fulfils the requirements in the Alternative Investment Fund Managers etc. Act or makes a decision on cessation, the Danish FSA may withdraw the authorisation of the association, and the association shall be wound up by liquidation. The Danish FSA may appoint a liquidator. The provisions in sections 95 and 96 in the existing Investment Associations etc. Act, cf. Consolidating Act no. 333 of 20 March 2013 shall apply upon liquidation. In very exceptional circumstances, the Danish FSA may grant exemptions from the time limit in the 1st clause.

**(3)** Special-purpose associations which have amended their articles of association and brought their activities into compliance with part 23 of the Alternative Investment Fund Managers etc. Act may, notwithstanding section 6(3) of the existing Investment Associations etc. Act, cf. Consolidating Act no. 333 of 20 March 2013, continue to use the designations special-purpose association, placement association, money-market association or a fund of funds.

**(4)** Hedge associations which have amended their articles of association and brought their activities into compliance with part 23 of the Alternative Investment Fund Managers etc. Act may, notwithstanding section 7(3) of the existing Investment Associations etc. Act, cf. Consolidating Act no. 333 of 20 March 2013, continue to use the designation hedge association.

##### *Restricted associations*

**195.-(1)** Restricted associations, cf. section 161 of the existing Investment Associations etc. Act, cf. Consolidating Act no. 333 of 20 March 2013, shall no later than 1 April 2014 notify the Danish FSA that they have brought their activities into compliance with part 23 of the Alternative Investment Fund Managers etc. Act and have changed their articles of association at a general meeting, or decided to terminate the association, cf. sections 167-169 of the existing Investment Associations etc. Act, cf. Consolidating Act no. 333 of 20 March 2013.



**(2)** If a restricted association, cf. subsection (1) fails to bring their activities in compliance with part 23 of the Alternative Investment Fund Managers etc. Act by 1 April 2014 by amending its articles of association such that the association fulfils the requirements in the Alternative Investment Fund Managers etc. Act or makes a decision on cessation, the Danish FSA may withdraw the authorisation of the association, and the association shall be by liquidation. The Danish FSA may appoint a liquidator. The provisions in sections 95 and 96 in the existing Investment Associations etc. Act, cf. Consolidating Act no. 333 of 20 March 2013 shall apply upon liquidation with the changes necessary. In very exceptional circumstances, the Danish FSA may grant exemptions from the time limit in the 1st clause.

#### *Professional associations*

**196.-(1)** Professional associations, cf. section 147 of the existing Investment Associations etc. Act, cf. Consolidating Act no. 333 of 20 March 2013, shall no later than 1 April 2014 notify the Danish FSA that they have brought their activities into compliance with part 23 of the Alternative Investment Fund Managers etc. Act and have changed their articles of association at a general meeting, or decided to liquidate the association, cf. section 160(1) of the existing Investment Associations etc. Act, cf. Consolidating Act no. 333 of 20 March 2013, cf. section 20 the Certain Commercial Undertakings Act.

**(2)** If a professional association, cf. subsection (1) fails to bring their activities into compliance with part 23 of the Alternative Investment Fund Managers etc. Act by 1 April 2014 by amending its articles of association such that the association fulfils the requirements in the Alternative Investment Fund Managers etc. Act or decides to liquidate, the Danish FSA may will remove the professional association from its register. Section 160(4) of the existing Investment Associations etc. Act, cf. Consolidating Act no. 333 of 20 March 2013 shall not apply.

**(3)** Professional associations which have amended their articles of association and brought their activities into compliance with part 23 of the Alternative Investment Fund Managers etc. Act may, notwithstanding section 147(3) of the existing Investment Associations etc. Act, cf. Consolidating Act no. 333 of 20 March 2013, continue to use the designation professional association.

**(4)** Where a professional association, cf. subsections (1) and (2) fails to notify amendments to the articles of association or dissolution to the Danish Business Authority, cf. subsection (1) by no later than four weeks after expiry of the time limit in subsection (1), the Danish FSA may decide that the association shall be wound up by liquidation. The Danish FSA may appoint a liquidator. The provisions in sections 95 and 96 in the existing Investment Associations etc. Act, cf. Consolidating Act no. 333 of 20 March 2013 shall apply upon liquidation with the changes necessary.

#### *Other collective investment schemes*

**197.-(1)** Other collective investment schemes, cf. section 195 of the existing Investment Associations etc. Act, cf. Consolidating Act no. 333 of 20 March 2013, which have until now been registered as commercial associations pursuant to the Certain Commercial Undertakings Act, shall, in order to maintain registration with the Danish Business Authority, by no later than 1 April 2014, notify the Danish Business Authority that they have brought their activities into compliance with part 23 of the Alternative Investment Fund Managers etc. Act and have changed their articles of association at a general meeting or in other ways made the activities of the investment scheme legal, or that they have decided to dissolve the collective investment scheme.



**(2)** If another collective investment scheme, cf. subsection (1), no later than 1 April 2014 notifies the Danish Business Authority of a change in its articles of association such that the association fulfils the requirements in part 23 of the Alternative Investment Fund Managers etc. Act or makes a decision on dissolution, the Danish FSA may decide that the association shall be wound up by liquidation. The Danish FSA may appoint a liquidator. The provisions in sections 95 and 96 in the existing Investment Associations etc. Act, cf. Consolidating Act no. 333 of 20 March 2013 shall apply upon liquidation with the changes necessary.

*Non-approved restricted associations*

**198.-(1)** Non-approved restricted associations shall, by no later than 1 April 2014, notify the Danish Business Authority that they have brought their activities into compliance with part 23 of the Alternative Investment Fund Managers etc. Act and have changed their articles of association at a general meeting, or that they have decided to liquidate the association, cf. section 224(1) of the existing Investment Associations etc. Act, cf. Consolidating Act no. 333 of 20 March 2013.

**(2)** If a non-approved restricted association, cf. subsection (1), fails to notify the Danish Business Authority of a change in its articles of association such that the association fulfils the requirements in part 23 of the Alternative Investment Fund Managers etc. Act by 1 April 2014 or makes a decisions on dissolution, the Danish FSA may decide that the association shall be wound up by liquidation. The Danish FSA may appoint a liquidator. The provisions in sections 95 and 96 in the existing Investment Associations etc. Act, cf. Consolidating Act no. 333 of 20 March 2013 shall apply upon liquidation with the changes necessary.

*Notification of non-approved restricted associations and other collective investment schemes to the Danish FSA*

**199.-(1)** Investment management companies, which on entry into force of this Act, manage non-approved restricted associations, cf. section 224 of the existing Investment Associations, etc. Act, cf. Consolidating Act no. 333 of 20 March 2013, and investment management companies and banks which manage other collective investment schemes, cf. section 195 of the existing Investment Associations etc. Act, cf. Consolidating Act no. 333 of 20 March 2013, shall, by no later than 1 December 2013, notify the Danish FSA of names and Civil Business Registration (CVR) numbers on the managed non-approved restricted associations and other collective investment scheme.

**(2)** The Danish FSA shall disclose a list of names and Civil Business Registration (CVR) numbers of the non-approved restricted associations and other alternative investment schemes, cf. subsection (1), to the Danish Business Authority, and shall, together with the Danish Business Authority, ensure that the non-approved restricted associations and other collective investment schemes either bring their activities into compliance with part 23 of the Alternative Investment Fund Managers etc. Act and change their articles of association at a general meeting or make a decision on dissolving the association.

*Investment in placement associations by Danish UCITS*

**200.** Danish UCITS, the sub-funds of which, on entry into force of this Act, invest in units in special-purpose associations pursuant to section 124(1), no. 3 of the existing Investment Associations etc. Act, cf. Consolidating Act no. 333 of 20 March 2013, or units in corresponding foreign investment undertakings in which Danish UCITS no longer invest, shall settle such investments when the association or the foreign investment undertaking ceases to be a special-purpose association or an investment association under supervision, however, by no

later than 22 July 2014. In very exceptional circumstances, the Danish FSA may grant exemptions from the time limit in the 1st clause.

**201.-(1)** This Act shall not extend to the Faeroe Islands and Greenland, but may, by Royal Decree be brought into force in full or in part for the Faeroe Islands and Greenland subject to any amendments in its operation necessitated by the conditions prevailing in the Faeroe Islands and Greenland.

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Act no. 268 of 25 March 2014 contains the following entry into force and transitional provisions:

**22.**

**(1)** This Act shall enter into force on 31 March 2014, cf. however, subsections (2)-(6).

**(2)** (Omitted)

**(3)** (Omitted)

**(4)** (Omitted)

**(5)** The Minister for Business and Growth shall stipulate the date of entry into force for section 75a of the Financial Business Act, in the wording laid down in section 1, no. 37, section 1, no. 133 of this Act, section 344a of the Financial Business Act in the wording laid down in section 1, no. 134 of this Act, section 11a of the Securities Trading etc. Act in the wording laid down in section 2, no. 2 of this Act, section 27a of the Alternative Investment Fund Managers etc. Act in the wording laid down in section 4, no. 22 of this Act, section 24b of the Supervision of Company Pension Funds Act in the wording laid down in section 5, no. 1 of this Act, section 63a of the Investment Associations etc. Act in the wording laid down in section 7, no. 1 of this Act, section 18a of the Insurance Mediation Act in the wording laid down in section 10, no. 1 of this Act, section 18a of the Payment Services and Electronic Money Act in the wording laid down in section 11, no. 1 of this Act, section 10a of the Financial Advisors Act (*lov om finansielle rådgivere*) in the wording laid down in section 12, no. 1 of this Act, section 5a of the Mortgage Companies Act in the wording laid down in section 13, no. 1 of this Act, section 5f of the Lønmodtagernes Dyrtdidsfond Act in the wording laid down in section 14, no. 2 of this Act, section 24g of the ATP (Arbejdsmarkedets Tillægspension) Act in the wording laid down in section 15, no. 2 of this Act, and for section 63b of the Workers' Compensation Act in the wording laid down in section 16, no. 1 of this Act. The Minister for Business and Growth may also stipulate that the provisions are to enter into force on different dates.

**(6)** (Omitted)

**(7)** (Omitted)

**(8)** (Omitted)

**(9)** (Omitted)

**(10)** The Governing Board of the Danish FSA, cf. section 1, no. 135, shall be appointed the first time on 1 July 2014. Until 1 July 2014 the regulations hitherto in force about the Financial Council shall apply.

**(11)** (Omitted)

**23.**

(Omitted)

**24.**

**(1)** Sections 1-17 and 19-21 shall not apply for the Faeroe Islands, but sections 1, 2, 4, 6-9, 11-13 and 21 may by Royal Decree be brought into force, in full or in part, for the Faeroe Islands, subject to any variations necessitated by the conditions prevailing on the Faeroe Islands.

**(2)** Sections 1, 2, 4-17 and 19-21 shall not apply for Greenland, but sections 1, 2, 4-13, 17 and 21 may by Royal Decree be brought into force, in full or in part, for Greenland, subject to any variations necessitated by the conditions prevailing in Greenland.

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Act no. 403 of 28 April 2014 contains the following entry into force and transitional provisions:

**22.**

**(1)** This Act shall enter into force on 15 May 2014, cf. however, subsections (2)-(4).

**(2)** (Omitted)

**(3)** (Omitted)

**(4)** (Omitted)

**(5)** (Omitted)

**(6)** (Omitted)

**(7)** (Omitted)

**(8)** (Omitted)

**23.**

**(1)** This Act shall not apply to the Faeroe Islands and Greenland, cf. however subsections (2) and (3).

**(2)** Sections 1, 2, 4, 5, 8, 9, 12, 13, 14, 18, 19 and 21 may, by Royal Decree, be brought fully or partially into force for the Faeroe Islands and Greenland subject to any amendments necessitated by the conditions prevailing on the Faeroe Islands and in Greenland.

**(3)** (Omitted)

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Act no. 1490 of 23 December 2014 contains the following entry into force and transitional provisions:

**14.**

**(1)** This Act shall enter into force on 1 January 2015, cf. however subsections (2) and (3).

**(2)** (Omitted)

**(3)** (Omitted)

**(4)** (Omitted)

**(5)** (Omitted)

**(6)** (Omitted)

**(7)** (Omitted)

**(8)** (Omitted)

**(9)** (Omitted)

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 Consolidating Act no. 1051 of 25 August 2015. Only the Danish document has legal validity.

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**(10)** (Omitted)

**(11)** (Omitted)

**15.**

(Omitted)

**16.**

**(1)** This Act shall not apply for the Faeroe Islands and Greenland, cf. however subsections (2) and (3).

**(2)** Sections 1-5, 12 and 13 may, by Royal Decree, be brought fully or partially into force for the Faeroe Islands and Greenland subject to any amendments necessitated by the conditions prevailing on the Faeroe Islands and in Greenland..

**(3)** (Omitted)