

This document contains relevant sections of the Alternative Investment Fund Managers, etc. Act. While this translation was carried out by a professional translation agency, the text is to be regarded as an unofficial translation based on the latest official Executive Order no. 1047 of 14 October 2019. Only the Danish document has legal validity.

The Alternative Investment Fund Managers, etc. Act

Executive Order no. 1047 of 14 October 2019

VI. Cross-border marketing and management

Part 13

Marketing in Denmark of units or shares in alternative investment funds from a Member State of the European Union, or a country with which the EU has concluded an agreement in the financial field, by managers with a registered office in Denmark

76.-(1) Alternative investment fund managers with a registered office in Denmark that manage alternative investment funds from a Member State of the European Union, or a country with which the EU has concluded an agreement in the financial field, may market the units of these funds to professional investors in Denmark if the conditions in sections 77–80 are satisfied.

(2) Where the alternative investment fund that the manager intends to market in Denmark is a feeder fund, the right for the manager to market the fund within the European Union or in a country with which the EU has concluded an agreement in the financial field is subject to the condition that the master fund is also from a Member State of the European Union or a country with which the EU has concluded an agreement in the financial field, and that the master fund is managed by a manager from a Member State of the European Union, or a country with which the EU has concluded an agreement in the financial field, and which is authorised to manage alternative investment funds.

77.-(1) Alternative investment fund managers with a registered office in Denmark intending to market alternative investment funds in Denmark from the European Union, or a country with which the EU has concluded an agreement in the financial field, must submit a notification to the Danish Financial Supervisory Authority for each fund prior to marketing.

(2) The notification pursuant to subsection (1) must be in writing and comprise the following documentation and information:

- 1) A programme of operations clearly identifying the alternative investment funds that the manager intends to market and information about where the funds are established.
- 2) The fund rules or articles of association.
- 3) Identification of the depositary of each fund.

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- 4) Any information that is available to investors about the alternative investment funds.
- 5) Information on where the master fund is established if one of the funds is a feeder fund.
- 6) Any additional information, cf. section 62(1), for each fund that the manager intends to market.
- 7) Where relevant, information on the arrangements established to prevent units in the fund from being marketed to retail investors, including when the manager relies on independent entities to provide investment services in respect of the fund.

78.-(1) Within 20 working days following receipt of a complete notification pursuant to section 77(2), the Danish Financial Supervisory Authority shall inform the manager of whether the manager may start marketing the alternative investment fund in Denmark. Marketing may only be refused if the manager's management of the alternative investment fund fails to comply with this Act and rules issued pursuant to this Act, or if the manager otherwise fails to comply with this Act and rules issued pursuant to this Act.

(2) The manager may start marketing the alternative investment fund in Denmark from the date of notification by the Danish Financial Supervisory Authority to that effect.

(3) If Denmark is not the home Member State of the alternative investment fund, the Danish Financial Supervisory Authority shall, immediately after deciding that the alternative investment fund may be marketed in Denmark, also notify the competent authorities in the home Member State of the alternative investment fund that the manager may start marketing units of the fund in Denmark.

79.-(1) The manager must notify the Danish Financial Supervisory Authority in writing of any material changes to the particulars communicated in accordance with section 77(2). For planned changes, the notice must be provided no later than one month before implementing the changes. Unplanned changes must be notified to the Danish Financial Supervisory Authority immediately after the change has occurred.

(2) If the planned changes mean that the manager's management of the alternative investment fund will no longer comply with this Act or rules issued pursuant to this Act, or if the manager will otherwise no longer comply with this Act or rules issued pursuant to this Act, the Danish Financial Supervisory Authority may order the manager not to implement the changes. The Danish Financial Supervisory Authority must notify the manager of this immediately upon receipt of the notification in subsection (1).

(3) If a planned change is implemented despite the Danish Financial Supervisory Authority communicating pursuant to subsection (2), or if an unplanned change has occurred whereby the manager's management of the alternative investment fund no longer complies with this Act or rules issued pursuant to this Act, or if the manager otherwise no longer complies with this Act or rules issued pursuant to this Act, the Danish Financial Supervisory Authority shall take all due measures, including, if necessary, the express prohibition of the marketing of the alternative investment fund or revoking the manager's authorisation to manage alternative investment funds, cf. section 17.

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80.-(1) The Danish Financial Supervisory Authority may lay down more detailed regulations regarding

- 1) the form and content of the notification to be submitted by the manager to the Danish Financial Supervisory Authority prior to marketing pursuant to section 77, and
- 2) the form of the written notice to be submitted by the manager to the Danish Financial Supervisory Authority, cf. section 79(1), on planned changes or changes that have occurred in the information communicated pursuant to section 77(2).

Marketing in a Member State within the European Union, or a country with which the EU has concluded an agreement in the financial field, of units in alternative investment funds from a Member State within the European Union, or a country with which the EU has concluded an agreement in the financial field, by a manager with a registered office in Denmark

81.-(1) An alternative investment fund manager with a registered office in Denmark which intends to market units in alternative investment funds from a Member State of the European Union, or a country with which the EU has concluded an agreement in the financial field, to professional investors in another Member State within the European Union, or a country with which the EU has concluded an agreement in the financial field, must notify the Danish Financial Supervisory Authority to this effect.

(2) The notification pursuant to subsection (1) must be in writing and comprise the following documentation and information:

- 1) A programme of operations clearly identifying the alternative investment funds that the manager intends to market and information about where the funds are established.
- 2) The fund rules or articles of association.
- 3) Identification of the depositary of each fund.
- 4) A description of the funds available to investors.
- 5) Information on where the master fund is established if one of the funds is a feeder fund.
- 6) Any additional information, cf. section 62(1), for each fund that the manager intends to market.
- 7) Information about the Member State or Member States in which the manager intends to market units to professional investors for each fund.
- 8) Information about the arrangements made for the marketing of funds and, where relevant, information on the arrangements established to prevent units in each fund from being marketed to retail investors, including when the manager relies on independent entities to provide investment services in respect of the fund.

82.-(1) The notification referred to in section 81 must be provided in a language customary in the sphere of international finance.

83.-(1) Where the alternative investment fund that the manager intends to market pursuant to section 81 is a feeder fund, the right for the manager to market the fund in a Member State of the European Union, or in a country with

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which the EU has concluded an agreement in the financial field, is subject to the condition that the master fund is also from a Member State of the European Union, or a country with which the EU has concluded an agreement in the financial field, and that the master fund is managed by a manager authorised to manage alternative investment funds.

84.-(1) No later than 20 working days after receiving a complete notification that meets the conditions in sections 81 and 82, the Danish Financial Supervisory Authority must transmit the notification to the competent authorities in the country where it is intended that the alternative investment fund be marketed. The Danish Financial Supervisory Authority will only transmit the notification if the manager's management of the alternative investment fund complies with this Act and rules issued pursuant to this Act and if the manager otherwise complies with this Act and rules issued pursuant to this Act.

(2) The Danish Financial Supervisory Authority encloses a statement to the effect that the manager is authorised to manage alternative investment funds with an investment strategy followed by the alternative investment fund in question.

85.-(1) When the Danish Financial Supervisory Authority has sent the notification to the competent authorities in the host country, cf. section 84, the Danish Financial Supervisory Authority shall immediately notify the manager of the transmission. The manager may start marketing the alternative investment fund in the host country as of the date of that notification.

(2) If the home country of the alternative investment fund is another Member State of the European Union, or a country with which the EU has concluded an agreement in the financial field other than the host country, the Danish Financial Supervisory Authority shall also inform the national competent authorities in the home country of the alternative investment fund that the manager may start marketing units in the fund in the host country.

86.-(1) The manager must notify the Danish Financial Supervisory Authority in writing of any material changes to the particulars communicated in accordance with section 81(2). For planned changes, the notice must be provided no later than one month before implementing the changes. Unplanned changes must be notified to the Danish Financial Supervisory Authority immediately after the change has occurred.

(2) If the planned changes mean that the manager's management of the alternative investment fund will no longer comply with this Act or rules issued pursuant to this Act, or if the manager will otherwise no longer comply with this Act or rules issued pursuant to this Act, the Danish Financial Supervisory Authority may order the manager not to implement the changes. The Danish Financial Supervisory Authority must notify the manager of this immediately upon receipt of the notification in subsection (1).

(3) If a planned change is implemented despite the Danish Financial Supervisory Authority communicating pursuant to subsection (2), or if an unplanned change has occurred whereby the manager's management of the alternative investment fund no longer complies with this Act or rules issued pursuant to this Act, or if the manager other-

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wise no longer complies with this Act or rules issued pursuant to this Act, the Danish Financial Supervisory Authority shall take all due measures, including, if necessary, the express prohibition of the marketing of the alternative investment fund or revoking the manager's authorisation to manage alternative investment funds, cf. section 17.

(4) If the changes notified do not contravene the rules in this Act or rules issued pursuant to this Act, the Danish Financial Supervisory Authority shall immediately notify the competent authorities in the manager's host country of the changes.

87.-(1) The Danish Financial Supervisory Authority may lay down more detailed regulations regarding

1) the form and content of the notification to be submitted by the manager to the Danish Financial Supervisory Authority prior to marketing in accordance with sections 81 and 82, and

2) the form of the written notice to be submitted by the manager to the Danish Financial Supervisory Authority, cf. section 86(1), on planned changes or changes that have occurred in the information communicated pursuant to section 81.

Marketing in Denmark of units in alternative investment funds from a Member State of the European Union, or a country with which the EU has concluded an agreement in the financial field, by a manager with its registered office in a Member State of the European Union or a country with which the EU has concluded an agreement in the financial field

88.-(1) An alternative investment fund manager with its registered office in another Member State of the European Union, or a country with which the EU has concluded an agreement in the financial field, which is authorised to manage alternative investment funds in accordance with rules implementing Directive 2011/61/EU of 8 June 2011 on Alternative Investment Fund Managers, and which intends to market units in alternative investment funds from a Member State of the European Union or a country with which the EU has concluded an agreement in the financial field to professional investors in Denmark, may start this marketing from the time when the competent authorities in the manager's home country have notified the manager that they have transmitted a notification and declaration to that effect to the Danish Financial Supervisory Authority in accordance with the rules in Directive 2011/61/EU of 8 June 2011 on Alternative Investment Fund Managers.

(2) The Danish Financial Supervisory Authority may lay down more detailed rules on the marketing referred to in subsection (1).

191.-(1) Should an alternative investment fund manager fail to comply in a timely manner with the obligations in respect of the Danish Financial Supervisory Authority which are incumbent on the manager pursuant to section 5(1), section 10(1), section 11(1), section 61(2), no. 2, section 67(1)–(5), section 68(1)–(3), and section 73(1), no.

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3 and subsection (6), or should a depositary fail to comply in a timely manner with the obligations in respect of the Danish Financial Supervisory Authority which are incumbent on the depositary pursuant to section 59, the Danish Financial Supervisory Authority may, as a coercive measure, impose daily or weekly fines on the parties concerned.

(2) Should a natural or legal person fail to fulfil the obligations consequential upon section 161(4) and (5), the Danish Financial Supervisory Authority may, as a coercive measure, impose daily or weekly fines on the natural or legal person or on the persons responsible for said legal person.

(3) Should an alternative investment fund manager fail to comply with an order issued pursuant to section 168(1) and the first sentence of (3), the Danish Financial Supervisory Authority may impose daily or weekly penalty fines on the members of the manager's supreme governing body. The first sentence shall apply mutatis mutandis if a depositary authorised pursuant to section 46(3) fails to comply with an order issued pursuant to section 168 a(1) and the first sentence of (3).

(4) Should an alternative investment fund manager that has issued securities admitted to trading on a regulated market fail to fulfil its obligations in accordance with provisions laid down pursuant to section 131, the Danish Financial Supervisory Authority may order the relevant manager to rectify the situation. including making public amended or supplementary information. If deemed appropriate, the Danish Financial Supervisory Authority may itself may make public the relevant information or the order, or suspend or remove the securities involved from trading on a regulated market.

(5) An alternative investment fund manager that does not comply with an order issued by the Danish Financial Supervisory Authority or communicates incorrect or misleading information to the Danish Financial Supervisory Authority in respect of the tasks of the authority pursuant to subsection (4) shall be liable to a fine, provided that the offence does not carry a more severe penalty under other legislation.

(6) Subsections (1)–(3) shall apply mutatis mutandis to the Danish Financial Supervisory Authority in respect of the authority's inspection pursuant to section 155(1), second sentence.

(7) Regulations issued in pursuance of this Act which establish obligations for alternative investment fund managers or other natural or legal persons covered by this Act may stipulate that the Danish Financial Supervisory Authority may, as a coercive measure, impose daily or weekly fines.