

## DANISH FINANCIAL INSTITUTIONS

The legal framework pertaining to financial institutions in Denmark is primarily based on the relevant EU legislation as further described below. The Danish Financial Supervisory Authority (the "FSA") supervises the financial institutions and has the authority to make certain decisions relating to their activities.

The Danish financial sector is subject to intensive regulation. The main source of regulation is the Danish Financial Business Act which is supplemented by a number of executive orders, provisions contained within other acts and case law interpreting the above provisions.

The below text contains information on the following institutions:

- Banks
- Mortgage-credit institutions
- Investment companies
- Investment management companies
- Insurance companies
- Financial advisors

Finally, the following text describes the various collective investment schemes provided for by Danish law.

### **Is it possible for a foreign financial entity to carry out business in Denmark?**

Danish law provides a number of ways for such entities wishing to carry out or market financial services in Denmark. Subject to certain requirements, these activities may be carried out through a branch or on a cross-border basis. The financial entity may also choose to establish a Danish company for the purpose.

The requirements for carrying out the abovementioned activities in Denmark depend on the nationality of the financial institution in question. In general, the activities described are subject to a licensing requirement. In compliance with EU legislation and principles, financial institutions within the EU/EEA may carry out such activities to which they have obtained the relevant license from their home country without obtaining a separate

Danish license. However, it is a condition that the FSA has received prior notification from the relevant authority which supervises the foreign entity in question. Two months after notification from the relevant supervisory authority to the FSA, an EU/EEA entity may also choose to establish a branch in Denmark. The FSA will request additional information from the foreign supervisory authority in question.

An entity which has only obtained a license from a country outside the EU/EEA is required to obtain a Danish license from the FSA prior to carrying out the relevant business activities in Denmark.

It should be noted that no matter how a foreign financial entity chooses to carry out activities in Denmark, it should still be aware of the general legislation applying to financial institutions, including the rules on conduct and good practice.

#### **Which types of financial undertakings exist in Denmark?**

The Danish Financial Business Act defines the following types of financial undertakings:

- **Banks**

Danish companies receiving deposits from the public or other funds to be repaid must obtain a banking license. A Danish bank must have a share capital of at least the equivalent of EUR 8 million when applying for the license. After having received the banking license, the capital requirement is reduced to EUR 5 million.

- **Mortgage-credit institutions**

These institutions, along with certain foreign credit institutions, have exclusive rights to issue mortgage-credit bonds. A Danish mortgage-credit institution must have a share capital of at least the equivalent of EUR 8 million when applying for the license. After having received the relevant license, the capital requirement is reduced to EUR 5 million.

- **Investment companies**

The activity of these types of companies consists of the carrying out of certain types of investment activities for third parties. A Danish company not licensed as a bank, a mortgage-credit institution or an investment management company is considered an investment company and must obtain a license as such. The statutory minimum requirement for the share capital of such companies is either EUR 0.3 million or EUR 1 million depending on the type of activities to be carried out. The provisions pertaining to investment companies are based on the MiFID-directive.

- **Investment management companies**

These companies have the exclusive right to manage certain investment associations, special-purpose associations, restricted associations and hedge associations and must have obtained the appropriate license from the FSA to do so.

- **Insurance companies**

Companies carrying out insurance activities must have obtained a license from the FSA to do so. Exceptions apply to certain special types of undertakings. The capital requirements are subject to extensive regulation and vary depending on a number of factors such as factors relating to risks.

- **Financial advisors**

In addition to the above and in accordance with the MiFID-directive, financial institutions or undertakings offering financial investment advisory services, such as giving personal advice regarding investment in certain instruments, are required to obtain a license to do so from the FSA. Generally, the rights of EU/EEA entities to carry out activities on a cross-border basis and by establishing a branch also apply to these entities.

### **When should a license be obtained?**

Each institution is required to obtain a license from the FSA before commencing operations. The license must comprise the activities to be carried out. The Danish Financial Business Act contains comprehensive lists of the activities which companies subject to license requirements are allowed to carry out and for which a license may be obtained.

### **Does obtaining a license restrict the possible activities of the undertaking in question?**

The undertaking is generally only allowed to carry out such business for which it has obtained a license and certain ancillary operations as outlined in the Danish Financial Business Act. Since a license may only be obtained to carry out the activities listed in the Danish Financial Business Act, an undertaking having obtained a license is generally prohibited from carrying out activities not provided for in the license, unless such activities are considered ancillary activities.

While certain activities, such as the issue of mortgage-credit bonds, are exclusive to a particular type of financial undertaking, other activities may be carried out by different types of financial undertakings, provided that the appropriate license has been obtained.

**What are the requirements for establishing a new financial institution or a subsidiary of a foreign financial institution in Denmark?**

New financial institutions are generally required to have a certain share capital as described above and to obtain a license from the FSA. The exact requirements vary according to the type of financial institution.

**How does the regulation of Danish financial institutions correspond to the relevant EU legislation?**

The regulation of financial institutions in Denmark corresponds to the relevant EU legislation. The regulation of banks and mortgage institutions is in accordance with the provisions of Directive 2006/48/EC. The MiFID-directive is the basis of the regulation of investment companies and the regulation of investment management companies is based on Directive 85/611/EEC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS). The regulation of insurance companies is also based on the relevant directives.

**How are collective investment schemes regulated?**

Danish collective investment schemes may be organised in a number of ways. The Act on Investment Associations and Special-Purpose Associations as well as other Collective Investment Schemes etc. provide for the following types:

- **Investment associations and special-purpose associations**  
Such associations receive funds from a group of investors or from the general public. In accordance with a principle of risk diversification, these funds are then placed in instruments in accordance with certain regulations. At the request of a member, the association must redeem said member's share of the assets with funds derived therefrom. These associations must obtain a license from the FSA and are subject to restrictions as to the investment of the funds received.
- **Hedge associations**  
These associations are similar to investment associations and special-purpose associations. However, hedge associations are allowed to define their own risk policies and may obtain loans for the purposes of making investments.
- **Professional associations**  
These associations are also similar to investment associations and special-purpose associations but are not required to obtain a license from the FSA since they only receive funds etc. from certain professional investors.

- **Other collective investment schemes**

These are investment schemes which are not comprised by the definition of investment associations, special-purpose associations or hedge associations and which receive funds from a wide circle of investors or from the general public where the investors bear the market risk. These schemes are required to place at least 80% of their funds in certain financial instruments.

Foreign investment undertakings are also comprised by the act.

**What are the requirements for marketing units of foreign investment undertakings in Denmark?**

Foreign investment undertakings are allowed to market their units in Denmark, provided that certain conditions are complied with. If the foreign investment undertaking in question has been approved by a competent authority in another country within the EU or a country with which the EU has entered into an agreement on the financial area in accordance with UCITS, the units may be marketed following submission of certain information to the FSA, unless, following submission of the information, the FSA makes a decision to the contrary.

Other foreign investment undertakings not comprised by UCITS are required to obtain approval from the FSA before marketing their units. Detailed requirements for obtaining such approval have been laid down by the act and by the FSA.

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