

Ankenævnet for investeringsfonde

The Danish Complaint Board of Investment Funds
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STATUTES

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Founding organisations

1.

The Danish Complaint Board of Investment Funds (hereinafter 'the Complaint Board') was set up by the Danish Investment Fund Association (*Investeringsfondsbranchen*) and the Danish Consumer Council THINK (*Forbrugerrådet Tænk*).

Jurisdiction of the Complaint Board

2.

2.1 The Complaint Board handles complaints against investment funds, SIKAV's and securities funds under the Danish Act of Investment Funds etc. (lov om investeringsforeninger m.v.) and capital funds under the Danish Act of Administrators of Alternative Investment Funds etc. (lov om forvaltere af alternative investeringsfonde m.v.) (hereinafter collectively referred to as 'investment funds'), which are established in Denmark. The Complaint Board may handle complaints against an investment fund established in a foreign country if the matter is associated more closely with Denmark than with the country of establishment, or if the parties agree thereon.

2.2 The Complaint Board handles complaints concerning private customer relationships. The Complaint Board may handle complaints from businesses if the complaints do not differ significantly from a complaint concerning a private customer relationship.

2.3 Complaints from businesses generally fall outside the Complaint Board's jurisdiction.

2.4 A complaint may concern all aspects of the legal relationship between the parties, including those occurring before an actual customer relationship has been established.

2.5 If a complaint has been taken to court and the consumer wants it to be brought before the Complaint Board, the court will dismiss the case and refer it to the Complaint Board, unless it must be considered evident that the consumer will not succeed in the complaint or the matter is considered unsuited for handling by the Complaint Board.

2.6 If a matter has been brought before an arbitration tribunal or another special forum and the consumer would like to bring it before the Complaint Board, the arbitration proceedings must be stayed pending the Complaint Board's consideration.

2.7 Agreements to the effect that disputes must be referred to arbitration or another special forum do not preclude submitting the complaint to the Complaint Board.

3.

3.1 The Complaint Board cannot handle cases that have been decided by final judgment, valid and binding arbitration or court settlement, or cases expected to be decided in the context of criminal proceedings.

3.2 Arbitration awards are only binding if, prior to the arbitration proceedings, the complainant has been informed of the option of handling by the Complaint Board.

3.3 For as long as a complaint is pending before the Complaint Board, the parties to the complaint cannot institute proceedings before the courts or an arbitration tribunal concerning the issues comprised by the complaint.

4.

Complaints assigned by law to be handled by public authorities or other dispute resolution bodies fall outside the jurisdiction of the Complaint Board.

Refusal of complaints

5.

5.1 The Complaint Board must refuse to handle complaints that fall within the jurisdiction of, are being or have been handled by

- a) another private dispute resolution body notified to the European Commission,
- b) a statutory alternative dispute resolution body notified to the European Commission,
- c) a foreign dispute resolution body notified to the European Commission,
- d) The Danish Competition and Consumer Authority (*Konkurrence- og Forbrugerstyrelsen*), or
- e) a court of law.

5.2 Complaints against an investment fund established in another country may be refused if the complaints are associated more closely with a country other than Denmark.

5.3 The Complaint Board may refuse to handle a complaint if

- 1) the complainant failed to first complain to the person or branch of the investment fund responsible for handling complaints or if the investment fund has not finished processing the complaint. The Complaint Board may start processing a complaint if the investment fund has refused the claim or if the complainant and the investment fund have failed to reach a settlement within five weeks of receipt of a complaint
- 2) the complaint does not concern a specific financial dispute
- 3) the complaint is frivolous or vexatious
- 4) the complaint is deemed inappropriate for consideration by the Complaint Board on account of its general legal nature, uncertainty regarding assessment of the facts received or for other special reasons, or
- 5) handling the complaint will seriously prevent the Complaint Board from functioning effectively.

5.4 If a complaint can evidently not be handled by the Complaint Board, the Complaint Board will refuse it within three weeks of receipt. In other cases, the complaint must be refused as soon as possible.

5.5 Refusal of a complaint must be reasoned, and the complainant must be informed of the possibility of taking the complaint to court, recovering legal expenses and applying for free legal aid. In addition, where relevant, the complainant must be informed that the claim may become time-barred.

6.

6.1 If the complaint evidently falls outside the jurisdiction of the Complaint Board, the secretariat may refuse it. The reasons for the refusal must be given to the complainant, who must also be informed that the refusal can be brought before the Complaint Board. This is done at the instance of the secretariat, if the complainant so requests.

6.2 On behalf of the Complaint Board, by virtue of article 5.3, the founding organisations may authorise the chairman to refuse complaints not considered appropriate for handling by the Complaint Board.

Composition of the Complaint Board

7.

7.1 The founding organisations will each appoint a fixed number of Board members. In addition, the founding organisations will jointly appoint a chairman and one or more

vice-chairmen. Due to the complex legal nature and major financial significance of the complaints the chairman of the Complaint Board must as far as possible be a Supreme Court judge, and the vice-chairman/vice-chairmen must as far as possible be a High Court judge/High Court judges.

7.2 The provisions of these Statutes concerning the chairman and the chairman's powers will apply correspondingly to the vice-chairman/vice-chairmen.

7.3 The chairmanship and other members of the Complaint Board are appointed for a term of three years and are eligible for reappointment.

7.4 The founding organisations may enter into an agreement with the founding organisations of The Danish Complaint Board of Banking Services, which is approved according to the Danish Act on Consumer Complaints (Forbrugerklageloven), that the chairmanship and the secretariat of the Danish Complaint Board of Banking Services shall also function as chairmanship and secretariat of the Danish Complaint Board of Investment Funds.

Tasks of the secretariat

8.

8.1 The Complaint Board has a secretariat, which must be independent of the founding organisations.

8.2 The secretariat is tasked with answering written, telephone and personal enquiries to the Complaint Board and with preparing the complaints for the Complaint Board's consideration. Complaints may be submitted electronically and, if electronic submission is neither feasible nor reasonable, by ordinary mail. The complainant may be required to submit the complaint on a form drafted by the secretariat.

8.3 For the purpose of the case handling, when submitting a complaint to the Complaint Board the complainant must consent to the investment fund's disclosure of information to the Complaint Board notwithstanding its duty of confidentiality.

8.4 On receipt of a complaint, the secretariat must ensure that before submitting the complaint the complainant tried in vain to contact the person or division of the investment fund responsible for handling complaints and that the complaint fee has been paid.

9.

Complaints received by the Complaint Board, but which are subject to the jurisdiction of another approved private dispute resolution body, the Danish Competition and Consumer Authority or a statutory dispute resolution body under the Danish Act on Consumer Complaints (*Forbrugerklageloven*), must be forwarded to such other bodies by the secretariat. If the complaint does not fall under a dispute resolution body as set out in the first sentence, the complainant can be referred to bringing the matter before the ordinary courts. In that case, the complainant must be informed of the possibility of legal expense recovery and free legal aid.

10.

Before the processing of the complaint commences, the complainant must be informed that he or she may withdraw the complaint at any time, after which the case will be closed. If the complaint is withdrawn, the Complaint Board will repay the complaint fee.

11.

The parties must be informed as soon as possible that they are not obliged to retain a lawyer or legal adviser, but may seek independent advice or be represented or assisted by a third party throughout all phases of the complaints procedure. In addition, the parties must be advised that the Complaint Board's handling of the complaint does not prevent them from seeking judicial review.

12.

12.1 Upon receipt of the complaint the secretariat will send a copy of the material received (except for material undoubtedly known to the investment fund) to the investment fund by its administrator with a request for a statement. The secretariat must generally ensure that either party is provided with such information from the other party as must be considered significant for deciding the case as well as expert opinions or statements obtained for the purpose of the complaints procedure. In addition, at its own initiative the secretariat will obtain information on the necessary legal and factual basis for the decision, and to the extent necessary will provide guidance to the parties on their legal position.

12.2 The secretariat will fix a time limit of five weeks for the investment fund to submit its first statement. The secretariat will then fix a time limit of three weeks for the parties' subsequent statements. The secretariat will fix a time limit of two weeks for obtaining any further information. Time starts to run on the date on which the secretariat submits a request to the parties for a statement. If the investment fund or the complainant fails

to produce a statement before expiry of the time limit - and the secretariat has not extended the time limit, before its expiry, at the investment fund's or the complainant's request - the secretariat may present the matter to the Complaint Board for consideration, which may resolve to decide it on the information available.

12.3 Once all documents with the relevant information have been received, including any expert opinions, the parties will immediately be notified thereof, after which the 90-day period for processing a complaint mentioned in article 18.1 starts to run.

12.4 The secretariat may seek to settle the matter between the parties. It must appear from a proposed settlement that the secretariat has processed the complaint and that the parties can demand that it be presented to the Complaint Board.

12.5 At each meeting of the Complaint Board the secretariat must produce an outline of the complaints settled with the assistance of the secretariat since the Complaint Board's last meeting. The outline must briefly specify the content of the settlement.

12.6 The secretariat will close the case if, during the preparation, the investment fund complies with the complainant's claim or the parties make a settlement. The same applies if the consumer waives his or her complaint.

12.7 The secretariat submits complaints to the Complaint Board that are not resolved during the preparatory stage of the processing.

Conflict of interest and confidentiality

13.

13.1 Members of the Complaint Board, the secretariat staff and experts,

- 1) may not be instructed by any of the parties or their representatives, and
- 2) may not be remunerated in a way that is linked to the outcome of the procedure.

13.2 In addition, secretariat staff must be appointed for a term of office of sufficient duration to ensure the independence of their actions and to prevent their being relieved from their duties without just cause.

14.

14.1 No person may participate in the handling of a case if

- 1) he or she has a special personal or financial interest in its outcome or, in respect of the same case, is or has been a representative of someone with such an interest,
- 2) that person's spouse, relatives by blood or by marriage in ascending or descending line or in the collateral line as close as a cousin, niece or nephew, or other related parties have a special personal or financial interest in its outcome or is a representative of someone with such an interest, or
- 3) other circumstances exist which may give rise to doubts about that person's complete impartiality.

14.2 Any person to whom any of the circumstances mentioned in article 14.1 above apply must immediately notify the chairman of the Complaint Board thereof.

14.3 The chairman of the Complaint Board decides whether, as a result of the provision of article 14.1, a person must be excluded from participating in the handling of a complaint.

14.4 A Complaint Board member not participating in the handling of a complaint pursuant to the chairman's decision, see article 14.3, may not be physically present at the handling of the complaint during the meeting of the Complaint Board.

15.

Complaint Board members, the Danish Competition and Consumer Authority, secretariat staff and any experts appointed by the Complaint Board are subject to a duty of confidentiality with respect to information disclosed to them in the course of the complaints procedure, except for publicly available information.

Decisions of the Complaint Board

16.

16.1 The Complaint Board makes its decisions on the basis procured by the secretariat, including issues relating to payment of fees; see article 26. Individual cases are decided by a simple majority of votes at a meeting of the Complaint Board. The chairman or a vice-chairman and four of the members mentioned in article 7.1, first sentence, participate in handling the individual complaints so that the consumer's and the investment fund's interests are equally represented. The Complaint Board forms a quorum when, apart from the chairman, at least one consumer representative and at least one investment fund representative attend the meeting without thereby altering the number of votes, ie, two consumer votes and two investment fund votes.

16.2 The Complaint Board makes its decisions based on a legal and professional assessment. Decisions must be in writing, and they must be accompanied by the relevant reasons and signed by the chairman. Decisions must state whether they are based on a majority of votes and, if so, must include the dissenting minority's reasons.

16.3 A representative of the Danish Competition and Consumer Authority is entitled at any time to attend the meetings of the Complaint Board but has no voting right.

16.4 The Complaint Board will hold an appropriate number of meetings each year to ensure compliance with the time limits of articles 5.4 and 18.1, cf. sections 17 and 18 of the Danish Act on Consumer Complaints.

17.

17.1 In special cases, at the request of a party or of its own motion, the Complaint Board may summon the parties for an oral hearing. If, for no lawful, notified reason the complainant fails to turn up at such proceedings or fails to provide the information requested by the Complaint Board, the Complaint Board may refuse the complaint or handle it on the information available. If the investment fund fails to turn up or provide the information requested by the Complaint Board, the complaint may similarly be handled on the information available.

17.2 At the request of a party or of its own motion, the Complaint Board may obtain expert opinions or statements.

18.

18.1 The Complaint Board must decide a complaint within a period of 90 days from the time when all information relating to the case has become available.

18.2 In special cases the Complaint Board may extend the time limit according to article 18.1. In such event, the Complaint Board must inform the parties of the extension of the time limit and of the time when the case can be expected to be decided and concluded, respectively.

18.3 In special cases, the Complaint Board may postpone the handling of a complaint. In such event the Complaint Board must notify the parties of the reasons for the postponement and, if possible, when the handling of the complaint can be expected to be continued.

19.

19.1 Decisions must be reasoned and made in writing on a durable medium. It must state the name of the chairman participating in the decision. A time limit of usually 30 calendar days will be fixed for compliance with the decision.

19.2 Any repayment of the complaint fee must be set out in the decision; see article 26.

20.

20.1 Decisions of the Complaint Board must be sent to the parties within ten calendar days of the date of the decision.

20.2 If the complainant succeeds with the complaint in full or in part, notice of the decision must be given to the investment fund in accordance with the provisions of the Danish Act on Consumer Complaints, unless the investment fund in the individual case has waived summons and notice; see the Danish Administration of Justice Act article 160.

20.3 In connection with giving notice of the decision, the investment fund must be informed of the contents of articles 20.4, 21.2 and 24.2 of these Statutes.

20.4 If the investment fund does not wish to be bound by the Complaint Board's decision, it must notify the Complaint Board thereof in writing within 30 calendar days of the date on which notice of the decision was given to the investment fund or the date of the decision if the investment fund has waived summons and notice, cf. article 20.2.

20.5 On the consumer's request and behalf, the Danish Competition and Consumer Authority may take the complaint to court if the investment fund fails to comply with a decision or a settlement made.

21.

21.1 Both parties must be notified of the possibility to take the complaint to court and, where relevant, advised about the possibility that the decision may be enforced and that the complaint may be reopened. In addition, where relevant, the complainant must be informed of

- 1) the right to have the Danish Competition and Consumer Authority issue process on behalf of the consumer and cover certain expenses in connection with legal proceedings,
- 2) the possibility to obtain free legal aid or coverage of legal expenses, potentially through a legal expenses insurance, and that

3) the claim may become time-barred if not taken to court within a year of the Complaint Board's decision.

21.2 The Complaint Board's decision can be enforced against the investment fund after expiry of the time limits of articles 20.4 and 24.2 unless, before expiry of the time limits, the investment fund has notified the Complaint Board in writing that it does not wish to be bound by the decision.

21.3 An enforcement request to the bailiff's court must be accompanied by the decision forming the basis of the enforcement request and a declaration from the Complaint Board that the investment fund has failed to state within the time limits of articles 20.4 and 24.2 that it does not wish to be bound by the decision.

22.

The founding organisations may authorise the chairman to decide certain complaints on behalf of the Complaint Board for which established practice exists.

23.

The Danish Competition and Consumer Authority can at any time request to receive copies of the Complaint Board's decisions, including refusals.

Reopening a complaint

24.

24.1 The chairman can decide to reopen a decided case if special reasons so warrant, including particularly in the case of

- 1) the excused absence of a party that has expressed no opinion in the case, or
- 2) new information which - had it been available for the Complaint Board's consideration - must be assumed to have resulted in a different outcome of the case.

24.2 A request from the investment fund to reopen the case submitted in writing to the Complaint Board within 30 calendar days of the date on which notice of the decision was given - or the date of the decision if the investment fund has waived summons and notice; see article 20.2 - will have a suspensive effect. Hereafter, the 30-day period begins to run on the date on which the request to reopen the case was refused or the Complaint Board decided the reopened case.

24.3 Requests to reopen a case submitted by an investment fund later than 30 calendar days after notice of the decision was given will be refused.

Fees and costs

25.

25.1 Neither party must pay costs to the other party in relation to the complaints procedure.

25.2 The Complaint Board must pay all costs related to the complaints procedure, including the cost of obtaining opinions or statements by virtue of article 17.2.

25.3 In connection with an oral hearing according to article 17.1, the Complaint Board may reimburse the complainant for his or her travel expenses, etc. if special circumstances so warrant.

26.

26.1 The complainant must pay a fee of DKK 200 (inclusive of VAT) for having a complaint considered by the Complaint Board.

26.2 The fee is repaid to the complainant if he or she succeeds with the complaint in full or in part, or if the complaint is refused, see articles 5 and 6, lapses or is withdrawn; see article 10.

Information requirements for complaints submitted through the European Commission's online dispute resolution platform (ODR platform); see regulation no. 524/2013 of 21 May 2013

27.

27.1 When the Complaint Board receives a complaint through the European Commission's ODR platform, the Complaint Board must notify the parties and the ODR platform as soon as possible about whether the complaint is accepted for consideration or refused under sections 14, 15 or 16 of the Danish Act on Consumer Complaints.

27.2 If the complaint is accepted for consideration, see article 27.1, the parties must concurrently be informed of the Complaint Board's procedural rules and the fees that may be imposed by virtue of article 26 of these Statutes.

27.3 Once the Complaint Board has agreed to consider the complaint received through the ODR platform and all information relating to the case has become available, the Complaint Board must inform the parties and the ODR platform thereof; see article 18.1 of these Statutes.

27.4 Immediately after the case has been concluded the Complaint Board must notify the ODR platform of the dates on which it received and concluded the case, respectively, and of the outcome of the complaints procedure.

28.

The Complaint Board has through the website of the Investment Fund Association provided links to the European Commission's list of alternative dispute resolution bodies (ADR bodies); see Article 20(4) of the European Parliament's and the Council's directive on alternative dispute resolution for consumer disputes (the ADR directive).

Annual report and disclosure requirements, etc

29.

29.1 The Complaint Board must prepare an annual report on its activities in the year under review and on the administration in general. The annual report must provide information on

- 1) the number of complaints received and the type of disputes relating to the complaints,
- 2) the percentage of cases discontinued before a result was achieved,
- 3) the average complaint processing time,
- 4) systematic or essential problems frequently seen and resulting in disputes between the complainants and the investment funds. Such information may be accompanied by recommendations to resolve or avoid such problems,
- 5) the number of complaints refused, including the percentage of complaints refused relative to each of the refusal options that have been approved for the Complaint Board,
- 6) the percentage of cases in which the complainant succeeded,
- 7) the extent to which decisions are complied with, if known, and

- 8) details on any participation in networks cooperating on cross-border disputes and an evaluation of their effectiveness.

29.2 The Complaint Board reports to the Danish Competition and Consumer Authority on an annual basis.

Information obligation

30.

30.1 The Complaint Board establishes and updates the information that it is obliged to provide on the website of the Investment Fund Association. The website must provide the following information in a clear and easily accessible manner and, on request, also on a durable medium,

- 1) the dispute resolution procedure
- 2) the full name of the Complaint Board, its postal and email addresses,
- 3) the entry of the Complaint Board on a list in accordance with section 4(3) of the Danish Act on Consumer Complaints and article 20 of the ADR directive,
- 4) the physical persons responsible for the Complaint Board and the manner and duration of their appointment,
- 5) any memberships of ADR bodies facilitating cross-border dispute resolution,
- 6) the types of disputes which the Complaint Board can handle,
- 7) the procedural rules applying to dispute resolution and the criteria on the basis of which the Complaint Board may refuse to handle a complaint,
- 8) the languages in which complaints may be filed, and the languages of the complaints procedure,
- 9) the case-handling costs to be covered by the parties,
- 10) the average duration of dispute resolution,
- 11) the legal effect of the outcome of dispute resolution, including the extent to which it can be enforced,
- 12) annual reports on the Complaint Board's activities, and on
- 13) selected decisions.

30.2 In accordance with the provisions of the Danish Act on Processing of Personal Data (*Persondataloven*), the Complaint Board's decisions will be published on the Investment Fund Association's website without stating the identity of the complainant and any third parties. When deciding a case, if special circumstances so warrant, the Complaint Board may decide to withhold the identity of the investment fund as well.

31.

If the investment fund has given notice according to article 20.4 that it does not wish to be bound by the Complaint Board's decision, this must be stated in connection with publishing the decision on the Investment Fund Association's website.

32.

By approaching the Complaint Board's secretariat any person can demand to be informed of the Complaint Board's decisions, if identifiable. The complainants' names must be anonymised. Any disclosure of information must be in accordance with the provisions of the Danish Act on Processing of Personal Data. The secretariat can forward photocopies or electronic copies of decisions and may fix a fee to cover the costs of providing such photocopies.

Financing, financial statements, etc

33.

The Investment Fund Association lays down rules concerning the funding, budgets, auditing and financial statements, etc. of the Complaint Board.

Amendment of the Statutes

34.

Amendment of these Statutes is subject to agreement between the founding organisations and subject to approval by the relevant minister under the Danish Act on Alternative Dispute Resolution of Consumer Complaints in force at any time (the Danish Act on Consumer Complaints).

Dissolution of the Complaint Board

35.

The founding organisations of the Complaint Board may withdraw from the Complaint Board at one year's notice in which case the Complaint Board will be dissolved. In connection with such dissolution, adequate terms for the closing of pending cases, etc, must be laid down.

Commencement and transitional provisions

36.

36.1 These Statutes, which have been approved by the Danish Minister for Business and Growth in accordance with the Danish Act on Alternative Dispute Resolution in connection with Consumer Complaints (the Danish Act on Consumer Complaints), enter into force on 1 June 2016.

36.2 The case processing time limits in articles 5.4 and 18 of these Statutes only apply to cases brought before the Complaint Board after 1 October 2015. Cases brought before the Complaint Board prior to 1 October 2015 are governed by the previous rules.

The Minister for Business and Growth has approved these Statutes up to and including 31 January 2019.