

Decree of the Ministry of Finance on the Accounts to be Appended to the Application for Authorisation of a Management Company and a Custodian

2.7.2004/234

Pursuant to the Decision of the Ministry of Finance, the following shall be enacted under section 5 a, section 9, subsection 1 and section 126 b, subsection 2 of the Act on Common Funds of 29 January 1999, as they are in Act 224/2004, as well as under section 7, subsection 1 of the Act on the Operation of a Foreign Management Company in Finland of 2 April 2004 (225/2004):

Section 1

Scope of application

This Decree shall govern the accounts to be appended to an application for:

- 1) an authorisation of a management company referred to in section 5 a of the Act on Common Funds (48/1999);
- 2) an authorisation of a custodian referred to in section 9, subsection 1 of the Act on Common Funds;
- 3) a permission referred to in section 126 b, subsection 1 for a management company to set up a branch in a State outside the European Economic Area; or for
- 4) an authorisation of a branch referred to in section 7, subsection 1 of the Act on the Operation of a Foreign Management Company in Finland (225/2004).

Section 2

Information on the applicant

The written application for authorisation of the management company shall indicate the full trade name, possible auxiliary trade names, registered office, postal and street address, central administrative establishment in Finland and other offices of the company applying for an authorisation of a management company.

The following shall be appended to the application:

- 1) a copy of the Articles of Association of the company in force;

- 2) an extract or copy of the decision of the General Meeting of the Shareholders with possible appendices whereby the Articles of Association have been amended to correspond to the requirements set on the Articles of Association of a management company and indicating both the intention of the company to apply for the authorisation of a management company and the application procedure to be complied with;
- 3) an account to the effect that the amendment of the Articles of Association referred to in subsection 2 has been submitted for registration to the National Board of Patents and Registration as provided for in chapter 9, section 14, subsection 2 of the Limited Liability Companies Act (734/1978);
- 4) an extract from the Trade Register of the company.

If the authorisation of a management company is applied for in the name of a company to be established, the application shall state the name and contact information of the applicant as well as the name of the company to be established, the possible auxiliary trade names, its registered office, its central administrative establishment in Finland and its other offices.

The application for an authorisation of a company to be established shall include, with possible appendices:

- 1) an extract or a copy of the decision to establish a management company if the founder is a legal person;
- 2) an extract from the Trade Register of each founder if the founder is a legal person or if the founder is a natural person, an extract from the Population Information System and contact information of each founder;
- 3) a copy of the Memorandum of Association;
- 4) a copy of the minutes of the Meeting of Incorporation, if any.

The provisions of subsections 1-4 shall, in the application for authorisation of a custodian, correspondingly apply to the account on the applicant and the company to be established.

Section 3

Operations to be carried out

The management company shall in the application for authorisation describe the activities referred to in section 5, subsections 1 and 2 of the Act on Common Funds which the company intends to carry out and the custodian shall describe the activity referred to in section 9 of the Act on Common Funds which the custodian intends to carry out.

Section 4

Share capital

If the share capital required of a management company and referred to in section 6 of the Act on Common Funds has not been paid when applying for an authorisation, the application shall be appended with an account of the commitments relating to the payment of the share capital. The account shall include the Memorandum of Association of a limited company or a subscription list in which the shares have been entered, the minutes of the Meeting of Incorporation as well as information on the subscribers and their subscriptions. The application shall also be appended with a copy of the decision on the share subscription of each legal person subscribing for the shares and an extract from the Trade Register of each subscriber that is a legal person as well as an extract from the Population Information System of a natural person subscribing for the shares.

If the share capital required of a management company is fully paid upon application for the authorisation, the application for authorisation shall be appended with an account to the effect that the amount paid is held by and in possession of the company. The account shall also be appended with a statement signed by the auditors of the company to the effect that the provisions on payment of the share capital have been complied with.

If the share capital has been subscribed to with the right or obligation to invest other property than cash against a share in the company or if the share capital is paid in full or in part in a form other than cash, the application shall be appended with an opinion referred to in chapter 2, section 4 a of the Limited Liability Companies Act.

The provisions of subsections 1-3 shall correspondingly apply to the account to be appended to the application for authorisation of a custodian on the share capital of a custodian referred to in section 10 of the Act on Common Funds.

Section 5

Account of the most important shareholders and of the holdings of shareholders

The application of the management company shall state the names of holders whose direct or indirect holding in the management company is at least one-twentieth. The application shall state the portion of holdings of each holder as well as the personal and contact informa-

tion of the holders. The application shall be appended with extracts from the Population Information System or accounts corresponding thereto of the natural persons with a holding as well as extracts from the Trade Register or accounts corresponding thereto of the legal persons with a holding. The application shall also be appended with an account of agreements or other arrangements, which result in or may result in a holding referred to in this subsection.

The application shall be appended with an account of the financial position of the holder referred to in subsection 1, which shall also include information on the loans received by the holder from the management company, including the loan capital, interest and loan period, as well as on items comparable to lending. If the holder is a legal person, the application shall be appended with financial statement information and, if the holder is a part of a group, consolidated financial statement information from last three financial years. If the latest financial statement has been drawn up earlier than six months before the filing of the application, the application shall be appended with an account, dated and signed by the Board of Directors of the company, of any events that have taken place after the drawing up of the financial statement and which have a material effect on the financial position of the company as well as of the financial position and result of the company at the time of application.

The information and accounts referred to in subsections 1 and 2 shall also be submitted of a natural person and legal person comparable to a shareholder referred to in chapter 2, section 9 of the Securities Markets Act (495/1989). The application shall also itemise the matter on the grounds of which the natural person or legal person is to be deemed a person comparable to a shareholder referred to above.

The provisions of subsections 1-3 shall correspondingly apply to the account of the shareholders of the custodian and the holdings of the shareholders presented in the application for authorisation of a custodian.

Section 6

Management of the management company and the custodian

The application for authorisation of a management company shall be appended with extracts or copies of the necessary minutes of the General Meeting of the Shareholders and the meeting of the Board of Directors or of other documents drawn up by a third party indicating the ordinary and deputy members of the Board of Directors elected for the management

company as well as the Managing Director and Deputy Managing Director elected for the company. The application shall also state the contact information of the ordinary and deputy members of the Board of Directors as well as of the Managing Director and a possible Deputy Managing Director if this does not appear in the said minutes or documents as well as be appended with extracts from the Population Information Systems of the said persons.

If one or several deputy managing directors have been elected for the management company, the application shall indicate the preconditions subject to which a deputy managing director shall substitute the managing director when the latter is prevented from attending to his duties as well as the order of substitution of the deputy managing directors.

The provisions of subsections 1 and 2 shall correspondingly apply to the account to be presented of the management of the custodian in the application for authorisation of a custodian.

Section 7

Account of significant engagements

The application for authorisation of a management company shall be appended with an account of significant engagements referred to in section 5 b, subsection 1 of the Act on Common Funds. The application shall also be appended with an account of agreements or other arrangements, which result or may result in a significant engagement.

The provisions of subsection 1 shall correspondingly apply to the account to be presented of significant engagements referred to in section 9 a, subsection 1 of the Act on Common Funds to be appended to the application for authorisation of a custodian.

Section 8

Auditors

The application for authorisation of a management company shall state the names of the auditors and their deputies elected by the management company as well as which auditor or which audit organisation is the auditor or audit organisation approved by the Central Chamber of Commerce and referred to in section 36, subsection 2 of the Act on Common Funds. The application for authorisation of a custodian shall state the names of the auditor and possible deputy auditor of the company. The application shall further be appended with an ex-

tract or copy of the minutes of the General Meeting of the Shareholders or the Meeting of Incorporation relating to the election of the auditors of the company or organisation.

Section 9

Economic operational preconditions

In order to assess the economic operational precondition of a management company and a custodian, the application for authorisation shall be appended with an action plan.

The action plan of a management company shall contain:

- 1) a detailed account of the nature and scope of the operations to be carried out as well as of the division of the operations into common fund activity, activity materially related thereto and to the provision of other services referred to in section 5 of the Act on Common Funds;
- 2) descriptions on the keeping of a fund unit register, the making of subscriptions and redemptions of fund units and the calculation of the value of a fund unit;
- 3) profitability estimates and goals as well as result and balance-sheet prognoses and their grounds for the next three years;
- 4) an estimate on the adequacy of own funds for the next three years and a plan to ensure adequate solvency and, if the company intends to carry out activity referred to in section 5, subsection 2 of the Act on Common Funds, a plan to ensure liquidity;
- 5) an account of operations intended to be carried out through a representative as well as of other operations to be outsourced including the names and contact information of the representative.

The action plan of a custodian shall contain:

- 1) a detailed account of the nature and scope of the operations to be carried out as well as of the division of the operations into custodial activity and activity materially related thereto;
- 2) profitability estimates and goals as well as result and balance-sheet prognoses and their grounds for the next three years.

If the company applying for authorisation of a management company is engaged in earlier business operations, the application shall be appended with financial statement information and, if the applicant is a part of a group, consolidated financial statement information from the last three financial periods. If the latest financial statement has been drawn up earlier than six months before the filing of the application, the application shall also be appended with an ac-

count, dated and signed by the Board of Directors of the management company, of any events taken place after the drawing up of the financial statement with a material effect on the financial position of the company as well as of the financial position and result of the company at the time of application.

The provisions of subsection 4 shall correspondingly apply to the account to be appended to the application for authorisation of a custodian.

If the management company intends to carry out activity referred to in section 5, subsection 2 of the Act on Common Funds, the application for authorisation shall be appended with a copy of the application with which the company has applied for membership in the investor compensation fund.

Section 10

Internal control and risk management

With regard to the internal control and risk management of the management company, the application shall be appended with:

- 1) a description of the organisation, division of tasks and responsibilities as well as of the decision-making system of the management company;
- 2) an account of the number of personnel to be hired as well as of the professional requirements to be set on the personnel;
- 3) a description of the arrangement of internal supervision;
- 4) a description of the arrangement of internal control;
- 5) a description of the arrangement of supervision of compliance with the legality of operations and internal procedures;
- 6) an account of the systems and methods through which the management company intends to monitor and manage the risks referred to in chapter 4 a of the Act on Common Funds;
- 7) a description of the safeguarding of adequate information flow as well as of risk management and internal control with regard to operations to be carried out through a representative and the other operations to be outsourced;
- 8) an account of the accounting system and accounting methods;
- 9) a description of the data systems, data-management strategy and data-management organisation as well as of data-technology to be outsourced;
- 10) a description of the data security organisation, the data security responsibilities, the data security principles and the management of risks relating to data security;

- 11) main instructions relating to data security;
- 12) an account on measures taken by the management company in order to ensure continuance of operations in fault situations;
- 13) plans for the continuance of the core operations of the management company.

The application shall further be appended with the standing orders of the decision-making bodies of the management company as well as the internal operation instructions applicable in the management company.

The application for authorisation of a custodian shall, with regard to internal control and risk management, be appended with descriptions and accounts corresponding to those provided for in subsection 1 (1) - (5) and (8) - (11) and subsection 2 on accounts to be appended to the application for authorisation of a management company.

Section 11

Customer identification and recognition systems

The application for authorisation of a management company shall be appended with an account of and the internal instructions approved by the management for the identification and recognition system of a unit-holder or a person intending to become one and of a customer of the management company, and of the manner in which compliance with the requirement to act diligently and the compulsory notification in the regulations on the prevention of money laundering and combating of terrorist financing. The application shall also include an account of the custody of identification documents, the persons in charge and the personnel training programme. The provisions above shall correspondingly apply to the account of the identification and recognition system of a unit-holder or a person intending to become one to be appended to the application for authorisation of a custodian.

Section 12

Reliability, good reputation, experience and other suitability of the shareholders of a management company and a custodian

The application for authorisation of a management company shall be appended with a declaration dated and signed by and related to a shareholder referred to in section 5 or by a natural person comparable thereto containing:

- 1) the name of the management company;

- 2) the name of the declarer;
- 3) information on agreements or other arrangements entitling the declarer to benefit from the profit of the shares in the management company;
- 4) information on incompetent persons whose guardian the declarer is, the organisations controlled by the incompetent persons, the holdings in the management company of the incompetent persons or on agreements or other arrangements which, upon realisation, will result in the control or holding referred to above;
- 5) information on co-operation with the management company carried out or planned to be carried out by the declarer or an incompetent person under the guardianship of the declarer or by an organisation controlled by the above;
- 6) information on organisations controlled by the declarer as well as on the financial position of such an organisation upon the filing of the declaration including the latest financial statement information as well as, if the financial statement has been drawn up earlier than six months prior to the filing of the application, an account dated and signed by the Board of Directors or all partners with personal liability of any events with a material effect on the position of the organisation as well as of the financial position and result of the organisation at the time of the filing of the application;
- 7) information on membership or deputy membership of the declarer in the supervisory board or board of directors of another organisation or the acting of the declarer in the management of another organisation;
- 8) information on the portion of holdings or voting rights referred to in chapter 2, section 9 of the Securities Markets Act of the declarer or an incompetent person represented by the declarer or of an organisation controlled by the above also in other organisations than those whose share is admitted to public trading or trading corresponding thereto in the European Economic Area or of agreements or other arrangements possibly resulting in such portion;
- 9) information on the portion of holdings or voting rights of the declarer or an incompetent person represented by the declarer or of an organisation controlled by the above in another management company which exceeds one-twentieth of the amount of equity capital or the number of voting rights of the management company or of agreements or other arrangements possibly resulting in such portion;
- 10) information on a possible business prohibition on the declarer;
- 11) information on possible disciplinary actions, objections or other reprimands against the declarer, an organisation under his control or against an organisation where he holds or has held a position referred to in paragraph 7 during a period of time when he has held the said position;

- 12) information on a possible initiation of debt restructuring or bankruptcy proceedings of the declarer, an organisation under his control or of an organisation where the declarer holds a position referred to in paragraph 7;
- 13) a certificate issued by the execution authority of the place of residence of the declarer and of the place of the registered office of an organisation under his control or of an organisation where he holds or has held a position referred to in paragraph 7 of possible execution procedures against the said person or organisation being enforced;
- 14) information on whether the declarer, an organisation under his control or an organisation where the declarer holds or has held a position referred to in paragraph 7 has earlier applied for an authorisation of a credit institution, an investment firm, a management company or a custodian and if so, when, where and with what outcome as well as information on a possible restriction of operations and withdrawal of the authorisation as well as the grounds for the restriction of operations and the withdrawal of the authorisation;
- 15) information on whether the declarer, either as a private person, as an entrepreneur or as a partner with personal liability or in a position comparable thereto, or whether an organisation which is or has been under his control, has applied for membership in a stock exchange, an option organisation or a self-regulatory organisation in the financial branch organised on a professional basis, and if so, when, where and with what outcome as well as information on a possible discharge from membership and the grounds therefor;
- 16) any other matter that may be deemed to be of material importance when assessing the reliability, good reputation, experience and other suitability of the declarer as a shareholder of a management company.

If the person referred to in subsection 1 is an incompetent person or if his capacity has been restricted, the guardian shall also include in the application an account of the incompetence or restriction of capacity of the declarer as well as an account relating to the guardian himself including the information and accounts referred to in subsection 1 unless the information and accounts are indicated in the declaration relating to the person referred to in subsection 1.

The application for authorisation of a management company shall also be appended with a declaration relating to a shareholder referred to in section 5 or to a legal person comparable thereto dated and signed by the natural persons authorised to sign for this legal person, and including:

- 1) the information and accounts referred to in subsection 1 (1), (3), (4), (6) and (16);
- 2) the trade name of the declarer as well as the name and contact information of the representative;

- 3) information on whether the operations of the declarer or of the organisation under its control are subject to an authorisation as well as who has granted the authorisation and where and when;
- 4) information on persons authorised to exercise control in the declarer;
- 5) information on co-operation with the management company carried out by the declarer or an organisation under its control;
- 6) information on the portions of holdings or voting rights referred to in subsection 1 (8) of the declarer or an organisation under its control or of any agreements or arrangements possibly resulting in such portion;
- 7) information on the portions of holdings or voting rights referred to in subsection 1 (9) of the declarer or an organisation under its control or of any agreements or arrangements possibly resulting to such portion;
- 8) information on possible disciplinary actions, objections or other reprimands against the declarer or an organisation under its control;
- 9) information on the possible initiation of debt restructuring or bankruptcy proceedings against the declarer or an organisation under its control;
- 10) a certificate issued by the execution authority of the place of residence of the declarer or the place of the registered office of an organisation under its control of possible execution procedures against the said organisations being enforced;
- 11) information on whether the declarer or an organisation under its control has applied for an authorisation of a credit institution, an investment firm, a management company or a custodian and if so, when, where and with what outcome as well as information on a possible restriction of operations and withdrawal of the authorisation as well as the grounds for the restriction of operations and the withdrawal of the authorisation;
- 12) information on whether the declarer or an organisation under its control has applied for membership in a stock exchange, an option organisation or of a self-regulatory organisation in the financing branch organised on a professional basis, and if so, when, where and with what outcome as well as information on a possible discharge from membership and the grounds therefor.

The provisions of subsections 1 - 3 shall correspondingly apply to the account of the reliability, good reputation, experience and other suitability of the shareholders of a custodian to be appended to the application for authorisation of a custodian.

Section 13

Reliability, good reputation, experience and other suitability of the management of a management company and a custodian

The application for authorisation of a management company shall be appended with a declaration relating to the members and deputy members of the board of directors of the management company as well as on the managing director and his deputy, dated and signed by the said person, including:

- 1) the information and accounts referred to in section 12, subsection 1 (1)-(15);
- 2) information on credits granted by the management company to the declarer including the capital, interest and loan periods of the credits as well as on items comparable to lending;
- 3) an account to the effect that the declarer is in control of himself and his assets if the authorisation is applied for in the name of a company to be established;
- 4) a detailed account of the duties and responsibilities of the declarer in the management company;
- 5) information on the professional training of the declarer;
- 6) a detailed account of the earlier work experience of the declarer with material importance to the attendance to the duties of the management company and of related responsibilities in the employment of the former employers;
- 7) an account of all the portions of holdings and voting rights of the declarer in the management company;
- 8) any other matter that may be deemed to be of material importance when assessing the reliability, good reputation, experience and other suitability of the declarer in attending to the management of the management company.

The application for authorisation of a management company shall be appended with an account relating to the members and deputy members of the board of directors or a corresponding administrative body of the legal person acting as the owner of the management company referred to in section 5 as well as on its managing director and his deputy or on a corresponding person, dated and signed by the said person, including:

- 1) the information and accounts referred to in section 12, subsection 1 (1)-(5), (7) and (9) - (14);
- 2) any other matter that may be deemed to be of material importance when assessing the reliability, good reputation, experience and other suitability of the declarer.

The provisions of subsections 1 and 2 shall correspondingly apply to the account of the reliability, good reputation, experience and other suitability of the management of a custodian to be appended to the application for authorisation of a custodian.

Section 14

Information to be appended to the application for authorisation of a branch of a management company to be established in a State outside the European Economic Area

The written application for authorisation of a management company authorised in Finland for the establishment of a branch in a State outside the European Economic Area shall be appended with:

- 1) a copy of the decision of a competent body of the management company on the establishment of a branch in another State;
- 2) an authorisation for the establishment of a branch of the relevant authority of the State in which the branch is located if such authorisation is required in the said State;
- 3) an account of the legislation of the State in which the branch is located governing the operations and supervision of the management company;
- 4) an account of the right of the Financial Supervision Authority to supervise and obtain information from the branch;
- 5) an account of the right of the supervisory authority of the State where the branch is located to supervise the branch;
- 6) the address and contact information of the branch;
- 7) the business plan of the branch;
- 8) an account of the placement of the branch in the organisation of the management company and the organisational structure of the branch;
- 9) information on persons belonging to the management of the branch as well as an account referred to in section 13, subsection 1 of these persons;
- 10) an account of the arrangement of the internal supervision and risk management of the management company in the branch;
- 11) an account of the reporting and other exchange of information between the management company and its branch as well as of its arrangement.

Section 15

Information to be appended to the application for authorisation of a branch to be established in Finland of a management company authorised in a State outside the European Economic Area

A management company authorised in a State outside the European Economic Area shall append to the written application for authorisation of a branch to be established in Finland the following with regard to the management company:

- 1) a certified copy of the authorisation of the management company from its home State;
- 2) an authorisation of the relevant authority of the home State for the establishment of a branch in Finland if such authorisation is a precondition for the establishment of a branch in accordance with the legislation of the home State of the management company;
- 3) an extract or copy of the decision of the decision-making body of the management company on the establishment of a branch in Finland and the procedure to be complied with in the establishment;
- 4) the accounts referred to in sections 2 - 8, section 10, subsections 1 and 2 as well as in sections 12 and 13 on the management company.

With regard to the branch, the following shall be appended to the application for authorisation:

- 1) the business plan of the branch which shall include the accounts referred to in section 9, subsection 1, section 10, subsections 1 and 2 as well as in section 11;
- 2) an account of the organisation of the branch as well as the declaration referred to in section 13 of the suitability and reliability of the management of the branch;
- 3) an account of the reporting system from the branch to the management company as well as to the supervisory authorities;
- 4) an account of the arrangement of the internal supervision and risk management of the management company in the branch.

With regard to the supervision of the management company and the legislation of its home State, the application shall be appended with:

- 1) an account of the right of the Financial Supervision Authority to obtain information from the supervisory authorities of the home State of the management company;
- 2) an account of the right of the Financial Supervision Authority to inspect and obtain information from the branch;
- 3) an account of the right of the supervisory authority of the home State of the management company to inspect and supervise a branch located in Finland;
- 4) an account of the legislation on the operations and supervision of the management company as well as on the prevention of the criminal abuse of the financial system.

If the branch intends to carry out activity referred to in section 5, subsection 2 of the Act on Common Funds, the application shall also be appended with an account of the scheme of the home State of the management company corresponding to the investor compensation fund as well as an account of whether the management company and its branch abroad belong within the scope of this system. The account shall state the level of cover of the home State.

Section 16

Entry into force

This Decree enters into force on 8 April 2004.