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# The operating licence for an investment firm

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An investment firm is a company whose main activity is providing investment services.

A licence is needed to operate as an investment firm, and this is issued by Finantsinspektsioon.

## Applying for an operating licence as an investment firm

Operating licences for investment firms are issued and can be withdrawn by Finantsinspektsioon. The operating licence is not time-limited, is non-transferable and may not be acquired or used by anybody else. Operating licences are issued either separately for the provision of some investment services or for all investment services. Investment firms may provide only those investment services for which they have an operating licence. To provide other investment services, the investment firm must apply for an additional operating licence.

To apply for an operating licence, an application must be submitted to Finantsinspektsioon comprising a written notification and the annexes listed in the Securities Market Act.

To apply for an operating licence the founders of an investment firm or the management of the registered company must submit the following documents and data to Finantsinspektsioon:

1. A notarised copy of the foundation contract or decision for a business being founded;
2. A copy of the statutes for a business that is operating, any decision by the general meeting to amend the statutes, and the amended text of the statutes;
3. A list of the shareholders of the applicant showing the name of each shareholder, their registry code or ID code, or date of birth if they have none, and details on the share or equity holdings of each shareholder and the voting weight given to them;
4. Data on the major shareholders of the applicant;
5. Details of the members of the management board and supervisory board of the applicant and of its senior managers;
6. Data on any business that the applicant or its management holds more than 20% of, where those data include the size of its equity, a list of its areas of activity, and the size of the holding of the applicant and each manager;
7. Data on the auditor of the applicant and on the people responsible for internal controls;
8. The initial balance of the applicant and a review of income and expenses or the balance and profit report as at the end of the month prior to the application for an operating business, and annual reports for the past three years if they exist;
9. Documentation certifying the value of net own funds for a business that is already operating,

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together with the auditor's reports;

10. If a significant share of the applicant is owned by a credit institution, fund manager, investment fund, investment firm, insurer or other body from a third country that is subject to financial supervision, confirmation from the supervisory institution of that country that that body has an operating licence and that its activities are within the law as far as the supervisory institution is aware;
11. The three-year business plan of the applicant, which must cover at least its planned activities, the organisational architecture of the applicant, the locations of its activities, the IT systems and other technical means to be employed, and a description of its financial results;
12. Internal rules or proposed rules for bookkeeping;
13. The operating manual required by the Money Laundering and Terrorist Financing Prevention Act and the draft internal rules for ensuring compliance with this manual;
14. A document in which the applicant undertakes to make the one-off payment required by the Guarantee Fund Act.

The decision to issue an operating licence or to refuse it is taken by Finantsinspektsioon within two months after all the necessary documentation and data have been received, and not later than six months after the application for the operating licence has been received.

## **Applying for an additional operating licence**

To apply for an additional operating licence, the investment firm must submit the following:

1. A list of the shareholders of the applicant showing the name of each shareholder, their registry code or ID code, or date of birth if they have none, and details on the share or equity holdings of each shareholder and the voting weight given to them;
2. Documentation certifying the value of net own funds for a business that is already operating, together with the auditor's reports;
3. If a significant share of the applicant is owned by a credit institution, fund manager, investment fund, investment firm, insurer or other body from a third country that is subject to financial supervision, confirmation from the supervisory institution of that country that that body has an operating licence and that its activities are within the law as far as the supervisory institution is aware;
4. Internal rules or proposed rules for bookkeeping;
5. The operating manual required by the Money Laundering and Terrorist Financing Prevention Act and the draft internal rules for ensuring compliance with this manual.

## **Applying for an operating licence to operate abroad**

If an investment firm registered in Estonia wants to establish a subsidiary or branch to provide investment services in a foreign country or to take a large enough holding in an investment firm from a foreign country to make that into a subsidiary, it must apply to Finantsinspektsioon for permission to do so.

To apply for the licence, a written application and the following data must be submitted to Finantsinspektsioon:

1. The country where the subsidiary or branch will be established or where the investment firm in which a stake will be acquired is registered;

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2. The business name and address of the subsidiary or the name and address of the branch;
  3. For an investment firm in a third country in which a stake will be acquired, the annual reports for the past two financial years with an Estonian translation signed by the applicant;
  4. The business plan of the subsidiary or branch;
  5. Details of the members of the management bodies of the subsidiary or the manager of the branch;
  6. Data on the major shareholders of the subsidiary.

## **Setting up a branch of an investment firm in a country in the European Economic Area**

Setting up a branch of an investment firm in a country in the European Economic Area is covered by the Securities Market Act. The freedom to establish investment firms derives from Article 33 of Directive 2004/39/EU of the European Parliament and of the Council on markets in financial instruments (MiFID). Investment firms have the right to provide the investment and auxiliary services listed in the annex to MiFID where they relate to relevant financial instruments.

An investment firm that wants to provide the investment and auxiliary services listed in its operating licence to other countries in the European Economic Area and to set up a branch in the territory of another country must inform Finantsinspektsioon of its plans and submit the following data and documents:

1. The name of the country where the investment firm wants to establish a branch;
2. A business plan for the branch that must include data on all the investment and auxiliary services that it is planned to provide in that country, a description of the organisational structure of the branch, an explanation of how the branch intends to use investment agents, and the personal data of the agent if one exists;
3. The address of the branch;
4. The names of the managers of the branch.

The documents required for establishing a branch are to be submitted in Estonian with a notarised or authorised translation into the official language or one of the official languages of the state where the investment firm wishes to establish its branch. Many financial supervisory authorities also accept documents in English.

The business plan of the branch must contain the following information:

1. The structure and strategy of the group, which describes how the branch will support and participate in the strategy of the firm or group, and what the main functions of the branch will be;
2. A description of the business strategy, stating who the main clients or partners of the branch are expected to be, and how it is planned to reach those clients and what services will be offered to them;
3. A description of the organisational structure, stating where the branch fits into the overall structure of the firm and what the organisational architecture of the branch itself will be, including how the chain of command will function. It should also list the people who will be responsible for the everyday work of the branch, for compliance controls and for handling complaints. It should also explain the reporting between the branch and the firm and show information on the transfer of functions;

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4. A description of the control systems, stating how the money and assets of clients will be protected, what the internal rules will be, including those for avoidance of conflict of interests of employees, anti-money laundering measures and controls for outsourced services, and how compliance will be ensured for those activities governed by legal obligations;
  5. How the auditing of the branch will be organised;
  6. A financing plan for the operations of the branch for at least the next 12 months.

If the branch plans to use investment agents, this should be noted in the application and if the agent is known then their personal data should be submitted.

If the investment firm wants to use investment agents that are established in the other country, this is treated equivalently to founding a branch and the conditions regulating the founding and operation of a branch apply equally.

We would request that the investment and auxiliary services that the branch plans to provide be submitted in the table format presented in the form. The form should give the data on the service provider and how the planned cross-border services relate to financial instruments.

Together with the names of the branch managers required by the Securities Market Act, their biographies should also be submitted. The financial supervisory authority of the country where the branch will be located must be able to assess the suitability of the branch manager under the law of that country.

The investment firm must inform Finantsinspeksioon of any change in the data or documents required by the Securities Market Act where possible at least one month before the change comes into force or immediately after it has done so. Finantsinspeksioon will inform the financial supervisory authority of the other country of the change.

### **Time limit for procedures**

Finantsinspeksioon takes a decision on whether to send all the data and documents required for establishing a branch to the supervisory authority of the other country or to refuse to do so within two months of receiving them, but in any case no later than within three months of receiving the application. Finantsinspeksioon informs the investment firm immediately as to the decision of whether or not to forward the data and documents.

The investment firm may establish a branch in another country only in accordance with the laws of that country.

Please note: Finantsinspeksioon does not advise the founder of the branch on matters of business law, including establishing a branch, or tax law. It is recommended to contact an appropriate legal adviser for this.

### **Application fee**

No application fee is required by Finantsinspeksioon for establishing the branch of an investment firm in a country in the European Economic Area.

## **Setting up a branch of an investment firm from a foreign country in**

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## Estonia

An investment firm registered in a foreign country must apply to Finantsinspektsioon for a licence to establish a branch in Estonia.

To apply for a licence, the following must be submitted to Finantsinspektsioon:

1. The name and address of the branch;
2. Details of the management of the branch in accordance with the commercial code;
3. Data on the major shareholders of the investment firm;
4. Data and documents required by the commercial code;
5. The two most recent annual reports of the applicant;
6. The business plan of the branch.

An investment firm from a third country must also submit to Finantsinspektsioon the following from the securities markets supervisory institution of its own country:

1. Authorisation to establish a branch in Estonia;
2. Confirmation that the firm has a valid operating licence in its home country and that its activities are correct and in line with good practice;
3. Data on the financial position of the applicant, including the size of its equity, its capital adequacy, its solvency, and the investor protection scheme of its home country.

Data and documents in a foreign language must be legalised in accordance with the Consular Act and submitted together with an approved Estonian translation.

## Setting up an office of an investment firm from a foreign country in Estonia

If an investment firm registered in a foreign country wants to open an office in Estonia, it must submit information on it to Finantsinspektsioon together with the following data and documentation:

1. Confirmation from the securities markets supervisory authority of the home country that the investment firm has a valid operating licence;
2. An operating plan for the representative office;
3. A Power of Attorney showing the authorisation of the representative;
4. Documents showing the registration of the investment firm in its home country (an extract from the commercial register or a copy of its registration documents);
5. The statutes of the investment firm;
6. The location of the representative office, and its address and telecommunications numbers.

These documents must be submitted to Finantsinspektsioon together with an approved Estonian translation.

## Providing cross-border investment services in countries in the European Economic Area

The provision of cross-border investment services is governed by the Securities Markets Act. The

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freedom to provide cross-border investment services derives from Article 31 of Directive 2004/39/EU of the European Parliament and of the Council on markets in financial instruments (MiFID). Investment firms have the right to provide the investment and auxiliary services listed in the annex to MiFID where they relate to relevant financial instruments.

An investment firm that wants to provide investment and auxiliary services for the first time without establishing a branch must inform Finantsinspektsioon about this and submit the following data and documents:

1. The name of the country where it is planned to provide the investment and auxiliary services;
2. A business plan together with a description of the planned investment and auxiliary services;
3. If the investment firm plans to use an investment agent in the country where it wants to provide services, then the personal data for that investment agent.

## **Providing cross-border investment services in Estonia**

Neither the provider of cross-border investment services itself nor its branch need be registered in Estonia. Investment firms registered in the European Economic Area may start to provide cross-border investment services in Estonia after the securities markets supervisory institution of the firm's home country has forwarded to Finantsinspektsioon a notification of this with the business plan and description of planned services.

The investment firm providing cross-border investment services must give notification in writing of proposed changes to business plan in good time to both Finantsinspektsioon and the securities markets supervisory institution of its home country.