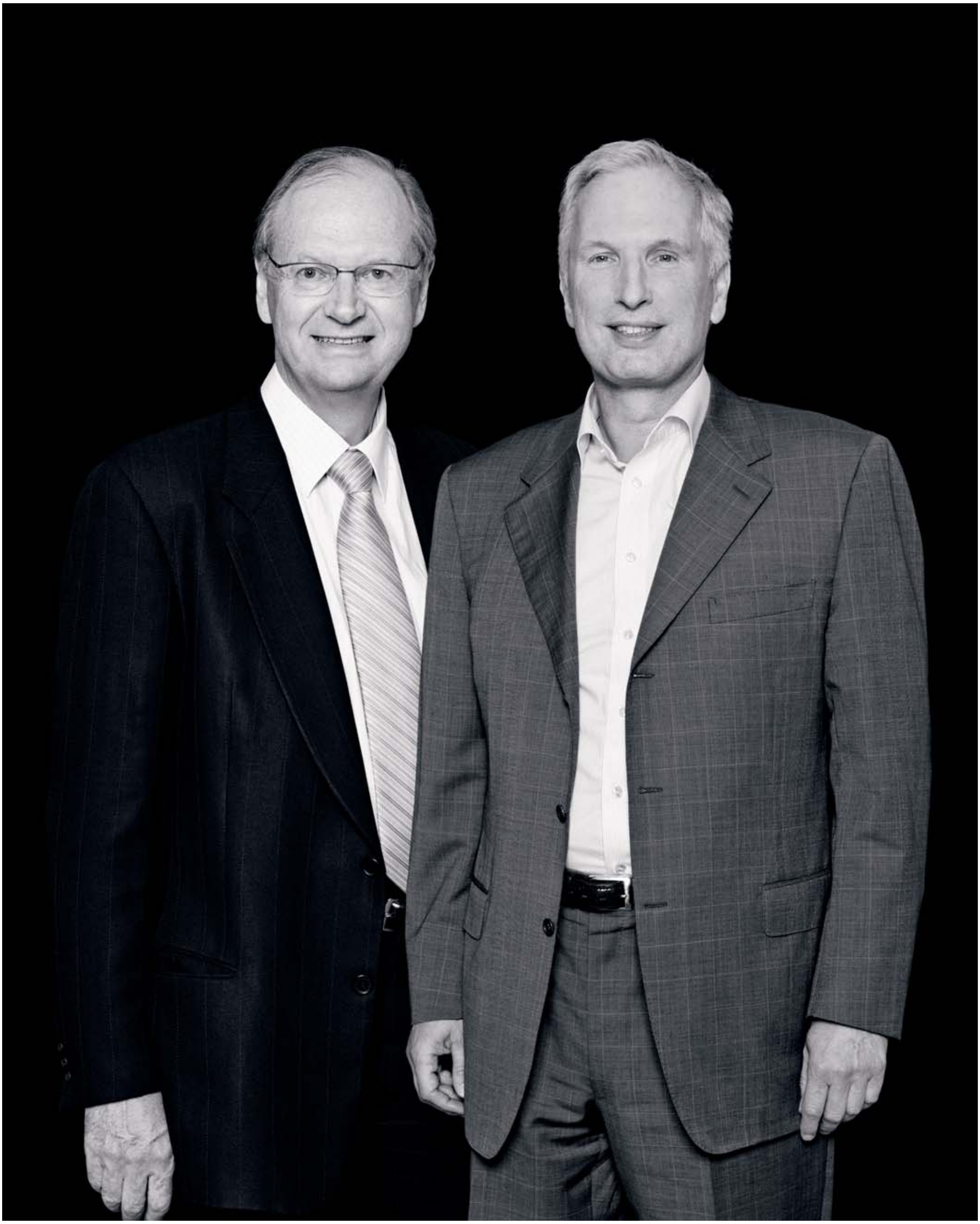
dvca

Danish Venture Capital and Private Equity Association

Active ownership and transparency in private equity funds

Guidelines for responsible ownership and good corporate governance



Ole Steen Andersen

Ole Steen Andersen became chairman of DVCA in March 2008.

Ole Steen Andersen has a long career with the central administration, NKT and Danfoss behind him. Most recently he was Executive Vice President and CFO of Danfoss A/S, where he retired in 2007 on the occasion of the annual meeting.

Ole Steen Andersen is a member of the board of SPEAS and Nordic Industrial Advisor for CVC Capital Partner as well as being a member of the Advisory Board of Dansk Merchant Capital.

Furthermore, Ole Steen Andersen is chairman of the board of the venture company HedgeCorp A/S and member of a large number of boards both in Denmark and abroad.

Christian Frigast

Christian Frigast is a managing partner in Axcel, which he co-founded in 1994.

Previously Christian Frigast was Executive Vice President of Incentive (1993–94) and director of the former Unibank, now Nordea (1973–92).

Christian Frigast is an M.Sc. (Political Science and Economics) and studied, among other places, at Stanford University in the USA. As well as sitting on the boards of companies owned by Axcel, he is the deputy chairman of Dampskibsselskabet Torm.

Christian Frigast is deputy chairman of DVCA and chairman of DVCA's Private Equity committee.

More openness creates value for private equity funds and their investors

Foreword

Since autumn 2007 a large number of DVCA's members have been working on creating the framework for greater openness and transparency in private equity funds. With these guidelines DVCA hopes to kick-start a dialogue on active ownership.

The guidelines will set new standards for the communication of private equity funds with the outside world. DVCA is aware that parts of the outside world have hitherto perceived the industry as being too closed, and naturally we ourselves must accept the main responsibility for this. DVCA recognises that dialogue with the outside world not only brings about greater appreciation of how we work, but may also be valuable for enabling the industry to pick up the signals that the outside world is sending.

In addition to the guidelines, DVCA has also prepared a background report (in Danish only) giving a detailed description of what active ownership is all about. This is supplemented with 10 interesting investments which each tell in their own way how private equity funds are working with companies. An important part of the basis for our report is a large research project which researchers from CEBR (Centre for Economic and Business Research at Copenhagen Business School) have been carrying out during the past year. This work, which has been financed by DVCA, has resulted in an independent report (in Danish only) which will later be available for downloading from DVCA's website – www.dvca.dk.

The drawing up of the guidelines is just the beginning. Now they must be put into operation, and in future this will be reflected in greater openness in private equity funds and in the companies which the funds own. DVCA will itself lead the way with a more proactive role which can help to direct more focus on how active ownership can create sound, strong companies. Among other things, DVCA will in future be publishing a yearly report containing detailed accounts of progress in the industry.

During the working process, DVCA has drawn on the services of an external reference group consisting of Ingerlise Buck (head of department, Danish Confederation of Trade Unions, LO), Professor Jan Schans Christensen (University of Copenhagen), Jørgen Mads Clausen (CEO, Danfoss), Bjarne Graven Larsen (chief investment officer, ATP), Peter Schütze (head of retail banking, Nordea) and Bente Sorgenfrey (chairwoman, Confederation of Professionals in Denmark, FTF). We would like to take this opportunity to thank them for the outstanding commitment of this group to the work on the guidelines. However, it must be stressed that the responsibility for the guidelines rests solely with DVCA.

A special thank you must also go to the working group which, on behalf of the industry, has taken time to draw up the guidelines.

DVCA will now monitor how the guidelines are observed and how important they prove to be for our stakeholders. On this basis, in 2010 we will evaluate the need to revise the guidelines.

Ole Steen Andersen
Chairman, DVCA

Christian Frigast
Chairman of DVCA's working group and deputy chairman, DVCA

»A private equity fund can be seen as a professional investment vehicle where a number of investors – typically pension funds, financial institutions and large companies – invest in companies deemed ripe for acquisition.«

What is a private equity fund and how does it work?

A private equity fund is a professional investment vehicle where a number of investors[1] – typically pension funds, financial institutions and large companies – invest in companies deemed ripe for acquisition via a management company which advises on investments in companies matching the criteria agreed on by the investors and the fund.

The fund exercises active ownership on behalf of the investors and develops the companies with a view to increasing their value. Active ownership means that the fund not only makes capital available but also works actively with the company's board and management on the company's development.

The typical investment horizon for those investing in private equity funds is 10–12 years. During this period, known as the commitment period, the funds use the time to find the right companies in which to invest and then spend the rest of the period developing and subsequently selling these companies.

Characteristic of private equity funds' investments in companies is for a combination of equity and loan capital to be injected when the acquisition is financed, and for a group of key employees to become co-owners of the company along with the private equity fund.

Characteristic of private equity funds' investments in companies is for a combination of equity and loan capital to be injected when the acquisition is financed, and for a group of key employees to become co-owners of the company along with the private equity fund.

When a private equity fund is set up, it receives a binding commitment on the provision of capital from its investors. In Denmark, this is typically via a limited partnership or similar corporate form familiar to investors from international private equity funds. The fund's management company is then free to use this capital within the agreed constraints.

The management company exercises its right to draw on committed capital as companies are acquired. Investors' capital therefore remains with the investors until a concrete investment is made, and repayments are made through ongoing divestments of companies. This results in the best possible use of investors' capital.

The fund's overall return depends on the performance of the individual companies in which it has invested. Two different methods can be used to measure this return: the internal rate of return (IRR) or a return multiple, namely the relation-

1. Investors are also known as limited partners.

ship between the amount paid when the fund is liquidated and the amount that the fund has drawn from its investors.

The average annual return on investment in companies owned by private equity funds in Europe in 1996–2006 as measured by the IRR method was 13.6%.[2] In Denmark the return on divested companies was just above 30% p.a. in the period from 2000 to 2007.

Why is there a need for guidelines for private equity funds?

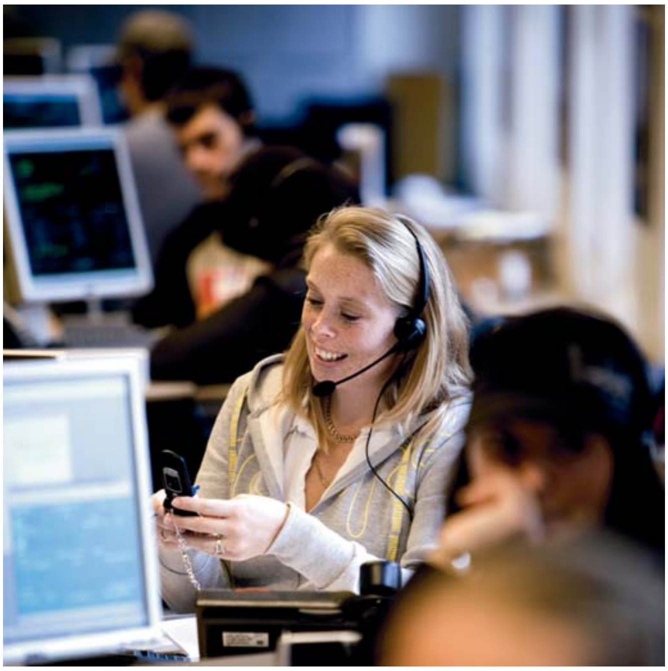
In Denmark, private equity funds and the companies in which they invest are covered by the same legislation as other businesses. However, private equity funds have a responsibility for and interest in ensuring that the sector in general behaves and is perceived as a credible corporate citizen, and that there is broad understanding of private equity funds' business model. This requires that the funds exercise responsible ownership.

As a result of the relatively high returns that many funds have generated in recent years, more and more money is being invested in private equity funds. Private equity funds therefore own a growing proportion of companies, both in Denmark and abroad. For example, it was estimated in 2006 that approximately 4% of employees in the Danish private sector worked for companies owned by such funds.[3]

When a company is taken over by a private equity fund, the main goal is to increase the value of the company by developing and strengthening it. This is typically achieved by accelerating its growth and raising its profitability, often combined with acquisitions of other companies or activities. The company may also be streamlined through the divestment of non-core activities.

After a company has been taken over by a private equity fund, significant strategic changes will normally be made so that the company is as well-equipped as possible to tackle the specific challenges that it faces. These sometimes far-reaching change processes – as well as recent years' increased activity in the private equity sector – have resulted in greater public interest in private equity funds, both in Denmark and abroad. This has led to a growing desire for openness about the way in which private equity funds do business. This applies

2. Source: European Private Equity & Venture Capital Association (EVCA).
3. Source: Kapitalfonde i Danmark [Private equity funds in Denmark], Økonomisk Tema, Danish Ministry of Economic and Business Affairs, November 2006.



throughout the cycle from the initial acquisition of a company through its development and on to its sale to new owners after a number of years.

Private equity funds, investors and the rest of society have a mutual interest in the companies owned by private equity funds being competitive on a healthy basis. Responsible ownership in private equity funds means that funds have an opportunity to develop their companies in close collaboration with each company's board, management and employees. One important requirement in this respect is for the wider society to be confident that private equity funds operate on a known and transparent basis. DVCA wishes to promote this through these guidelines, which pave the way for openness and dialogue through better reporting and greater transparency.

Companies owned by private equity funds fall somewhere between companies owned by individuals or foundations, which are not subject to exacting communication and disclosure requirements, and listed companies, which are subject to detailed rules on reporting to the outside world. It is therefore important to stress that there are a number of key differences between the communication from a listed company and that from a company owned by a private equity fund.

Private equity funds, investors and the rest of society have a mutual interest in the companies owned by private equity funds being competitive on a healthy basis. Responsible ownership in private equity funds means that funds have an opportunity to develop their companies in close collaboration with each company's board, management and employees.

In listed companies, ownership is typically spread across thousands of different owners (shareholders) who are constantly trading in the company's shares, which means that a company must communicate proactively with the public to ensure that important information about the company reaches both existing and prospective new shareholders simultaneously. Companies owned by private equity funds differ significantly from this because they may have as little as one owner. There is also the important difference that the company's shares are not constantly changing hands. The company and the fund that owns it have direct and more informal access to both the fund's ultimate investors (limited partners) and the company's employees.

Communication between a fund and its investors also differs significantly from listed companies' communication with their shareholders and the market in general. This is because an investor in a private equity fund commits his investment to a portfolio of companies for a lengthy period of time (corresponding to the life of the fund), whereas a shareholder in a listed company can, in principle, decide at any time to sell his shareholding, as mentioned in the previous paragraph. The information needs of an investor in a private equity fund are therefore different and typically of a more long-term/strategic nature than those of a shareholder in a listed company.

Listed companies are subject to formal requirements for detailed quarterly financial reporting. This is needed to ensure that all shareholders always have the same insight into a company's performance. By way of contrast, a private equity fund's close relationship with its investors can provide a better opportunity to focus on the long term, because it is agreed from the outset that the fund will pursue a strategy for each individual company that may stretch over 5–7 years.

This does not necessarily mean that investors receive less information. They simply receive it on a more ad hoc basis and are not limited to quarterly reports. Companies owned by private equity funds therefore avoid the administrative burden associated with preparing formal quarterly interim reports etc.

However, it has to be recognised that today's private equity funds own companies that may be of broad interest to society. These may be companies that are important for infrastructure or play a major role in the local area. They may also be companies that employ large numbers of people. In addition, many investors in private equity funds are pension funds, whose most important stakeholders are pension savers – typically ordinary salary earners.

The general public may therefore have an interest in gaining insight into how a private equity fund works and creates value. This is the background to why these guidelines specify a number of areas where private equity funds and their portfolio companies should publish information.

4%

In 2006 approximately 4% of employees in the Danish private sector worked for companies owned by private equity funds.

DVCA's guidelines for responsible ownership and good corporate governance in private equity funds in Denmark

Introduction to the guidelines

These guidelines apply at both company level and fund level. They also touch on DVCA's communication at sector level. First there is a brief description of relevant stakeholders and the application and scope of the guidelines.

Comments are attached to the guidelines to some extent. These comments are not part of the guidelines but briefly present the background to them.

DVCA has attempted to make the guidelines sufficiently flexible for them to be applied in practice in the world in which private equity funds and their companies operate – a world of constant change in both terms and expectations. It is therefore intended that the need to revise the guidelines will be assessed in 2010.

The guidelines make allowance for the diverse nature of private equity funds and their portfolio companies, which implies that there may be differences in good corporate governance and the way in which active ownership is exercised. DVCA is of the opinion that it is neither possible nor desirable to have specific and detailed legislation in this area.

The use of these guidelines on a "comply or explain" basis instead of legislation is dependent on the responsibility shown by private equity funds. This self-regulatory approach engenders an expectation that, as a general rule, private equity funds will comply with these guidelines, and that these guidelines are a suitable instrument for increasing general levels of information. This is first and foremost because such self-regulation is based largely on values accepted by a broad majority of players. However, not all funds and companies are alike, and so there is a need for a degree of flexibility.

Contents

I. The guidelines' origins, target group and stakeholders

1. Content and application of DVCA's guidelines for responsible ownership and good corporate governance in private equity funds in Denmark

These guidelines have been developed under the auspices of DVCA and are the responsibility of DVCA. To ensure that the guidelines reflect relevant stakeholders' needs for transparency, the process has been linked to an external reference group which has monitored and commented on the development of the guidelines. This reference group, which represents private equity funds' most important stakeholders, comprised:

Ingerlise Buck, head of department, Danish Confederation of Trade Unions (LO)
Jan Schans Christensen, professor of corporate law, University of Copenhagen
Jørgen Mads Clausen, chief executive officer, Danfoss
Bjarne Graven Larsen, chief investment officer, ATP
Peter Schütze, head of retail banking, Nordea
Bente Sorgenfrey, chairwoman, Confederation of Professionals in Denmark (FTF)

Jan Schans Christensen not only commented on the content of the guidelines but also advised DVCA on their design.

2. Who has an interest in these guidelines?

The main target group for these guidelines is private equity funds operating in Denmark and the companies in which they have invested. The guidelines are also expected to be of interest to investors in these funds and to employees, creditors, advisers and public bodies. The wider public may also have an interest in gaining an insight into how private equity funds work.

As members of DVCA, private equity funds and portfolio companies that meet the criteria set out below are expected to follow these guidelines on a "comply or explain" basis. This means that, as a general rule, the funds and their companies are expected to comply with these guidelines. Where a fund or company does not comply with the guidelines, the reasons for this are to be given.

DVCA wants these guidelines to serve as a practical tool. DVCA will therefore always engage in dialogue with funds and portfolio companies that can be expected to be covered by the guidelines. The definitions below should therefore be taken only as a general guide as to whether funds and companies are covered by the guidelines.

DVCA also encourages other players that operate as private equity funds but do not immediately fall under these definitions to subscribe to these guidelines.

DVCA's reference group

Jørgen Mads Clausen, chief executive officer, Danfoss
Jan Schans Christensen, professor of corporate law, University of Copenhagen
Ole Steen Andersen, chairman, DVCA
Peter Schütze, head of retail banking, Nordea
Ingerlise Buck, head of department,
Danish Confederation of Trade Unions (LO)

Not pictured:
Bjarne Graven Larsen, chief investment officer, ATP
Bente Sorgenfrey, chairwoman, Confederation of Professionals in Denmark (FTF)

DVCA's working group

Søren Vestergaard-Poulsen, CVC
Thomas Schleicher, EQT
Michael Haaning, Nordic Capital
Christian Frigast, Axcel (chairman)
Søren Møller, LD Equity
Viggo Nedergaard Jensen, Polaris
Anders Bruun Schmidt , Dania Capital
Bill Haudal Pedersen, Deloitte

Not pictured:
Christian Dyvig, Nordic Capital
Lars Berg-Nielsen, Deloitte

3. DVCA's working group on transparency and active ownership in private equity funds

DVCA's transparency and active ownership project has been led by a working group comprising a number of representatives of private equity funds that operate in Denmark:

Lars Berg-Nielsen, Deloitte,
Anders Bruun-Schmidt, Dania Capital
Christian Dyvig[4], Nordic Capital
Christian Frigast, Axcel (chairman)
Søren Møller, LD Equity
Viggo Nedergaard Jensen, Polaris Private Equity
Thomas Schleicher, EQT
Søren Vestergaard-Poulsen, CVC

The working group has been assisted by communication consultant Joachim Sperling (project manager), state-authorised public accountant Bill Haudal Pedersen from Deloitte, senior consultant Gorm Boe Petersen from DVCA, and chief financial officer Lars Thomassen and communications manager Trine Juul Wengel from Axcel.

4. Succeeded by Michael Haaning in January 2008.

4. Entry into force

The part of the guidelines that concerns private equity funds enters into force on 1 January 2009. Provisions relating to disqualification apply from today's date, cf. paragraph 5 of section III on private equity funds' relations with their industrial network.

At company level, the guidelines apply to financial years starting on or after 1 January 2008.

5. Which private equity funds and companies are covered?

A **private equity fund** is covered by these guidelines if it is:

- a private equity member of DVCA and

- has committed capital of at least DKK 500 million, calculated as total committed capital for all funds that are managed by a given management company (general partner) and invest directly in companies and

- has a company structure which includes one or more investors (limited partners) and

- undertakes the bulk of its activities in Denmark.

Members of DVCA whose ultimate parent company is registered in a country other than Denmark cannot therefore be required to comply fully with DVCA's guidelines, as they may be subject to the guidelines that apply where the fund is registered.

Those parts of a foreign private equity fund's activities that can be attributed to Danish investments are nevertheless covered by the guidelines in paragraphs 2–5 of section III in the same way as Danish private equity funds.

A **private equity portfolio company** covered by these guidelines is a Danish company (group) which

- is controlled[5] by one or more Danish or foreign private equity funds (regardless of whether these funds are covered by the guidelines) and

- is, as a minimum, of a size resulting in classification as a class C (large) company under the Danish Financial Statements Act.

The criteria for class C (large) companies as at 1 January 2008[6] are:

- Revenue in excess of DKK 238 million (EUR 32 million)
- Assets in excess of DKK 119 million (EUR 16 million)
- More than 250 employees

5. Control means that a private equity fund has a decisive influence over the company in question.
6. On 3 June 2008 the Danish Parliament adopted an act amending the Danish Financial Statements Act (L 100) according to which, among other things, the criteria for class C (large) companies have changed with effect from financial years beginning 1 September 2008 or later. Subsequently, the criteria are DKK 286 million for revenue and DKK 143 million for assets.

II. Guidelines at company level

1. Requirements for reporting and corporate governance

A. Background

Compared to many other countries, such as the UK, relatively rigorous requirements are made of companies' annual reports in Denmark. This means that private equity portfolio companies covered by these guidelines are already obliged under the Danish Financial Statements Act to include a management report in their annual reports, which generally entails a high level of information.

However, the Financial Statements Act is relatively unspecific about the level of detail that the information in the management report should contain, which means that there may be a need for information that is not covered by the requirements of applicable legislation. It has therefore been deemed appropriate to supplement the provisions of the act.

B. Guidelines

Annual report in general

Companies are to provide additional detailed information on the following in their annual reports as a supplement to applicable legislation:

- Operational and financial developments
- Corporate governance
- Financial and other risks
- Employee matters

These extended requirements for the management report in the annual report build on two fundamental principles: substance over form, and materiality over box-ticking. This means, for example, that companies are to present information that is relevant to the company's specific situation in the light of it being owned by a private equity fund.

It is recommended that the management report states that the company's owner and thereby also the company are covered by DVCA's guidelines. It is also recommended that reference is made to DVCA's website, where these guidelines can be found.

The audited annual report is to be made available on the company's website as soon as it is published.

Operational and financial developments

The report on financial developments is to include a presentation of revenue and earnings broken down by principal business segment, together with a general assessment in the light of the established strategy.

The management report is also to include a description of the company's expected revenue and earnings performance and of any significant changes in the established strategy.

Corporate governance

The management report is to include information on the company's ownership and capital structure. The main aim of this information is to provide an overview of the management set-up and capital structure established by the company's owner – the private equity fund.

This information is to include:

a. Which private equity fund owns the company and the size of its holding
b. Which partner(s) in the private equity fund represent(s) the fund in the company
c. Who nominated the individual members of the board
d. Capital structure (e.g. breakdown into share classes etc.)
e. The general meeting (any special provisions in the articles of association concerning the board's powers/authority to approve distributions etc.)
f. Stakeholders (specification of who are the company's primary stakeholders and what management is doing to accommodate them)
g. The board's work (number of board meetings, use of committees etc.)
h. Current remuneration of the board and management
i. Shares held directly by the board (collectively) and management (collectively) if they exceed 5% on the balance sheet date

Financial and other risks

The report is to have a particular focus on financial risks associated with the chosen capital structure.

Where relevant to the company, the management report should also contain information on the company's environmental performance and possible impact on climate change.

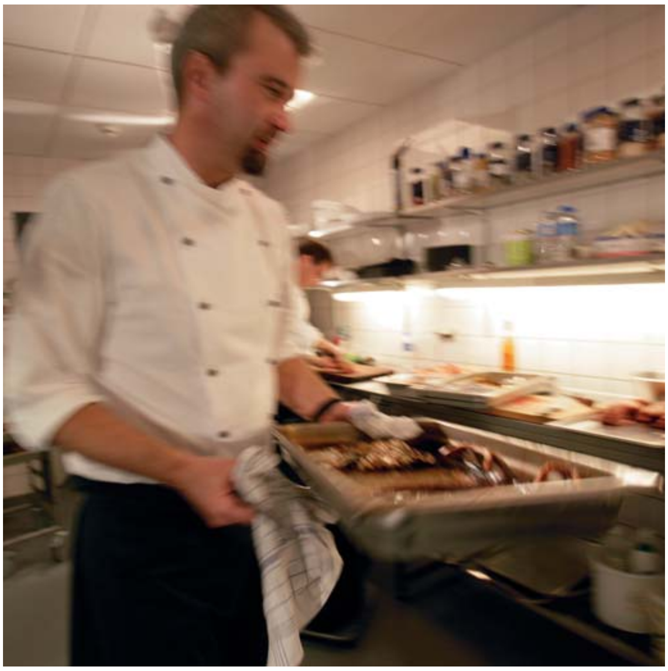
Employee matters

The report is to cover employee turnover (terminations, recruitment, number of employees at beginning and end of year, broken down by Denmark and rest of world) and any other special matters of significance to employees.

Companies delisted in connection with a transaction

To ensure that the flow of information to the company's shareholders while it was listed in the form of interim and annual reports in accordance with OMX Nordic Exchange Copenhagen's rules does not deteriorate as an immediate consequence of the private equity fund's takeover and delisting of the company, the company's initial semi-annual and annual reports are to provide the same level of information as when the company was listed.

After this period, the company is to prepare a semi-annual report (without detailed financial information) that describes whether the company is pursuing the general aims published in the annual report for the previous year. This report is to be made available on the company's website within three months of the end of the period.



2. Submissions to DVCA by private equity portfolio companies

A. Background

In order to provide the data needed to assess private equity funds' activities, private equity portfolio companies covered by these guidelines are to submit a variety of information to DVCA (or a company designated by DVCA). See also the comments on DVCA's duties in section IV.

B. Guidelines

Companies covered by these guidelines are to submit data relating to the following to DVCA or the company designated by DVCA:

- Revenue and earnings
- Organic growth
- Capital structure
- Employee turnover (terminations, recruitment, number of employees at beginning and end of year, broken down by Denmark and rest of world)
- Investment in human capital (employee development), investment in fixed capital, expenditure on research and development
- Cash flows

DVCA will send a guideline and a reporting form to the companies concerned.

III. Guidelines at fund level

1. Communication and reporting by a private equity fund

A. Background

The aim of these guidelines is to bring about the necessary transparency and information from private equity funds and the companies they own. Beyond this, the guidelines do not themselves make recommendations as to how ownership of portfolio companies is to be administered. However, DVCA advises its member companies to formulate guidelines for social responsibility in their investment policy. Because the investors behind private equity funds have very often already formulated such guidelines themselves, the development of guidelines for social responsibility can usefully be performed in collaboration with investors.

B. Guidelines

Information on the private equity fund's website

A private equity fund covered by these guidelines is to include on its website:

1. Confirmation that the fund follows the "comply or explain" principle with regard to these guidelines.

2. Information on the extent to which the fund departs from these guidelines, with an explanation for any such departures.

3. A description of the fund's history and origins.

4. A description of the fund's management and organisation, including general partners and individual board members, showing significant directorships and other posts held by each member.

5. Possibility of downloading the management company's accounts.

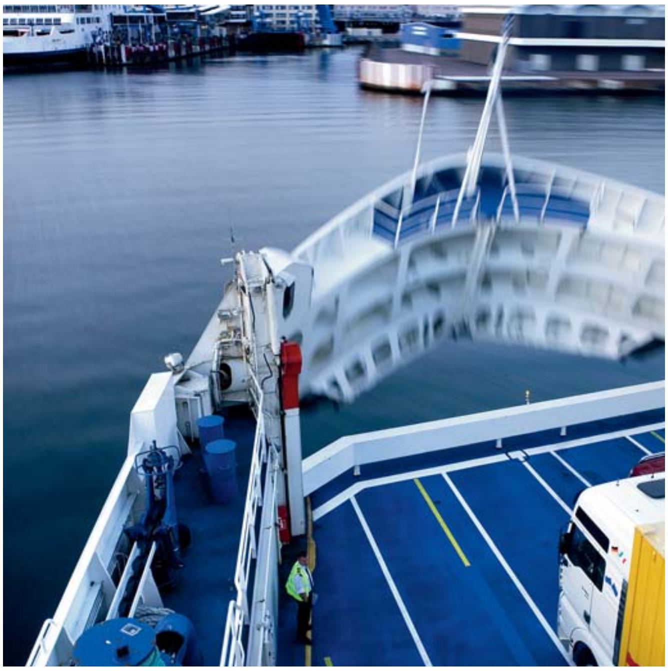
6. Where the carried interest programme for general partners departs significantly from the market standard, a general description of the programme is to be given.

> The market standard is currently for general partners to receive carried interest (additional return) on their investment in a fund if they generate an annual return in excess of a basic rate of return (normally 8%) on committed capital after all costs (such as management fees). The size of this carried interest varies, but is typically 20% of any return generated over and above the 8% basic return. This basic return is also known as the "hurdle rate". Management fees and administrative expenses etc. are to be reimbursed before carried interest can be paid out.

7. General strategy for the fund, including a description of the fund's working methods and strategy for developing companies (streamlining, restructuring, expansion etc.).

8. Policy on corporate social responsibility – a description of the fund's principles for social responsibility in its investment policy.

9. Investment criteria
   a. The fund's geographical focus
   b. The fund's sector focus



10. Investors by type and country. The breakdown by type is to show the proportions of pension funds, insurance companies, banks, funds of funds[7], industrial investors, SWFs[8], private investors etc. The breakdown by country is to be divided into Denmark, other Nordic, other Europe, USA, rest of world.

11. Information on assets under management.

12. A description of the fund's companies stating
    a. Geographical location (Denmark, other Nordic, other Europe, USA, rest of world)
    b. Industrial sector (agriculture, food, textiles, chemicals etc. – cf. Statistics Denmark's classifications)
    c. Contact names or references to the companies' websites, key figures for the companies
    d. Examples of how the fund has created value in relation to its investments

13. General information on developments in portfolio companies and any significant changes in portfolio companies each year.

14. An overview of divestments by sector, fund and exit year with a description of the buyer of each company.

15. Possibility of downloading annual reports from portfolio companies (possibly in the form of a link to the portfolio company's website).

16. Press contact.

7. A fund of funds is an undertaking whose primary activity is investing in private equity funds.
8. SWF is an abbreviation for sovereign wealth fund (a state-owned fund).

2. Submissions to DVCA

A. Background

It is appropriate for private equity funds covered by these guidelines to submit a variety of information to DVCA (or a company designated by DVCA) in order to provide the data needed to assess private equity funds' activities. See also the comments on DVCA's duties in section IV.

B. Guidelines

A private equity fund is to submit the following information to DVCA:
- The amount raised per fund and the upper limit for the size of the equity investments that the private equity fund may then make
- Purchases and sales of companies and their enterprise value broken down by company

3. Reporting to limited partners

A. Background

Limited partners are a private equity fund's investors. Communication with limited partners is extensive and follow EVCA's guidelines, which provide a standardised framework for communication.

As a result of the extensive and often business-critical communication between limited and general partners, it is not possible to share the content of this communication with the public. DVCA nevertheless recommends that, taking due account of their business model, funds impose as few restrictions as possible on their investors' disclosures concerning their involvement in a particular fund.

B. Guidelines

Private equity funds covered by these guidelines are to:

1. Follow established guidelines for communication with limited partners/investors, which will normally be EVCA's guidelines, which can be found at www.evca.org. This information is to include a short description of each individual investment in the fund, an overview of the individual limited partner's involvement in the fund, and details of fees to general partners.

2. Value portfolio companies in accordance with the valuation guidelines published by the International Private Equity and Venture Capital Board (IPEV) or the Private Equity Industry Guidelines Group (PEIGG) or such other standardised guidelines as may be published in the future.

4. Requirements for communication by private equity portfolio companies

A. Background

Beside the general need for increased transparency in relation to private equity funds and the companies they own, there may be situations where there is a particular need for communication.

B. Guidelines

General

A private equity fund has a duty to communicate effectively with employees and other important stakeholders either directly or through its portfolio company throughout the period of ownership. This is to happen wherever relevant and possible, but taking due account of the legitimate interests of the private equity fund and the company in confidentiality, which may pose an obstacle to communication.

Private equity funds are to prioritise good and open ongoing collaboration with the company's employees through information, consultation and negotiation with union representatives and other employee representatives.

The private equity fund and/or company must keep union representatives or other employee representatives updated through the company's works council, employee-elected board members etc. concerning any plans the fund may have for the company that may be of material significance to employees. Information must also always be provided in accordance with applicable legislative requirements and stock exchange rules.

Communication in connection with a private equity fund's acquisition of companies

Regardless of whether investment is being made in a listed company or another type of company, planned investments are not normally communicated before they are made. However, this does not apply if disclosure is required by applicable legislation or stock exchange rules.

The following applies when a private equity fund takes over a company:

In connection with the acquisition, the outside world is to be informed about the new owner's plans for the company.

External communication, including press releases, is to contain, as a minimum, information on the following:
- The new owners' identity
- The commercial rationale for the investment
- Development plans for the company (general strategy)
- Expectations for the company's development
- Expected ownership horizon
- Effect on stakeholders

The private equity fund and/or company is to hold meetings with union representatives or other employee representatives under the auspices of the company's works council etc. to organise information for employees and develop a plan for internal communication.

4. Requirements for communication by private equity portfolio companies (continued)

Internal communication in connection with a private equity fund's acquisition of companies

In connection with the acquisition of a company, the company's employees are to be informed of the new owner's plans for the company and of the opportunities and consequences that the change of ownership will have for employees. This is to happen as early as possible and in accordance with relevant legislative requirements and stock exchange rules.

Communication materials, messages etc. should be formulated in collaboration with representatives of the company to ensure relevance and backing within the organisation.

A plan for internal communication in connection with the acquisition of a company is expected to contain the following:
- Description of what is to be communicated to whom and when
- Timetable for employee meeting(s) to present the new owners
- Plan for following up on employee meetings, including follow-up on topics that employees can reasonably be expected to want answers to
- Internal releases (elaboration of press release, possibly including the owners' reasons for deciding to sell to the new owners)
- Q&A list that as far as possible answers the questions that can be expected from employees and other stakeholders
- Relevant internal communication, which is to be made as widely available as possible, either by using existing channels or by establishing new ones (intranet, newsletter etc.)

The private equity fund and/or company must also ensure that the company can fulfil its obligations under applicable labour agreements and legislation to ensure that union representatives or other employee representatives are informed and involved in matters of material significance to employees' terms of employment as early as possible.

Communication in connection with a private equity fund's sale of a company

A plan for internal and external communication in connection with divestment is to be an integral part of the divestment strategy, and is to be developed in conjunction with the buyer of the company.

In principle, the buyer assumes responsibility for communication concerning the takeover of the company once the agreement is entered into. The private equity fund is as far as possible to ensure that DVCA's guidelines for communication are observed during the sale process, regardless of whether the company's new owner is a member of DVCA.

5. Private equity funds' relations with their industrial network

A. Background

Private equity funds' particular strength is active ownership in the form of a capacity to offer companies strategic advice, industrial expertise, suitable capital resources and a network based on the specific circumstances of the individual company.

Private equity funds' industrial network (in other words, the people who either advise the management company or are included directly on companies' boards) normally consists of people who are or have been active players in the industry. This group of people can advise at fund level on the acquisition and sale of companies, and contribute at portfolio company level to developing the company in question. This collaboration can take many different forms, including advising on a consulting basis.

B. Guidelines

There must be no doubt about whose interests the individuals involved in a transaction are acting in. This applies particularly if a person is actively involved in the management of a company and has a decisive influence over possible transactions.

Particular problems can arise when one or more private equity funds show an interest in a company in a purchase or sale situation. In such a situation, executives, directors and financial advisers of a candidate company who have a significant financial or commercial interest in the bidding private equity fund have a duty to inform the chairman of the company in question of this in accordance with standard disqualification principles. This applies regardless of whether this person is part of the private equity fund's formal advisory network as published on the fund's website.

The above applies from today's date.

IV. DVCA in the future

1. Requirements for DVCA's communication and data resources

To create a better understanding of private equity funds, it is important that the sector itself takes responsibility for collecting and consolidating data. These data are to come from both portfolio companies and the funds.

DVCA is to publish an yearly report on the basis of a variety of information submitted by private equity funds and portfolio companies. This report is to include a general account of trends in the industry and a statement from DVCA's corporate governance committee.

The idea is for DVCA's yearly report to include general information on:

- Total assets under management
- Capital structure and financial gearing
- Total return relative to benchmark
- Number of employees in portfolio companies
- Total number of acquisitions and transaction sizes
- Key figures for portfolio companies, such as revenue and earnings
- Estimates of changes in number of employees due to terminations and recruitment
- Estimates of investment in fixed capital, R&D etc.

To support the preparation of an aggregated analysis at sector level of the main sources of value creation, the following are to be included:

- Capital structure and financial restructuring
- Growth in market multiples
- Growth generated by strategic restructuring and operational improvements

To ensure consistency from country to country, this analysis will be developed in close collaboration with Walker Working Group and the British Private Equity and Venture Capital Association (BVCA).

2. DVCA's committee for good corporate governance in private equity funds

A committee will be appointed to monitor compliance with these guidelines and propose any necessary adjustments. This committee will comprise DVCA's chairman, a state-authorised public accountant and an independent industry representative.

These guidelines are to be seen as a first step in creating a set of general rules for funds' activities, and the idea is for the guidelines to evolve in line with practice in the sector.

In addition, the committee will issue an annual statement in connection with DVCA's yearly report concerning the extent to which DVCA's members have complied with the guidelines.

Funds covered by DVCA's guidelines

List of private equity funds that are members of DVCA and covered by the guidelines as at 1 June 2008

Fully covered by the guidelines

Axcel
Capidea
Dania Capital
Dansk Kapitalanlæg
LD Equity
Polaris Private Equity

Partially covered by the guidelines (see paragraphs 2–5 of section III)

3i
Altor
CapMan
CVC Capital Partners
EQT
Industri Kapital
Nordic Capital
Nordic Growth
Nordic Telephone Company (Apax, KKR, Permira, Blackstone, Providence)

Not as yet covered by the guidelines

ATP PEP
C.W. Obel
Danske Bank – Danske Markets
Danske Private Equity
Deltaq
Erhvervsinvest Nord
Executive Capital
Industri Udvikling[9]
Jysk Fynsk Kapital
KIRKBI
SPEAS
SR Private Brands

9. Has acceded to the guidelines.

Walker Working Group – the UK guidelines

Background

Walker Working Group was established in 2007 by a number of international private equity funds with a view to developing a voluntary set of guidelines on openness and transparency in private equity funds operating in the United Kingdom. A consultation document setting out the foundation principles for the guidelines was published on 17 July 2007, and following a consulting process the final guidelines were published on 20 November 2007.

The guidelines follow the so-called comply or explain principle. This means that funds must either comply with the guidelines or explain why they are not complying.

Who is covered by the guidelines from Walker Working Group?

- Private equity funds authorised by the FSA that are managing or advising funds that either own or control one or more UK companies or have a designated capability to engage in such acticity in the future
- Companies which are acquired by one or more private equity funds in a secondary or other private transaction where enterprise value at the time of the transaction was in excess of GBP 500 million, more than 50% of revenue was generated in the UK, and there were more than 1,000 full-time employees

Greater requirements for communication by portfolio companies

Portfolio companies must provide the following in their audited annual reports in addition to the legislative requirements:

A business review conforming to the provisions of § 417 of the Companies Act, incl. sub-section 5, which normally only applies to listed companies. This subsection lays down requirements pertaining to general trends and factors affecting the company's future developments, performance and market position, and also requires that information must be provided on environmental matters, employee matters and CSR.

New requirements for industry communication

The UK industry organisation for private equity funds – BVCA – will in future communicate more proactively with the outside world. Among other things, this means that an aggregated analysis will be carried out at industry level of the main sources of value creation in companies owned by private equity funds. This concerns the effects of:

- Gearing and financial restructuring
- Growth in market multiples and earnings in the industry
- Growth generated by strategic restructuring and operational improvements in the business

About Walker Working Group

The responsibility for the work on the UK guidelines lay with Sir David Walker, former chairman of the board of Morgan Stanley. The working group established to advise him – Walker Working Group – consisted of representatives of a number of important UK and international funds:

Sir Michael Rake – Chairman, British Telecom
Adrian Beecroft – Deputy Chairman, Apax Partners
David Blitzer – Senior Managing Director, Blackstone Group International Ltd.
Anne Glover – Chief Executive, Amadeus Capital Partners Ltd.
Robin Hall – Managing Partner, Cinven
Baroness Hogg – Chairman, 3i
Lord Hollick – Partner, KKR & Co Ltd.
William Jackson – Managing Partner, Bridgepoint
Dwight Poler – European Managing Director, Bain Capital Ltd.
Rod Selkirk – Chief Executive, Hermes Private Equity

A detailed summary of the differences and similarities between DVCA's guidelines and the UK guidelines is given in the following pages.

Comparison of Danish and UK guidelines for private equity funds

	DVCA's guidelines
1. Who is covered by the guidelines?	
Private equity funds	All private equity funds which are members of DVCA and exceed: – Total commitment > DKK 500 million
Portfolio companies	Companies (class C size under the Danish Financial Statements Act) which exceed: – Revenue > DKK 238 million (EUR 32 million) – Assets > DKK 119 million (EUR 16 million) – Number of employees > 250
2. Basic principles of the guidelines	
"Comply or explain"	Yes. "Non compliance" must be published on the private equity fund's or portfolio company's website.
Substance over form	Yes
Materiality over box-ticking	Yes
3. Guidelines for portfolio companies' reporting	
3.1. Requirements for the annual report	
Deadline for publication	5 months (in accordance with the requirements of the Danish Financial Statements Act).
Requirement for a verbal statement on the current and expected financial activity	Yes. Management report (cf. requirements of the Danish Financial Statements Act).
The management report/business review must cover the following operational areas:	
The company's main activities	Yes
A statement on the progress of the company's activities and financial affairs	Yes
The company's expected progress, including special conditions and uncertain factors on which the management has based the description	Yes
Environmental issues	Yes
Employee matters, including knowledge resources of major importance for the company	Yes
A statement on employee turnover, including terminations, recruitment etc.	Yes
Social and societal issues	Yes, via other issues
Policies relating to the environment, personnel, and social issues and their effectiveness	Yes, via other issues
Research and development activities	Yes
Significant events occurring after the end of the financial year	Yes

Walker Working Group's guidelines	Comments
A company authorised by FSA which owns a portfolio company covered by the guidelines.	The UK works with a definition based on FSA authorisation, whereas Denmark works with a definition based on typical characteristics for private equity funds.
Companies which exceed: – Enterprise value > GBP 500 million – Revenue > 50% in the UK – Number of employees > 1,000	The Danish guidelines cover almost all companies owned by private equity funds, while the UK guidelines affect roughly only the 100 largest companies. Lower threshold in Denmark and no Danish requirement concerning distribution of revenue in Denmark.
Yes. "Non compliance" must be published on the private equity fund's or portfolio company's website.	
Yes	
Yes	
6 months	
Yes. Business review + financial review.	
	The information in the business review is in line with listed companies in the UK. This must be seen in light of the fact that it is only the really big companies that are covered by the UK guidelines.
Yes	
Yes	
Yes	
Yes	
Yes	
No	
Yes	
Yes	
No	
Yes	

	DVCA's guidelines
The management report/financial review must cover the following areas relating to financial risks/corporate governance:	The management report must include information on the special risks as well as ordinarily occurring risks within the company's sector, including business and financial risks that may affect the company. This description must focus in particular on the financial risks that are associated with the chosen capital structure.
Which private equity funds own the company and the size of their holdings	Yes
Which partner(s) in the private equity fund represent(s) the fund(s) at the given company	Yes
Who the individual members of the board represent	Yes
Capital structure (e.g. breakdown into share classes etc.)	Yes
The general meeting (any special provisions in the articles of association concerning the board's powers/authority to approve distributions etc.)	Yes
Stakeholders (who are the company's primary stakeholders and what is the management doing to accommodate them)	Yes
The board's tasks and responsibilities (employee representatives, number of board meetings etc.)	Yes
Current remuneration of the management and board	Yes
Shares held directly by the board (collectively) and management (collectively) if they exceed 5% on the balance sheet date	Yes
3.2. Requirements for reporting/communication	
Publication of annual report on the website	Yes
Requirement for a half-year update (verbal statement)	Yes, but only for delisted companies.
3.3. Key figures covered by reporting to the industry association	
Revenue and earnings	Yes
Employees	Yes
Capital structure	Yes
Investment in fixed capital	Yes
Investment in research and development	Yes
Cash flows	Yes
Responsibility for data handling	Auditing company/DVCA
Annual report prepared by	DVCA
4. Guidelines for private equity funds' reporting and openness	
4.1. Information on private equity funds' websites	
Confirmation that the guidelines are being followed	Yes
Description of the fund's history, origin, management and organisation	Yes
General strategy for the fund, including investment criteria (geography/sector)	Yes
Investors by type and country as well as investor policy	Yes
Description of carried interest programme	Yes, if it departs significantly from the market standard.
Description of policy for social responsibility	Yes
Statement of types of asset under management	Yes
Description of the fund's companies (geography, sector etc.)	Yes
Annual statement on general progress of portfolio companies	Yes
Statement on divestments	Yes
Possibility of downloading annual reports from portfolio companies	Yes
Press contact	Yes

Walker Working Group's guidelines	Comments
The financial review must include information on goals and policies for risk management in relation to the company's primary financial risks and uncertainties, including gearing (with references to relevant balance sheet items, cash flows and notes).	The Danish guidelines lay down requirements for information on corporate governance that are more extensive than those in the UK. The extended requirements are in accordance with the recommendations relevant for private equity funds that are laid down for listed companies in Denmark, cf. the Recommendations for good corporate governance.
Yes	
Yes	
Yes	
No	
No	
No	
No	
No	
No	
Yes	
Yes	
Yes	
Yes	
Yes	
Yes	
Yes	
No	
Auditing firm	
BVCA	
Yes	
Yes	
Yes	
Yes	
No	
No	
No	
No	
Yes	
No	
No	
No	

	DVCA's guidelines
4.2. Reporting of data to the industry association	
The raised capital per fund in the previous year and the upper limit for the size of transactions that may then be carried out on this basis	Yes
Listing of purchases and sales of portfolio companies and the values thereof for the previous year	Yes
Estimate of the overall fees paid to external consultants and financial institutions in the previous year	No
Responsibility for data handling	Auditing firm
Annual report prepared by	DVCA
4.3. Reporting to limited partners (the investors)	
The communication with limited partners/investors must comply with EVCA's guidelines, and the continuous fund reporting must include: – Summary of each individual investment in the fund – Detailed overview of the individual limited partner's investment and return in the fund – Details of management and other fees paid to general partners	Yes
Valuation of companies must follow the valuation guidelines published by the International Private Equity and Venture Capital Board (IPEV) or the Private Equity Industry Guidelines Group (PEIGG) or such other standardised guidelines as may be published in the future	Yes
Recommendation that, taking due account of their business model, funds impose as few restrictions as possible on their investors' disclosures concerning their involvement in a particular fund	Yes
4.4. Private equity funds' reporting of strategic changes in the portfolio companies	
Requirement that the private equity fund communicates effectively with employees and other important stakeholders either directly or through the portfolio company in connection with strategic changes. This is to happen as early as possible and taking due account of the confidentiality aspects which may be a natural obstacle to communication	Yes. Also includes detailed guidelines for external and internal communication in connection with the private equity fund's purchases and sales of companies as well as the continuous dialogue with employees via employee-elected board members and the works council. Effective communication must be carried out with employees throughout the ownership period.
If a company experiences problems in relation to its operations such that its financial situation is critical and it is not deemed possible to introduce further capital, the private equity fund's board representatives must undertake not only to inform the investors but also to bring about the necessary initiatives to the extent that is practically possible	No. Danish legislation, including the Danish Bankruptcy Act, adequately ensures that the board must respond to financial difficulties.
5. Other matters	
General guidelines for private equity funds' relations and use of industrial and other consultants	Yes
6. Continuous updating and observance of the guidelines	
A committee will be appointed for good corporate governance in private equity funds with the following tasks:	Yes
Assess the need for updating of the guidelines	Yes
Monitor that the existing guidelines are being observed by the private equity funds and their portfolio companies	Yes
Publish an annual report on the committee's work, including statistical material on the private equity fund industry	Yes

Walker Working Group's guidelines	Comments
Yes	
Yes	
Yes	
Auditing firm	
BVCA	
Yes	
Yes	
No	
Yes. No further details.	
Yes	
No	
Yes	
Yes	
Yes	
Yes	

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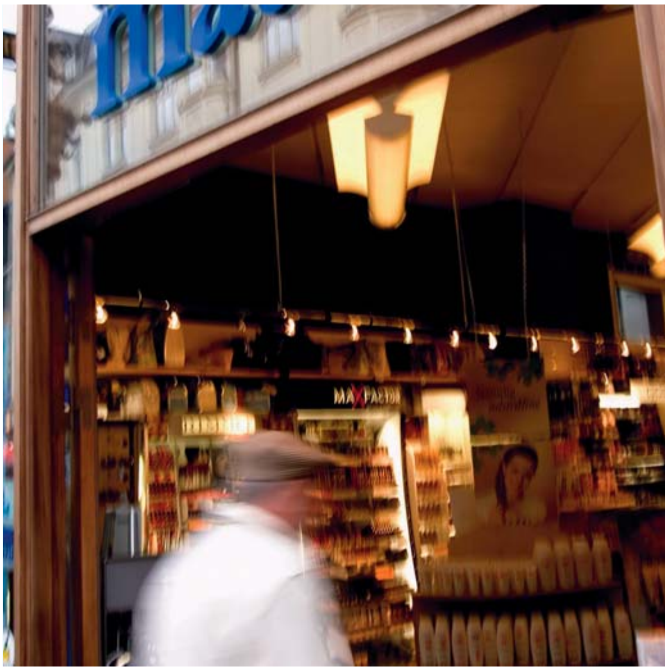
DVCA's secretariat is housed in the old stock exchange building next to Christiansborg Palace. Christian IV had the Stock Exchange built between 1618 and 1624 with the intention that the building should promote Copenhagen as a trading centre and metropolis.



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