

Council Directive of 20 December 1985 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (85/611/EEC) (repealed)

[<sup>F1</sup>SECTION IV

**Obligations regarding investment companies**

Title A

**Conditions for taking up business**

*Article 12*

Access to the business of investment companies shall be subject to prior official authorisation to be granted by the home Member States competent authorities.

The Member States shall determine the legal form which an investment company must take.]

*Article 13*

No investment company may engage in activities other than those referred to in Article 1 (2).

[<sup>F2</sup>Article 13a

1 Without prejudice to other conditions of general application laid down by national law, the competent authorities shall not grant authorisation to an investment company that has not designated a management company unless the investment company has a sufficient initial capital of at least EUR 300 000.

In addition, when an investment company has not designated a management company authorised pursuant to this Directive:

- the authorisation shall not be granted unless the application for authorisation is accompanied by a programme of activity setting out, *inter alia*, the organisational structure of the investment company;
- the directors of the investment company shall be of sufficiently good repute and be sufficiently experienced also in relation to the type of business carried out by the investment company. To that end, the names of the directors and of every person succeeding them in office must be communicated forthwith to the competent authorities. The conduct of an investment company's business must be decided by at least two persons meeting such conditions. Directors shall mean those persons who, under the law or the instruments of incorporation, represent the investment company, or who effectively determine the policy of the company;
- moreover, where close links exist between the investment company and other natural or legal persons, the competent authorities shall grant authorisation only if those do not prevent the effective exercise of their supervisory functions.

The competent authorities shall also refuse authorisation if the laws, regulations or administrative provisions of a non-member country governing one or more natural or legal persons with which the investment company has close links, or difficulties

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involved in their enforcement, prevent the effective exercise of their supervisory functions.

The competent authorities shall require investment companies to provide them with the information they require.

2 An applicant shall be informed, within six months of the submission of a complete application, whether or not authorisation has been granted. Reasons shall be given whenever an authorisation is refused.

3 An investment company may start business as soon as authorisation has been granted.

4 The competent authorities may withdraw the authorisation issued to an investment company subject to this Directive only where that company:

- a does not make use of the authorisation within 12 months, expressly renounces the authorisation or has ceased the activity covered by this Directive more than 6 months previously unless the Member State concerned has provided for authorisation to lapse in such cases;
- b has obtained the authorisation by making false statements or by any other irregular means;
- c no longer fulfils the conditions under which authorisation was granted;
- d has seriously and/or systematically infringed the provisions adopted pursuant to this Directive; or
- e falls within any of the cases where national law provides for withdrawal.

#### **Textual Amendments**

- F2** Inserted by [Directive 2001/107/EC of the European Parliament and of the Council of 21 January 2002 amending Council Directive 85/611/EEC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities \(UCITS\) with a view to regulating management companies and simplified prospectuses.](#)

## Title B

### Operating conditions

#### *Article 13b*

Articles 5g and 5h shall apply to investment companies that have not designated a management company authorised pursuant to this Directive. For the purpose of this Article ‘management company’ shall be construed as ‘investment company’.

Investment companies may only manage assets of their own portfolio and may not, under any circumstances, receive any mandate to manage assets on behalf of a third party.

#### *Article 13c*

Each home Member State shall draw up prudential rules which shall be observed at all times by investment companies that have not designated a management company authorised pursuant to this Directive.

In particular, the competent authorities of the home Member State, having regard also to the nature of the investment company, shall require that the company has sound administrative and accounting procedures, control and safeguard arrangements for electronic data processing and adequate internal control mechanisms including, in particular, rules for personal transactions by its employees or for the holding or management of investments in financial instruments in order to invest its initial capital and ensuring, *inter alia*, that each transaction involving the company may be reconstructed according to its origin, the parties to it, its nature, and the time and place at which it was effected and that the assets of the investment company are invested according to the instruments of incorporation and the legal provisions in force.]

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#### **Textual Amendments**

- F1** Substituted by [Directive 2001/107/EC of the European Parliament and of the Council of 21 January 2002 amending Council Directive 85/611/EEC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities \(UCITS\)](#) with a view to regulating management companies and simplified prospectuses.