

Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (recast) (Text with EEA relevance)

CHAPTER III

OBLIGATIONS REGARDING MANAGEMENT COMPANIES

SECTION 1

Conditions for taking up business

Article 7

1 Without prejudice to other conditions of general application laid down by national law, the competent authorities shall not grant authorisation to a management company unless the following conditions are met:

- a the management company has an initial capital of at least EUR 125 000, taking into account the following:
 - (i) when the value of the portfolios of the management company exceeds EUR 250 000 000, the management company must be required to provide an additional amount of own funds which is equal to 0,02 % of the amount by which the value of the portfolios of the management company exceeds EUR 250 000 000 but the required total of the initial capital and the additional amount must not, however, exceed EUR 10 000 000;
 - (ii) for the purposes of this paragraph, the following portfolios must be deemed to be the portfolios of the management company:
 - common funds managed by the management company including portfolios for which it has delegated the management function but excluding portfolios that it is managing under delegation,
 - investment companies for which the management company is the designated management company,
 - other collective investment undertakings managed by the management company including portfolios for which it has delegated the management function but excluding portfolios that it is managing under delegation;
 - (iii) irrespective of the amount of those requirements, the own funds of the management company must at no time be less than the amount prescribed in Article 21 of Directive 2006/49/EC;
- b the persons who effectively conduct the business of a management company are of sufficiently good repute and are sufficiently experienced also in relation to the type of UCITS managed by the management company, the names of those persons and of every person succeeding them in office being communicated forthwith to the competent authorities and the conduct of the business of a management company being decided by at least two persons meeting such conditions;

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- c the application for authorisation is accompanied by a programme of activity setting out, at least, the organisational structure of the management company; and
- d the head office and the registered office of the management company are located in the same Member State.

For the purposes of point (a) of the first subparagraph, Member States may authorise management companies not to provide up to 50 % of the additional amount of own funds referred to in point (i) of point (a) if they benefit from a guarantee of the same amount given by a credit institution or an insurance undertaking which has its registered office in a Member State, or in a third country where it is subject to prudential rules considered by the competent authorities as equivalent to those laid down in Community law.

2 Where close links exist between the management company and other natural or legal persons, the competent authorities shall grant authorisation only if those close links 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 third country governing one or more natural or legal persons with which the management company has close links, or difficulties involved in their enforcement, prevent the effective exercise of their supervisory functions.

The competent authorities shall require management companies to provide them with the information they require to monitor compliance with the conditions referred to in this paragraph on a continuous basis.

3 The competent authorities shall inform the applicant within six months of the submission of a complete application whether or not authorisation has been granted. Reasons shall be given where an authorisation is refused.

4 A management company may start business as soon as authorisation has been granted.

5 The competent authorities may withdraw the authorisation issued to a management 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 six 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 no longer complies with Directive 2006/49/EC if its authorisation also covers the discretionary portfolio management service referred to in Article 6(3)(a) of this Directive;
- e has seriously or systematically infringed the provisions adopted pursuant to this Directive; or
- f falls within any of the cases where national law provides for withdrawal.

[^{F16} In order to ensure consistent harmonisation of this Article, ESMA may develop draft regulatory technical standards to specify:

- a the information to be provided to the competent authorities in the application for the authorisation of the management company, including the programme of activity;
- b the requirements applicable to the management company under paragraph 2 and the information for the notification provided for in paragraph 3;

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- c the requirements applicable to shareholders and members with qualifying holdings, as well as obstacles which may prevent effective exercise of the supervisory functions of the competent authority, as provided for in Article 8(1) of this Directive and in Article 10(1) and (2) of Directive 2004/39/EC, in accordance with Article 11 of this Directive.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

In order to ensure uniform conditions of application of this Article, ESMA may develop draft implementing technical standards to determine standard forms, templates and procedures for the notification or provision of information provided for in points (a) and (b) of the first subparagraph.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the third subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.]

Textual Amendments

- F1** Inserted by Directive 2010/78/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 98/26/EC, 2002/87/EC, 2003/6/EC, 2003/41/EC, 2003/71/EC, 2004/39/EC, 2004/109/EC, 2005/60/EC, 2006/48/EC, 2006/49/EC and 2009/65/EC in respect of the powers of the European Supervisory Authority (European Banking Authority), the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority) (Text with EEA relevance).