

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 3

Operating conditions

Article 10

1 The competent authorities of the management company's home Member State shall require that the management company which they have authorised complies at all times with the conditions laid down in Article 6 and Article 7(1) and (2).

The own funds of a management company shall not fall below the level specified in Article 7(1)(a). If they do, however, the competent authorities may, where the circumstances so justify, allow such firms a limited period in which to rectify their situations or cease their activities.

2 The prudential supervision of a management company shall be the responsibility of the competent authorities of the management company's home Member State, whether the management company establishes a branch or provides services in another Member State or not, without prejudice to those provisions of this Directive which confer responsibility to the competent authorities of a management company's host Member State.

Article 11

1 Qualifying holdings in management companies shall be subject to the same rules as those laid down in Articles 10, 10a and 10b of Directive 2004/39/EC.

2 For the purposes of this Directive, the terms 'investment firm' and 'investment firms' referred to in Article 10 of Directive 2004/39/EC, mean, respectively, 'management company' and 'management companies'.

Article 12

1 Each Member State shall draw up prudential rules which management companies authorised in that Member State, with regard to the activity of management of UCITS authorised according to this Directive, shall observe at all times.

In particular, the competent authorities of the management company's home Member State, having regard also to the nature of the UCITS managed by a management company, shall require that each such company:

- a 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 on its own account and ensuring, at least, that each transaction involving the UCITS 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 UCITS managed by the management company are invested according to the fund rules or the instruments of incorporation and the legal provisions in force;

- b is structured and organised in such a way as to minimise the risk of UCITS' or clients' interests being prejudiced by conflicts of interest between the company and its clients, between two of its clients, between one of its clients and a UCITS, or between two UCITS.

2 Each management company the authorisation of which also covers the discretionary portfolio management service referred to in Article 6(3)(a) shall:

- a not be permitted to invest all or a part of the investor's portfolio in units of collective investment undertakings it manages, unless it receives prior general approval from the client;
- b be subject with regard to the services referred to in Article 6(3) to the provisions laid down in Directive 97/9/EC of the European Parliament and of the Council of 3 March 1997 on investor-compensation schemes⁽¹⁾.

3 Without prejudice to Article 116, the Commission shall adopt, by 1 July 2010, implementing measures specifying the procedures and arrangements as referred to under point (a) of the second subparagraph of paragraph 1 and the structures and organisational requirements to minimise conflicts of interests as referred to under point (b) of the second subparagraph of paragraph 1.

Those measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 112(2).

Article 13

1 If the law of the management company's home Member State allows management companies to delegate to third parties for the purpose of a more efficient conduct of the companies' business, to carry out on their behalf one or more of their own functions, all of the following preconditions shall be complied with:

- a the management company must inform the competent authorities of its home Member State in an appropriate manner; the competent authorities of the management company's home Member State must, without delay, transmit the information to the competent authorities of the UCITS home Member State;
- b the mandate must not prevent the effectiveness of supervision over the management company, and, in particular, must not prevent the management company from acting, or the UCITS from being managed, in the best interests of its investors;
- c when the delegation concerns the investment management, the mandate must be given only to undertakings which are authorised or registered for the purpose of asset management and subject to prudential supervision; the delegation must be in accordance with investment-allocation criteria periodically laid down by the management companies;
- d where the mandate concerns the investment management and is given to a third-country undertaking, cooperation between the supervisory authorities concerned must be ensured;
- e a mandate with regard to the core function of investment management must not be given to the depositary or to any other undertaking whose interests may conflict with those of the management company or the unit-holders;

- f measures must exist which enable the persons who conduct the business of the management company to monitor effectively at any time the activity of the undertaking to which the mandate is given;
- g the mandate must not prevent the persons who conduct the business of the management company from giving further instructions to the undertaking to which functions are delegated at any time or from withdrawing the mandate with immediate effect when this is in the interest of investors;
- h having regard to the nature of the functions to be delegated, the undertaking to which functions will be delegated must be qualified and capable of undertaking the functions in question; and
- i the UCITS' prospectuses must list the functions which the management company has been allowed to delegate in accordance with this Article.

2 The liability of the management company or the depositary shall not be affected by delegation by the management company of any functions to third parties. The management company shall not delegate its functions to the extent that it becomes a letter-box entity.

Article 14

1 Each Member State shall draw up rules of conduct which management companies authorised in that Member State shall observe at all times. Such rules shall implement at least the principles set out in this paragraph. Those principles shall ensure that a management company:

- a acts honestly and fairly in conducting its business activities in the best interests of the UCITS it manages and the integrity of the market;
- b acts with due skill, care and diligence, in the best interests of the UCITS it manages and the integrity of the market;
- c has and employs effectively the resources and procedures that are necessary for the proper performance of its business activities;
- d tries to avoid conflicts of interests and, when they cannot be avoided, ensures that the UCITS it manages are fairly treated; and
- e complies with all regulatory requirements applicable to the conduct of its business activities so as to promote the best interests of its investors and the integrity of the market.

2 Without prejudice to Article 116, the Commission shall adopt, by 1 July 2010, implementing measures, with a view to ensuring that the management company complies with the duties set out in paragraph 1, in particular to:

- a establish appropriate criteria for acting honestly and fairly and with due skill, care and diligence in the best interests of the UCITS;
- b specify the principles required to ensure that management companies employ effectively the resources and procedures that are necessary for the proper performance of their business activities; and
- c define the steps that management companies might reasonably be expected to take to identify, prevent, manage or disclose conflicts of interest as well as to establish appropriate criteria for determining the types of conflicts of interest whose existence may damage the interests of the UCITS.

Those measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 112(2).

Article 15

Management companies or, where relevant, investment companies shall take measures in accordance with Article 92 and establish appropriate procedures and arrangements to ensure that they deal properly with investor complaints and that there are no restrictions on investors exercising their rights in the event that the management company is authorised in a Member State other than the UCITS home Member State. Those measures shall allow investors to file complaints in the official language or one of the official languages of their Member State.

Management companies shall also establish appropriate procedures and arrangements to make information available at the request of the public or the competent authorities of the UCITS home Member State.

(1) OJ L 84, 26.3.1997, p. 22.