

Commission Directive 2010/43/EU of 1 July 2010 implementing Directive 2009/65/EC of the European Parliament and of the Council as regards organisational requirements, conflicts of interest, conduct of business, risk management and content of the agreement between a depositary and a management company (Text with EEA relevance)

CHAPTER III

CONFLICT OF INTERESTS

(Article 12(1)(b) and Article 14(1)(d) and (2)(c) of Directive 2009/65/EC)

Article 19

Independence in conflicts management

1 Member States shall ensure that the procedures and measures provided for in Article 18(2)(b) are designed to ensure that relevant persons engaged in different business activities involving a conflict of interest carry on those activities at a level of independence appropriate to the size and activities of the management company and of the group to which it belongs and to the materiality of the risk of damage to the interests of clients.

2 The procedures to be followed and measures to be adopted in accordance with Article 18(2)(b) shall include the following where necessary and appropriate for the management company to ensure the requisite degree of independence:

- a effective procedures to prevent or control the exchange of information between relevant persons engaged in collective portfolio management activities involving a risk of a conflict of interest where the exchange of that information may harm the interests of one or more clients;
- b the separate supervision of relevant persons whose principal functions involve carrying out collective portfolio management activities on behalf of, or providing services to, clients or to investors whose interests may conflict, or who otherwise represent different interests that may conflict, including those of the management company;
- c the removal of any direct link between the remuneration of relevant persons principally engaged in one activity and the remuneration of, or revenues generated by, different relevant persons principally engaged in another activity, where a conflict of interest may arise in relation to those activities;
- d measures to prevent or limit any person from exercising inappropriate influence over the way in which a relevant person carries out collective portfolio management activities;
- e measures to prevent or control the simultaneous or sequential involvement of a relevant person in separate collective portfolio management activities where such involvement may impair the proper management of conflicts of interest.

Where the adoption or the practice of one or more of those measures and procedures does not ensure the requisite degree of independence, Member States shall require management companies to adopt such alternative or additional measures and procedures as are necessary and appropriate for those purposes.