

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 depository and a management company (Text with EEA relevance)

CHAPTER I

SUBJECT-MATTER, SCOPE AND DEFINITIONS

Article 1

Subject matter

This Directive lays down rules implementing Directive 2009/65/EC:

1. specifying the procedures and arrangements as referred to under point (a) of the second subparagraph of Article 12(1), and the structures and organisational requirements to minimise conflicts of interests as referred to under point (b) of the second subparagraph of Article 12(1);
2. establishing criteria for acting honestly and fairly and with due skill, care and diligence in the best interests of the UCITS and the criteria for determining the types of conflict of interests, specifying the principles required to ensure that the resources are employed effectively, defining the steps that should be taken to identify, prevent, manage or disclose conflicts of interests referred to in Article 14(1) and (2);
3. concerning the particulars that need to be included in the agreements between the depository and management company in accordance with Articles 23(5) and 33(5); and
4. concerning the risk management process referred to in Article 51(1), in particular criteria for assessing the adequacy of the risk management process employed by the management company and the risk management policy and processes and the arrangements, processes and techniques for risk measurement and management relating to such criteria.

Article 2

Scope

1 This Directive shall apply to management companies pursuing the activity of management of an undertaking for collective investment in transferable securities (UCITS) as referred to in Article 6(2) of Directive 2009/65/EC.

Chapter V of this Directive shall also apply to depositaries carrying out their functions according to the provisions of Chapter IV and Section 3 of Chapter V of Directive 2009/65/EC.

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2 The provisions of this Chapter, Article 12 of Chapter II and Chapters III, IV and VI shall apply *mutatis mutandis* to investment companies that have not designated a management company authorised pursuant to Directive 2009/65/EC.

In those cases ‘management company’ shall be understood as ‘investment company’.

Article 3

Definitions

For the purposes of this Directive, the following definitions shall apply in addition to the definitions set out in Directive 2009/65/EC:

1. ‘client’ means any natural or legal person, or any other undertaking including a UCITS, to whom a management company provides a service of collective portfolio management or services pursuant to Article 6(3) of Directive 2009/65/EC;
2. ‘unit-holder’ means any natural or legal person holding one or more units in a UCITS;
3. ‘relevant person’ in relation to a management company, means any of the following:
 - (a) a director, partner or equivalent, or manager of the management company;
 - (b) an employee of the management company, as well as any other natural person whose services are placed at the disposal and under the control of the management company and who is involved in the provision by the management company of collective portfolio management;
 - (c) a natural person who is directly involved in the provision of services to the management company under a delegation arrangement to third parties for the purpose of the provision by the management company of collective portfolio management;
4. ‘senior management’ means the person or persons who effectively conduct the business of a management company in accordance with Article 7(1)(b) of Directive 2009/65/EC;
5. ‘board of directors’ means the board of directors of the management company;
6. ‘supervisory function’ means the relevant persons or body or bodies responsible for the supervision of its senior management and for the assessment and periodical review of the adequacy and effectiveness of the risk management process and of the policies, arrangements and procedures put in place to comply with the obligations under Directive 2009/65/EC;
7. ‘counterparty risk’ means the risk of loss for the UCITS resulting from the fact that the counterparty to a transaction may default on its obligations prior to the final settlement of the transaction’s cash flow;
8. ‘liquidity risk’ means the risk that a position in the UCITS portfolio cannot be sold, liquidated or closed at limited cost in an adequately short time frame and that the ability of the UCITS to comply at any time with Article 84(1) of Directive 2009/65/EC is thereby compromised;
9. ‘market risk’ means the risk of loss for the UCITS resulting from fluctuation in the market value of positions in the UCITS’ portfolio attributable to changes in market

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variables, such as interest rates, foreign exchange rates, equity and commodity prices or an issuer's credit worthiness;

10. 'operational risk' means the risk of loss for the UCITS resulting from inadequate internal processes and failures in relation to people and systems of the management company or from external events, and includes legal and documentation risk and risk resulting from the trading, settlement and valuation procedures operated on behalf of the UCITS.

The term 'board of directors' defined in point 5 of the first paragraph shall not comprise the supervisory board where management companies have a dual structure composed of a board of directors and a supervisory board.