

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 II

ADMINISTRATIVE PROCEDURES AND CONTROL MECHANISM

(Article 12(1)(a) and Article 14(1)(c) of Directive 2009/65/EC)

SECTION 1

General principles

Article 4

General requirements on procedures and organisation

1 Member States shall require management companies to comply with the following requirements:

- a to establish, implement and maintain decision-making procedures and an organisational structure which clearly and in a documented manner specifies reporting lines and allocates functions and responsibilities;
- b to ensure that their relevant persons are aware of the procedures which must be followed for the proper discharge of their responsibilities;
- c to establish, implement and maintain adequate internal control mechanisms designed to secure compliance with decisions and procedures at all levels of the management company;
- d to establish, implement and maintain effective internal reporting and communication of information at all relevant levels of the management company as well as effective information flows with any third party involved;
- e to maintain adequate and orderly records of their business and internal organisation.

Member States shall ensure that management companies take into account the nature, scale and complexity of the business of the management company, and the nature and range of services and activities undertaken in the course of that business.

2 Member States shall require management companies to establish, implement and maintain systems and procedures that are adequate to safeguard the security, integrity and confidentiality of information, taking into account the nature of the information in question.

3 Member States shall require management companies to establish, implement and maintain an adequate business continuity policy aimed at ensuring, in the case of an interruption to their systems and procedures, the preservation of essential data and functions, and the maintenance of services and activities, or, where that is not possible, the timely recovery of such data and functions and the timely resumption of their services and activities.

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4 Member States shall require management companies to establish, implement and maintain accounting policies and procedures that enable them, at the request of the competent authority, to deliver in a timely manner to the competent authority financial reports which reflect a true and fair view of their financial position and which comply with all applicable accounting standards and rules.

5 Member States shall require management companies to monitor and, on a regular basis, evaluate the adequacy and effectiveness of their systems, internal control mechanisms and arrangements established in accordance with paragraphs 1 to 4, and to take appropriate measures to address any deficiencies.

Article 5

Resources

1 Member States shall require management companies to employ personnel with the skills, knowledge and expertise necessary for the discharge of the responsibilities allocated to them.

2 Member States shall ensure that management companies retain the necessary resources and expertise so as to effectively monitor the activities carried out by third parties on the basis of an arrangement with the management company, especially with regard to the management of the risk associated with those arrangements.

3 Member States shall require management companies to ensure that the performance of multiple functions by relevant persons does not and is not likely to prevent those relevant persons from discharging any particular function soundly, honestly, and professionally.

4 Member States shall ensure that for the purposes laid down in paragraphs 1, 2 and 3, management companies take into account the nature, scale and complexity of the business of the management company, and the nature and range of services and activities undertaken in the course of that business.