

Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 (Text with EEA relevance)

CHAPTER III

OPERATING CONDITIONS FOR AIFMs

SECTION 3

Delegation of AIFM functions

Article 20

Delegation

1 AIFMs which intend to delegate to third parties the task of carrying out functions on their behalf shall notify the competent authorities of their home Member State before the delegation arrangements become effective. The following conditions shall be met:

- a the AIFM must be able to justify its entire delegation structure on objective reasons;
- b the delegate must dispose of sufficient resources to perform the respective tasks and the persons who effectively conduct the business of the delegate must be of sufficiently good repute and sufficiently experienced;
- c where the delegation concerns portfolio management or risk management, it must be conferred only on undertakings which are authorised or registered for the purpose of asset management and subject to supervision or, where that condition cannot be met, only subject to prior approval by the competent authorities of the home Member State of the AIFM;
- d where the delegation concerns portfolio management or risk management and is conferred on a third-country undertaking, in addition to the requirements in point (c), cooperation between the competent authorities of the home Member State of the AIFM and the supervisory authority of the undertaking must be ensured;
- e the delegation must not prevent the effectiveness of supervision of the AIFM, and, in particular, must not prevent the AIFM from acting, or the AIF from being managed, in the best interests of its investors;
- f the AIFM must be able to demonstrate that the delegate is qualified and capable of undertaking the functions in question, that it was selected with all due care and that the AIFM is in a position to monitor effectively at any time the delegated activity, to give at any time further instructions to the delegate and to withdraw the delegation with immediate effect when this is in the interest of investors.

The AIFM shall review the services provided by each delegate on an ongoing basis.

2 No delegation of portfolio management or risk management shall be conferred on:

- a the depositary or a delegate of the depositary; or

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- b any other entity whose interests may conflict with those of the AIFM or the investors of the AIF, unless such entity has functionally and hierarchically separated the performance of its portfolio management or risk management tasks from its other potentially conflicting tasks, and the potential conflicts of interest are properly identified, managed, monitored and disclosed to the investors of the AIF.

3 The AIFM's liability towards the AIF and its investors shall not be affected by the fact that the AIFM has delegated functions to a third party, or by any further sub-delegation, nor shall the AIFM delegate its functions to the extent that, in essence, it can no longer be considered to be the manager of the AIF and to the extent that it becomes a letter-box entity.

4 The third party may sub-delegate any of the functions delegated to it provided that the following conditions are met:

- a the AIFM consented prior to the sub-delegation;
- b the AIFM notified the competent authorities of its home Member State before the sub-delegation arrangements become effective;
- c the conditions set out in paragraph 1, on the understanding that all references to the 'delegate' are read as references to the 'sub-delegate'.

5 No sub-delegation of portfolio management or risk management shall be conferred on:

- a the depositary or a delegate of the depositary; or
- b any other entity whose interests may conflict with those of the AIFM or the investors of the AIF, unless such entity has functionally and hierarchically separated the performance of its portfolio management or risk management tasks from its other potentially conflicting tasks, and the potential conflicts of interest are properly identified, managed, monitored and disclosed to the investors of the AIF.

The relevant delegate shall review the services provided by each sub-delegate on an ongoing basis.

6 Where the sub-delegate further delegates any of the functions delegated to it, the conditions set out in paragraph 4 shall apply *mutatis mutandis*.

7 The Commission shall adopt, by means of delegated acts in accordance with Article 56 and subject to the conditions of Articles 57 and 58, measures specifying:

- a the conditions for fulfilling the requirements set out in paragraphs 1, 2, 4 and 5;
- b the conditions under which the AIFM shall be deemed to have delegated its functions to the extent that it becomes a letter-box entity and can no longer be considered to be the manager of the AIF as set out in paragraph 3.