

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 V

AIFMs MANAGING SPECIFIC TYPES OF AIF

SECTION 2

Obligations for AIFMs managing AIFs which acquire control of non-listed companies and issuers

Article 28

Disclosure in case of acquisition of control

1 Member States shall require that when an AIF acquires, individually or jointly, control of a non-listed company or an issuer pursuant to Article 26(1), in conjunction with paragraph 5 of that Article, the AIFM managing such AIF shall make the information referred to in paragraph 2 of this Article available to:

- a the company concerned;
- b the shareholders of the company of which the identities and addresses are available to the AIFM or can be made available by the company or through a register to which the AIFM has or can obtain access; and
- c the competent authorities of the home Member State of the AIFM.

Member States may require that the information referred to in paragraph 2 is also made available to the competent authorities of the non-listed company which the Member States may designate to that effect.

2 The AIFM shall make available:

- a the identity of the AIFMs which either individually or in agreement with other AIFMs manage the AIFs that have acquired control;
- b the policy for preventing and managing conflicts of interest, in particular between the AIFM, the AIF and the company, including information about the specific safeguards established to ensure that any agreement between the AIFM and/or the AIF and the company is concluded at arm's length; and
- c the policy for external and internal communication relating to the company in particular as regards employees.

3 In its notification to the company pursuant to point (a) of paragraph 1, the AIFM shall request the board of directors of the company to inform the employees' representatives or, where there are none, the employees themselves, without undue delay of the information referred to in paragraph 1. The AIFM shall use its best efforts to ensure that the employees' representatives or, where there are none, the employees themselves, are duly informed by the board of directors in accordance with this Article.

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4 Member States shall require that when an AIF acquires, individually or jointly, control of a non-listed company pursuant to Article 26(1), in conjunction with paragraph 5 of that Article, the AIFM managing such AIF ensure that the AIF, or the AIFM acting on behalf of the AIF, disclose its intentions with regard to the future business of the non-listed company and the likely repercussions on employment, including any material change in the conditions of employment, to:

- a the non-listed company; and
- b the shareholders of the non-listed company of which the identities and addresses are available to the AIFM or can be made available by the non-listed company or through a register to which the AIFM has or can obtain access.

In addition, the AIFM managing the relevant AIF shall request and use its best efforts to ensure that the board of directors of the non-listed company makes available the information set out in the first subparagraph to the employees' representatives or, where there are none, the employees themselves, of the non-listed company.

5 Member States shall require that when an AIF acquires control of a non-listed company pursuant to Article 26(1), in conjunction with paragraph 5 of that Article, the AIFM managing such an AIF provide the competent authorities of its home Member State and the AIF's investors with information on the financing of the acquisition.