

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 II

AUTHORISATION OF AIFMs

Article 9

Initial capital and own funds

1 Member States shall require that an AIFM which is an internally managed AIF has an initial capital of at least EUR 300 000.

2 Where an AIFM is appointed as external manager of AIFs, the AIFM shall have an initial capital of at least EUR 125 000.

3 Where the value of the portfolios of AIFs managed by the AIFM exceeds EUR 250 million, the AIFM shall provide an additional amount of own funds. That additional amount of own funds shall be equal to 0,02 % of the amount by which the value of the portfolios of the AIFM exceeds EUR 250 million but the required total of the initial capital and the additional amount shall not, however, exceed EUR 10 million.

4 For the purpose of paragraph 3, AIFs managed by the AIFM, including AIFs for which the AIFM has delegated functions in accordance with Article 20 but excluding AIF portfolios that the AIFM is managing under delegation, shall be deemed to be the portfolios of the AIFM.

5 Irrespective of paragraph 3, the own funds of the AIFM shall never be less than the amount required under Article 21 of Directive 2006/49/EC.

6 Member States may authorise AIFMs not to provide up to 50 % of the additional amount of own funds referred to in paragraph 3 if they benefit from a guarantee of the same amount given by a credit institution or an insurance undertaking which has its registered office in a Member State, or in a third country where it is subject to prudential rules considered by the competent authorities as equivalent to those laid down in Union law.

7 To cover potential professional liability risks resulting from activities AIFMs may carry out pursuant to this Directive, both internally managed AIFs and external AIFMs shall either:

- a have additional own funds which are appropriate to cover potential liability risks arising from professional negligence; or
- b hold a professional indemnity insurance against liability arising from professional negligence which is appropriate to the risks covered.

8 Own funds, including any additional own funds as referred to in point (a) of paragraph 7, shall be invested in liquid assets or assets readily convertible to cash in the short term and shall not include speculative positions.

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9 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 in relation to paragraph 7 of this Article specifying:

- a the risks the additional own funds or the professional indemnity insurance must cover;
- b the conditions for determining the appropriateness of additional own funds or the coverage of the professional indemnity insurance; and
- c the manner of determining ongoing adjustments of the additional own funds or of the coverage of the professional indemnity insurance.

10 With the exception of paragraphs 7 and 8 and of the delegated acts adopted pursuant to paragraph 9, this Article shall not apply to AIFMs which are also UCITS management companies.