

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 6

Conditions for taking up activities as AIFM

1 Member States shall ensure that no AIFMs manage AIFs unless they are authorised in accordance with this Directive.

AIFMs authorised in accordance with this Directive shall meet the conditions for authorisation established in this Directive at all times.

2 Member States shall require that no external AIFM engage in activities other than those referred to in Annex I to this Directive and the additional management of UCITS subject to authorisation under Directive 2009/65/EC.

3 Member States shall require that no internally managed AIF shall engage in activities other than the internal management of that AIF in accordance with Annex I.

4 By way of derogation from paragraph 2, Member States may authorise an external AIFM to provide the following services:

- a management of portfolios of investments, including those owned by pension funds and institutions for occupational retirement provision in accordance with Article 19(1) of Directive 2003/41/EC, in accordance with mandates given by investors on a discretionary, client-by-client basis;
- b non-core services comprising:
 - (i) investment advice;
 - (ii) safe-keeping and administration in relation to shares or units of collective investment undertakings;
 - (iii) reception and transmission of orders in relation to financial instruments.

5 AIFMs shall not be authorised under this Directive to provide:

- a only the services referred to in paragraph 4;
- b non-core services referred to in point (b) of paragraph 4 without also being authorised to provide the services referred to in point (a) of paragraph 4;
- c only the activities referred to in point 2 of Annex I; or
- d the services referred to in point 1(a) of Annex I without also providing the services referred to in point 1(b) of Annex I or vice versa.

6 Article 2(2) and Articles 12, 13 and 19 of Directive 2004/39/EC shall apply to the provision of the services referred to in paragraph 4 of this Article by AIFMs.

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7 Member States shall require that the AIFMs provide the competent authorities of their home Member State with the information they require to monitor compliance with the conditions referred to in this Directive at all times.

8 Investment firms authorised under Directive 2004/39/EC and credit institutions authorised under Directive 2006/48/EC shall not be required to obtain an authorisation under this Directive in order to provide investment services such as individual portfolio management in respect of AIFs. However, investment firms shall, directly or indirectly, offer units or shares of AIFs to, or place such units or shares with, investors in the Union, only to the extent the units or shares can be marketed in accordance with this Directive.

Article 7

Application for authorisation

1 Member States shall require that AIFMs apply for authorisation from the competent authorities of their home Member State.

2 Member States shall require that an AIFM applying for an authorisation shall provide the following information relating to the AIFM to the competent authorities of its home Member State:

- a information on the persons effectively conducting the business of the AIFM;
- b information on the identities of the AIFM's shareholders or members, whether direct or indirect, natural or legal persons, that have qualifying holdings and on the amounts of those holdings;
- c a programme of activity setting out the organisational structure of the AIFM, including information on how the AIFM intends to comply with its obligations under Chapters II, III, IV, and, where applicable, Chapters V, VI, VII and VIII;
- d information on the remuneration policies and practices pursuant to Article 13;
- e information on arrangements made for the delegation and sub-delegation to third parties of functions as referred to in Article 20.

3 Member States shall require that an AIFM applying for authorisation further provide the following information on the AIFs it intends to manage to the competent authorities of its home Member State:

- a information about the investment strategies including the types of underlying funds if the AIF is a fund of funds, and the AIFM's policy as regards the use of leverage, and the risk profiles and other characteristics of the AIFs it manages or intends to manage, including information about the Member States or third countries in which such AIFs are established or are expected to be established;
- b information on where the master AIF is established if the AIF is a feeder AIF;
- c the rules or instruments of incorporation of each AIF the AIFM intends to manage;
- d information on the arrangements made for the appointment of the depositary in accordance with Article 21 for each AIF the AIFM intends to manage;
- e any additional information referred to in Article 23(1) for each AIF the AIFM manages or intends to manage.

4 Where a management company is authorised pursuant to Directive 2009/65/EC (UCITS management company) and applies for authorisation as an AIFM under this Directive, the competent authorities shall not require the UCITS management company to provide information or documents which the UCITS management company has already provided when

applying for authorisation under Directive 2009/65/EC, provided that such information or documents remain up-to-date.

5 The competent authorities shall, on a quarterly basis, inform ESMA of authorisations granted or withdrawn in accordance with this Chapter.

ESMA shall keep a central public register identifying each AIFM authorised under this Directive, a list of the AIFs managed and/or marketed in the Union by such AIFMs and the competent authority for each such AIFM. The register shall be made available in electronic format.

6 In order to ensure consistent harmonisation of this Article, ESMA may develop draft regulatory technical standards to specify the information to be provided to the competent authorities in the application for the authorisation of the AIFM, including the programme of activity.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

7 In order to ensure uniform conditions of application of this Article, ESMA may develop draft implementing technical standards to determine standard forms, templates and procedures for the provision of information provided for in the first subparagraph of paragraph 6.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.

Article 8

Conditions for granting authorisation

1 The competent authorities of the home Member State of the AIFM shall not grant authorisation unless:

- a they are satisfied that the AIFM will be able to meet the conditions of this Directive;
- b the AIFM has sufficient initial capital and own funds in accordance with Article 9;
- c the persons who effectively conduct the business of the AIFM are of sufficiently good repute and are sufficiently experienced also in relation to the investment strategies pursued by the AIFs managed by the AIFM, the names of those persons and of every person succeeding them in office being communicated forthwith to the competent authorities of the home Member State of the AIFM and the conduct of the business of the AIFM being decided by at least two persons meeting such conditions;
- d the shareholders or members of the AIFM that have qualifying holdings are suitable taking into account the need to ensure the sound and prudent management of the AIFM; and
- e the head office and the registered office of the AIFM are located in the same Member State.

Authorisation shall be valid for all Member States.

2 The relevant competent authorities of the other Member States involved shall be consulted before authorisation is granted to the following AIFMs:

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- a a subsidiary of another AIFM, of a UCITS management company, of an investment firm, of a credit institution or of an insurance undertaking authorised in another Member State;
- b a subsidiary of the parent undertaking of another AIFM, of a UCITS management company, of an investment firm, of a credit institution or of an insurance undertaking authorised in another Member State; and
- c a company controlled by the same natural or legal persons as those that control another AIFM, a UCITS management company, an investment firm, a credit institution or an insurance undertaking authorised in another Member State.

3 The competent authorities of the home Member State of the AIFM shall refuse authorisation where the effective exercise of their supervisory functions is prevented by any of the following:

- a close links between the AIFM and other natural or legal persons;
- b the laws, regulations or administrative provisions of a third country governing natural or legal persons with which the AIFM has close links;
- c difficulties involved in the enforcement of those laws, regulations and administrative provisions.

4 The competent authorities of the home Member State of the AIFM may restrict the scope of the authorisation, in particular as regards the investment strategies of AIFs the AIFM is allowed to manage.

5 The competent authorities of the home Member State of the AIFM shall inform the applicant in writing within 3 months of the submission of a complete application, whether or not authorisation has been granted. The competent authorities may prolong this period for up to three additional months, where they consider it necessary due to the specific circumstances of the case and after having notified the AIFM accordingly.

For the purpose of this paragraph an application is deemed complete if the AIFM has at least submitted the information referred to in points (a) to (d) of Article 7(2) and points (a) and (b) of Article 7(3).

AIFMs may start managing AIFs with investment strategies described in the application in accordance with point (a) of Article 7(3) in their home Member State as soon as the authorisation is granted, but not earlier than 1 month after having submitted any missing information referred to in point (e) of Article 7(2) and points (c), (d) and (e) of Article 7(3).

6 In order to ensure consistent harmonisation of this Article, ESMA may develop draft regulatory technical standards to specify the:

- a requirements applicable to the AIFMs under paragraph 3;
- b requirements applicable to shareholders and members with qualifying holdings referred to in point (d) of paragraph 1;
- c obstacles which may prevent effective exercise of the supervisory functions of the competent authorities.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

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.

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.

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Article 10

Changes in the scope of the authorisation

1 Member States shall require that AIFMs, before implementation, notify the competent authorities of their home Member State of any material changes to the conditions for initial authorisation, in particular material changes to the information provided in accordance with Article 7.

2 If the competent authorities of the home Member State decide to impose restrictions or reject those changes, they shall, within 1 month of receipt of that notification, inform the AIFM. The competent authorities may prolong that period for up to 1 month where they consider this to be necessary because of the specific circumstances of the case and after having notified the AIFM accordingly. The changes shall be implemented if the relevant competent authorities do not oppose the changes within the relevant assessment period.

Article 11

Withdrawal of the authorisation

The competent authorities of the home Member State of the AIFM may withdraw the authorisation issued to an AIFM where that AIFM:

- (a) does not make use of the authorisation within 12 months, expressly renounces the authorisation or has ceased the activity covered by this Directive for the preceding 6 months, unless the Member State concerned has provided for authorisation to lapse in such cases;
- (b) obtained the authorisation by making false statements or by any other irregular means;
- (c) no longer meets the conditions under which authorisation was granted;
- (d) no longer complies with Directive 2006/49/EC if its authorisation also covers the discretionary portfolio management service referred to in point (a) of Article 6(4) of this Directive;
- (e) has seriously or systematically infringed the provisions adopted pursuant to this Directive; or
- (f) falls within any of the cases where national law, in respect of matters outside the scope of this Directive, provides for withdrawal.