

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 2

Organisational requirements

Article 18

General principles

1 Member States shall require that AIFMs use, at all times, adequate and appropriate human and technical resources that are necessary for the proper management of AIFs.

In particular, the competent authorities of the home Member State of the AIFM, having regard also to the nature of the AIFs managed by the AIFM, shall require that the AIFM has sound administrative and accounting procedures, control and safeguard arrangements for electronic data processing and adequate internal control mechanisms including, in particular, rules for personal transactions by its employees or for the holding or management of investments in order to invest on its own account and ensuring, at least, that each transaction involving the AIFs may be reconstructed according to its origin, the parties to it, its nature, and the time and place at which it was effected and that the assets of the AIFs managed by the AIFM are invested in accordance with the AIF rules or instruments of incorporation and the legal provisions in force.

2 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 the procedures and arrangements as referred to in paragraph 1.

Article 19

Valuation

1 AIFMs shall ensure that, for each AIF that they manage, appropriate and consistent procedures are established so that a proper and independent valuation of the assets of the AIF can be performed in accordance with this Article, the applicable national law and the AIF rules or instruments of incorporation.

2 The rules applicable to the valuation of assets and the calculation of the net asset value per unit or share of the AIF shall be laid down in the law of the country where the AIF is established and/or in the AIF rules or instruments of incorporation.

Status: EU Directives are being published on this site to aid cross referencing from UK legislation. After IP completion day (31 December 2020 11pm) no further amendments will be applied to this version.

3 AIFMs shall also ensure that the net asset value per unit or share of AIFs is calculated and disclosed to the investors in accordance with this Article, the applicable national law and the AIF rules or instruments of incorporation.

The valuation procedures used shall ensure that the assets are valued and the net asset value per unit or share is calculated at least once a year.

If the AIF is of the open-ended type, such valuations and calculations shall also be carried out at a frequency which is both appropriate to the assets held by the AIF and its issuance and redemption frequency.

If the AIF is of the closed-ended type, such valuations and calculations shall also be carried out in case of an increase or decrease of the capital by the relevant AIF.

The investors shall be informed of the valuations and calculations as set out in the relevant AIF rules or instruments of incorporation.

- 4 AIFMs shall ensure that the valuation function is either performed by:
- a an external valuer, being a legal or natural person independent from the AIF, the AIFM and any other persons with close links to the AIF or the AIFM; or
 - b the AIFM itself, provided that the valuation task is functionally independent from the portfolio management and the remuneration policy and other measures ensure that conflicts of interest are mitigated and that undue influence upon the employees is prevented.

The depositary appointed for an AIF shall not be appointed as external valuer of that AIF, unless it has functionally and hierarchically separated the performance of its depositary functions from its tasks as external valuer and the potential conflicts of interest are properly identified, managed, monitored and disclosed to the investors of the AIF.

5 Where an external valuer performs the valuation function, the AIFM shall demonstrate that:

- a the external valuer is subject to mandatory professional registration recognised by law or to legal or regulatory provisions or rules of professional conduct;
- b the external valuer can provide sufficient professional guarantees to be able to perform effectively the relevant valuation function in accordance with paragraphs 1, 2 and 3; and
- c the appointment of the external valuer complies with the requirements of Article 20(1) and (2) and the delegated acts adopted pursuant to Article 20(7).

6 The appointed external valuer shall not delegate the valuation function to a third party.

7 AIFMs shall notify the appointment of the external valuer to the competent authorities of their home Member State which may require that another external valuer be appointed instead, where the conditions laid down in paragraph 5 are not met.

8 The valuation shall be performed impartially and with all due skill, care and diligence.

9 Where the valuation function is not performed by an independent external valuer, the competent authorities of the home Member State of the AIFM may require the AIFM to have its valuation procedures and/or valuations verified by an external valuer or, where appropriate, by an auditor.

10 AIFMs are responsible for the proper valuation of AIF assets, the calculation of the net asset value and the publication of that net asset value. The AIFM's liability towards the AIF and its investors shall, therefore, not be affected by the fact that the AIFM has appointed an external valuer.

Notwithstanding the first subparagraph and irrespective of any contractual arrangements providing otherwise, the external valuer shall be liable to the AIFM for any losses suffered by the AIFM as a result of the external valuer's negligence or intentional failure to perform its tasks.

11 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 criteria concerning the procedures for the proper valuation of the assets and the calculation of the net asset value per unit or share;
- b the professional guarantees the external valuer must be able to provide to effectively perform the valuation function;
- c the frequency of valuation carried out by open-ended AIFs which is both appropriate to the assets held by the AIF and its issuance and redemption policy.