

Regulation (EU) 2019/2033 of the European Parliament and of the Council of 27 November 2019 on the prudential requirements of investment firms and amending Regulations (EU) No 1093/2010, (EU) No 575/2013, (EU) No 600/2014 and (EU) No 806/2014 (Text with EEA relevance)

PART ONE

**GENERAL PROVISIONS**

TITLE II

**LEVEL OF APPLICATION OF REQUIREMENTS**

*CHAPTER 1*

*Application of requirements on an individual basis*

*Article 5*

**General principle**

Investment firms shall comply with the requirements laid down in Parts Two to Seven on an individual basis.

*Article 6*

**Exemptions**

1 Competent authorities may exempt an investment firm from the application of Article 5 in respect of Parts Two, Three, Four, Six and Seven, where all of the following conditions apply:

- a the investment firm meets the conditions for qualifying as a small and non# interconnected investment firm set out in Article 12(1);
- b one of the following conditions is satisfied:
  - (i) the investment firm is a subsidiary and is included in the supervision on a consolidated basis of a credit institution, a financial holding company or a mixed financial holding company, in accordance with the provisions of Chapter 2 of Title II of Part One of Regulation (EU) No 575/2013;
  - (ii) the investment firm is a subsidiary and is included in an investment firm group supervised on a consolidated basis in accordance with Article 7;
- c both the investment firm and its parent undertaking are subject to authorisation and supervision by the same Member State;
- d the authorities competent for the supervision on a consolidated basis in accordance with Regulation (EU) No 575/2013 or in accordance with Article 7 of this Regulation agree to such an exemption;

- e own funds are distributed adequately between the parent undertaking and the investment firm, and all of the following conditions are satisfied:
    - (i) there is no current or foreseen material practical or legal impediment to the prompt transfer of capital or repayment of liabilities by the parent undertaking;
    - (ii) upon prior approval by the competent authority, the parent undertaking declares that it guarantees the commitments entered into by the investment firm or that the risks in the investment firm are of negligible interest;
    - (iii) the risk evaluation, measurement and control procedures of the parent undertaking include the investment firm; and
    - (iv) the parent undertaking holds more than 50 % of the voting rights attached to shares in the capital of the investment firm or has the right to appoint or remove a majority of the members of the investment firm's management body.
- 2 Competent authorities may exempt investment firms from the application of Article 5 in respect of Part Six where all of the following conditions apply:
- a the investment firm meets the conditions for qualifying as a small and non# interconnected investment firm set out in Article 12(1);
  - b the investment firm is a subsidiary and is included in the supervision on a consolidated basis of an insurance or reinsurance undertaking in accordance with Article 228 of Directive 2009/138/EC;
  - c both the investment firm and its parent undertaking are subject to authorisation and supervision by the same Member State;
  - d the authorities competent for the supervision on a consolidated basis in accordance with Directive 2009/138/EC agree to such an exemption;
  - e own funds are distributed adequately between the parent undertaking and the investment firm and all of the following conditions are satisfied:
    - (i) there is no current or foreseen material practical or legal impediment to the prompt transfer of capital or repayment of liabilities by the parent undertaking;
    - (ii) upon prior approval by the competent authority, the parent undertaking declares that it guarantees the commitments entered into by the investment firm or that the risks in the investment firm are of negligible interest;
    - (iii) the risk evaluation, measurement and control procedures of the parent undertaking include the investment firm; and
    - (iv) the parent undertaking holds more than 50 % of the voting rights attached to shares in the capital of the investment firm or has the right to appoint or remove a majority of the members of the investment firm's management body.
- 3 Competent authorities may exempt investment firms from the application of Article 5 in respect of Part Five where all of the following conditions are satisfied:
- a the investment firm is included in the supervision on a consolidated basis in accordance with Chapter 2 of Title II of Part One of Regulation (EU) No 575/2013 or is included in an investment firm group for which Article 7(3) of this Regulation applies and the exemption provided for in Article 7(4) does not apply;
  - b the parent undertaking, on a consolidated basis, monitors and has oversight at all times over the liquidity positions of all institutions and investment firms within the group or sub#group that are subject to a waiver and ensures a sufficient level of liquidity for all of those institutions and investment firms;

- c the parent undertaking and the investment firm have entered into contracts that, to the satisfaction of the competent authorities, provide for the free movement of funds between the parent undertaking and the investment firm to enable them to meet their individual obligations and joint obligations as they become due;
- d there is no current or foreseen material, practical or legal impediment to the fulfilment of the contracts referred to in point (c);
- e the authorities competent for the supervision on a consolidated basis in accordance with Regulation (EU) No 575/2013 or in accordance with Article 7 of this Regulation agree to such an exemption.