Directive 2006/49/EC of the European Parliament and of the Council of 14 June 2006 on the capital adequacy of investment firms and credit institutions (recast) (repealed)

CHAPTER IV

Own funds

Article 12

[[F1]'Original own funds' means the sum of points (a) to (ca), less the sum of points (i), (j) and (k) of Article 57 of Directive 2006/48/EC.**]**

The Commission shall, by 1 January 2009,,submit an appropriate proposal to the European Parliament and to the Council for amendment of this Chapter.

Textual Amendments

F1 Substituted by Directive 2009/111/EC of the European Parliament and of the Council of 16 September 2009 amending Directives 2006/48/EC, 2006/49/EC and 2007/64/EC as regards banks affiliated to central institutions, certain own funds items, large exposures, supervisory arrangements, and crisis management (Text with EEA relevance).

Article 13

1 Subject to paragraphs 2 to 5 of this Article and Articles 14 to 17, the own funds of investment firms and credit institutions shall be determined in accordance with Directive 2006/48/EC.

In addition, the first subparagraph applies to investment firms which do not have one of the legal forms referred to in Article 1(1) of the Fourth Council Directive 78/660/EEC of 25 July 1978 based on Article 54(3) of the Treaty on the annual accounts of certain types of companies[(1)].

2 By way of derogation from paragraph 1, the competent authorities may permit those institutions which are obliged to meet the capital requirements calculated in accordance with Articles 21 and 28 to 32 and Annexes I and III to VI to use, for that purpose only, an alternative determination of own funds. No part of the own funds used for that purpose may be used simultaneously to meet other capital requirements.

Such an alternative determination shall be the sum of the items set out in points (a) to (c) of this subparagraph, minus the item set out in point (d), with the deduction of that last item being left to the discretion of the competent authorities:

a own funds as defined in Directive 2006/48/EC, excluding only points (l) to (p) of Article 57 of that Directive for those investment firms which are required to deduct item (d) of this paragraph from the total of items (a) to (c);

b an institution's net trading-book profits net of any foreseeable charges or dividends, less net losses on its other business, provided that none of those amounts has already been included in item (a) of this paragraph as one of the items set out in points (b) or (k) of Article 57 of Directive 2006/48/EC;

c subordinated loan capital and/or the items referred to in paragraph 5 of this Article, subject to the conditions set out in paragraphs 3 and 4 of this Article and in Article 14; and

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d illiquid assets as specified in Article 15.

3 The subordinated loan capital referred to in point (c) of the second subparagraph of paragraph 2 shall have an initial maturity of at least two years. It shall be fully paid up and the loan agreement shall not include any clause providing that in specified circumstances, other than the winding up of the institution, the debt will become repayable before the agreed repayment date, unless the competent authorities approve the repayment. Neither the principal nor the interest on such subordinated loan capital may be repaid if such repayment would mean that the own funds of the institution in question would then amount to less than 100 % of that institution's overall capital requirements.

In addition, an institution shall notify the competent authorities of all repayments on such subordinated loan capital as soon as its own funds fall below 120 % of its overall capital requirements.

4 The subordinated loan capital referred to in point (c) of the second subparagraph of paragraph 2 may not exceed a maximum of 150 % of the original own funds left to meet the requirements calculated in accordance with Articles 21 and 28 to 32 and Annexes I to VI and may approach that maximum only in particular circumstances acceptable to the competent authorities.

5 The competent authorities may permit institutions to replace the subordinated loan capital referred to in point (c) of the second subparagraph of paragraph 2 with points (d) to (h) of Article 57 of Directive 2006/48/EC.

Article 14

1 The competent authorities may permit investment firms to exceed the ceiling for subordinated loan capital set out in Article 13(4) if they judge it prudentially adequate and provided that the total of such subordinated loan capital and the items referred to in Article 13(5) does not exceed 200 % of the original own funds left to meet the requirements calculated in accordance with Articles 21 and 28 to 32 and Annexes I and III to VI, or 250 % of the same amount where investment firms deduct the item set out in Article 13(2)(d) when calculating own funds.

2 The competent authorities may permit the ceiling for subordinated loan capital set out in Article 13(4) to be exceeded by a credit institution if they judge it prudentially adequate and provided that the total of such subordinated loan capital and points (d) to (h) of Article 57 of Directive 2006/48/EC does not exceed 250 % of the original own funds left to meet the requirements calculated in accordance with Articles 28 to 32 and Annexes I and III to VI to this Directive.

Article 15

Illiquid assets as referred to in point (d) of the second subparagraph of Article 13(2) shall include the following:

(a) tangible fixed assets, except to the extent that land and buildings may be allowed to count against the loans which they are securing;

(b) holdings in, including subordinated claims on, credit or financial institutions which may be included in the own funds of those institutions, unless they have been deducted under points (l) to (p) of Article 57 of Directive 2006/48/EC or under Article 16(d) of this Directive;

(c) holdings and other investments in undertakings other than credit or financial institutions, which are not readily marketable;

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(d) deficiencies in subsidiaries;

(e) deposits made, other than those which are available for repayment within 90 days, and also excluding payments in connection with margined futures or options contracts;

(f) loans and other amounts due, other than those due to be repaid within 90 days; and

(g) physical stocks, unless they are already subject to capital requirements at least as stringent as those set out in Articles 18 and 20.

For the purposes of point (b), where shares in a credit or financial institution are held temporarily for the purpose of a financial assistance operation designed to reorganise and save that institution, the competent authorities may waive the application of this Article. They may also waive it in respect of those shares which are included in an investment firm's trading book.

Article 16

Investment firms included in a group which has been granted the waiver provided for in Article 22 shall calculate their own funds in accordance with Articles 13 to 15, subject to the following:

(a) the illiquid assets referred to in Article 13(2)(d) shall be deducted;

(b) the exclusion referred to in point (a) of Article 13(2) shall not cover those components of points (l) to (p) of Article 57 of Directive 2006/48/EC which an investment firm holds in respect of undertakings included in the scope of consolidation as defined in Article 2(1) of this Directive;

(c) the limits referred to in points (a) and (b) of Article 66(1) of Directive 2006/48/EC shall be calculated with reference to the original own funds less the components of points (l) to (p) of Article 57 of that Directive as referred to in point (b) of this Article which are elements of the original own funds of those undertakings; and

(d) the components of points (l) to (p) of Article 57 of Directive 2006/48/EC referred to in point (c) of this Article shall be deducted from the original own funds rather than from the total of all items as laid down in Article 66(2) of that Directive for the purposes in particular of Articles 13(4), 13(5) and 14 of this Directive.

Article 17

1 Where an institution calculates risk-weighted exposure amounts for the purposes of Annex II to this Directive in accordance with Articles 84 to 89 of Directive 2006/48/EC, then for the purposes of the calculation provided for in point 4 of Part 1 of Annex VII to Directive 2006/48/EC, the following shall apply:

a value adjustments made to take account of the credit quality of the counterparty may be included in the sum of value adjustments and provisions made for the exposures indicated in Annex II; and

b subject to the approval of the competent authorities, if the credit risk of the counterparty is adequately taken into account in the valuation of a position included in the trading book, the expected loss amount for the counterparty risk exposure shall be zero.

For the purposes of point (a), for such institutions, such value adjustments shall not be included in own funds other than in accordance with the provisions of this paragraph.

2 For the purposes of this Article, Article 153 and 154 of Directive 2006/48/EC shall apply.

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(1) OJ L 222, 14.8.1978, p. 11. Directive as last amended by Directive 2003/51/EC of the European Parliament and of the Council (OJ L 178, 17.7.2003, p. 16).