

Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (recast) (Text with EEA relevance)

CHAPTER III

OBLIGATIONS REGARDING MANAGEMENT COMPANIES

SECTION 3

Operating conditions

Article 13

1 If the law of the management company's home Member State allows management companies to delegate to third parties for the purpose of a more efficient conduct of the companies' business, to carry out on their behalf one or more of their own functions, all of the following preconditions shall be complied with:

- a the management company must inform the competent authorities of its home Member State in an appropriate manner; the competent authorities of the management company's home Member State must, without delay, transmit the information to the competent authorities of the UCITS home Member State;
- b the mandate must not prevent the effectiveness of supervision over the management company, and, in particular, must not prevent the management company from acting, or the UCITS from being managed, in the best interests of its investors;
- c when the delegation concerns the investment management, the mandate must be given only to undertakings which are authorised or registered for the purpose of asset management and subject to prudential supervision; the delegation must be in accordance with investment-allocation criteria periodically laid down by the management companies;
- d where the mandate concerns the investment management and is given to a third-country undertaking, cooperation between the supervisory authorities concerned must be ensured;
- e a mandate with regard to the core function of investment management must not be given to the depositary or to any other undertaking whose interests may conflict with those of the management company or the unit-holders;
- f measures must exist which enable the persons who conduct the business of the management company to monitor effectively at any time the activity of the undertaking to which the mandate is given;
- g the mandate must not prevent the persons who conduct the business of the management company from giving further instructions to the undertaking to which functions are delegated at any time or from withdrawing the mandate with immediate effect when this is in the interest of investors;
- h having regard to the nature of the functions to be delegated, the undertaking to which functions will be delegated must be qualified and capable of undertaking the functions in question; and

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- i the UCITS' prospectuses must list the functions which the management company has been allowed to delegate in accordance with this Article.

2 The liability of the management company or the depositary shall not be affected by delegation by the management company of any functions to third parties. The management company shall not delegate its functions to the extent that it becomes a letter-box entity.