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 U.K.

OBLIGATIONS REGARDING MANAGEMENT COMPANIES

SECTION 1 U.K.

Conditions for taking up business

Article 6 U.K.

1 Access to the business of management companies shall be subject to prior authorisation to be granted by the competent authorities of the management company's home Member State. Authorisation granted under this Directive to a management company shall be valid for all Member States.

[[F1]ESMA shall be notified of every authorisation granted and shall publish and keep up-to-date a list of authorised management companies on its website.**]**

2 No management company shall engage in activities other than the management of UCITS authorised under this Directive, with the exception of the additional management of other collective investment undertakings which are not covered by this Directive and for which the management company is subject to prudential supervision but the units of which cannot be marketed in other Member States under this Directive.

The activity of management of UCITS shall include, for the purpose of this Directive, the functions referred to in Annex II.

3 By way of derogation from paragraph 2, Member States may authorise management companies to provide, in addition to the management of UCITS, the following services:

a management of portfolios of investments, including those owned by pension funds, in accordance with mandates given by investors on a discretionary, client-by-client basis, where such portfolios include one or more of the instruments listed in Annex I, Section C to Directive 2004/39/EC; and

b as non-core services:

(i) investment advice concerning one or more of the instruments listed in Annex I, Section C to Directive 2004/39/EC;

(ii) safekeeping and administration in relation to units of collective investment undertakings.

Management companies shall not be authorised under this Directive to provide only the services referred to in this paragraph, or to provide non-core services without being authorised for the services referred to in point (a) of the first subparagraph.

4 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 3 of this Article by management companies.

Textual Amendments

F1 Inserted by Directive 2010/78/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 98/26/EC, 2002/87/EC, 2003/6/EC, 2003/41/EC, 2003/71/EC, 2004/39/EC, 2004/109/EC, 2005/60/EC, 2006/48/EC, 2006/49/EC and 2009/65/EC in respect of the powers of the European Supervisory Authority (European Banking Authority), the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority) (Text with EEA relevance).

Article 7 *U.K.*

1 Without prejudice to other conditions of general application laid down by national law, the competent authorities shall not grant authorisation to a management company unless the following conditions are met:

a the management company has an initial capital of at least EUR 125 000, taking into account the following:

(i) when the value of the portfolios of the management company exceeds EUR 250 000 000, the management company must be required to provide an additional amount of own funds which is equal to 0,02 % of the amount by which the value of the portfolios of the management company exceeds EUR 250 000 000 but the required total of the initial capital and the additional amount must not, however, exceed EUR 10 000 000;

(ii) for the purposes of this paragraph, the following portfolios must be deemed to be the portfolios of the management company:

— common funds managed by the management company including portfolios for which it has delegated the management function but excluding portfolios that it is managing under delegation,

— investment companies for which the management company is the designated management company,

— other collective investment undertakings managed by the management company including portfolios for which it has delegated the management function but excluding portfolios that it is managing under delegation;

(iii) irrespective of the amount of those requirements, the own funds of the management company must at no time be less than the amount prescribed in Article 21 of Directive 2006/49/EC;

b the persons who effectively conduct the business of a management company are of sufficiently good repute and are sufficiently experienced also in relation to the type of UCITS managed by the management company, the names of those persons and of every person succeeding them in office being communicated forthwith to the competent authorities and the conduct of the business of a management company being decided by at least two persons meeting such conditions;

c the application for authorisation is accompanied by a programme of activity setting out, at least, the organisational structure of the management company; and

d the head office and the registered office of the management company are located in the same Member State.

For the purposes of point (a) of the first subparagraph, Member States may authorise management companies not to provide up to 50 % of the additional amount of own funds referred to in point (i) of point (a) 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 Community law.

2 Where close links exist between the management company and other natural or legal persons, the competent authorities shall grant authorisation only if those close links do not prevent the effective exercise of their supervisory functions.

The competent authorities shall also refuse authorisation if the laws, regulations or administrative provisions of a third country governing one or more natural or legal persons with which the management company has close links, or difficulties involved in their enforcement, prevent the effective exercise of their supervisory functions.

The competent authorities shall require management companies to provide them with the information they require to monitor compliance with the conditions referred to in this paragraph on a continuous basis.

3 The competent authorities shall inform the applicant within six months of the submission of a complete application whether or not authorisation has been granted. Reasons shall be given where an authorisation is refused.

4 A management company may start business as soon as authorisation has been granted.

5 The competent authorities may withdraw the authorisation issued to a management company subject to this Directive only where that company:

a does not make use of the authorisation within 12 months, expressly renounces the authorisation or has ceased the activity covered by this Directive more than six months previously, unless the Member State concerned has provided for authorisation to lapse in such cases;

b has obtained the authorisation by making false statements or by any other irregular means;

c no longer fulfils 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 Article 6(3)(a) 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 provides for withdrawal.

[[F1]6 In order to ensure consistent harmonisation of this Article, ESMA may develop draft regulatory technical standards to specify:

a the information to be provided to the competent authorities in the application for the authorisation of the management company, including the programme of activity;

b the requirements applicable to the management company under paragraph 2 and the information for the notification provided for in paragraph 3;

c the requirements applicable to shareholders and members with qualifying holdings, as well as obstacles which may prevent effective exercise of the supervisory functions of the competent authority, as provided for in Article 8(1) of this Directive and in Article 10(1) and (2) of Directive 2004/39/EC, in accordance with Article 11 of this Directive.

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.

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 notification or provision of information provided for in points (a) and (b) of the first subparagraph.

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

Textual Amendments

F1 Inserted by Directive 2010/78/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 98/26/EC, 2002/87/EC, 2003/6/EC, 2003/41/EC, 2003/71/EC, 2004/39/EC, 2004/109/EC, 2005/60/EC, 2006/48/EC, 2006/49/EC and 2009/65/EC in respect of the powers of the European Supervisory Authority (European Banking Authority), the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority) (Text with EEA relevance).

Article 8 *U.K.*

1 The competent authorities shall not grant authorisation to take up the business of management companies until they have been informed of the identities of the shareholders or members, whether direct or indirect, natural or legal persons, that have qualifying holdings and of the amounts of those holdings.

The competent authorities shall refuse authorisation if, taking into account the need to ensure the sound and prudent management of a management company, they are not satisfied as to the suitability of the shareholders or members referred to in the first subparagraph.

2 In the case of branches of management companies that have registered offices outside the Community and are taking up or pursuing business, the Member States shall not apply provisions that result in treatment more favourable than that accorded to branches of management companies that have registered offices in Member States.

3 The competent authorities of the other Member State involved shall be consulted beforehand in relation to the authorisation of any management company which is one of the following:

a a subsidiary of another management company, an investment firm, a credit institution or an insurance undertaking authorised in another Member State;

b a subsidiary of the parent undertaking of another management company, an investment firm, a credit institution or an insurance undertaking authorised in another Member State; or

c a company controlled by the same natural or legal persons as control another management company, an investment firm, a credit institution or an insurance undertaking authorised in another Member State.