

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 V

OBLIGATIONS REGARDING INVESTMENT COMPANIES

SECTION 1

Conditions for taking up business

Article 27

Access to the business of an investment company shall be subject to prior authorisation to be granted by the competent authorities of the investment company's home Member State.

Member States shall determine the legal form which an investment company must take.

The registered office of the investment company shall be situated in the investment company's home Member State.

Article 28

No investment company may engage in activities other than those referred to in Article 1(2).

Article 29

1 Without prejudice to other conditions of general application laid down by national law, the competent authorities of the investment company's home Member State shall not grant authorisation to an investment company that has not designated a management company unless the investment company has a sufficient initial capital of at least EUR 300 000.

In addition, when an investment company has not designated a management company authorised pursuant to this Directive, the following conditions shall apply:

- a the authorisation must not be granted unless the application for authorisation is accompanied by a programme of operations setting out, at least, the organisational structure of the investment company;
- b the directors of the investment company must be of sufficiently good repute and be sufficiently experienced also in relation to the type of business pursued by the investment company and, to that end: the names of the directors and of every person succeeding them in office must be communicated forthwith to the competent authorities; the conduct of an investment company's business must be decided by at least two persons meeting such conditions; and 'directors' shall mean those persons who, under the law or the instruments of incorporation, represent the investment company, or who effectively determine the policy of the company; and
- c where close links exist between the investment company and other natural or legal persons, the competent authorities must grant authorisation only if those close links do not prevent the effective exercise of their supervisory functions.

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The competent authorities of the investment company's home Member State 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 investment company has close links, or difficulties involved in their enforcement, prevent the effective exercise of their supervisory functions.

The competent authorities of the investment company's home Member State shall require investment companies to provide them with the information they need.

2 Where an investment company has not designated a management company, the investment company shall be informed, within six months of the submission of a complete application, whether or not authorisation has been granted. Reasons shall be given whenever an authorisation is refused.

3 An investment company may start business as soon as authorisation has been granted.

4 The competent authorities of the investment company's home Member State may withdraw the authorisation issued to an investment 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 has seriously or systematically infringed the provisions adopted pursuant to this Directive; or
- e falls within any of the cases where national law provides for withdrawal.

[^{F15} In order to ensure consistent harmonisation of this Directive, 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 investment company, including the programme of operations; and
- b the obstacles which may prevent effective exercise of the supervisory functions of the competent authority under paragraph 1(c).

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.

6 In order to ensure uniform conditions of application of this Article, ESMA may develop draft implementing technical standards to establish standard forms, templates and procedures for the provision of information referred to in point (a) of the first subparagraph of paragraph 5.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first 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](#)

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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).

SECTION 2

Operating conditions

Article 30

[^{F2}Articles 13 to 14b shall apply *mutatis mutandis* to investment companies that have not designated a management company authorised pursuant to this Directive.]

For the purpose of the Articles referred to in the first paragraph, ‘management company’ means ‘investment company’.

Investment companies shall manage only assets of their own portfolio and shall not, under any circumstances, receive any mandate to manage assets on behalf of a third party.

Textual Amendments

- F2** Substituted by Directive 2014/91/EU of the European Parliament and of the Council of 23 July 2014 amending Directive 2009/65/EC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) as regards depositary functions, remuneration policies and sanctions (Text with EEA relevance).

Article 31

Each investment company’s home Member State shall draw up prudential rules which shall be observed at all times by investment companies that have not designated a management company authorised pursuant to this Directive.

In particular, the competent authorities of the investment company’s home Member State, having regard also to the nature of the investment company, shall require that the company 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 financial instruments in order to invest its initial capital and ensuring, at least, that each transaction involving the company 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 investment company are invested according to the instruments of incorporation and the legal provisions in force.

^{F3}SECTION 3

[^{F3}Obligations regarding the depositary]

^{F3}Article 32

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^{F3}Article 33

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^{F3}Article 34

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^{F3}Article 35

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^{F3}Article 36

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Textual Amendments

- F3** Deleted by Directive 2014/91/EU of the European Parliament and of the Council of 23 July 2014 amending Directive 2009/65/EC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) as regards depositary functions, remuneration policies and sanctions (Text with EEA relevance).