

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and of the Council of 14 June 2006 on the capital adequacy of investment firms and credit institutions (recast) (repealed)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 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<sup>(1)</sup>.

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
- 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.

---

*Status: This is the original version (as it was originally adopted).*

---

- (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](#)).