

Commission Directive 2010/43/EU of 1 July 2010 implementing Directive 2009/65/EC of the European Parliament and of the Council as regards organisational requirements, conflicts of interest, conduct of business, risk management and content of the agreement between a depositary and a management company (Text with EEA relevance)

CHAPTER II

ADMINISTRATIVE PROCEDURES AND CONTROL MECHANISM

(Article 12(1)(a) and Article 14(1)(c) of Directive 2009/65/EC)

SECTION 3

Internal control mechanisms

Article 10

Permanent compliance function

1 Member States shall ensure that management companies establish, implement and maintain adequate policies and procedures designed to detect any risk of failure by the management company to comply with its obligations under Directive 2009/65/EC, as well as the associated risks, and put in place adequate measures and procedures designed to minimise such risk and to enable the competent authorities to exercise their powers effectively under that Directive.

Member States shall ensure that management companies take into account the nature, scale and complexity of the business of the company, and the nature and range of services and activities undertaken in the course of that business.

2 Member States shall require management companies to establish and maintain a permanent and effective compliance function which operates independently and which has the following responsibilities:

- a to monitor and, on a regular basis, to assess the adequacy and effectiveness of the measures, policies and procedures put in place in accordance with paragraph 1, and the actions taken to address any deficiencies in the management company's compliance with its obligations;
- b to advise and assist the relevant persons responsible for carrying out services and activities to comply with the management company's obligations under Directive 2009/65/EC.

3 In order to enable the compliance function referred to in paragraph 2 to discharge its responsibilities properly and independently, management companies shall ensure that the following conditions are satisfied:

- a the compliance function must have the necessary authority, resources, expertise and access to all relevant information;

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- b a compliance officer must be appointed and must be responsible for the compliance function and for any reporting on a frequent basis, and at least annually, to the senior management on matters of compliance, indicating in particular whether the appropriate remedial measures have been taken in the event of any deficiencies;
- c the relevant persons involved in the compliance function must not be involved in the performance of services or activities they monitor;
- d the method of determining the remuneration of the relevant persons involved in the compliance function must not compromise their objectivity and must not be likely to do so.

However, a management company shall not be required to comply with point (c) or point (d) of the first subparagraph where it is able to demonstrate that in view of the nature, scale and complexity of its business, and the nature and range of its services and activities, that requirement is not proportionate and that its compliance function continues to be effective.