

Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive (Text with EEA relevance)

CHAPTER II

ORGANISATIONAL REQUIREMENTS

SECTION I

Organisation

Article 21

General organisational requirements^{F1} ...

- 1 Investment firms shall comply with the following organisational requirements:
 - a establish, implement and maintain decision-making procedures and an organisational structure which clearly and in documented manner specifies reporting lines and allocates functions and responsibilities;
 - b ensure that their relevant persons are aware of the procedures which must be followed for the proper discharge of their responsibilities;
 - c establish, implement and maintain adequate internal control mechanisms designed to secure compliance with decisions and procedures at all levels of the investment firm;
 - d employ personnel with the skills, knowledge and expertise necessary for the discharge of the responsibilities allocated to them;
 - e establish, implement and maintain effective internal reporting and communication of information at all relevant levels of the investment firm;
 - f maintain adequate and orderly records of their business and internal organisation;
 - g ensure that the performance of multiple functions by their relevant persons does not and is not likely to prevent those persons from discharging any particular function soundly, honestly, and professionally.

When complying with the requirements set out in the this paragraph, investment firms shall take into account the nature, scale and complexity of the business of the firm, and the nature and range of investment services and activities undertaken in the course of that business.

- 2 Investment firms shall establish, implement and maintain systems and procedures that are adequate to safeguard the security, integrity and confidentiality of information, taking into account the nature of the information in question.

- 3 Investment firms shall establish, implement and maintain an adequate business continuity policy aimed at ensuring, in the case of an interruption to their systems and procedures, the preservation of essential data and functions, and the maintenance of investment services and activities, or, where that is not possible, the timely recovery of such data and functions and the timely resumption of their investment services and activities.

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4 Investment firms shall establish, implement and maintain accounting policies and procedures that enable them, at the request of the competent authority, to deliver in a timely manner to the competent authority financial reports which reflect a true and fair view of their financial position and which comply with all applicable accounting standards and rules.

5 Investment firms shall monitor and, on a regular basis, evaluate the adequacy and effectiveness of their systems, internal control mechanisms and arrangements established in accordance with paragraphs 1 to 4, and take appropriate measures to address any deficiencies.

Textual Amendments

- F1** Words in [Art. 21](#) heading omitted (31.12.2020) by virtue of [The Markets in Financial Instruments \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1403\)](#), regs. 1(3), **42(1)** (with savings in [S.I. 2019/680](#), reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

Article 22

Compliance ^{F2}...

1 Investment firms shall establish, implement and maintain adequate policies and procedures designed to detect any risk of failure by the firm to comply with its obligations under [^{F3}UK law on markets in financial instruments (“UK obligations”)], 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 [^{F4}UK law on markets in financial instruments].

Investment firms shall take into account the nature, scale and complexity of the business of the firm, and the nature and range of investment services and activities undertaken in the course of that business.

2 Investment firms shall establish and maintain a permanent and effective compliance function which operates independently and which has the following responsibilities:

- a to monitor on a permanent basis and to assess, on a regular basis, the adequacy and effectiveness of the measures, policies and procedures put in place in accordance with the first subparagraph of paragraph 1, and the actions taken to address any deficiencies in the firm's compliance with its obligations;
- b to advise and assist the relevant persons responsible for carrying out investment services and activities to comply with the firm's [^{F5}UK obligations];
- c to report to the management body, on at least an annual basis, on the implementation and effectiveness of the overall control environment for investment services and activities, on the risks that have been identified and on the complaints-handling reporting as well as remedies undertaken or to be undertaken;
- d to monitor the operations of the complaints-handling process and consider complaints as a source of relevant information in the context of its general monitoring responsibilities.

In order to comply with points (a) and (b) of this paragraph, the compliance function shall conduct an assessment on the basis of which it shall establish a risk-based monitoring programme that takes into consideration all areas of the investment firm's investment services, activities and any relevant ancillary services, including relevant information gathered in relation to the monitoring of complaints handling. The monitoring programme shall establish priorities determined by the compliance risk assessment ensuring that compliance risk is comprehensively monitored.

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

- a the compliance function has the necessary authority, resources, expertise and access to all relevant information;
- b a compliance officer is appointed and replaced by the management body and is responsible for the compliance function and for any reporting as to compliance required [^{F6}in relation to its UK obligations and by] Article 25(2) of this Regulation;
- c the compliance function reports on an ad-hoc basis directly to the management body where it detects a significant risk of failure by the firm to comply with its [^{F7}UK obligations];
- d the relevant persons involved in the compliance function are not involved in the performance of services or activities they monitor;
- e the method of determining the remuneration of the relevant persons involved in the compliance function does not compromise their objectivity and is not likely to do so.

4 An investment firm shall not be required to comply with point (d) or point (e) of paragraph 3 where it is able to demonstrate that in view of the nature, scale and complexity of its business, and the nature and range of investment services and activities, the requirements under point (d) or (e) are not proportionate and that its compliance function continues to be effective. In that case, the investment firm shall assess whether the effectiveness of the compliance function is compromised. The assessment shall be reviewed on a regular basis.

Textual Amendments

- F2** Words in Art. 22 heading omitted (31.12.2020) by virtue of [The Markets in Financial Instruments \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1403\)](#), regs. 1(3), **42(2)(a)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F3** Words in Art. 22(1) substituted (31.12.2020) by [The Markets in Financial Instruments \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1403\)](#), regs. 1(3), **42(2)(b)(i)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F4** Words in Art. 22(1) substituted (31.12.2020) by [The Markets in Financial Instruments \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1403\)](#), regs. 1(3), **42(2)(b)(ii)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F5** Words in Art. 22(2)(b) substituted (31.12.2020) by [The Markets in Financial Instruments \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1403\)](#), regs. 1(3), **42(2)(c)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F6** Words in Art. 22(3)(b) substituted (31.12.2020) by [The Markets in Financial Instruments \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1403\)](#), regs. 1(3), **42(2)(d)(i)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F7** Words in Art. 22(3)(c) substituted (31.12.2020) by [The Markets in Financial Instruments \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1403\)](#), regs. 1(3), **42(2)(d)(ii)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

Article 23

Risk management ^{F8}...

1 Investment firms shall take the following actions relating to risk management:

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- a establish, implement and maintain adequate risk management policies and procedures which identify the risks relating to the firm's activities, processes and systems, and where appropriate, set the level of risk tolerated by the firm;
 - b adopt effective arrangements, processes and mechanisms to manage the risks relating to the firm's activities, processes and systems, in light of that level of risk tolerance;
 - c monitor the following:
 - (i) the adequacy and effectiveness of the investment firm's risk management policies and procedures;
 - (ii) the level of compliance by the investment firm and its relevant persons with the arrangements, processes and mechanisms adopted in accordance with point (b);
 - (iii) the adequacy and effectiveness of measures taken to address any deficiencies in those policies, procedures, arrangements, processes and mechanisms, including failures by the relevant persons to comply with such arrangements, processes and mechanisms or follow such policies and procedures.
- 2 Investment firms shall, where appropriate and proportionate in view of the nature, scale and complexity of their business and the nature and range of the investment services and activities undertaken in the course of that business, establish and maintain a risk management function that operates independently and carries out the following tasks:
- a implementation of the policy and procedures referred to in paragraph 1;
 - b provision of reports and advice to senior management in accordance with Article 25(2).

Where an investment firm does not establish and maintain a risk management function under the first sub-paragraph, it shall be able to demonstrate upon request that the policies and procedures which it has adopted in accordance with paragraph 1 satisfy the requirements therein.

Textual Amendments

- F8** Words in [Art. 23](#) heading omitted (31.12.2020) by virtue of [The Markets in Financial Instruments \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1403\)](#), regs. 1(3), **42(3)** (with savings in [S.I. 2019/680](#), reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

Article 24

Internal audit ^{F9} ...

Investment firms shall, where appropriate and proportionate in view of the nature, scale and complexity of their business and the nature and range of investment services and activities undertaken in the course of that business, establish and maintain an internal audit function which is separate and independent from the other functions and activities of the investment firm and which has the following responsibilities:

- (a) establish, implement and maintain an audit plan to examine and evaluate the adequacy and effectiveness of the investment firm's systems, internal control mechanisms and arrangements;
- (b) issue recommendations based on the result of work carried out in accordance with point (a) and verify compliance with those recommendations;

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- (c) report in relation to internal audit matters in accordance with Article 25(2).

Textual Amendments

- F9** Words in [Art. 24](#) heading omitted (31.12.2020) by virtue of [The Markets in Financial Instruments \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1403\)](#), regs. 1(3), **42(4)** (with savings in S.I. 2019/680, **reg. 11**); 2020 c. 1, **Sch. 5 para. 1(1)**

Article 25

Responsibility of senior management ^{F10} ...

1 Investment firms shall, when allocating functions internally, ensure that senior management, and, where applicable, the supervisory function, are responsible for ensuring that the firm complies with its obligations under [^{F11}UK law on markets in financial instruments (“UK obligations”)]. In particular, senior management and, where applicable, the supervisory function shall be required to assess and periodically review the effectiveness of the policies, arrangements and procedures put in place to comply with [^{F12}UK obligations] and to take appropriate measures to address any deficiencies.

The allocation of significant functions among senior managers shall clearly establish who is responsible for overseeing and maintaining the firm's organisational requirements. Records of the allocation of significant functions shall be kept up-to-date.

2 Investment firms shall ensure that their senior management receive on a frequent basis, and at least annually, written reports on the matters covered by Articles 22, 23 and 24 indicating in particular whether the appropriate remedial measures have been taken in the event of any deficiencies.

3 Investment firms shall ensure that where there is a supervisory function, it receives written reports on the matters covered by Articles 22, 23 and 24 on a regular basis.

4 For the purposes of this Article, the supervisory function shall be the function within an investment firm responsible for the supervision of its senior management.

Textual Amendments

- F10** Words in [Art. 25](#) heading omitted (31.12.2020) by virtue of [The Markets in Financial Instruments \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1403\)](#), regs. 1(3), **42(5)(a)** (with savings in S.I. 2019/680, **reg. 11**); 2020 c. 1, **Sch. 5 para. 1(1)**
- F11** Words in [Art. 25\(1\)](#) substituted (31.12.2020) by [The Markets in Financial Instruments \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1403\)](#), regs. 1(3), **42(5)(b)(i)** (with savings in S.I. 2019/680, **reg. 11**); 2020 c. 1, **Sch. 5 para. 1(1)**
- F12** Words in [Art. 25\(1\)](#) substituted (31.12.2020) by [The Markets in Financial Instruments \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1403\)](#), regs. 1(3), **42(5)(b)(ii)** (with savings in S.I. 2019/680, **reg. 11**); 2020 c. 1, **Sch. 5 para. 1(1)**

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Article 26

Complaints handling ^{F13} ...

1 Investment firms shall establish, implement and maintain effective and transparent complaints management policies and procedures for the prompt handling of clients' or potential clients' complaints. Investment firms shall keep a record of the complaints received and the measures taken for their resolution.

The complaints management policy shall provide clear, accurate and up-to-date information about the complaints-handling process. This policy shall be endorsed by the firm's management body.

2 Investment firms shall publish the details of the process to be followed when handling a complaint. Such details shall include information about the complaints management policy and the contact details of the complaints management function. The information shall be provided to clients or potential clients, on request, or when acknowledging a complaint. Investment firms shall enable clients and potential clients to submit complaints free of charge.

3 Investment firms shall establish a complaints management function responsible for the investigation of complaints. This function may be carried out by the compliance function.

4 When handling a complaint, investment firms shall communicate with clients or potential clients clearly, in plain language that is easy to understand and shall reply to the complaint without undue delay.

5 Investment firms shall communicate the firm's position on the complaint to clients or potential clients and inform the clients or potential clients about their options, including that they may be able to refer the complaint to an alternative dispute resolution entity, as defined in [^{F14}regulation 4 of the Alternative Dispute Resolution Regulations 2015] or that the client may be able to take civil action.

6 Investment firms shall provide information on complaints and complaints-handling to the relevant competent authorities and, where applicable under national law, to an alternative dispute resolution (ADR) entity.

7 Investment firms' compliance function shall analyse complaints and complaints-handling data to ensure that they identify and address any risks or issues.

Textual Amendments

F13 Words in [Art. 26](#) heading omitted (31.12.2020) by virtue of [The Markets in Financial Instruments \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1403\)](#), regs. 1(3), **42(6)(a)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

F14 Words in [Art. 26\(5\)](#) substituted (31.12.2020) by [The Markets in Financial Instruments \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1403\)](#), regs. 1(3), **42(6)(b)** (with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

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Article 27

Remuneration policies and practices ^{F15} ...

1 Investment firms shall define and implement remuneration policies and practices under appropriate internal procedures taking into account the interests of all the clients of the firm, with a view to ensuring that clients are treated fairly and their interests are not impaired by the remuneration practices adopted by the firm in the short, medium or long term.

Remuneration policies and practices shall be designed in such a way so as not to create a conflict of interest or incentive that may lead relevant persons to favour their own interests or the firm's interests to the potential detriment of any client.

2 Investment firms shall ensure that their remuneration policies and practices apply to all relevant persons with an impact, directly or indirectly, on investment and ancillary services provided by the investment firm or on its corporate behaviour, regardless of the type of clients, to the extent that the remuneration of such persons and similar incentives may create a conflict of interest that encourages them to act against the interests of any of the firm's clients.

3 The management body of the investment firm shall approve, after taking advice from the compliance function, the firm's remuneration policy. The senior management of the investment firm shall be responsible for the day-to-day implementation of the remuneration policy and the monitoring of compliance risks related to the policy.

4 Remuneration and similar incentives shall not be solely or predominantly based on quantitative commercial criteria, and shall take fully into account appropriate qualitative criteria reflecting compliance with the applicable regulations, the fair treatment of clients and the quality of services provided to clients.

A balance between fixed and variable components of remuneration shall be maintained at all times, so that the remuneration structure does not favour the interests of the investment firm or its relevant persons against the interests of any client.

Textual Amendments

F15 Words in [Art. 27](#) heading omitted (31.12.2020) by virtue of [The Markets in Financial Instruments \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1403\)](#), regs. 1(3), **42(7)** (with savings in [S.I. 2019/680](#), reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

Article 28

Scope of personal transactions ^{F16} ...

For the purposes of Article 29 and Article 37, a personal transaction shall be a trade in a financial instrument effected by or on behalf of a relevant person, where at least one of the following criteria are met:

- (a) the relevant person is acting outside the scope of the activities he carries out in his professional capacity;
- (b) the trade is carried out for the account of any of the following persons:
 - (i) the relevant person;

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- (ii) any person with whom he has a family relationship, or with whom he has close links;
- (iii) a person in respect of whom the relevant person has a direct or indirect material interest in the outcome of the trade, other than obtaining a fee or commission for the execution of the trade.

Textual Amendments

F16 Words in [Art. 28](#) heading omitted (31.12.2020) by virtue of [The Markets in Financial Instruments \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1403\)](#), regs. 1(3), **42(8)** (with savings in [S.I. 2019/680](#), reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

Article 29

Personal transactions ^{F17} ...

1 Investment firms shall establish, implement and maintain adequate arrangements aimed at preventing the activities set out in paragraphs 2, 3 and 4 in the case of any relevant person who is involved in activities that may give rise to a conflict of interest, or who has access to inside information within the meaning of Article 7(1) of Regulation (EU) No 596/2014 or to other confidential information relating to clients or transactions with or for clients by virtue of an activity carried out by him on behalf of the firm.

2 Investment firms shall ensure that relevant persons do not enter into a personal transaction which meets at least one of the following criteria:

- a that person is prohibited from entering into it under Regulation (EU) No 596/2014;
- b it involves the misuse or improper disclosure of that confidential information;
- c it conflicts or is likely to conflict with an obligation of the investment firm under [^{F18}UK law on markets in financial instruments].

3 Investment firms shall ensure that relevant persons do not advise or recommend, other than in the proper course of employment or contract for services, any other person to enter into a transaction in financial instruments which, if it were a personal transaction of the relevant person, would be covered by paragraph 2 or Article 37(2)(a) or (b) or Article 67(3).

4 Without prejudice to Article 10(1) of Regulation (EU) No 596/2014, investment firms shall ensure that relevant persons do not disclose, other than in the normal course of his employment or contract for services, any information or opinion to any other person where the relevant person knows, or reasonably ought to know, that as a result of that disclosure that other person will or would be likely to take either of the following steps:

- a to enter into a transaction in financial instruments which, if it were a personal transaction of the relevant person, would be covered by paragraphs 2 or 3 or Article 37(2)(a) or (b) or Article 67(3);
- b to advise or procure another person to enter into such a transaction.

5 The arrangements required under paragraph 1 shall be designed to ensure that:

- a each relevant person covered by paragraphs 1, 2, 3 and 4 is aware of the restrictions on personal transactions, and of the measures established by the investment firm in connection with personal transactions and disclosure, in accordance with paragraphs 1, 2, 3 and 4.

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- b the firm is informed promptly of any personal transaction entered into by a relevant person, either by notification of that transaction or by other procedures enabling the firm to identify such transactions;
- c a record is kept of the personal transaction notified to the firm or identified by it, including any authorisation or prohibition in connection with such a transaction.

In the case of outsourcing arrangements, the investment firm shall ensure that the firm to which the activity is outsourced maintains a record of personal transactions entered into by any relevant person and provides that information to the investment firm promptly on request.

- 6 Paragraphs 1 to 5 shall not apply to the following personal transactions:
- a personal transactions effected under a discretionary portfolio management service where there is no prior communication in connection with the transaction between the portfolio manager and the relevant person or other person for whose account the transaction is executed;
 - b personal transactions in undertakings for collective investments in transferable securities (UCITS) or AIFs that are subject to supervision under the law of ^{F19}the United Kingdom] which requires an equivalent level of risk spreading in their assets, where the relevant person and any other person for whose account the transactions are effected are not involved in the management of that undertaking.

Textual Amendments

- F17** Words in [Art. 29](#) heading omitted (31.12.2020) by virtue of [The Markets in Financial Instruments \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1403\)](#), regs. 1(3), **42(9)(a)** (with savings in [S.I. 2019/680](#), reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F18** Words in [Art. 29\(2\)\(c\)](#) substituted (31.12.2020) by [The Markets in Financial Instruments \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1403\)](#), regs. 1(3), **42(9)(b)** (with savings in [S.I. 2019/680](#), reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F19** Words in [Art. 29\(6\)\(b\)](#) substituted (31.12.2020) by [The Markets in Financial Instruments \(Amendment\) \(EU Exit\) Regulations 2018 \(S.I. 2018/1403\)](#), regs. 1(3), **42(9)(c)** (with savings in [S.I. 2019/680](#), reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

Changes to legislation:

There are outstanding changes not yet made to Commission Delegated Regulation (EU) 2017/565. Any changes that have already been made to the legislation appear in the content and are referenced with annotations.

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Changes and effects yet to be applied to :

- Regulation power to amend or revoke conferred by [2023 c. 29 s. 1517](#)
- Regulation power to modify conferred by [2023 c. 29 s. 3Sch. 1 Pt. 3](#)
- Regulation power to modify conferred by [2023 c. 29 s. 1317](#)
- Regulation revoked by [2023 c. 29 Sch. 1 Pt. 3](#)

Changes and effects yet to be applied to the whole legislation item and associated provisions

- Art. 3(1B) omitted by [S.I. 2022/1297 reg. 2\(3\)](#)
- Art. 3(1ZA) inserted by [S.I. 2022/1297 reg. 2\(2\)\(b\)](#)