

Annex S

COMMISSION DELEGATED REGULATION (EU) 2017/1943 of 14 July 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards on information and requirements for the authorisation of investment firms

~~(Text with EEA relevance)~~

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Article -1

Interpretation

1. Where a term is defined in Directive 2014/65/EU that term shall apply for the purposes of this Regulation except where (2) applies.
2. Where a term it is defined in article 2 of Regulation 600/2014/EU, as amended by the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018, that definition shall apply for the purposes of this Regulation.
3. References to UK law corresponding to EU legislation include any primary or secondary legislation or regulators' requirements which were relied upon by the United Kingdom immediately before Exit Day to give effect to that EU legislation.

Article 1

General information

An applicant seeking authorisation as an investment firm in accordance to the United Kingdom's legislation corresponding to Title II of Directive 2014/65/EU shall submit to the competent authority an application that includes the following general information:

- (a) its name (including its legal name and any other trading name to be used); legal structure (including information on whether it will be a legal person or, where allowed by national legislation, a natural person), address of the head office and, for existing companies, registered office; contact details; its national identification number, where available; as well as:
 - (i) for domestic branches: information on where the branches will operate;
 - (ii) for domestic tied agents: details on its intention to use tied agents;
- (b) the list of investment services and activities, ancillary services and financial instruments to be provided, and whether clients' financial instruments and funds will be held (even on a temporary basis).

- (c) copies of corporate documents and evidence of registration with the national register of companies, where applicable.

Article 2

Information on capital

An applicant seeking authorisation as an investment firm in accordance to the United Kingdom's legislation corresponding to Title II of Directive 2014/65/EU shall provide to the competent authority information and, where available, evidence on the sources of capital available to it. The information shall include:

- (a) details on the use of private financial resources including the origin and availability of those funds;
- (b) details on access to capital sources and financial markets including details of financial instruments issued or to be issued;
- (c) any relevant agreements and contracts regarding the capital raised;
- (d) information on the use or expected use of borrowed funds including the name of relevant lenders and details of the facilities granted or expected to be granted, including maturities, terms, pledges and guarantees, along with information on the origin of the borrowed funds (or funds expected to be borrowed) where the lender is not a supervised financial institution;
- (e) details on the means of transferring financial resources to the firm including the network used to transfer such funds.

For the purposes of point (b), information on types of capital raised shall refer, where relevant, to the types of capital specified under Regulation (EU) No 575/2013, specifically whether the capital comprises Common Equity Tier 1 items, Additional Tier 1 items or Tier 2 items.

Article 3

Information on shareholders

An applicant seeking authorisation as an investment firm in accordance to the United Kingdom's legislation corresponding to Title II of Directive 2014/65/EU shall provide to the competent authority the following information on its shareholders:

- (a) the list of persons with a direct or indirect qualifying holding in the investment firm, and the amount of these holdings and, for indirect holdings, the name of the person through which the stake is held and the name of the final holder;
- (b) for persons with a qualifying holding (direct or indirect) in the investment firm the documentation required from proposed acquirers for the acquisition and increases in qualifying holdings in investment firms in accordance with Articles 3, 4 and 5 of Commission Delegated Regulation 2017/1946 of 11 July 2017 supplementing Directives 2004/39/EC and 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for an exhaustive list of information to be included by proposed acquirers in the notification of a proposed acquisition of a qualifying holding in an investment firm;

- (c) for corporate shareholders that are members of a group, an organisational chart of the group indicating the main activities of each firm within the group, identification of any regulated entities within the group and the names of the relevant supervisory authorities as well as the relationship between the financial entities of the group and other non-financial group entities.
- (d) For the purposes of point (b), where the holder of a qualifying holding is not a natural person, the documentation shall also relate to all members of the management body and the general manager, or any other person performing equivalent duties.

Article 4

Information on the management body and persons who direct the business

An applicant seeking authorisation as an investment firm in accordance to the United Kingdom's legislation corresponding to Title II of Directive 2014/65/EU shall provide to the competent authority the following information:

- (a) in respect of members of the management body and persons effectively directing the business and their related powers and any proxies:
 - (i) personal details comprising the person's name, date and place of birth, personal national identification number, where available, address and contact details;
 - (ii) the position for which the person is/will be appointed;
 - (iii) a curriculum vitae stating relevant education and professional training, professional experience, including the names of all organisations for which the person has worked and nature and duration of the functions performed, in particular for any activities within the scope of the position sought; for positions held in the previous 10 years, when describing those activities, details shall be included on all delegated powers and internal decision-making powers held and the areas of operations under control;
 - (iv) documentation relating to person's reputation and experience, in particular a list of reference persons including contact information, letters of recommendation;
 - (v) criminal records and information on criminal investigations and proceedings relevant civil and administrative cases, and disciplinary actions opened against them (including disqualification as a company director, bankruptcy, insolvency and similar procedures), notably through an official certificate (if and so far as it is available from the relevant ~~Member State~~ or third country), or through another equivalent document; for ongoing investigations, the information may be provided through a declaration of honour;

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Article 5

Financial information

An applicant seeking authorisation as an investment firm in accordance to the United Kingdom's legislation corresponding to Title II of Directive 2014/65/EU shall provide to the competent authority the following information on its financial situation:

- (a) forecast information at an individual and, where applicable, at consolidated group and sub-consolidated levels, including:
 - (i) forecast accounting plans for the first three business years including:
 - forecast balance sheets;
 - forecast profit and loss accounts or income statements;
 - (ii) planning assumptions for the above forecasts as well as explanations of the figures, including expected number and type of customers, expected volume of transactions/orders, expected assets under management;
 - (iii) where applicable, forecast calculations of the firm's capital requirements and liquidity requirements under Regulation (EU) No 575/2013 of the European Parliament and of the Council and forecast solvency ratio for the first year;
- (b) for companies that are already active, statutory financial statements, at an individual and, where applicable, at consolidated group and sub-consolidated levels for the last three financial periods, approved, where the financial statements are audited, by the external auditor, including:
 - (i) the balance sheet;
 - (ii) the profit and loss accounts or income statements;
 - (iii) the annual reports and financial annexes and any other documents registered with the relevant registry or authority in the particular territory relevant to the company financial statements and, where applicable, a report by the company's auditor of the last three years or since the beginning of the activity;
- (c) an analysis of the scope of consolidated supervision under Regulation (EU) No 575/2013, including details on which group entities will be included in the scope of consolidated supervision requirements post-authorisation and at which level within the group these requirements will apply on a full or sub-consolidated basis.

Article 6

Information on the organisation of the firm

An applicant seeking authorisation as an investment firm in accordance to the United Kingdom's legislation corresponding to Title II of Directive 2014/65/EU shall provide to the competent authority the following information on its organisation:

- (a) a programme of initial operations for the following three years, including information on planned regulated and unregulated activities detailed information on the

geographical distribution and activities to be carried out by the investment firm. Relevant information in the programme of operations shall include:

- (i) the domicile of prospective customers and targeted investors;
 - (ii) the marketing and promotional activity and arrangements, including languages of the offering and promotional documents; identification of the ~~Member States~~ country where advertisements are most visible and frequent; type of promotional documents (in order to assess where effective marketing will be mostly developed);
 - (iii) the identity of direct marketers, financial investment advisers and distributors, geographical localisation of their activity;
- (b) details of the firm's auditors, when available at time of application for authorisation;
- (c) the organisational structure and internal control systems of the company, comprising:
- (i) the personal details of the heads of internal functions (management and supervisory), including a detailed curriculum vitae, stating relevant education and professional training, professional experience;
 - (ii) the description of the resources (in particular human and technical) allocated to the various planned activities;
 - (iii) in relation to holding client financial instruments and funds, information, specifying any client asset safeguarding arrangements (in particular, where financial instruments and funds are held in a custodian, the name of the custodian, and related contracts);
 - (iv) an explanation of how the firm will satisfy its prudential and conduct requirements.
- (d) information on the status of the application undertaken by the investment firm to become a member of the investor compensation scheme of the ~~Home Member State~~ UK or evidence of membership to the investor compensation scheme, where available;

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Article 7

General requirements

1. The information to be provided to the competent authority ~~of the home Member State~~, as set out in Articles 1 and 6, shall refer to both the head office of the firm and its branches and tied agents.
2. The information to be provided to the competent authority ~~of the home Member State~~, as set out in Articles 2 to 5, shall refer to the head office of the firm.

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Article 9

Requirements applicable to shareholders and members with qualifying holdings

The competent authority shall verify that the request of an applicant for authorisation as an investment firm, in accordance to the United Kingdom's legislation corresponding to Title II of Directive 2014/65/EU, offers sufficient guarantees for a sound and prudent management of the entity by assessing the suitability of proposed shareholders and members with qualifying holdings, having regard to the likely influence on the investment firm of each proposed shareholder or member with qualifying holdings, against all of the following criteria:

- (a) the reputation and experience of any person who will direct the business of the investment firm;
- (b) the reputation of the proposed shareholders and members with qualifying holdings;
- (c) the financial soundness of the proposed shareholders and members with qualifying holding, in particular in relation to the type of business pursued and envisaged in the investment firm;
- (d) whether the investment firm will be able to comply and continue to comply with the prudential requirements set out in the United Kingdom's legislation implementing Article 15 of Directive 2014/65/EU and, where applicable, the United Kingdom's legislation implementing Directives 2002/87/EC and 2013/36/EU of the European Parliament and of the Council and in particular, whether the group of which it will become a part has a structure that makes it possible to exercise effective supervision, ~~effectively exchange information among the competent authorities and determine the allocation of responsibilities among the competent authorities;~~
- (e) whether there are reasonable grounds to suspect that, in connection with the authorisation of the investment firm, money laundering or terrorist financing within the meaning of the United Kingdom's legislation corresponding to Article 1 of Directive 2005/60/EC of the European Parliament and of the Council (3) is being or has been committed or attempted, or that the authorisation of the investment firm could increase the risk thereof.

Article 10

Effective exercise of supervisory functions

A group structure within which the investment firm will operate shall be considered to be an obstacle to the exercise of the supervisory function of the competent authority for the purposes of the United Kingdom's legislation corresponding to Article 10(1) and (2) of Directive 2014/65/EU in any of the following cases:

- (a) it is complex and not sufficiently transparent;
- (b) it has a geographical location of group entities;
- (c) it includes activities performed by the group entities that may prevent the competent authority to effectively appraise the suitability of the shareholders or members with qualifying holdings or the influence of close links with the investment firm.

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~~This Regulation shall be binding in its entirety and directly applicable in all Member States.~~

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