

Delegation

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Agenda



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- Scope
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- Delegation conditions Level 1/Level 2
 - Delegation to depositary
 - Delegation agreement
 - Delegation notification to BaFin
 - White-label business
 - Letter-box entity
 - Audit

Scope

Delegation:

- Asset management company („AMC“) transfers to third parties functions which have been otherwise carried out by AMC

No delegation:

- Purchase of external services which are usually provided by a third party and are not carried out by AMC due to legal or other reasons, e.g. use of clearing and settlement facilities

Scope

No delegation:

- Receipt of asset information/recommendations (e.g. investment advice, „advisory models“) by third parties provided that the qualified investment decision by AMC is based on its own analysis

No delegation:

- Execution of orders by third parties (e.g. brokers or depositaries) as long as the third party does not have any discretion regarding the investment strategy

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Delegation conditions Level 1/Level 2



Level 1 conditions (key issues):

- AMC must be able to justify its entire delegation structure on objective reasons
- Delegate: sufficient resources; delegate's managers: sufficiently good repute and experience
- UCITS-AMC: Delegation of portfolio management only on entities which are authorised/registered for asset management and subject to supervision
- AIF-AMC: Delegation of portfolio-/risk management only on entities which are authorised/registered for asset management and subject to supervision, exemption: prior approval by BaFin

Delegation conditions Level 1/Level 2



Level 1 conditions (key issues):

- Delegation of portfolio-/risk management on third-country entity requires a MoU between BaFin and third-country NCA
- Delegation must not prevent effective supervision by AMC
- AMC must be able to demonstrate that delegate is qualified, capable and selected with due care
- AMC must be able to monitor the delegated actively effectively at any time

Delegation conditions Level 1/Level 2



Level 1 conditions (key issues):

- AMC shall notify BaFin of the intended delegation before the delegation arrangement becomes effective
- No „letter-box entity“
- No delegation of portfolio-/risk management on
 - Depositary or delegate of the depositary or
 - Any other entity whose interest may conflict with AMC/investors unless there is a functional and hierarchical separation between the conflicting tasks

Delegation conditions

Level 1/Level 2



Level 2 conditions (key issues):

- According to the German Investment Code („KAGB“) the AIFM Level 2 delegation requirements also apply to UCITS
- AMC must supervise the delegated functions effectively and manage the risks associated with the delegation
- Delegation agreement shall contain specific rights of AMC, e.g. information, inspection, instruction and monitoring rights

Delegation conditions

Level 1/Level 2



Level 2 conditions (key issues):

- Delegation of portfolio-/risk management on third-country entities requires a written MoU which defines specific rights of the competent authorities (e.g. on-site inspection regarding delegate)
- Objective reasons for delegation:
 - Optimising business functions and processes
 - Cost saving
 - Expertise of the delegate in matters of administration or in specific markets or investments
 - Access of the delegate to global trading capabilities

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Delegation to depositary



- Delegation of portfolio-/risk management to depositary is not allowed
- Delegation of other functions than portfolio-/risk management is subject to certain conditions:
 - Monitoring function of the depositary
 - Implementation of organisational measures („divisional solution“= spatial, functional and hierarchical separation) to avoid conflicts of interest and
 - Setting up an escalation process

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Delegation agreement



Minimum content:

- Clear allocation of respective rights and obligations of AMC and delegate
- Right of information and inspection by AMC and its external auditors
- Right of information and inspection by BaFin
- Instruction and monitoring rights by AMC
- Ensure compliance with data protection rules

Delegation agreement



Minimum content:

- Termination rights and reasonable notice periods
- Terms and conditions of sub-delegation (e.g. sub-delegation is subject to prior consent by AMC)
- Delegate's duty to inform AMC about any development that may have a material impact on delegate's ability to carry out the delegated functions

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Delegation notification to BaFin



Key issues:

- Name of delegate
- Description of delegated function/activity
- Statement of respective AIF/UCITS or specific assets where applicable
- Effective date of delegation agreement
- Explanation of objective reasons for delegation

Delegation notification to BaFin



Key issues:

- In case of delegation of portfolio-/risk management to entity domiciled outside Germany:
 - Explanation whether delegate is authorised/registered for asset management and subject to supervision
- Delegation agreements do not need to be submitted (irrespective of BaFin's right to request them at a later time)
- Notification to be submitted to BaFin at the latest, one day before the delegation agreement comes into force

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White-label business



- AMC provides a platform for fund initiator to set up UCITS/AIF
- AMC carries out risk management and administrative functions
- Delegation of portfolio management to fund initiator

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Letter-box entity



Substance requirements:

- In principle, either portfolio management or risk management can be delegated, fully or partly
- It is not allowed to fully delegate both functions
- Delegated investment management functions must not exceed retained portfolio-/risk management functions substantially

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- BaFin may perform audits of the delegate (routine and event driven audits)
- Auditor has to assess in its audit report if the delegation requirements are fulfilled
- Separate statement in the audit report on delegation of portfolio- and risk management

Thank you for your interest!

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