

# Non-UCITS fund

## Legal framework:

Act No. 240/2013 Coll., on Management Companies and Investment Funds, particularly Articles 6 (2), 100 (1) and 657 (1).

Government Regulation No. 242/2013 Coll., on Key Investor Information Document of non-UCITS Fund and on a Way to Provide Information and on Fund Rules in Non-paper Form

Government Regulation No. 243/2013 Coll., on Investing of Investment Funds and on Efficient Portfolio Management Techniques, particularly Articles 45 to 50, 60 to 67, 71, 72 and 74 to 78.

Act No. 89/2012 Coll., Civil Code, particularly Article 126, with derogation pursuant to Articles 5 (3) and 203 (3) of the Act No. 240/2013 Coll.

Act No. 90/2012 Coll., on Commercial Companies and Cooperatives (Commercial Corporations Act), particularly Articles 8, 276 and 277, with derogation pursuant to Articles 157 (1), 159 (3) and 203 (1) of the Act No. 240/2013 Coll.

Commission Delegated Regulation (EU) No 231/2013 of 19 December 2012 supplementing Directive 2011/61/EU of the European Parliament and of the Council with regard to exemptions, general operating conditions, depositaries, leverage, transparency and supervision.

## Introduction:

Investment funds are divided in collective investment funds and qualified investors funds pursuant to the Act on Management Companies and Investment funds. Collective investment funds raise capital from the public and they are further divided in UCITS funds and non-UCITS funds.

Non-UCITS fund means a collective investment fund, which does not comply with requirements laid down in Directive 2009/65/EC (UCITS IV Directive) and is not registered in the relevant register maintained by the Czech National Bank.

Non-UCITS fund may be structured as a common fund or as a limited company.

The manager of a non-UCITS fund may not be its administrator as well.

The investment strategy of a non-UCITS fund cannot be altered, unless otherwise provided.

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Manager	<ul style="list-style-type: none"> <li>• Investment fund with internal management</li> <li>• Management company authorized to manage non-UCITS funds pursuant to AIFMD (external manager)</li> <li>• Non-EU manager authorized by the Czech National Bank to manage non-UCITS funds (external manager)</li> <li>• EU management company authorized by competent authority of another Member State pursuant to AIFMD (external manager)</li> </ul>		<ul style="list-style-type: none"> <li>• Investment firm or equivalent foreign entity having its registered office in another Member State, its branch in the Czech Republic and complying with the highest capital adequacy ratio</li> <li>• Foreign bank without its branch in the Czech Republic (but no later than 22.7.2017)</li> </ul>
Administrator	<ul style="list-style-type: none"> <li>• Manager, if he is authorized to perform the administration of non-UCITS funds</li> <li>• Management company, which is not the manager of this fund and is authorized to perform the administration of non-UCITS funds</li> <li>• Central administrator authorized to perform the administration of non-UCITS funds</li> </ul>	Prime broker	<ul style="list-style-type: none"> <li>• Bank having its registered office in the Czech Republic</li> <li>• Foreign bank having its registered office in the Member State</li> <li>• Investment firm or equivalent foreign entity having its registered office in another Member State and complying with the highest capital adequacy ratio</li> <li>• Foreign entity having its registered office in a non-EU state and subject to prudential requirements and supervision</li> </ul>
Legal forms	<ul style="list-style-type: none"> <li>• Private/public limited company (SA), including investment company with variable capital (SICAV)</li> <li>• Common fund (FCP, open-ended or closed-ended)</li> </ul>	Types of shares	Possible for shares and common fund units
Initial capital of the manager	<ul style="list-style-type: none"> <li>• At least 125,000 EUR for the management company and for the non-EU manager authorized by the Czech National Bank or EU management company authorized by the competent authority of another Member State</li> <li>• At least 300,000 EUR for the investment fund with internal management or for the equivalent non-EU manager authorized by the Czech National Bank</li> </ul>	Net asset value	At least 1,250,000 EUR within 6 months of the day of incorporation of the fund
Initial capital of the administrator	<ul style="list-style-type: none"> <li>• If the administrator is a manager, see the above mentioned initial capital requirement for the manager</li> <li>• At least 50,000 EUR if the administrator is a central administrator</li> <li>• At least 50,000 EUR if the administrator is a management company, which is not its manager and is not authorized to manage collective investment funds</li> <li>• At least 125,000 EUR if the administrator is other management company, which is not its manager</li> </ul>	Eligible investors	No restrictions
Depository	<ul style="list-style-type: none"> <li>• Bank having its registered office in the Czech Republic</li> <li>• Foreign bank having its branch in the Czech Republic</li> </ul>	Eligible investments	<ul style="list-style-type: none"> <li>• Only cash</li> <li>• Capital calls are not permitted</li> </ul>
		Issuance of bonds	Prohibited
		Establishment and incorporation of a fund	<ul style="list-style-type: none"> <li>• Common fund is established by the agreement between the founder and the manager on the content of the fund rules or by the adoption of the fund rules by the manager and it is incorporated by the registration in the register maintained by the Czech National Bank</li> <li>• Corporation (private/public limited company) is established by the instruments of incorporation or by the charter of incorporation or by the adoption of the articles of association and it is incorporated by the registration in the public (business) register</li> </ul>
		Public marketing	Investments in a fund may be marketed publicly provided that this fund is registered in the register maintained by the Czech National Bank

Calculation of value of units or shares	At least monthly, in a way specified in the fund rules or in the Act.			Master-feeder structures	The fund may be both master and feeder
Valuation of assets and liabilities	Performed by the manager, the administrator and a person appointed by the administrator or the depository. Assets and liabilities are valued at fair value in accordance with the international accounting standards.			Fund rules and prospectus	<ul style="list-style-type: none"> <li>The fund shall have the fund rules/prospectus, which contains investment policy, description of risks and other information necessary for investors to be able to make an informed judgement of investment and which shall be regularly updated</li> <li>It is not subject to the approval by the Czech National Bank</li> </ul>
Eligible assets	<ul style="list-style-type: none"> <li>Transferable securities</li> <li>Money market instruments</li> <li>Securities and uncertificated securities issued by a collective investment fund or an equivalent foreign investment fund</li> <li>Financial and commodity derivatives</li> <li>Bank deposits</li> <li>Commodities</li> </ul>			Disclosure of information to investors prior to their investment	<ul style="list-style-type: none"> <li>Information about the manager, the administrator, the prime broker, the auditor and the depository and the depository contract</li> <li>Investment policy</li> <li>Current value of capital</li> <li>Information about leverage</li> <li>Past performance</li> <li>Conditions for the issuance and the repurchase of shares and units</li> </ul>
Investment limits	Global	Counterparty/Commodity	Concentration		
Transferable securities	100 %	20 %	10 %		
Money market instruments	100 %	20 %	10 %		
Shares in collective investment funds	100 %	20 %, (35 % <sup>1)</sup> )	25 %		
Financial and commodity derivatives	100 % <sup>2)</sup> (20 % <sup>3)</sup> )	5 % (10 % <sup>4)</sup> )	--		
Bank deposits <sup>5)</sup>	100 %	20 %	--		
Commodities	100 %	10 %, 20 %	--		
Efficient portfolio management techniques	<ul style="list-style-type: none"> <li>Repurchase transactions, reverse repurchase transactions, securities lending transactions and securities borrowing transactions</li> <li>Financial derivatives</li> <li>Commodity derivatives</li> </ul>			Mergers, acquisitions and alike	<ul style="list-style-type: none"> <li>Authorization by the Czech National Bank is required</li> <li>Conversion of an investment fund with legal personality is allowed. Transfer of assets to shareholders of the fund is prohibited unless these shareholders are investment funds.</li> <li>Conversion of a fund with legal form of private/public limited company into an investment company with variable capital and <i>vice versa</i> is allowed, by changing the articles of association</li> <li>Conversion of a closed-ended and an open-ended common fund into an investment company with variable capital, conversion of a closed-ended common fund into a private/public limited company, and conversion of a closed-ended common fund into an open-ended common fund are allowed</li> <li>Merger of two common funds (non-UCITS funds) into a common fund (non-UCITS fund), and merger of a common fund (non-UCITS fund) and a common fund (UCITS fund) into a common fund (UCITS fund) are allowed</li> </ul>

	<ul style="list-style-type: none"> <li>• Acquisition of a common fund (non-UCITS funds) by a common fund (non-UCITS fund), acquisition of an investment company with variable capital by an open-ended common fund, and acquisition of a common fund (non-UCITS fund) by a common fund (UCITS fund) are allowed</li> <li>• Conversion of a non-UCITS fund into a UCITS fund is allowed, but not <i>vice versa</i></li> <li>• Conversion into a foreign investment fund as with legal personality and without is allowed</li> <li>• For the conversion of a sub-fund the provisions of the Act providing for the conversion of a common fund shall apply <i>mutatis mutandis</i></li> </ul>
<p>Dissolution with liquidation</p>	<ul style="list-style-type: none"> <li>• For dissolution with liquidation of an investment fund with legal personality the provisions of the Act providing for dissolution with liquidation of a management company shall apply <i>mutatis mutandis</i>. The liquidator is appointed and dismissed by the Czech National Bank or by the court, in the case of dissolution by the court. The liquidator shall be registered in the register maintained by the Czech National Bank.</li> <li>• Dissolution with liquidation of a common fund: the manager sells assets and pays off liabilities. The administrator ensures the redemption of units or shares.</li> </ul>

- 1) In case of a non-UCITS fund investing pursuant to its fund rules more than 49 % of its assets in shares and units issued by collective investment funds or equivalent foreign investment funds (i.e. fund of funds).
- 2) If the global exposure is calculated by using the commitment approach.
- 3) If the global exposure is calculated pursuant to the absolute VaR approach. In case of calculation pursuant to the relative VaR approach, the maximum shall be double the VaR of the reference portfolio.
- 4) If the counterparty is a person referred to in Article 72 (2) of the Act.
- 5) Claims for the payment of cash from an account in Czech or foreign currency on one of the persons referred to in Article 72 (2) of the Act.