



Book III - Service providers

Title II - Other service providers

Chapter III - AIF depositaries

Section 2 - Organisational structures and resources of the AIF depositary

Sub-section 3 - Relations between the depositary and other service providers

General regulation of the AMF

Article 323-32 into force since 14 August 2013

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Article 323-32

I. - Pursuant to Article L. 214-24-9 of the Monetary and Financial Code, the depositary may delegate its safekeeping functions for the assets of the AIF, subject to the following conditions:

- 1 • The tasks are not delegated with the intention of avoiding their professional obligations;
- 2 • The depositary can demonstrate that there is an objective reason for the delegation;
- 3 • The depositary has exercised all due skill, care and diligence in the selection and the appointment of any third party to whom it wants to delegate parts of its tasks, and keeps exercising all due skill, care and diligence in the periodic review and ongoing monitoring of any third party to whom it has delegated parts of its tasks and of the arrangements of the third party in respect of the matters delegated to it;
- 4 • The depositary ensures that the third party meets the following conditions at all times during the performance of the tasks delegated to it:

- a) The third party has the structures and the expertise that are adequate and proportionate to the nature and complexity of the assets of the AIF or its asset management company, which have been entrusted to it;
- b) For financial instrument custody tasks referred to in Article L. 214-24-8, II, 1 of the Monetary and Financial Code, the third party is subject to effective prudential regulation, including minimum own funds requirements, and supervision in the jurisdiction concerned and the third party is subject to an external periodic audit to ensure that the financial instruments are in its possession;
- c) The third party segregates the assets of the depositary's clients from its own assets and from the assets of the depositary in such a way that they can at any time be clearly identified as belonging to clients of a particular depositary;
- d) The third party does not make use of the assets without the prior consent of the AIF or its asset management company and without prior notification to the depositary;
- e) The third party complies with the general obligations and prohibitions referred to in Articles L. 214-24-3, L. 214-24-6 and L. 214-24-8, II of the Monetary and Financial Code.

II. - Where the law of a third country requires that certain financial instruments be held in custody by a local entity and no local entities satisfy the delegation requirements laid down in Paragraph I, Point 4, the depositary may delegate its functions to such a local entity only to the extent required by the law of the third country and only for as long as there are no local entities that satisfy the delegation requirements, subject to the following requirements:

- 1 • The investors of the relevant AIF must be duly informed that such delegation is required due to legal constraints in the law of the third country and of the circumstances justifying the delegation, prior to their investment;
- 2 • The AIF or its asset management company must instruct the depositary to delegate the custody of such financial instruments to such local entity.

III. - The third party may, in turn, sub-delegate those functions, subject to the same requirements. In such a case, Article L. 214-24-10, II and III of the Monetary and Financial Code shall apply *mutatis mutandis* to the relevant parties.

For the purposes of this paragraph, the provision of services as specified by Directive 98/26/EC of the European Parliament and Council of 19 May 1998, by securities settlement systems as designated for the purposes of that Directive or the provision of similar services by third-country securities settlement systems shall not be considered a delegation of its custody functions.

The terms of application of this Article are specified in Articles 98 to 99 of Delegated Regulation (EU) n° 231/2013 of the Commission of 19 December 2012.

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