



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 323-35 into force since 14 August 2013

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Article 323-35

Pursuant to Article L. 214-24-10, IV of the Monetary and Financial Code, where the law of a third country requires that certain financial instruments are held in custody by a local entity and there are no local entities that satisfy the requirements of being subject to effective regulation and prudential supervision and to external periodic audit, as laid down in Article 323-32, I, 4, b, the depositary can discharge itself of liability provided that the following conditions are met:

- 1 • The rules or instruments of incorporation of the AIF concerned expressly allow for such a discharge under the conditions set out in this sub-section;
- 2 • The unit or shareholders of the relevant AIF have been duly informed of that discharge and of the circumstances justifying the discharge prior to their investment;
- 3 • The AIF or its asset management company has instructed the depositary to delegate the custody of such financial instruments to a local entity;

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- 4 • There is a written contract between the depositary and the AIF or its asset management company, which expressly allows such a discharge;

- 5 • There is a written contract between the depositary and the third party that expressly transfers the liability of the depositary to that local entity and makes it possible for the AIF or its asset management company to make a claim against that local entity in respect of the loss of financial instruments or for the depositary to make such a claim on their behalf.

📌 **Version into force since 14 August 2013**