

Book III - Service providers

Title II - Other service providers

Chapter II - Depositaries of UCITS

Section 2 - Organisational structures and resources of the depositary

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

General regulation of the AMF

Article 323-14 into force since 29 June 2016

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Article 323-14

I.-Pursuant to the second sub-paragraph of Article L. 214-10-6 of the Monetary and Financial Code, the depositary may delegate some of the duties related to its custody of the assets of the UCITS, provided that the following conditions are satisfied:

- 1 • The tasks are not delegated with the intention of avoiding the requirements laid down under the depositary's 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 intends to delegate parts of its tasks, and continues to exercise all due skill, care and diligence in the periodic review and ongoing monitoring of any third party to which 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 shall ensure that the third party satisfies the following conditions at all times during the performance of the

tasks delegated to it:

- a • The third party has structures and expertise that are adequate and proportionate to the nature and complexity of the assets of the SICAV or the management company acting on behalf of the UCITS which have been entrusted to it;
- b • For custody tasks referred to in Article L. 214-10-5, II, 1 of the Monetary and Financial Code, the third party is subject to:
 - i) effective prudential regulation, including minimum capital requirements, and supervision;
 - ii) an external periodic audit to ensure that the financial instruments are in its possession;
- c • The third party segregates the assets of the clients of the depositary 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 takes all necessary steps to ensure that in the event of insolvency of the third party, assets of a UCITS held by the third party in custody are unavailable for distribution among, or realisation for the benefit of, creditors of the third party; and
- e • The third party complies with the general obligations and prohibitions laid down in Articles L. 214-9, L. 214-10-2 and L. 214-10-5, II of the Monetary and Financial Code.

II. – Notwithstanding point I 4° b) i), 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 that point i), the depositary may delegate its functions to such a local entity only to the extent required by the law of that third country, only for as long as there are no local entities that satisfy the delegation requirements, and only where:

- a) The investors of the relevant UCITS are duly informed, prior to their investment, of the fact that such a delegation is required due to legal constraints in the law of the third country, of the circumstances justifying the delegation and of the risks involved in such a delegation;
- b) The SICAV or the asset management company of the UCITS has instructed the depositary to delegate the custody of such financial instruments to such a local entity.

III. - The third party may, in turn, sub-delegate those functions, subject to the same requirements. In such a case, Article L. 214-11 1 of the Monetary and Financial Code shall apply mutatis mutandis to the relevant parties.

For the purposes of this article, the provision of services as specified by Directive 98/26/EC of the European Parliament and of the 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 to be a delegation of custody functions.

When a central securities depository (CSD), as defined in point (1) of Article 2(1) of Regulation (EU) No. 909/2014 of the European Parliament and of the Council, or a third-country CSD provides the services of operating a securities settlement system as well as at least either the initial recording of securities in a book-entry system through initial crediting or providing and maintaining securities accounts at the top tier level, as specified in section A of the annex to that regulation, the provision of those services by that CSD with respect to the securities of the UCITS that are initially recorded in a book-entry system through initial crediting by that CSD should not be considered to be a delegation of custody functions. However, entrusting the custody of securities of the UCITS to any CSD, or to any third-country CSD should be considered to be a delegation of custody functions.

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