

Regulatory News Alert

Omnibus Law of 27 February: Amendment to the Law of 17 December 2010 regarding Part II Funds

9 March 2018

Context

The Omnibus Law of the 27 February introduced a much-awaited change for the UCI industry. It modifies and amends the Law of 17 December 2010 ("**UCI Law**") with effect from 5 March 2018. The modification was delayed due to intense exchanges on another provision of the Omnibus law the change to article 41 (please refer to the alert [here](#)).

The changes introduced concerns about the completion of the post-UCITS V regulatory transition regarding depositaries for undertakings for collective investment governed by the Part II of the UCI Law ("**Part II Funds**"). The change remedies a potential source of goldplating for these part II funds that would have otherwise had to apply a full-fledged UCITS V depositary regime.

The law requires that for **such Part II funds that are not to be offered or prohibit the offer to retail investors in Luxembourg**, be they managed by an AIFM or a non-EU AIFM, the fund **must appoint one depositary that is subject to the AIFMD depositary** rules.

The UCITS V depositary regime and the AIFMD depositary regime differ on two aspects important for some of Part II funds; the AIFMD depositary regime allows:

1. to contractually agree the transfer of liability from the depositary to a sub-depositary (i.e., to a broker acting as sub-depositary) and
2. to extend possibilities for rehypothecation.

The amendment is of particular relevance for Part II Funds relying on strategies that imply the recourse to a prime broker acting as sub-depositary.

The Law punctuates the divide between UCITS, AIF and Part II funds; it should be noted that following the EMSA Opinion of Summer 2017 that a new twist should intervene in the fund depositary regulation to align segregation practices across funds and other regulations.



How Deloitte can help

Deloitte teams can help you to comply with the new regulatory changes and apply the optimal strategy for your organization and your clients.

Deloitte Kaleidoscope RegWatch team can help you stay ahead of the regulatory curve to anticipate changes and drive your organization.

Your contacts

Simon Ramos

Partner – IM Advisory & Consulting Leader

Tel : +352 45145 2702

siramos@deloitte.lu

Laurent Collet

Partner – Strategy, Regulatory & Corporate
Finance

Tel : +352 45145 2112

lacollet@deloitte.lu

G rard Lorent

Director - Strategy, Regulatory & Corporate
Finance

Tel : +352 45145 4278

gelorent@deloitte.lu

Benoit Sauvage

Senior Manager – Strategy, Regulatory &
Corporate Finance

Tel : +352 45145 4220

bsauvage@deloitte.lu

Jean-Fran ois Giuliani

Senior Manager – Strategy, Regulatory &
Corporate Finance

Tel : +352 45145 2403

jgiuliani@deloitte.lu

Deloitte Luxembourg

560, rue de Neudorf

L-2220 Luxembourg

Tel: +352 451 451

Fax: +352 451 452 401

www.deloitte.lu

Deloitte is a multidisciplinary service organisation which is subject to certain regulatory and professional restrictions on the types of services we can provide to our clients, particularly where an audit relationship exists, as independence issues and other conflicts of interest may arise. Any services we commit to deliver to you will comply fully with applicable restrictions.

Due to the constant changes and amendments to Luxembourg legislation, Deloitte cannot assume any liability for the content of this leaflet. It shall only serve as general information and shall not replace the need to consult your Deloitte advisor.

About Deloitte Touche Tohmatsu Limited:

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee, and its network of member firms, each of which is a legally separate and independent entity. Please see www.deloitte.com/lu/about for a detailed description of the legal structure of Deloitte Touche Tohmatsu Limited and its member firms.

Deloitte provides audit, tax, consulting and financial advisory services to public and private clients spanning multiple industries. With a globally connected network of member firms in more than 150 countries, Deloitte brings world-class capabilities and deep local expertise to help clients succeed wherever they operate. Deloitte has in the region of 200,000 professionals, all committed to becoming the standard of excellence.

  2018 Deloitte General Services

Designed and produced by MarCom at Deloitte Luxembourg