

New obligations and
responsibilities of
the Depository

Time for a
Depository
Healthcheck



As of July 2013, the new regulatory landscape for AIFMs will be in place and will be followed by UCITS V with related impacts on the Depositary

Context and Key Issues

The role of the Depositary bank in Luxembourg and across Europe is under scrutiny. UCITS Directives III and IV did not succeed in clarifying the roles and responsibilities of the Depositary, or moving them on with the evolution of the market. The day-to-day life of Depositaries has nevertheless evolved towards a more complex environment. With an increasing level of service required from Depositaries, a trend to increasingly complex products, an increasing number of stakeholders, wider geographical footprint, increasing industry and regulatory events, we observe a need to realign regulation with the role now played by Depositaries. The emergence, or the “coming of age” of new asset classes (e.g. Real Estate, Private Equity, collectible assets) have also broadened the need to formally differentiate safekeeping on

financial assets and supervision on tangible assets. All this will be clarified by the forthcoming AIFMD and UCITS V implementation in Luxembourg law.

The AIFMD gives the option to Member States to extend eligible depositaries to include certain professional entities other than credit institutions and investment firms.

Unlike some other countries, Luxembourg will use this option by introducing a new article in the Banking law of 1993 creating a new category of PSF “professional depositary of assets other than financial instruments” in order to adapt the depositary regime to the specificities of the alternative funds industry and the nature of the assets in deposits, in particular for private equity and real estate funds.

Main Challenges

I. From an organisational point of view:

- Identify and set up the right reporting line for the Depositary supervisory function; and
- Ensure Depositary staff has sufficient knowledge about regulation to perform the function.
- Make sure the right skill sets are available in your organisation to differentiate between safekeeping of financial assets and supervision of tangible assets

II. Set-up an appropriate initial and on-going due diligence process:

- On the traditional network which comprises the sub-custodian network; and
- On the non-traditional network, characterised by the involvement of brokers and other third-parties which do not act through the traditional clearing systems.
- Ensure the application of a risk based approach prioritising those counterparties most at risk, typically, third Party Asset Managers and alternative asset classes, those that are more complex to operate for a depositary.

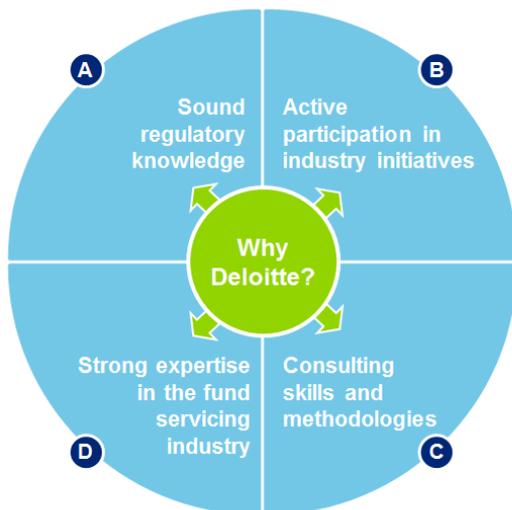
III. Implement a practical and efficient Control Framework in order to safeguard the the Depository's responsibilities:

- It is key to define the right areas, frequencies, stakeholders and breadth of the controls framework;
- Make sure IT systems and counterparty static data enables the implementation of the Depository controls framework;
- Adapt the controls framework to the asset class (financial assets are not monitored the same way as non- tangible assets);
- Ensure the right documentary disclosure is applied in each contract / constitutional document of the fund in order to ensure the Depository's access at all times to the fund's assets, that investors are informed

about the risks related to the various counterparties of the fund (e.g. re-hypothecation) and the depository receives all the necessary information from the sub-custodians and counterparties (i.e. to know at any time where the assets are held and how they are invested); and

- For non-credit institutions/investment firms, the entering of the depository market will require
 - a streamlining of their processes and flows in a depository environment,
 - review of their capital requirements and insurance to support the liability of the depository function, find the appropriate model to safekeep the financial part of the assets of the fund (which may be up to 30% of the fund's assets)

Our value proposition can be declined around four axes:



Deloitte offers a range of services that can be proposed on a bundled or unbundled offering

Our value proposition for fund depositaries covers the following areas:

- Regulatory Watch
- Strategic review of the Depository functional organisation, skills, FTE assessment and IT systems
- Review and implementation of the Depository's controls framework and procedures
- Assistance in Depository on-boarding and on-going monitoring of alternative asset classes
- Service Organization Control reports (ISAE 3402 / SSAE 16)
- Internal Audit outsourcing or co-sourcing
- Help non-banks to create their Depository function from scratch

Our External Audit services are differentiating us from the competition by putting the right focus on the Depository function instead of only focusing on day-to-day Custody operations.

Contacts



Benjamin Collette
Partner | Strategy and Corporate Finance
Tel: + 352 451 452 809
bcollette@deloitte.lu



Lou Kiesch
Partner | Regulatory Strategy
Tel: +352 451 452 456
lkiesch@deloitte.lu



Simon Ramos
Partner | Corporate Strategy
Tel: +352 451 452 702
siram@deloitte.lu



Christopher Stuart Sinclair
Directeur | Regulatory Strategy
Tel: +352 452 202
cstuartsinclair@deloitte.lu



Laurent Berliner
Partner | Business Risk
Tel: + 352 451 452 328
lberliner@deloitte.lu



Nick Tabone
Partner | Audit
Tel: +352 451 452 264
ntabone@deloitte.lu



Lize Griffiths
Partner | Audit
Tel: +352 451 452 693
lizgriffiths@deloitte.lu



Emmanuelle Miette
Partner | Audit
Tel: + 352 451 452 714
emiette@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.