

## Regulatory News Alert

### UCITS V- CSSF Circular 16/644 repealing CSSF Circular 14/587 on UCITS Depositary function – The key take aways

26 October 2016

#### Scope and background

Circular CSSF 14/587 anticipated different dimensions of the UCITS V framework. The text was due to be repealed and replaced by a new CSSF Circular as soon as the EU Commission delegated [Regulation \(EU\) 2016/438](#) would enter in effect, “in order to adapt its content to the provision of the final Commission Delegated Regulation”.

On October 11, 2016 CSSF has published its new **Circular 16/644** (“the Circular”). The Circular now reflects in full the UCITS V Depositary regime and brings valuable clarifications on specific contents of previous CSSF 14/587, which had raised concerns among the industry.

**Relevant rules are summarized hereafter.**

## Key take aways

Area	Rules	Practical implications
<p><b>Clarification of the concepts of “delegation” versus “outsourcing”</b></p>	<p><u>Delegation</u>: refers exclusively to the delegation of the functions in relation to safekeeping of the assets (custody and recordkeeping)</p> <p><u>Outsourcing</u>: refers to (the full or partial) reliance on external parties to perform operational tasks or activities of the Depositary, other than a delegation</p>	<p>Clarifies the respective due diligence obligation, eligibility criteria, and CSSF notification duties of the Depositary for each situation</p>
<p><b>Depositary may act as Collateral Manager and Collateral Agent</b></p>	<p>The list of activities which a Depositary may perform alongside with its core Depositary functions has been extended to also include the functions of Collateral Agent</p>	<p>Reflects business models that many Depositaries have in place</p>
<p><b>Substantial changes in Depositary organisation subject to preliminary approval by CSSF</b></p>	<p>Substantial changes to any dimension of the Depositary organisation having funded its initial authorisation must be notified and approved upfront by CSSF</p>	<p>The Circular clarifies that changes in the list of Delegates as well as the outsourcing of a substantial activity shall be considered as substantial changes</p>
<p><b>Account segregation</b></p>	<p>Circular removes references to the obligation to segregate accounts for assets held on behalf of UCITS versus for AIF assets. Depositaries may use omnibus accounts to hold the assets that are subject to collective investment</p>	<p>Ongoing ESMA transversal consultation on asset segregation is expected to drive any further guidance in this area</p>
<p><b>Definition of Prime Broker is removed</b></p>	<p>The use of the term “Prime Broker” in CSSF 14/587 has proved to be confusing and generally not relevant to the UCITS world. It is no longer used in the Circular</p>	<p>The issues regarding the holding, access to collateral, valuation and the related reportings are addressed by Chapter 4 (“right to access informations) and Chapter 6 of the Circular (“provisions specifically applicable in the case of recourse to a Collateral Agent”)</p>
<p><b>Operational independence</b></p>	<p>The Circular does not provide additional guidance on the operational independence between the management company and the Depositary</p>	

# Your contacts

**Lou Kiesch**

*Partner | Regulatory Compliance Leader*

Tel: +352 45145 2456

[lkiesch@deloitte.lu](mailto:lkiesch@deloitte.lu)

**Martin Flaunet**

*Partner | Banking & Securities Leader*

Tel: +352 45145 2334

[mflaunet@deloitte.lu](mailto:mflaunet@deloitte.lu)

**Johnny Yip Lan Yan**

*Partner | Investment Management Leader*

Tel: +352 45145 2489

[jyiplanyan@deloitte.lu](mailto:jyiplanyan@deloitte.lu)

**Simon Ramos**

*Partner | Regulatory Strategy Leader*

Tel: +352 45145 2702

[siramos@deloitte.lu](mailto:siramos@deloitte.lu)

**Benjamin Collette**

*Partner | Global Investment Management Advisory & Consulting Leader*

Tel: +352 45145 2809

[bcollette@deloitte.lu](mailto:bcollette@deloitte.lu)

**Sandrine Leclercq**

*Director | Regulatory Strategy*

Tel: +352 45145 3004

[saleclercq@deloitte.lu](mailto:saleclercq@deloitte.lu)

**Marc Noirhomme**

*Director | Regulatory Strategy*

Tel: +352 45145 2613

[mnoirhomme@deloitte.lu](mailto:mnoirhomme@deloitte.lu)

Deloitte Luxembourg  
560, rue de Neudorf  
L-2220 Luxembourg

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Tel: +352 451 451  
Fax: +352 451 452 401  
[www.deloitte.lu](http://www.deloitte.lu)

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