

Deloitte regulatory news alert

Depository Banks, UCITS and Management Companies



CSSF Circular 14/587

Scope and background

The Luxembourg Supervisory Authority CSSF has published today Circular 14/587 (the “Circular”) in order to clarify existing provisions by defining organisational rules, roles and responsibilities for depository banks, and the interaction of management companies with the depository.

The Circular replaces section E of IML circular 91/75 and targets credit institutions acting as depository bank for UCITS subject to Part I of the Law of 17 December 2010 and, as the case may be, their management company.

These new rules draw heavily on the Alternative Investment Fund Managers Directive (AIFMD) and anticipate the transposition of the UCITS V Directive. However, applicable rules to depository banks of AIFs are set up by the Law of 12 June 2013 implementing AIFMD and therefore are not included in the Circular.

The extent of detail provided in the Circular clearly shows the regulator’s determination to move away from a principle-based regulation in favor of detailed guidance.

What are the key attention points of the Circular?

- Depository banks will have to implement internal procedures that govern the acceptance of mandates and their execution. These procedures shall cover all specificities of UCITS for which the bank acts as depository, including the consideration of intended investments. They shall also specify and analyse, on a preliminary basis, which type of UCITS according to their investment strategy, the depository bank would be able to service, considering existing processes and internal controls.
- Depository banks will have to enhance provisions applied to the selection and the monitoring of sub-custodians and third-party custodians. They shall notably conduct due diligence in order to ensure that there is an appropriate level of protection for assets entrusted to such entities and that guarantees provided are adequate (similar to guarantees provided by the depository bank itself). The Circular clarifies the holding securities via a Securities Settlement System (SSS) is not a delegation of custody function. However, in some circumstances, this should not deter the depository bank from undertaking due diligence of sub-custodians albeit in an abridged form.

- Specific due diligence shall also be performed on specialised intermediaries when investment are made in target UCI(T)S.
- Depository banks will have to ensure that segregation of assets at the sub-custodian level shall be ensured between collectively managed assets, not collectively managed assets and own assets of the depository.
- An escalation processes shall be set up between depository banks and management companies to report reciprocally any detected anomalies.
- Depository banks are required to ensure adequate monitoring and accounting of cash accounts and cash flows. Adequate processes and procedures are to be put in place to ensure this. The UCITS (or its management company) shall ensure that the depository bank receives all information needed to fulfil its obligations regarding recognition and proper monitoring of cash.

What do you need to do now?

The Circular is an extensive document and this alert focuses on some key elements. It is therefore crucial that depositaries and management companies immediately assess the compliance of internal processes and procedures, as well of existing legal arrangements with the provisions of the new Circular and evaluate the impact of potential gaps.

Deloitte has gained an extensive experience on depository upgrades – mainly during the AIFMD implementation phase – and has set up a team of regulatory strategy experts that can help you in this UCITS depository enhancement process.

We trust this information is of assistance and remain at your disposal for any further questions.

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