



COMMITTEE OF EUROPEAN SECURITIES REGULATORS

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Mapping of duties and liabilities of UCITS depositaries

The table below contains information on the requirements in place in each CESR Member in the following areas.

General criteria on the depositary

This covers eligibility requirements; prudential requirements; requirements in relation to the experience and skills of the key personnel; organisational requirements; and any other requirements.

Liability of the depositary where delegation of custody functions

This relates to the extent to which and under what conditions the depositary would be held liable toward investors when assets are not safe-kept; and the extent to which and under what conditions the depositary would be required to restore assets in the case of sub-custody arrangements.

Obligation of means/obligation of result

'Obligation of means' should be understood as an obligation on the depositary to devote appropriate resources and carry out appropriate due diligence so as to ensure safe-keeping of assets. 'Obligation of result' should be understood as an obligation on the depositary to safe-keep assets and to reconstitute them in case of loss.

Legal framework (administrative/civil)

This covers the issue of the domestic legislative framework applicable to depositary liability.

Requirements on depositaries when delegating (due diligence)

This column covers the due diligence requirements depositaries must satisfy when selecting a sub-custodian.



Member	General criteria on the depositary	Liability of the depositary where delegation of custody functions	Obligation of means/obligation of result	Legal framework (administrative/civil)	Requirements on depositaries when delegating (due diligence)
<p>Austria</p>	<p>According to Art.23 of the Austrian Investment Funds Act (InvFG 1993), the investment fund management company shall appoint a custodian bank to issue and repurchase the unit certificates as well as to keep the securities belonging to an investment fund in safe custody and to keep the accounts belonging to the fund. Only a credit institution authorised to carry on custody business [Art. Para. 1 no. 5 of the Banking Act (Bankwesengesetz/BWG)] or a domestic branch of an EEA credit institution established under Art. 9 para. 4 of the Banking Act (freedom to establish branches) may be appointed as custodian bank.</p> <p>Therefore, the custodian bank - as any other bank - must have liable equity capital of at least €5 million and its</p>	<p>There are no special rules in the Investment Funds Act regulating the delegation of any functions of the depositary.</p> <p>Art. 39 para. 1 of the Banking Act, though, sets out as follows: ‘In their management activities, the managers of a credit institution must exercise the diligence of a prudent and conscientious manager as defined in Article 84 para. 1 of the Stock Corporation Act. In particular, they must obtain information on and control, monitor and limit the risks of banking transactions and banking operations using appropriate strategies and mechanisms, and have in place plans and procedures pursuant to Article 39a. Moreover, they must consider the overall earnings situation of the credit institution.’</p> <p>Additionally, the general</p>	<p>This is a question of Austrian civil law. Therefore this question lies outside the range of the FMA’s competences.</p>	<p><u>Civil law</u> Any questions of liability in general need to be assessed by the civil courts.</p> <p><u>Possible administrative sanctions</u> According to Article 70 para 4 of the Austrian Banking Act, in cases where ...a credit institution violates the provisions of the Banking Act or the Investment Fund Act or the Depository Act..., regulations issued on the basis of these federal acts, or an administrative ruling (<i>Bescheid</i>), the FMA must:</p> <ol style="list-style-type: none"> 1. instruct the credit institution on pain of penalties to restore legal compliance within a period of time which is appropriate in light of the 	<p>The Austrian Investment Funds Act prescribes no specific requirements on the depositaries in case of a delegation. However a delegation is not generally prohibited.</p> <p>In case of a delegation, the depositary must observe the provisions of the Austrian Investment Funds Act, the fund rules and the interests of the unit-holders.</p>



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	<p>managers must have the professional qualification to manage a credit institution. Directors of a bank should find themselves in an orderly economic situation and no facts should be known which would raise doubts about their personal reliability. On the basis of their prior education, the directors must possess the professional qualifications and experience necessary for operating the credit institution. The professional qualifications of the directors require that they possess sufficient theoretical and practical knowledge of the planned business as well as management experience. Professional qualification for the management of a bank is assumed if the director has carried out management activities in a company of comparable size and business type for at least three years. Every bank needs at least two directors, at least one director</p>	<p>regulations of civil law are applicable, which is outside the range of the FMA's competences. Therefore, we can only provide some general information with the reservation that civil courts might decide differently. Only the adjudication of Austrian civil courts count within this matter.</p> <p>Pursuant to Art. 961 ABGB (Austrian Civil Code), the depositary has to keep the deposit with diligence.</p> <p>According to Art.1313a Austrian Civil Code an obligor is responsible for fault on the part of his auxiliary persons, i.e. persons whom he uses to perform his obligation, to the same extent as for fault on his own part.</p> <p>This principle is concretized by Art. 3 para. 3 sentence 1 Depotgesetz (Austrian Custody Act, which is in that part similar to the German Custody Act)</p>		<p>circumstances; 2. in cases of repeated or continued violations, completely or partly prohibit the directors from managing the credit institution, unless this would be inappropriate based on the nature and severity of the violation and the restoration of legal compliance can be expected through repetition of the procedure pursuant to no. 1; in such cases, the initial penalty imposed must be enforced and the instruction repeated on pain of a higher penalty; 3. revoke the licence in cases where other measures pursuant to this federal act cannot ensure the functioning of the credit institution.</p> <p>Also, according to Art. 46 in connection with Art. 23 para 4 of the Investment</p>	

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	<p>needs to be capable of speaking the German language and the focus of at least one director's vital interests should be in Austria.</p> <p>The appointment and replacement of the custodian bank shall require the approval of the Financial Market Authority (FMA). Such approval may be given only if the credit institution may be expected to ensure the fulfilment of the duties of a custodian bank.</p> <p>Before approval, the FMA therefore checks with the bank's auditors for any negative findings or problems in the custody area of the bank (any problems within the last three years would prevent an approval), and additionally checks the experience and organisational structure of the custody business.</p>	<p>according to which the custodian ('Verwahrer') is responsible for fault on the part of his sub custodian ('Zwischenverwahrer') to the same extent as for fault on his own part.</p> <p>According to Art. 3 para. 3 sentence 2 Austrian Custody Act, the custodian is in any case responsible for choosing a sub custodian with the required due diligence even if its liability has been limited by contractual stipulation (unless the sub custodian has been chosen on a respective instruction issued by the depositor).</p> <p>The question whether such a disclaimer in a contract between the management company and the depositary would be valid against the investors of a fund or not is a question of civil law which is outside the range of the FMA's competences.</p>		<p>Funds Act, if a custodian bank contravenes any provisions of this Federal Act or a regulation or ruling issued on the basis of this Federal Act, Art. 70 (4) and Art. 96 (penal provisions) of the Banking Act shall apply subject to the proviso that the revocation of the licence in accordance with Art. 70 (4) no. 3 of the Banking Act shall be replaced by the revocation of the approval given in accordance with Art. 23.</p>	



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	<p>The appointment and the replacement of the custodian bank shall be publicly announced; the public announcement shall contain a reference to the official notice of approval.</p> <p>According to the InvFG 1993 no manager of the custodian bank and no member of the custodian bank's supervisory board shall be a member of the supervisory board of the investment fund management company. No manager or authorised signatory of the custodian bank and no member of the custodian bank's supervisory board shall be a manager or authorised signatory of the investment fund management company.</p> <p>The depositary bank is subject to prudential supervision also with regard to its depositary function. In performing its duties, the</p>				



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	<p>custodian bank shall observe the provisions of the InvFG 1993 and the fund rules and the interests of the unit-holders.</p> <p>The main duties of the depositary bank are set out in Art. 23 para. 2: Valuable consideration for all transactions concluded for an investment fund shall be made available without delay to the custodian bank for the securities accounts and cash accounts kept by it for the investment fund. This applies in particular to the issue of the unit certificates and their repurchase. The custodian bank shall pay out the income payable on the units to the unit holders. The remuneration payable to the investment fund management company for managing the fund in accordance with the fund rules, and the reimbursement of the expenses arising from the</p>				



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	<p>management of the fund, shall be paid by the custodian bank out of the accounts kept for the fund. The custodian bank may charge to the investment fund the remuneration payable to it for the safe custody of the securities held by the fund and for keeping the accounts. In doing so, the custodian bank may act only upon the basis of instructions given by the investment fund management company.</p> <p>According to para.3, the custodian bank shall be authorised and obliged to raise an objection in its own name in accordance with Art. 37 of the Execution Code (Exekutionsordnung/EO) by way of bringing an action if execution is levied on an asset belonging to an investment fund, unless the claim against the fund has been raised in accordance with Art. 4.</p>				



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	<p>Pursuant to para. 4, in performing its duties, the custodian bank shall observe the provisions of this Federal Act, the fund rules and the interests of the unit holders. The custodian bank shall be liable to the investment fund management company and the unit holders for any loss suffered by them as a result of its unjustifiable failure to perform its obligations, or its improper performance of them (corresponds to Art. 16 of the UCITS Directive).</p>				
Belgium	<p>UCITS depositaries may only be chosen from the following categories of entities (art. 48 of the Law of 20 July 2004) :</p> <ul style="list-style-type: none"> - credit institutions established in Belgium and submitted to the banking act (Law of March 22, 1993); - the Central Bank of Belgium; - investment firms submitted to the investment firm act (Law of April 6, 1995) provided that their license 	<p>The liability of the depositary is in essence a question of civil law which is outside the remit of the CBFA's competences.</p> <p>The CIS-legislation adds some specific rules as far as the responsibility of the depositary is concerned.</p> <p>Art. 51 of the Law of 20 July 2004 provides indeed that neither the fund rules or the articles of incorporation of the</p>	<p>The interpretation of the responsibility regime of the depositary is a competence of the courts. In addition to the Civil Law, the <u>CIS-legislation</u> adds some specific rules to the general rules of civil law.</p> <p>Art. 51 of the Law of 20 July 2004 provides indeed that neither the fund rules nor the articles of incorporation of the</p>	<p>The liability regime of the depositary is governed by civil law.</p> <p>It is thus up to the courts to decide whether and to what extent a depositary will be held liable for any damage caused to the UCITS when assets are not safe-kept. As an administrative authority, the CBFA does not have the power to assess</p>	<p>The contractual duty of care and diligence of the depositary implies strong due diligence from the depositary in the choice of its delegates as well as an adequate monitoring and supervision of the delegated safekeeping-functions.</p> <p>As credit institutions and investment firms, depositaries are</p>

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	<p>covers safekeeping of assets.</p> <p>As credit institutions or investment firms, the depositaries are submitted to all requirements applying to those entities (fit & proper management, capital requirements, and organisational requirements).</p> <p>In addition, the Belgian legislation provides for a number of specific rules as regards the depositaries.</p> <p>The choice of the depositary is approved by the CBFA only if it is proved that the administrative, financial and technical organisation of the depositary is appropriate for the specific activities of the depositary. The persons representing the depositary and appointed to carry on the depositary activity must be fit & proper (art. 49 of the Law of 20 July 2004).</p>	<p>UCITS, nor the agreements between the management company (or the self managed UCITS) and the depositary may reduce, restrict or rule out the responsibility of the depositary.</p> <p>The responsibility of the depositary is moreover not affected by the fact that all or part of the assets in custody is delegated to a third party.</p> <p>Finally, the oversight function may never be delegated.</p> <p>It is up to the courts to decide whether and to what extent a depositary will be held liable for any damage caused to the UCITS by wrongful safekeeping or default.</p> <p>However, the CBFA may, as a supervisory authority, impose administrative measures with regard to the depositary in order to remedy to organisational deficiencies, non fit & properness of the</p>	<p>UCITS, nor the agreements between the management company (or the self managed UCITS) and the depositary may reduce, restrict or rule out the responsibility of the depositary.</p> <p>The responsibility of the depositary is moreover not affected by the fact that all or part of the assets custody is delegated to a third party.</p>	<p>whether the depositary is liable towards the UCITS when assets are not safe-kept, nor to decide on possible indemnification. However, the CBFA may, as a supervisory authority, impose administrative measures with regard to the depositary in order to remedy organisational deficiencies, non fit & properness of the management that are considered to be the cause of the default or wrongful safekeeping by the depositary or its sub-custodian. The CBFA may in such case also issue administrative sanctions against the depositary.</p>	<p>submitted to the MiFID rules as regards the provision of the safekeeping of assets and the delegation of this activity (a.o. articles 13 to 15 of the MiFID implementing Directive). For the sake of completeness, we recall that article 14, para 3 of the MiFID implementing Directive requires that the respective rights and obligations of the depositary and of the service provider must be clearly allocated and set out in a written agreement.</p> <p>The delegation may only concern the custody of assets and not the oversight tasks.</p> <p>The outsourcing of the custody does not affect the responsibility of the depositary (art. 7 of the</p>



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	<p>The depositary is not allowed to be executive director in the CIS or in the management company designated by the CIS, of which he is the depositary (Art. 50 of the Law of 20 July 2004).</p> <p>The members of the board of the CIS or of its designated management company who are proposed by the depositary are not allowed to be executive managers (Art. 50 of the Law of 20 July 2004).</p> <p>Finally, the Law of 20 July 2004, prohibits the delegation of the portfolio management and of the key administrative tasks (inter alia. the NAV calculation), to the depositary.</p>	<p>management,... that are considered to be the cause of the default or wrongful safekeeping. The CBFA may in such case also take administrative sanctions against the depositary.</p>			<p>UCITS Directive implemented by article 51, al. 2 of the Law of 20 July 2004).</p> <p>In case of delegation of the custody of assets to local correspondents, there is no specific approval given by the CBFA. In the case of the delegation to a global sub custodian, the CBFA verifies that the outsourcing requirements are effectively respected by the depositary and that the depositary is still able to perform adequately its oversight tasks.</p>
Bulgaria	<p>According to Art. 173 of the Law on Public Offering of Securities (LPOS) the depositary should be a bank that meets the following requirements:</p> <ol style="list-style-type: none"> 1. to be a local bank, 	<p>According to the Bulgarian legislation the depositary bank cannot delegate any functions to third parties.</p> <p>Nevertheless, Art. 12 of Ordinance 25 on the</p>			<p>There are no other regulations regarding the depositary.</p>



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	<p>bank from a member-state, which pursues bank activity on the territory of the Republic of Bulgaria by a branch, as well as a bank from a third country which has obtained a license from the Bulgarian National Bank to carry out bank activity on the territory of the country by a branch;</p> <p>2. to have obtained an authorization for execution of transactions financial instruments;</p> <p>3. to have been included in the list of primary dealers of government;</p> <p>4. whose licences, activities or operations have not been restricted to an extent that will impede or render impossible the execution of the duties, envisaged under this Law or by the contract for depositary services;</p> <p>5. in relation to which no measures under Art. 65, para (2), Item 11 and 14 of the</p>	<p>requirements to the activity of investment companies and contractual funds states that any physical foreign financial instruments, as well as any certificates of dematerialized foreign financial instruments held by the investment company and by the contractual fund, may be provided by the depositary bank for safekeeping to a foreign bank with which the depositary bank has concluded an agreement. This shall not exempt the depositary bank of the liability thereof to the investment company and to the shareholders therein, as well as to the management company and to the unit-holders in the contractual fund, for any detriment sustained thereby as a result of the actions of the foreign bank.</p> <p>The depositary bank must ask the foreign bank to provide it with any necessary information and documents without delay. The depositary bank shall</p>			



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	<p>Law on Banks or under Art. 103 para 2 item 14, 19 or 20 of the Law on Credit Institutions were imposed during the last 12 months;</p> <p>6. Which has capital, staff and information provision for the efficient execution of its depositary functions and obligations in compliance with the requirements of the LPOS and its implementing instruments.</p> <p>There are also requirements for the depositary bank not to be the same person or a related person with the management company or with another person performing managerial or supervisory functions in the investment company, or with persons who control the investment company</p> <p>The depositary bank reports separately on the funds and other assets of the investment</p>	<p>forthwith notify the investment company and the management company of any information and documents received from the foreign bank.</p>			



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	<p>company. The depositary bank separates the non-cash assets of the investment company from its own assets. The depositary is not liable for its own obligations towards its creditors with the funds it owes to the investment company.</p> <p>The depositary bank is responsible to the investment company and its shareholders, as well as to the management company and the owners of units in the contractual fund for all damages, sustained by them as a result of non-execution of obligations by the depositary bank, including also for any incomplete, incorrect and untimely execution, when it is due to reasons for which the bank is responsible.</p> <p>The depositary bank has the obligation to monitor for compliance with the law and the contractual fund's rules in</p>				



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	the execution of the sale and redemption of units by the management company, as well as in the calculation of the units value.				
Cyprus	<p>According to Chapter VIII of L.200(I)/2004:</p> <p>The Fund's assets shall be deposited for safekeeping to a Depositary.</p> <p>The details regulating the deposition of the assets of the Common Fund for safekeeping to a Depositary shall be regulated by a Directive issued by the Commission</p> <p>The Cyprus Securities and Exchange Commission (the CySEC) has not issued any Directive yet to regulate the activities of UCITS Depositaries. However, the CySEC is in the process of preparation of a Directive /Rules of Conduct which persons involved with UCITS</p>	<p>According to Section 53 of L.200(I)/2004:</p> <p>(1) The Depositary may assign the safekeeping of UCITS' assets to a third party, which shall legitimately exercise the duties of Depositary, provided that there shall be a relevant provision in the Common Fund Regulation allowing this.</p> <p>(2) The Depositary may assign the safekeeping of foreign transferable securities or other liquid financial assets referred to in subsection (1) of section 101 or Cypriot transferable securities or other liquid financial assets listed in a stock exchange other than the Cyprus Stock Exchange, to an officially authorized Depositary abroad.</p>	<p>The UCITS Law (L.200(I)/2004) provides that the depositary is generally responsible for any damage suffered because of his negligence.</p> <p>Where the depositary assigns the safe-keeping of the assets of the UCITS to a third party ('the sub-custodian') then <u>both</u> the depositary and the sub-custodian are liable for any damage suffered because of their negligence.</p> <p>The above responsibility of the custodian towards unit-holders could be read as an obligation of means, in the sense that both the depositary and the sub-custodian are liable to</p>	<p>In case of default, the Securities and Exchange Commission has the power to impose an administrative fine on the depositary or/and any sub-custodian. This power falls within the sphere of administrative law.</p> <p>At the same time, the provision of false or misleading information by a depositary or sub-custodian is a criminal offence.</p> <p>Moreover, individual unit holders have the power to file a law suit and claim any damages they suffered as a result of the depositary's negligence. This power falls within the sphere of civil law.</p>	<p>At present there are no other regulations regarding depositaries</p>



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	<p>(including the Depositary) must respect. The said Directive will include certain provisions regarding UCITS Depositaries. The CySEC plans to set for consultation the said Directive hopefully in the coming months.</p> <p>The duties of a Depositary may be assumed –</p> <p>(a) by a bank or a cooperative credit institutions entitled to provide the services of a Depositary under the relevant operation license, either based in the Republic or established therein in the form of a branch. In this last case, the Commission’s license shall be required for the granting of which the Commission shall in particular check the ability of the said bank or cooperative credit institution to –</p> <p>(i) provide the services of a Depositary for the</p>	<p>(3) The assigning of the Fund assets to a third party, in accordance with the provisions of subsections (1) and (2), shall be communicated to the Management Company of the Common Fund.</p> <p>(4) The Depositary shall be entitled to revoke at any time the assigning of the Fund’s assets to a third party. The revocation or resignation of the Depositary shall at the same time entail the revocation or resignation of the said third party.</p> <p>(5) The Depositary shall not assign to a third party the control of the activities of the Management Company and the operation of the Common Fund. According to section 56 of L.200(I)/2004:</p> <p>(1) The Depositary shall be liable to the Management Company and the unit-holders</p>	<p>indemnify investors in case of default.</p>		



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	<p>safekeeping of the assets of the Common Fund based on its administration, organization, know-how, branch infrastructure; and</p> <p>(ii) fulfil any necessary prerequisites that may be determined by a Directive⁴ of the Commission.</p> <p>The Depositary shall be deemed to be established in the Republic, if its registered office and central administration are situated in the Republic.</p> <p>(b) subject to the approval by the Commission, by a legal person established in the Republic that can provide adequate financial and professional guarantees that it is in a position to exercise its duties effectively and fulfils any necessary prerequisites that may be determined in a Directive by the Commission.</p>	<p>for every loss caused to them due to its negligence to carry out its obligations.</p> <p>(2) The unit-holders shall have the individual right to take legal action against the Depositary for the loss they suffered due to its negligence to fulfil its obligations.</p> <p>(3) The Depositary shall be fully liable together with the third party, to whom it has assigned the safekeeping of the Common Fund assets in accordance with the provisions of subsections (1) and (2) of section 53 (mentioned above).</p>			



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	<p>The Depositary shall bear the responsibility for the safe custody of the assets of the Fund and carry on the duties of its Treasurer.</p> <p>The Depositary shall execute the orders of the Management Company unless these are contrary to this Law or to the Fund Regulation and the Management Company shall monitor the correct execution of its orders by the Depositary.</p> <p>The Depositary shall make sure that the Management Company furnishes it with every piece of information necessary for the exercise of its duties and obligations in accordance with this Law and the Management Company shall provide the Depositary with full access to the documents that concern the fund.</p> <p>The Depositary shall bear the</p>				



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	<p>responsibility for the safe custody of the assets of the Fund and carry on the duties of its Treasurer.</p> <p>The Depositary shall execute the orders of the Management Company unless these are contrary to this Law or to the Fund Regulation and the Management Company shall monitor the correct execution of its orders by the Depositary.</p> <p>The Depositary shall make sure that the Management Company furnishes it with every piece of information necessary for the exercise of its duties and obligations in accordance with this Law and the Management Company shall provide the Depositary with full access to the documents that concern the Fund.</p> <p>The duties of Management Company and the duties of</p>				



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	Depositary may not be carried out by the same company.				
Czech Republic	The general obligations of the depositary and the obligations of the fund of collective investment vis-à-vis the depositary are stipulated in Art. 20-23 of the Act No. 189/2004 Coll., on Collective Investment as amended (hereinafter 'the ACI'). The Decree of the Czech National Bank No. 115/2007 Coll., further specifies the details on fulfilment of the depositary duties (hereinafter 'the Decree'). The depositary can be subject to on-site or off-site examinations carried out by the Czech National Bank. The depositary of particular collective investment fund is subject to approval by the Czech National Bank within the authorization procedure of the collective investment fund. In such a case experience of depositary senior staff is examined. Even the change of the depositary is subject to the prior consent of the CNB.				
	<p>According to Art. 20 para 1-4 of the ACI:</p> <p>(1) A depositary of a collective investment fund shall keep records of the assets of the collective investment fund and control whether the collective investment fund disposes of the assets in accordance with this Act and with the prospectus.</p> <p>(2) Only a bank with its registered office in the</p>	<p>According to Art. 23 para 12 of the ACI:</p> <p>A depositary shall be liable to the management company and the shareholders or unitholders of a collective investment fund for any damage caused by breach of a duty of the depositary, pursuant to the Commercial Code. This liability of the depositary shall also apply if it performs activities through a third person pursuant to Article 21 (1) (a) of the ACI. This</p>	Question of civil law	Depositary's liability regime (vis-à-vis the investors) is governed by the civil law. Simultaneously in case the depositary breaches its obligations to safe-keep the fund assets, the competent authority (the CNB) can impose a penalty under administrative law.	<p>According to Art. 12 of the Decree</p> <p>(1) In case a depositary uses third party to perform its function (incl. custody) the depositary</p> <p>a) shall verify that the delegated entity is authorized to perform the delegated activity</p> <p>b) shall conclude a</p>



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	<p>territory of the Czech Republic or a foreign bank that has a branch located in the territory of the Czech Republic, whose banking license includes the authorisation to perform activities of a depositary, may be a depositary.</p> <p>(3) A depositary shall perform its activities on the basis of a contract on performance of activities of a depositary concluded with a management company or an investment company</p> <p>(4) The depositary and the management company or investment company shall agree in the depositary contract on the terms and conditions of the performance of the duties of the depositary.</p> <p>According to Art. 64 para 1 letter l) and 66 para 1</p>	<p>shall in no way prejudice the liability of a management company for damage incurred in the management of the assets of a unit trust or the liability of an investment company for damage incurred in the management of its assets.</p> <p>The interpretation of the above Article can be done by civil court only.</p>			<p>contract with the delegated entity according to which the delegated entity by the nature of the matter:</p> <ol style="list-style-type: none"> 1. shall not hand out the assets of the collective investment fund or the documentation related to the assets to other entity without prior consent of the depositary, unless it fulfils duties according to the law and the delegated entity informs the depositary about handing out of the assets or documentation related to the assets without delay. 2. shall accept the request of the depositary to suspend the execution of the order concerning the entrusted assets. 3. shall enable the depositary whenever to



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	<p>letter d) of the ACI</p> <p>Czech National Bank shall grant a license to perform activities of an investment fund or establish an open-end unit trust or a closed-end unit trust if the depositary has created the preconditions for the performance of its duties;</p> <p>According to Art. 64 para 2 and 66 para 6 of the ACI</p> <p>The operative part of the decision on granting a license to perform activities of an investment fund or to establish an open-end unit trust or a closed-end unit trust shall include approval of the depositary.</p> <p>According to Art. 66 para 6 of the ACI</p> <p>Any change in the depositary of a unit trust... shall be subject to prior approval by</p>				<p>take over the assets of the collective investment fund or the documentation related to the assets, if it is possible by the nature of the matter</p> <p>4. shall not use another entity for this activity except of para 2 (see below),</p> <p>5. shall perform the delegated activities in such a way, so that the compliance of these activities with the legislation is ensured, and shall enable the supervision of the delegated activities by the depositary.</p> <p>(2) In case of custody (activity) the contract arranges, whether and under which conditions the delegated entity can use other entities for</p>



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	<p>the Czech National Bank.</p> <p>The CNB requires the depositary to be an independent unit within the bank. This does not exclude the possibility to use other units of the bank for purpose of performance of its duties.</p>				<p>purpose of performance of delegated activities; conditions according to para 1 must be fulfilled at the same time.</p> <p>Management company can of course negotiate or discuss the choice of the sub-custodians (which depends also on the fund investment policy) prior to the approval of the contract between management company and the depositary. However since management company is usually not party of the contract between the depositary and sub-custodian it has not direct right to approve or reject the choice of the sub-custodian. The Czech National Bank is not authorized to formally approve or reject the choice of the sub-custodian. However the</p>



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					fulfilment of the conditions above can be subject of its on- site and off-site supervision.
Denmark	<p>According to section 4(8) of the act on investment associations and special purpose associations as well as other collective investment schemes etc a depositary shall be a bank with its registered office in Denmark or a corresponding foreign credit institution with a branch in Denmark and with its registered office in another country within the European Union or in a country with which the Community has entered into an agreement for the financial area, and which has been made responsible for all the tasks of a depositary for UCITS etc.</p> <p>The board of directors and the management shall be fit and proper, cf. section 64 of the Financial Business Act (FBA).</p>	<p>According to section 107 of the Financial Business Act (FBA) the depositary of investment associations (UCITS) etc. shall be liable to the association for any damage said association may suffer as a result of faulty performance or non-performance of the obligations of said depositary.</p> <p>The depositary shall be liable notwithstanding that said depositary <u>delegates</u> the safe-keeping of the association's assets or parts hereof to another depositary.</p> <p>The depositary may not disclaim this liability by agreement.</p> <p>According to the „preamble' of the Financial Business Act the liability of the depositary shall be considered on the ground of the general regulation</p>	<p>The distinction - obligation of means/obligation of result - may not be so useful in the Danish regulation.</p> <p>The liability of the depositary does not depend on whether a part of the assets of the UCITS has been delegated to a sub custodian or not. According to section 107 of the Financial Business Act (FBA) The depositary shall be liable notwithstanding that said depositary delegates the safe-keeping of the association's (UCITS') assets or parts hereof to another depositary. The depositary may not disclaim this liability by agreement.</p>	<p>Civil law. Any dispute between a UCITS and its depositary on whether the depositary is liable needs to be assessed by the court.</p>	<p>Apart from the regulation in section 107 of the FBA, there is no specific Danish regulation on depositaries of UCITS etc.</p> <p>However Finanstilsynet has issued guidelines on outsourcing pursuant to FBA section 71. In circumstances where the board of directors decides to transfer part of the most significant areas of activity of the undertaking to external suppliers (outsourcing), the board of directors must ensure that there are guidelines for carrying out these activities. These guidelines must ensure appropriate performance of the activities, including in situations where the management of the</p>



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	<p>The capital requirement for banks is 8 million euros, cf. section 7 of the FBA. However no depositary has only the minimum capital requirement.</p> <p>Banks including depositaries shall according to FBA section 71 have:</p> <ul style="list-style-type: none"> • efficient forms of corporate governance, • a clear organizational structure with a well-defined, transparent and consistent division of responsibilities, • good administrative and accounting practices, • written procedures for all significant areas of activity, • effective procedures to identify, manage, monitor and report the risks, the undertaking is or can be exposed to, • the resources necessary for proper carrying out of 	<p>on damages/compensation, and thus the depositary will only be free of responsibility in entirely extraordinary situations. The liability is therefore comprehensive. However the depositary is not liable for damages due to war, revolt etc.</p> <p>So far there have not been any cases and thus the regulation has not been tested in the courts.</p>	<p>In circumstances where the depositary's board of directors decides to delegate safe keeping of a part of the assets to a sub custodian, the board of directors according to Finanstilsynet's general guidelines on outsourcing must ensure there are guidelines for carrying out these activities. These guidelines must ensure appropriate performance of the activities, including in situations where the management of the undertaking does not have a daily overview of how the activities are being carried out. If a depositary has not followed these guidelines and any dispute comes up the dispute has to be assessed by the court.</p>		<p>undertaking does not have a daily overview of how the activities are being carried out.</p> <p>Outsourcing significant areas of activity must be decided by the board of directors. Outsourcing also includes situations where one or more undertakings in a group carry out activities for other undertakings in the group.</p> <p>There must be regular reports to the board of directors so that they can control that the guidelines are being followed, and the board of directors must assess regularly whether activities are being carried out satisfactorily. It should be noted that the board's responsibility for carrying out the activities cannot be outsourced.</p>



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	<p>its activities, and use these appropriately,</p> <ul style="list-style-type: none"> • procedures with a view to separating functions in connection with management and prevention of conflicts of interest, • full internal control procedures, and • adequate IT control and security measures. <p>The Danish FSA shall according to article 7 of the Act on Investment Associations and Special Purpose Associations as well as other Collective Investment Schemes approve the depositary, chosen by the association. The depositary must provide sufficient financial and professional security that it is capable of performing its duties. Before the approval Finanstilsynet shall assess whether the bank fulfil the requirements of being depositary for the</p>				<p>In a nearer future outsourcing will be regulated by law.</p>



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	<p>UCITS in question.</p> <p>According to art. 6, sec. 2, the depositary shall ensure that:</p> <ol style="list-style-type: none"> 1) the issue and redemption by an association of its members' interests is carried out in compliance with the regulations and with the articles of association; 2) securities and derivative financial instruments are traded DVP or RVP and that the depositary receives the securities and the payment; 3) collateral shall be returned to the depositary when the collateralised claim has been redeemed; 4) dividend payments or retaining earnings to increase the assets only takes place in accordance with the regulations hereon stipulated in the articles of association; 5) securities are traded outside the market only to 				



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	<p>the same or better price than on the market;</p> <p>6) buying and selling of other assets take place at prices that are not less advantageous than the fair value.</p> <p>According to article 52 banks which have been licensed by the Danish FSA as depositaries for an investment association (UCITS) or non UCITS shall, as the depositary of the association, act independently and exclusively in the interests of the association.</p> <p>According to art. 26, sec. 2, of the act on investment associations and special purpose associations etc. the board of directors and management of an association must not have relations to the depositary. The majority of the board members of the management company as well as the management must</p>				



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	<p>not, cf. art. 98 of the financial business act have relations to the depositary.</p> <p>This regulation comprises UCITS as well as non UCITS.</p>				
Estonia	<p>Investment Fund Act § 92. Depositary</p> <p>(1) A common fund and a public fund founded as a public limited company shall have a depositary which safekeeps the assets of the fund and perform other functions assigned thereto by law.</p> <p>(2) A credit institution or an investment firm of a Contracting State which, according to the activity licence, has the right to provide services specified in clause 6 (1) 14) of the Credit Institutions Act or clause 44 1) of the Securities Market Act may be a depositary.</p> <p>(3) Only a credit institution specified in subsection (2) of this section may be the</p>	<p>Investment Fund Act § 98. Transfer of duties of depositary</p> <p>(1) A depositary has the right to enter into agreements with third parties for the safekeeping of fund assets, the performance of transactions therewith and the transfer of other duties of a depositary, pursuant to the procedure prescribed in the depositary contract. Upon transfer of duties, the depositary shall be held liable pursuant to the provisions of § 103 of this Act.</p> <p>(2) A depositary shall choose a third party which safe-keeps the assets or securities of a fund with due diligence in order to ensure the reliability of the third party. Before the transfer of duties and thereafter, a</p>	Obligation of means	Administrative	<p>Investment Fund Act § 103. Liability of depositary</p> <p>(1) A depositary shall be liable for the direct proprietary damage caused to a fund and unit-holders and shareholders as a result of violation of duties of the depositary.</p> <p>(2) Unless more stringent requirements are agreed in a depositary contract, the depositary shall be liable for violation of the requirements provided for in subsection 98 (2) of this Act and failure to exercise supervision over third parties.</p>

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	<p>depositary of a public fund and pension fund. (4) A credit institution, an investment firm and a branch of a credit institution or investment firm founded in a Contracting State, which is the depositary of an open-ended or public fund shall be entered in the Estonian commercial register.</p> <p>§ 94. Requirements for depositary</p> <p>(1) The level of the organisational and technical administration of activities of a depositary, its financial situation, the competence and experience of the employees engaged in performance of the functions of the depositary and its technical systems and facilities shall be adequate to ensure the performance of functions prescribed for the depositary by this Act, in the depositary contract and in the</p>	<p>depositary is required to verify whether the level of the organisational and technical administration of a third party and its financial situation are adequate to ensure the performance of obligations prescribed in the contract.</p> <p>§ 103. Liability of depositary (1) A depositary shall be liable for the direct proprietary damage caused to a fund and unit-holders and shareholders as a result of violation of duties of the depositary. (2) Unless more stringent requirements are agreed in a depositary contract, the depositary shall be liable for violation of the requirements provided for in subsection 98 (2) of this Act and failure to exercise supervision over third parties. There are no additional requirements for sub-custodians provided in law unless those described in § 98 (2). A depositary is required, before transfer of duties and thereafter,</p>			



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	<p>contract specified in subsection 22 (1) and 52 (3) of the Funded Pensions Act.</p> <p>(2) Only a credit institution which is an account administrator specified in the Estonian Central Register of Securities Act and which has operated as a depositary for at least one year during the three years preceding entry into the depositary contract may be the depositary of a mandatory pension fund.</p> <p>(3) A depositary shall act independently of the management company and in the interests of the fund and the shareholders or unit-holders of the fund.</p> <p>(4) A depositary shall perform the functions provided for in this Act or the Funded Pensions Act also after termination of the depositary contract if the depositary contract is terminated due to circumstances provided for in § 77 of this Act or in other cases if the assets of the fund</p>	<p>to verify whether the level of the organisational and technical administration of a third party and its financial situation are adequate to ensure the performance of obligations prescribed in the contract.</p>			



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	<p>are not transferred to another depositary after the termination of the depositary contract. A depositary has the right to receive a fee provided for in the depositary contract for performance of the activities specified in this subsection.</p> <p>Requirement for depositary are provided in § 94 (1). A depositary of public fund (all UCITS are public funds in Estonia) can be only a credit institution specified in subsection 92 (2). There are no additional requirements for credit institution acting as depositary.</p>				
Finland	<p>According to the Act on Common Funds 29.1.1999/48 Sections 9a and 11 a depositary must have one of the following status:</p> <p>-credit institution, (including foreign credit institution which has a branch in</p>	<p>The depositary may use organizations specialized in custodian services under the supervision of the Financial Supervision Authority or a corresponding foreign authority to assist in its duties</p> <p>Section 33, par 2 (Act on Common Funds 1999/48)</p>	<p>Regarding the depositary's activities and duties we would rather see the responsibility as obligation of means.</p> <p>However note also Section 137 in previous column: 'A custodian shall be liable to the management</p>	<p>The regulation on administrative sanctions possible to put in force regarding supervised entities (including depositary) is stated in the Law on Financial Supervision 19.12.2008/878</p> <p>These measures include</p>	<p>The choice of sub-custodian is up to the depositary to decide and on its responsibility.</p> <p>The depositary may use organizations specialized in custodian services under the supervision of the Financial Supervision</p>

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	<p>Finland)</p> <p>-investment service provider, authorized to provide custody services, (including foreign credit institution which has a branch in Finland)</p> <p>- other authorised Finnish limited company (special requirements regarding reliability, reputation, experience and other suitability to ensure that the custodian will be managed professionally and in accordance with sound and prudent business principles.)</p> <p>The depositary must be established in Finland.</p> <p>The management company shall keep separate the assets of a common fund from the assets of the management company by submitting them for safekeeping by a custodian</p>	<p>The above said doesn't lessen the reliability of the depositary on the assets under its custody.</p> <p>Section 137: A custodian shall be liable to the management company and the unitholders of a common fund for a loss accruing to them when the custodian, either wilfully or through negligence, has neglected to fulfil its liability. A contract on the transfer of this liability to a third party shall be void.</p> <p>A unitholder shall have the right to demand compensation from the custodian either directly or through the management company.</p> <p>The above said liability has not been tested in court yet.</p>	<p>company and the unitholders of a common fund for a loss accruing to them when the custodian, either wilfully or through negligence, has neglected to fulfil its liability. A contract on the transfer of this liability to a third party shall be void.'</p> <p>At the end of the day the nature of depositary's liability is only possible to be verified in the Court.</p>	<p>various possibilities to give remarks, warnings, to order depositary to take actions and even to revoke the authorisation of the supervised entity.</p>	<p>Authority or a corresponding foreign authority to assist in its duties.</p> <p>According to the legislative drafting works of the Act on Common Funds 1999/48 the depositary must take care in the service level agreements with the sub-custodians that it will be able to fulfil its' obligations as depositary in all circumstances.</p> <p>The depositary must have accurate due diligence processes in use when selecting a new sub-custodian.</p> <p>There is no further regulation on the level of due diligence.</p>

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	<p>(Section 25, second par.)</p> <p>Activities and duties of a custodian</p> <p>Section 31</p> <p>The duties of the custodian shall be:</p> <p>1) to keep the assets of a common fund;</p> <p>2) to comply with orders given by the management company unless they are in conflict with the law, the orders issued by authorities or the fund rules;</p> <p>3) to ensure that the value of the units is calculated in compliance with the law, the orders issued by authorities or the fund rules;</p> <p>4) to ensure that law and the fund rules are complied with in the issue and redemption of</p>				



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	<p>units;</p> <p>5) to ensure that the fees relating to the operations with the assets of the common fund are paid within a time limit generally in use; as well as</p> <p>6) to ensure that the profits of the common funds are used in compliance with the law and the fund rules.</p> <p>The custodian shall carry out its duties independently for the benefit of the unitholders.</p>				
France	<p>The depositary must have one of the following status :</p> <ul style="list-style-type: none"> - credit institution, - investment services provider authorized to provide custody services, - insurance companies. <p>The depositary of a SICAV or common fund must be distinct</p>	<p>The depositary has two main duties : safekeeping of the assets and control of the decision of the CIS / AMC. Delegation of the duties of control is not permitted whereas delegation of custody function is authorized, provided that the depositary remains fully liable for the delegated</p>	<p>Obligation of result</p>	<p>Both (principle set out in the Civil Code, complemented, as far as safekeeping of securities is concerned, by specific rules in the AMF General Regulation Book). The AMF can take administrative actions :</p>	<p>Please note that the French version of these texts would prevail – All applicable regulation has not been listed, only the most relevant articles have been copied below. The specific regulations on depositaries are available separately.</p> <p>The strong responsibility of the depositary under the French Regulation implies strong due diligence from the depositary in the choice of its delegates.</p> <p>There are additional</p>

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	<p>from the CIS / Asset Management Company, and must be registered in France.</p> <p>The depositary is subject to general rules on custody, and to specific rules on depositaries.</p> <p>The depositary must at all time have an appropriate organisation and means to fulfil its duties. Hereafter is a non exhaustive set of articles from the AMF General regulation, governing the requirements on the depositary. Article 323-6 (RG AMF°) The depositary shall draft a set of performance specifications that describes the conditions under which it carries on its business. These specifications shall be made available to the AMF. Article 323-7 (RG AMF°) The depositary shall at all times have at adequate human and material</p>	<p>functions. Delegation does not alter the depositary's liabilities, and segregation of assets must be ensured on the delegatee's accounts.</p> <p>The depositary is in charge of safekeeping. The safekeeping duties result in :</p> <p>custody of assets (such as transferable securities, money-market instruments, ...) the obligation to keep record of the position on contracts (such as financial derivatives instruments) Concerning the assets which are in the perimeter of the custody, the depositary is subject to the obligation to return any financial instrument held, and this responsibility is not affected in case of delegation.</p> <p>Below are the main regulatory references from the Financial and Monetary Code and the AMF General regulation on which is based the obligation of the depositary to return the assets (even in case of delegation of custody functions). It must be</p>		<p>issue administrative orders or sanction the depositaries; it can also take civil actions : ask the courts to issue civil orders; the investors (or else) can sue the depositary before the Civil Courts</p>	<p>specific requirements in the French Regulations regarding respectively custody and depositary activities, examples of which are set out below. These regulations require the depositary and its delegate to enter into a written agreement detailing the conditions of the delegation, the scope of the delegated tasks, and the procedures and resources established to ensure supervision of the tasks carried out by the delegate. The depositary must also conduct appropriate due diligence on the delegate to ensure it is able to perform its tasks.</p> <p>Article 322-41 (RG AMF) When the custodian appoints an agent or engages a third party as described in Articles 322-</p>



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	<p>resources, compliance and internal control systems, and organisational structures and procedures to conduct its business.</p> <p>Article 323-8 (RG AMF°) The depositary shall designate a person to take charge of the depositary function. It shall notify the AMF of the identity of this person.</p> <p>Article 323-9 (RG AMF°) The depositary of a collective investment scheme shall conduct its business diligently, honestly and fairly, respecting the primacy of interest of the scheme, its unit holders or shareholders, and market integrity. The depositary shall make every effort to avoid conflicts of interest and, when such conflicts cannot be avoided, shall see to it that all their clients are treated fairly.</p>	<p>noted that there is for the first time a pending action before the Cour de Cassation (French civil supreme court) on the principle and on the scope of the obligation of the depositary to return the assets to the CIS when the sub-custodian is in default.</p> <p>Article 323-1 (RG AMF) Under the terms of Articles L. 214-16, L. 214-26, L. 214-48 and L. 214-118 of the Monetary and Financial Code, the depositary shall have custody of the assets of the collective investment scheme and make sure that the scheme's decisions comply with applicable laws and regulations.</p> <p>Article 323-15 (RG AMF) The depositary may not delegate the task of supervising the legal and regulatory compliance of decisions made by the collective investment scheme.</p> <p>Article 323-14 (RG AMF)</p>			<p>39 and 322-40, it conducts an assessment of the resources and procedures employed and the risks incurred. This assessment is available for review by the AMF.</p> <p>Article 323-14 (RG AMF) The depositary may use one or more agents to carry out all or some of the duties related to its custody of the collective investment scheme's assets. This agent shall be a person authorised to provide administration and custody of financial instruments under the terms of Article L. 542-1 of the Monetary and Financial Code. If the depositary delegates custody of the collective investment scheme's assets, it shall draw up an agreement that specifies</p>



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		<p>The depositary may use one or more agents to carry out all or some of the duties related to its custody of the collective investment scheme's assets. [...]</p> <p>Article L.214-16 of the Financial and Monetary Code The liability of the depositary is not affected by the fact that it entrusts a third party with all or part of the assets for which it has safekeeping duties.</p> <p>Article 322-4 (RG AMF) [...] 3° The custodian has an obligation to return any financial instruments held in book entry form on its books. [...]</p> <p>Article 322-4 (RG AMF) [...] When the custodian uses the services of an agent, as provided for in Article 322-39, it ensures that the same segregation is made on the books of the agent.</p>			<p>the scope of the delegated tasks, along with the procedures and resources established to ensure supervision of the transactions carried out by the agent.</p>

Member	General criteria on the depositary	Liability of the depositary where delegation of custody functions	Obligation of means/obligation of result	Legal framework (administrative/civil)	Requirements on depositaries when delegating (due diligence)
		[...]			
Germany	<p>Under the German Investment Act (<i>Investmentgesetz</i> – “<i>InvG</i>”), a credit institution must perform the custody and supervision of the assets of investment stock corporations (known as <i>Investmentaktiengesellschaft</i>) and funds managed by asset management companies (known as <i>Kapitalanlagegesellschaft</i>).</p> <p>The depositary bank must have its registered office or a registered branch in Germany and be authorised under the German Banking Act (<i>Kreditwesengesetz</i>) to carry on deposit business (acceptance of funds from others as deposits) and custody business (safe custody and administration of securities for the account of others). The depositary bank must have liable equity capital of at least €5 million</p>	<p>The liability of the depositary vis-a-vis management company and investors is primarily a question of civil law which is outside the remit of BaFin’s competences. Therefore, the following information can only give some general indications with the reservation that civil courts might come to other solutions:</p> <p>Pursuant to sec 278 of the German Civil Code (<i>Bürgerliches Gesetzbuch</i> – “<i>BGB</i>”), the obligor is - as a general rule – liable for the fault of his statutory agent, and of persons whom he employs to perform his obligation, to the same extent as for his own fault. This principle is concretized by sec. 3 para. 2 sentence 1 German Custody Act (<i>Depotgesetz</i>) according to which the custodian (<i>Verwahrer</i>) is liable for fault of his subcustodian (<i>Zwischenverwahrer</i>) to the same extent as for his own</p>	<p>Pursuant to sec 280 para. 1 <i>BGB</i>, if the obligor fails to comply with a duty arising under the obligation (e.g. to return the assets held in custody), the obligee may claim compensation for the loss resulting from the breach. This does not apply if the obligor is not liable for the failure. According to sec. 7 para. 2 s. 2 <i>Depotgesetz</i> the collective custodian (<i>Sammelverwahrer</i>) is liable vis-à-vis the depositor for any loss of securities deposited collectively unless such loss is due to circumstances for which the custodian is not liable.</p> <p>Sec. 276 para. 1 and 2 <i>BGB</i> provides for the following: (1) The obligor is liable for deliberate and negligent</p>	<p>The liability of the depositary is a question of civil law which is outside the remit of competences of BaFin. It is up to the German civil courts to decide on the liability of the depositary and possible indemnifications vis-à-vis the management company and/or the investors of an investment fund.</p>	<p>According to sec. 24 para. 1 s. 2 <i>InvG</i>, the depositary may only entrust assets to a sub-custodian if the following conditions are met:</p> <ul style="list-style-type: none"> The sub-custodian is a bank for central depositary of securities in the sense of sec. 1 para. 3 <i>Depotgesetz</i>, a domestic or foreign credit institution or a foreign custodian which exercises the functions of a central depositary of securities, is subject to public or equivalent

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	<p>and its managers must have requisite experience. It must also be in a position to make the organisational arrangements required to perform the tasks of a depositary bank. The selection of the depositary bank remains subject to approval by BaFin, which has authority to place conditions on a depositary bank appointment or require a new appointment altogether. The depositary bank is also subject to prudential supervision with respect to its depositary function. The depositary bank must act independently and solely in the best interest of investors.</p>	<p>fault. According to sec 3 para. 2 sentence 2 Depotgesetz, the custodian is responsible for observing due diligence in the selection of the subcustodian also if the responsibility for fault by the subcustodian has been waived by contract (unless the sub-custodian has been chosen on a respective instruction issued by the depositor).</p> <p>German banks made use of the possibility to exclude by contract the liability for fault by the subcustodian (sec. 3 para 2 s. 2 Depotgesetz) and included the following provisions in their Special Conditions for Dealings in Securities (<i>“Sonderbedingungen für Wertpapiergeschäfte”</i>):</p> <p>19(1): Domestic custody: In case of domestic custody the depositary shall be liable for any fault of its own employees and of any third party entrusted with custody duties. [...]</p>	<p>acts or omissions, unless a severer or milder degree of liability is specified or follows from the subject matter of the obligation, in particular the assumption of a guarantee or the acquisition risk. (...)</p> <p>(2) Someone acts negligently if he fails to meet the relevant accepted standards of due care. Concerning the effect of delegation agreements on the liability of the depositary cf. column 2.</p>		<p>supervision concerning investor protection and</p> <ul style="list-style-type: none"> - grants the depositary a legal status equivalent to that provided by the Depotgesetz, and - whose national law does not impact the right of the depositary to request delivery of the assets. <p>The assets given to a foreign custodian must be fungible and admitted to collective deposit.</p>



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		<p>19(2): Foreign custody: In case of foreign custody the depositary's liability shall be limited to careful selection and instruction of the foreign subcustodian or intermediate subcustodian. However, if the domestic Central Depositories Securities (Clearstream Banking AG), another domestic intermediary or a foreign office of the depositary are involved in the custody chain, the depositary shall also be liable for their fault.</p>			
Greece	<p>According to article 3 par. 3 of Law 3283/2004, which has incorporated the provisions of the Directive 85/611/EEC as it has been amended by the Directives 2001/107/EC and 2001/108/EC, a UCITS depositary shall mean a credit institution registered in Greece or established in Greece in the form of a branch, provided that it is registered in another member</p>	<p>According to article 8 par. 3 of Law 3283/2004, a UCITS' depositary may delegate, with prior notification to HCMC and with the consent of the management company, the safekeeping of all or part of the mutual fund's assets to third parties (sub-custodians), on condition that the fund rules comprise such a provision.</p>	<p>Obligation of result (the depositary is obliged to safeguard assets). In case of delegation of the safekeeping function to a sub-custodian, according to article 8 par. 3 of Law 3283/2004, the depositary shall be fully liable for such delegation to the UCITS' unit holders and the management company.</p>	<p>According to article 46 par. 3 of Law 3283/2004, in the event of infringements of the provisions of this law, or of Rules implementing this law, administrative sanctions shall be issued by the HCMC against the depositary (when assets are not safe-kept).</p> <p>Please note that any</p>	<p>According to article 8 par. 3 of Law 3283/2004, third parties (sub-custodians) shall mean credit institutions or other organizations providing depositary services that are subject to supervisory rules being at least equivalent to those applicable in Greece.</p>



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	<p>state.</p> <p>According to article 8 par. 1 and 2 of Law 3283/2004, the safekeeping of a mutual fund's (UCITS) assets shall be entrusted by the management company, with the authorisation of the HCMC, to a depositary. The depositary shall act as the mutual fund's treasurer and shall carry out the instructions of the management company, unless they conflict with the law and the fund rules.</p> <p>The depositary shall subscribe the fund rules, the reports and statements under article 28 of Law 3283/2004 and shall ensure that:</p> <ul style="list-style-type: none"> a. the sale, issue, repurchase, redemption and cancellation of units effected are carried out in accordance with the 	<p>The depositary shall be fully liable for such delegation to the mutual fund's unit holders and the management company.</p>		<p>sanction imposed may be challenged in court.</p>	

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	<p>provisions of Law 3283/2004, the Rules implementing this law and the fund rules,</p> <p>b. the valuation of the mutual fund's assets, the calculation of the net value of mutual fund units and the distribution of profits to unit holders are carried out in accordance with the provisions of Law 3283/2004, the Rules implementing this law and the fund rules and</p> <p>c. in transactions involving a mutual fund's assets, any consideration is remitted to it within the usual time limits.</p> <p>According to article 9 par. 1 and 3 of Law 3283/2004, in the discharge of their duties, the depositary and the management company shall act independently, to the best interests of the mutual fund's unit holders. Moreover, the</p>				



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	<p>depositary shall be liable to the mutual fund's unit holders and the management company for any negligence in the fulfilment of its obligations.</p> <p>Finally, according to article 12 par. 4 of Law 3283/2004, the selection of the UCITS' depositary remains subject to approval by HCMC. The directors of the depositary must be fit and proper (article 12 par. 5 of Law 3283/2004).</p>				
Hungary	<p>According to Article 295 of the Hungarian Capital Market Act, the depositary must be:</p> <ul style="list-style-type: none"> - an investment firm or - a credit institution that is established in Hungary and is authorized to engage in the safe custody services defined in Paragraph b) of Subsection (2) of Article 5 of the Act on Investment Firms and Commodity Dealers, and on the Regulations Governing their Activities. Thus the Hungarian implemented 	<p>According to Article 296 of the Capital Market Act, a depositary may involve a subcontractor for any part of depositary services subject to full and unlimited liability for any and all conduct of the subcontractor. The subcontractor must be another depositary who meets the requirements set out in this Act, or an equivalent organization of foreign origin.</p> <p>The depositary shall be held liable for any damage caused by</p>	Obligation of result	Both civil and administrative rules apply to the depositary activity depending on the type of the examined factor or feature of the depositary activity. The infringement may be judged on an administrative legal basis if we would like to examine i.e. the observance of the Capital Market Act. Nevertheless an interested client or	The full and unlimited liability of the depositary for the conduct of the subcontractor implies strong due diligence from the depositary in the choice of its delegates, but there are no specific rules on the due diligence, eligibility requirements, on-going controls of the subcontractor



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	<p>MiFID rules are to be applied to the requirements on the experience and skills of the staff and directors, on organizational requirements or on other requirements.</p> <p>The depositary shall provide its services solely in view of the benefit of the investors, independent of any outside influence.</p> <p>The securities account and the bank account for investment-related financial transactions in connection with a particular fund and portfolio must be managed by the same depositary.</p> <p>The depositary shall perform the following as part of the services provided to an investment fund:</p> <ul style="list-style-type: none"> a) determine the net asset value of the investment fund on the aggregate and for each certificate; b) publish the investment fund's aggregate and per unit net asset value, and/or 	<p>his failure to perform the obligations specified in this Act, and any clause or stipulation to the contrary shall be null and void.</p>		<p>investor has the opportunity to sue the depositary before a civil court on a civil law basis.</p>	



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	<p>communicate them to the investors;</p> <p>c) monitor the investment fund management company's compliance with investment regulations laid down in legal regulation and in the fund's management protocol;</p> <p>d) provide facilities to ensure that all proceeds relating to transactions involving the fund's assets and to the trading of investment units are conveyed to the fund within a reasonable time frame.</p> <p>All securities held by an investment fund must be deposited with the depositary or recorded on the accounts opened by the depositary, with the exception of collateralized securities. Any collateral that was not called must be delivered to the depositary or transferred to an account opened by the depositary.</p> <p>When the contract of a depositary is cancelled, the</p>				



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	<p>new depositary must be appointed subject to the approval of the Authority. The depositary shall be required to notify the fund management company and the Authority in writing concerning any deviation in the course of his official capacity from legal regulations and/or from the fund's management protocol, and also when the fund's own capital becomes negative. The depositary must reject any instruction of the investment fund management company that is in violation of the law and/or the fund's management protocol, and shall demand the investment fund management company to restore the legitimacy of operations. If the investment fund management company fails to make all efforts necessary to restore compliance with the relevant legal regulations and with the fund's management protocol,</p>				

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	the depositary shall forthwith notify the Authority.				
Iceland	<p>In Art. 20 of the Act No. 30/2003 on Undertakings for Collective Investment in Transferable Securities and Investments Funds as amended (hereinafter ‘the UCITS Act’) the activities of the Depositary are outlined as follows:</p> <p>Administration and safekeeping of the financial instruments of a UCITS shall be entrusted to a depositary which has been approved by the Financial Supervisory Authority. The assets of a UCITS must be kept separate from the assets of the depositary. A depositary must:</p> <ol style="list-style-type: none"> 1. ensure that the sale, issue, repurchase, redemption and invalidation of unit shares in a UCITS is conducted in 	<p>According to Art. 18 of the UCITS Act a management company may entrust other parties with tasks as provided for in Art. 17 of the UCITS Act, operation of UCITS, after having received the approval of the Financial Supervisory Authority.</p> <p>According to Art. 17. of the UCITS Act the operation of UCITS shall include the following projects:</p> <ol style="list-style-type: none"> 1. investments in accordance with the investment policy; 2. general administration: <ol style="list-style-type: none"> a) accounting and legal services; b) customer services; c) assessment of the value of securities and other assets; d) internal checks and monitoring; 	<p>In Art. 20 of the UCITS Act the activities of the Depositary are outlined as follows:</p> <p>Administration and safekeeping of the financial instruments of a UCITS shall be entrusted to a depositary which has been approved by the Financial Supervisory Authority. The assets of a UCITS must be kept separate from the assets of the depositary. A depositary must:</p> <ol style="list-style-type: none"> 1. ensure that the sale, issue, repurchase, redemption and invalidation of unit shares in a UCITS is conducted in accordance with 	<p>Both administrative and civil law.</p> <p>The Financial Supervisory Authority has the power to impose an administrative fine on the depositary in case of violations against the UCITS Act unless more severe penalties are prescribed in accordance with other Acts in which case the Financial Supervisory Authority will refer the matter to the police.</p> <p>Moreover, individual unit holders and the management company on behalf of the unit-holders have the power to file a law suit and claim damages for any losses they may incur which may be traced to the intentional or negligent actions of the depositary's</p>	<p>A depositary may entrust another undertaking, which is eligible for approval as provided for in Art. 21 of the UCITS Act or which has an operating permit as a financial undertaking and is subject to supervision comparable to companies as referred to in Art. 21, the safekeeping of securities of a UCITS in whole or in part. Should a depositary entrust another undertaking with the safekeeping of securities of a UCITS, this shall not have any effect on the liability of the depositary towards a management company and unit share owners as referred to in the first paragraph, cf. Art. 22 of the UCITS Act.</p>

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	<p>accordance with the law and the rules of the party concerned;</p> <p>2. ensure that the redemption value of unit shares is calculated in accordance with law and the rules of the party concerned;</p> <p>3. enforce the instructions of the management company, unless these contravene the law or statutes of the party concerned;</p> <p>4. ensure that, when transactions take place with the assets of a UCITS, remuneration for the assets is made within</p>	<p>e) keeping a registry of unit share owners;</p> <p>f) calculation of redemption value;</p> <p>g) issuing and redemption of unit shares;</p> <p>h) compiling statements of transactions;</p> <p>i) serving as depositary for unit shares and data on transactions;</p> <p>3. marketing.</p> <p>A management company may never, however, outsource all of the tasks provided for in Article 17. Tasks as investments in accordance with the investment policy may not be entrusted to a depositary or another company if its interests are not compatible with those of the management company and unit share owners, cf. Art. 18 (1) of the UCITS Act.</p>	<p>the law and the rules of the party concerned;</p> <p>2. ensure that the redemption value of unit shares is calculated in accordance with law and the rules of the party concerned;</p> <p>3. enforce the instructions of the management company, unless these contravene the law or statutes of the party concerned;</p> <p>4. ensure that, when transactions take place with the assets of a UCITS, remuneration for</p>	<p>employees. Such a claim would fall within the sphere of civil law.</p>	

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	<p>normal time limits;</p> <p>5. ensure that the revenue of a UCITS is disposed of in accordance with law and the rules of the fund.</p> <p>According to Art. 21 (1) of the UCITS Act. commercial banks, savings banks, credit institutions, securities undertakings and the branches of comparable foreign undertakings operating in Iceland may be approved as depositaries. Changes of depositaries are not permitted without the approval of the Financial Supervisory Authority, cf. Art 21 (2) of the UCITS Act.</p>	<p>Should a management company entrust another undertaking with part of its tasks as provided for in Art. 17, this shall not in any way affect the responsibility of the management company towards unit share owners, cf. Art. 18 (2)</p> <p>Furthermore a depositary shall be liable towards a management company and unit share owners for any losses they may incur which may be traced to the intentional or negligent actions of the depositary's employees in carrying out tasks as provided for in Art. 20, activities of the Depositary, cf. Art. 22 (1) of the UCITS Act.</p>	<p>the assets is made within normal time limits;</p> <p>5. ensure that the revenue of a UCITS is disposed of in accordance with law and the rules of the fund.</p>		
Ireland	<p>1. The assets of a unit trust, a common contractual fund or an investment company must be entrusted to a trustee for safe-keeping in accordance</p>	<p>In responding to this question, I refer you to Articles 7, 9, 14 & 16 of the UCITS Directive which have been implemented into Irish law by the UCITS</p>	<p>The Irish legal and regulatory system does not have a specific equivalent to the terms 'obligations of means' and</p>	<p>Rules relating to the liability of a depositary are set out in the UCITS Directive and these provisions are</p>	<p>The Financial Regulator has not set down any eligibility criteria for sub-custodians. This is a matter for the trustee.</p>



Member	General criteria on the depositary	Liability of the depositary where delegation of custody functions	Obligation of means/obligation of result	Legal framework (administrative/civil)	Requirements on depositaries when delegating (due diligence)
	<p>with the UCITS Regulations (the UCITS Regulations implemented the provisions of the UCITS Directive, as amended, into Irish law). The assets shall belong exclusively to the UCITS. The assets shall be segregated from the assets of either the trustee or its agents or both and shall not be used to discharge directly or indirectly liabilities or claims against any other undertaking or entity and shall not be available for any such purpose.</p> <p>2. The trust deed in the case of a unit trust, the deed of constitution in the case of a common contractual fund and the articles of association in the case of an investment company shall lay down the conditions for the replacement of the trustee and rules to ensure the protection of unitholders in the event of such replacement. The trustee</p>	<p>Regulations and are also reflected in Notice 4 of the Financial Regulator’s UCITS Notices, as follows:</p> <p>Regulation 18 - Assets of a unit trust and common contractual fund</p> <p>(1) The assets of a unit trust and the assets of a common contractual fund shall be entrusted to a trustee for safe-keeping in accordance with the UCITS Regulations.</p> <p>(2) A trustee’s liability as referred to in Regulation 21 shall not be affected by the fact that it has entrusted to a third party some or all of the assets in its safe-keeping.</p> <p>Regulation 21 - Liability of trustee</p> <p>The trustee shall be liable to the management company and the unit-holders for any loss suffered by them as a result of its unjustifiable failure to perform its obligations or its improper performance of them.</p>	<p>‘obligation of result’.</p> <p>The Irish UCITS Regulations require that the assets of a UCITS must be entrusted to a depositary for safe-keeping. This requires a depositary to return the assets to the UCITS on request. The UCITS Regulations further provide that the assets shall belong exclusively to the UCITS. The assets shall be segregated from the assets of either the trustee or its agents or both and shall not be used to discharge directly or indirectly liabilities or claims against any other undertaking or entity and shall not be available for any such purpose.</p> <p>The UCITS Directive and the equivalent Irish law provides that the trustee shall be liable to the</p>	<p>implemented into Irish law. The Irish Financial Regulator’s Notices also set down requirements in relation to the duties and obligations of the depositary. The area of depositary liability is also governed by the Trustee Act 1893 and case law.</p>	<p>The provisions of UCITS Notice 4 ‘Trustees Duties and Conditions’ set out the following requirements in relation to the custody of assets and the appointment of a third party sub-custodians.</p> <p>The trustee must:</p> <p>(i) ensure that there is legal separation of non-cash assets held under custody and that such assets are held on a fiduciary basis. In jurisdictions where fiduciary duties are not recognised the trustee must ensure that the legal entitlement of the UCITS to the assets is assured;</p> <p>(ii) maintain appropriate internal control systems to ensure that records clearly identify the nature and amount of all assets</p>

Member	General criteria on the depositary	Liability of the depositary where delegation of custody functions	Obligation of means/obligation of result	Legal framework (administrative/civil)	Requirements on depositaries when delegating (due diligence)
	<p>may not be replaced without the approval of the Financial Regulator.</p> <p>3. A trustee must either have its registered office in the State or have established a place of business in the State if its registered office is in another Member State.</p> <p>4. Entities eligible to act as trustee are:</p> <p>(a) a credit institution authorised in the State with paid-up share capital which is not less than the limit specified in the Financial Regulator's Licensing Requirements,</p> <p>(b) a branch, established in the State, of a credit institution with a paid-up share capital which is not less than the limit specified in the Financial Regulator's Licensing Requirements, or</p> <p>(c) a company incorporated in</p>	<p>Liability to unit-holders may be invoked either directly or indirectly through the management company, depending on the legal nature of the relationship between the trustee, the management company and the unit-holders.</p> <p>Regulation 23 - Ownership of assets of UCITS established as unit trust or common contractual fund and liability of unit-holders.</p> <p>(1) The assets of a UCITS established as either a unit trust or common contractual fund shall belong exclusively to the UCITS. The assets shall be segregated from the assets of either the trustee or its agents or both and shall not be used to discharge directly or indirectly liabilities or claims against any other undertaking or entity and shall not be available for any such purpose.</p> <p>(2) Where a UCITS</p>	<p>UCITS and the unit-holders for any loss suffered by them as a result of its unjustifiable failure to perform its obligations, or its improper performance of them.</p> <p>The Irish Financial Regulator can assess the extent to which the depositary has complied with its' regulatory obligations and impose sanctions as appropriate. However it is a matter for the courts to interpret the standard of liability as set out in the Directive (and the corresponding Irish law) and to determine whether the depositary has failed to perform its obligations.</p>		<p>under custody, the ownership of each asset and where documents of title to that asset are located.</p> <p>Where the trustee utilises the services of a sub-custodian the trustee must ensure that these standards are maintained by the sub-custodian.</p> <p>Where the trustee utilises the services of a global sub-custodian the trustee must ensure that:</p> <p>(i) the non-cash assets are held on a fiduciary basis by the global sub-custodian's network of custodial agents. This should be confirmed by those agents on a regular basis. In jurisdictions where fiduciary duties are not recognised the trustee must ensure that the legal entitlement of the scheme to the assets is assured;</p>

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	<p>the State which</p> <p>(i) is wholly owned by a credit institution, provided the liabilities of the trustee are guaranteed by the credit institution and the credit institution has paid-up share capital which is not less than the limit specified in the Financial Regulator’s Licensing Requirements; or</p> <p>(ii) is wholly owned by an institution in a non-Member State which is deemed by the Financial Regulator to be the equivalent of such a credit institution, provided the liabilities of the trustee are guaranteed by the parent institution and the parent institution has a paid-up share capital which is not less than the limit specified in the Financial Regulator’s Licensing Requirements; or</p> <p>(iii) is wholly owned by an institution or company either</p>	<p>established as either a unit trust or common contractual fund is constituted as an umbrella fund the assets shall belong exclusively to the relevant sub-fund and shall not be used to discharge directly or indirectly the liabilities of or claims against any other sub-fund and shall not be available for any such purpose.</p> <p>Regulation 37 - Assets of investment companies</p> <p>(1) The assets of an investment company shall be entrusted to a trustee for safe-keeping in accordance with these Regulations.</p> <p>(2) A trustee’s liability as referred to in Regulation 43 shall not be affected by the fact that it has entrusted to a third party some or all of the assets in its safekeeping.</p> <p>(3) The assets of an investment company shall belong exclusively to the investment company. The assets shall be segregated from</p>			<p>(ii) the trustee must maintain records of the location and amounts of all securities held by each of the custodial agents;</p> <p>(iii) the relationship between the trustee and the global sub-custodian should be set out in a formal contract between the two entities.</p>

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	<p>in a Member State or in a non-Member State which is deemed by the Financial Regulator to be an institution or company which provides unit-holders with protection equivalent to that provided by a trustee under Regulation 19(2) (a), (b), (c) (i) or (c) (ii) and provided the liabilities of the company acting as trustee are guaranteed by the institution or company and the institution or company has a paid-up share capital which is not less than the limit specified in the Financial Regulator's Licensing Requirements.</p> <p>5. A trustee must satisfy the Financial Regulator that it has the appropriate expertise and experience to carry out its functions under the Regulations. The trustee must satisfy the Financial Regulator that it has sufficient management resources to effectively</p>	<p>the assets of either the trustee or its agents or both and shall not be used to discharge directly or indirectly liabilities or claims against any other undertaking or entity and shall not be available for any such purpose.</p> <p>Regulation 43 - Liability of trustee The trustee shall be liable to the investment company and the unit-holders for any loss suffered by them as a result of its unjustifiable failure to perform its obligations, or its improper performance of them.</p> <p>UCITS Notice 4 - 'Trustees Duties and Conditions' Paragraph 16 - The liability of a trustee will not be affected by the fact that it has entrusted to a third party some or all of the assets in its safe-keeping. Note: The Financial Regulator considers that in order for the trustee to discharge its</p>			



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	<p>conduct its business. In addition its directors and managers should be persons of integrity and have an appropriate level of knowledge and experience. The trustee must organise and control its internal affairs in a reasonable manner with proper records and adequate arrangements for ensuring that employees are suitable, adequately trained and properly supervised. There should be well defined procedures in place to ensure compliance with regulations and the trustee should deal with regulators in an open and co-operative manner.</p>	<p>responsibility under the Regulations, the trustee must exercise care and diligence in choosing and appointing a third party as a safe-keeping agent so as to ensure that the third party has and maintains the expertise, competence and standing appropriate to discharge the responsibilities concerned. The trustee must maintain an appropriate level of supervision over the safe-keeping agent and make appropriate inquiries from time to time to confirm that the obligations of the agent continue to be competently discharged. This does not purport to be a legal interpretation of these Regulations and the corresponding provisions of the UCITS Directive.</p> <p>Paragraph 17 - The trustee must:</p> <p>(i) ensure that there is legal separation of non-cash assets held under custody and that such assets are held on a fiduciary basis. In jurisdictions</p>			



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		<p>where fiduciary duties are not recognised the trustee must ensure that the legal entitlement of the UCITS to the assets is assured;</p> <p>(ii) maintain appropriate internal control systems to ensure that records clearly identify the nature and amount of all assets under custody, the ownership of each asset and where documents of title to that asset are located.</p> <p>Where the trustee utilises the services of a sub-custodian the trustee must ensure that these standards are maintained by the sub-custodian.</p> <p>Furthermore, I refer you to the policy document of the Financial Regulator on Trust Deeds/Custodian Agreements and specifically to the following:</p> <p>Section 2 - SUB-CUSTODIANS</p> <p>a. Standard of Care</p>			

Member	General criteria on the depositary	Liability of the depositary where delegation of custody functions	Obligation of means/obligation of result	Legal framework (administrative/civil)	Requirements on depositaries when delegating (due diligence)
		<p>Effective 1 January 1996 the Financial Regulator clarified its views in relation to the standard of care which a trustee must exercise in relation to the appointment and subsequent supervision/monitoring of sub-custodians:</p> <p>‘...the trustee must exercise care and diligence in choosing and appointing a third party as a safe-keeping agent so as to ensure that the third party has and maintains the expertise, competence and standing appropriate to discharge the responsibilities concerned. The trustee must maintain an appropriate level of supervision over the safe-keeping agent and make appropriate inquiries from time to time to confirm that the obligations of the agent continue to be competently discharged.’</p> <p>While this does not purport to be a legal interpretation of the</p>			



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		<p>UCITS Regulations, or the corresponding provisions of the UCITS Directive, and while it is the Courts which will decide whether or to what extent liability will apply in any given set of circumstances, this is the minimum standard of care which the Financial Regulator expects all schemes to provide for in their trust deed/custodian agreement.</p> <p>b. Trustee Liability for Sub-Custodians</p> <p>It is the view of the Financial Regulator, which is supported by its own legal advice, that a trustee's liability in relation to its sub-custodians is not strict liability. Such legal advice would suggest that once a trustee has demonstrably exercised the level of care and diligence in the appointment and subsequent supervision / monitoring of its agents, in the context of the market in which the sub-custodian is operating, it is</p>			

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		unlikely to be found liable by the Courts for losses arising in respect of the actions or inaction of such agents.			
Italy	<p>According to Article 36 of the Consolidated Law on Finance the assets of the fund must be deposited with a duly authorized depositary bank.</p> <p>The depositary bank, which must be an Italian entity or an Italian branch of an EU bank, must act independently and in the interests of the unit-holders.</p> <p>B.I.'s Regulation of 14 April 2005 establishes the conditions for accepting appointment as depositary bank. They include:</p> <ul style="list-style-type: none"> • Minimum amount of own funds (not less than EUR 100 million); • adequate experience; • adequate organizational structure. 	<p>Article 38, para 2 of the Consolidated Law on Finance states that the depositary bank is responsible towards the Asset Management Company and fund's unit holders for any damage deriving from breaches of its duties.</p> <p>B.I.'s Regulation of 14 April 2005 specifies that the depositary bank's responsibility remains also when assets are sub-deposited with a third party.</p> <p>As regulation states that the depositary bank's responsibility remains also when assets are sub-deposited with a third party, the sub custody agreement can't contain any clause aimed to reduce the depositary bank's responsibility towards the AMC and the unit-holders.</p>	<p>i) the depositary would be liable to investors, unless it can prove that the losses could not have been avoided even using the diligence required by the contractual relationship;</p> <p>ii) in case the safekeeping function is delegated to a third party and a failure occurred at the level of the latter, it is up to the Court to decide to what extent depositary liability would apply.</p> <p>In any case, the depositary would be responsible in relation to its monitoring function as stated by art. 7 of the UCITS Directive.</p>	<p>The liability regime of the depositary bank is governed by the civil code and any liability claim against the depositary is assessed and decided by the competent civil tribunal.</p> <p>Supervisory authorities may impose administrative sanctions or other remedial measures (i.e. prevent a bank from assuming new depositary contracts) if they detect breaches of regulation or inadequate business standards (organization requirements, accounts system, internal controls, etc.) which may relate, inter alia, to the safe keeping of assets.</p>	<p>The depositary bank may sub-deposit fund at:</p> <ul style="list-style-type: none"> • Italian or foreign entities authorized to perform centralized depositary functions which are subject to public supervision aimed at preserving transparency, orderly functioning of the business and investor protection; • Italian or foreign banks; • Italian or foreign investments firms authorized to hold clients' assets; • Other entities authorized to perform custody of assets which are subjected to prudential



Member	General criteria on the depositary	Liability of the depositary where delegation of custody functions	Obligation of means/obligation of result	Legal framework (administrative/civil)	Requirements on depositaries when delegating (due diligence)
					<p>supervision equivalent to that performed on banks and investment firms and provided that its obligations are guaranteed by a bank or a investment firm belonging to the same group.</p> <p>The depositary bank may sub deposits the assets of the UCITS only with the previous consent of the asset management company/SICAV. The consent is assumed if in the agreement between the AMC/SICAV the entities that may be chosen as sub-custodians depositary are listed.</p> <p>The banking regulation specifies that the depositary banks, in choosing any sub-depositary, have to carefully assess its fitness</p>

Member	General criteria on the depositary	Liability of the depositary where delegation of custody functions	Obligation of means/obligation of result	Legal framework (administrative/civil)	Requirements on depositaries when delegating (due diligence)
					<p>to efficiently perform the duty.</p> <p>In general, the AMC/SICAV is not involved in the sub-custody agreements unless it is required by the particular nature of the assets.</p> <p>Regulation do not set the minimum content of sub-custody agreements, but defines how the sub-deposit accounts should work in order to maintain the assets' segregation and enable the depositary bank to carry out its role effectively.</p>
Latvia	<p>According to Section 40 of the Law on Investment Management Companies the depositary in Latvia must have one of the following status:</p> <ul style="list-style-type: none"> - a bank, which is registered in Latvia and which has 	<p>(Section 42)</p> <p>(1) A depositary (further - custodian bank) has the following duties:</p> <ul style="list-style-type: none"> 1) to keep the fund property in accordance with the law and the custodian bank agreement; 2) to make sure that the issue, 	<p>The depositary's safe-keeping obligation should be read as an obligation of result.</p>	<p>The depositary's liability regime shall be governed by the civil law when contractual obligations settled into the agreement between an investment company and depositary are violated (when assets</p>	<p>(Section 43)</p> <p>(1) The custodian bank has the right to transfer by an agreement the keeping of the fund property and the servicing of the fund account to third persons if provided</p>



Member	General criteria on the depositary	Liability of the depositary where delegation of custody functions	Obligation of means/obligation of result	Legal framework (administrative/civil)	Requirements on depositaries when delegating (due diligence)
	<p>launched investment services and non-core services, incl. keeping of financial instruments;</p> <p>- a branch of the bank registered in the Member State, which is authorized to provide investment services and non-core investment services, incl. to keep financial instruments.</p>	<p>sale and repurchase of investment certificates takes place on behalf of the investment management company (further - company) and in accordance with the law, the fund prospectus and the fund management by-laws;</p> <p>3) to make sure that the fund value is calculated in accordance with the law, the regulations of the Financial and capital Market Commission (the Commission), the fund prospectus and the fund management by-laws;</p> <p>4) to fulfil orders of the company if they do not contradict the law, the regulations of the Commission, the fund prospectus, the fund management by-laws and the custodian bank agreement;</p> <p>5) to ensure that the fund income is used in accordance with the law, the fund prospectus and the fund management by-laws; and</p> <p>6) to make sure that the payments specified in</p>		<p>are not safe-kept in the proper way).</p> <p>Administrative sanctions according to the administrative law may be issued by the competent authority: according to Section 87 of the Law on Investment Management Companies the Financial and Capital Market Commission has the right to impose a penalty on the investment management company and the depositary in the amount up to 400 minimum monthly salaries for the defined violations, including safe-keeping violations.</p>	<p>for in the custodian bank agreement.</p> <p>(2) If the custodian bank fully or partially transfers its functions to a third person, such agreement shall be in effect, if it has been approved by the company and the Commission.</p> <p>(3) The transfer of the custodian bank's duties to third persons shall not release the custodian bank from the liability provided for in the law and the custodian bank agreement.</p>



Member	General criteria on the depositary	Liability of the depositary where delegation of custody functions	Obligation of means/obligation of result	Legal framework (administrative/civil)	Requirements on depositaries when delegating (due diligence)
		<p>transactions with the fund property are duly made.</p> <p>(3) The custodian bank has a duty to raise claims of fund investors against the company in its own name if required by the relevant circumstances. This provision shall not restrict the right of fund investors to raise such claims on their own behalf.</p> <p>(4) The custodian bank has a duty to raise a counterclaim if recovery proceedings are directed at the fund property in connection with its liabilities.</p> <p>(Section 45) The custodian bank has a duty to notify the Commission and the company's supervisory board without delay of the actions by the company known to the custodian bank which are in conflict with the law, the fund prospectus, the fund management by-laws or the custodian bank agreement.</p>			

Member	General criteria on the depositary	Liability of the depositary where delegation of custody functions	Obligation of means/obligation of result	Legal framework (administrative/civil)	Requirements on depositaries when delegating (due diligence)
		<p>(Section 46) (1) The custodian bank shall be fully liable to fund investors, company and third persons for losses, which have been caused if the custodian bank has violated the law or the custodian bank agreement intentionally or through negligence or has performed its duties negligently.</p> <p>(2) If the custodian bank has consented to a transaction, which does not conform to the provisions of the Law or has failed to submit an objection regarding a violation of the provisions of the Law, the custodian bank and the company shall be jointly liable for the losses caused to the fund.</p>			
Lithuania	According to the Law on Collective Investment Undertakings (the CIU Law), the assets of the collective investment undertaking shall be entrusted to a depositary for custody. The depositary shall be a bank which has a right to render investment	<p>The depositary has safekeeping and control duties listed in the Article 27 of the CIU Law, i.e.:</p> <p>1) ensure that the sale, issue, repurchase, redemption, and cancellation of units and shares is carried out in accordance with the requirements of legal acts</p>	Obligation of result	Liability regime – governed by the civil law; also administrative sanctions may be imposed in case of breach of duties	Except of the general duty of the depositary to act for the benefit of the unit-holders, there are no specific rules in Lithuanian legislation regarding the requirements on the delegations of custody

Member	General criteria on the depositary	Liability of the depositary where delegation of custody functions	Obligation of means/obligation of result	Legal framework (administrative/civil)	Requirements on depositaries when delegating (due diligence)
	<p>services in a Member State and having the registered office or a branch in the Republic of Lithuania.</p> <p>The depositary may be replaced only subject to the prior approval by the Lithuanian Securities Commission (the LSC). In case of the depositary's non-compliance with the requirements of the law, non-fulfilment of its obligations or improper fulfilment thereof, the Lithuanian Securities Commission, seeking to ensure the rights of unit-holders, shall have the right to instruct the management company or the investment company to terminate the contract concluded with the depositary and replace the depositary.</p> <p>Depositary is subject to all legal requirements applicable to banks (authorization; capital requirements; internal</p>	<p>and instruments of incorporation of the collective investment undertaking;</p> <p>2) ensure that the value of units or shares is calculated in accordance with the requirements of legal acts and instruments of incorporation of the collective investment undertaking;</p> <p>3) carry out the instructions of the management company or the investment company unless they conflict with legal acts and instruments of incorporation of the collective investment undertaking;</p> <p>4) ensure that in transactions involving an investment fund's assets any consideration is credited to the fund's account or to the investment company within an established time limits;</p> <p>5) to ensure that an investment fund's income is used in accordance with the requirements of legal acts or instruments of incorporation of the collective investment</p>			<p>functions. As the Lithuanian Securities Commission does not have any practical experience in this matter, the possibility to delegate any of depositary's functions or any additional obligations has not yet been discussed in Lithuania.</p> <p>There is only general rule as regards the sub-custody relations: The depositary shall be entitled to delegate its functions or part thereof to other depositaries, this, however, shall not affect its liability (despite of measures taken by the depositary).</p> <p>Any reasonable means of control (choice of sub-custodian, its control and oversight functions) are at discretion of the depositary.</p>

Member	General criteria on the depositary	Liability of the depositary where delegation of custody functions	Obligation of means/obligation of result	Legal framework (administrative/civil)	Requirements on depositaries when delegating (due diligence)
	<p>control; internal and external audit; necessary infrastructure, including human and technical resources, reliable IT systems.</p> <p>The same eligibility requirements apply for sub-custodian.</p> <p>The LSC approves custody agreement; any changes thereto that envisage sub-custody agreements shall be approved in the same manner.</p>	<p>undertaking.</p> <p>The depositary must notify the Securities Commission and the Supervisory Board or Board of the management company or the investment company of all the violations of legal acts or instruments of incorporation of the collective investment undertaking that come to its notice.</p> <p>The depositary is entitled to delegate its functions or part thereof to other depositories, however, this, does not affect its liability (Article 26(2) of the CIU Law).</p> <p>The depositary shall be liable for the damage caused to the members of the collective investment undertaking or the management company due to its failure to fulfil its duties or for inadequate performance of duties.</p>			
Luxembourg	The following information is an overview and not an	Pursuant to the Luxembourg law dated 20 December 2002,	With respect to the task of safe-keeping, the	The CSSF, acting in its role as an independent	The physical deposit of the assets if not made

Member	General criteria on the depositary	Liability of the depositary where delegation of custody functions	Obligation of means/obligation of result	Legal framework (administrative/civil)	Requirements on depositaries when delegating (due diligence)
	<p>exhaustive analysis of the relevant subject matter.</p> <p>According to the Luxembourg law dated 20 December 2002 ('the law'), the depositary must be a credit institution within the meaning of the law of 5 April 1993 concerning the financial sector, as amended. As such, the depositary is submitted to the CSSF's prudential supervision.</p> <p>By reason of its banking status, the depositary must comply with all legal and regulatory texts applying to banks, and more specifically with the provisions of the law of 5 April 1993.</p> <p>The provisions of the law of 5 April 1993 are setting forth the requirements to be met by banks in following areas: Authorization requirements regarding directors and significant shareholders; capital requirements;</p>	<p>the duties of the depositary are as follows:</p> <p>(a) the safe-keeping of the UCIs assets. The task of safe-keeping of the assets means that the depositary has a duty of supervision implying that the depositary must have knowledge at any time of how the assets of the UCI have been invested and how the assets are available.</p> <p>(b) the duty to supervise and monitor the performance of certain tasks of the UCI</p> <p>In addition to his safekeeping function, the depositary has various monitoring and supervisory functions, the scope of which depends on the type of the UCI concerned (UCI organized under the contractual form or UCI organized under the corporate form), such as the supervision of the assets of the UCI, the supervision of the investment policies, the control of the calculation of the net asset value of the UCI.</p> <p>The supervision by the</p>	<p>depositary is subject to the obligation to return the assets under custody. The obligation to return the assets is based on the general rules on deposit agreements (articles 1915 and following of the Civil Code). These rules define the obligation of the one who holds assets in deposits to return these assets as an 'obligation of result' ('obligation de résultat').</p> <p>It is however ultimately a matter for the courts to determine whether and to what extent the general rules of the Civil Code are applicable to a UCITS depositary based on the facts of a specific case.</p>	<p>public supervisory and regulatory authority, may take and enforce all necessary administrative measures in respect and against a supervised entity.</p> <p>More specifically, the CSSF may exercise the supervisory powers respectively apply the sanctions provided for by the law of 5 April 1993 on the financial sector (i.e. cessation of any practice that is contrary to the legal provisions; temporary prohibition of professional activity; authorization withdrawal of directors and managers; adoption of any type of measure necessary to ensure compliance with the applicable legal requirements and its implementing measures).</p> <p>In the context of the repayment of damages in</p>	<p>with the depositary itself, can be made with a professional authorized by its national laws to provide this kind of custody services and submitted to a supervision considered by the CSSF to be equivalent to that laid down in Community law.</p> <p>As regards the extent of the duty of supervision of the depositary, one can consider that the depositary has to be satisfied from the outset and during the whole of the duration of the contract that the third party with which the assets of the UCITS are on deposit is reputable and competent and has sufficient financial resources. Consequently, the depositary needs to perform a due diligence of the third party with</p>

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	<p>organizational structure, internal control procedure. The suitability of the directors of a bank is assessed in terms of professional respectability and experience:</p> <ul style="list-style-type: none"> - The assessment of professional respectability of the directors is based on their previous legal records and on all information which might show that the persons concerned enjoy a good reputation and present all guarantees of irreproachable conduct. - The directors must have obtained the necessary professional experience to determine the general business policy of the bank through having already exercised similar tasks at a high level of responsibility and autonomy. <p>By reason of their banking status, depositaries are subject to the CSSF's supervisory regime applying to banks.</p>	<p>depositary is exercised in particular with respect to third parties with whom the assets of the UCI have been deposited. The duty to supervise the assets of the UCI, and consequently the responsibility for this supervision, remains permanently within the domain of the depositary. The responsibility of the depositary is moreover not affected by the fact that it has delegated the performance of certain tasks to third parties. The liability of the depositary is more specifically regulated by following legal provisions:</p> <ul style="list-style-type: none"> • According to article 9 of the European Directive 85/611/EEC as amended, which has been implemented in the Luxembourg regulatory framework by articles 19(1) (applicable to common funds) and 36 (applicable to investment companies) of the Luxembourg law dated 20 December 2002, the depositary shall be liable for its wrongful 		<p>case of breach of obligations by a supervised entity (including a depositary bank), it falls exclusively to the courts and tribunals of the judicial order to decide whether a supervised entity committed a civil tort which would oblige it to contribute to the indemnification of the damages.</p>	<p>which the UCITS's assets should be deposited as well as on going controls of this party in order to ensure that the assets of a UCI are continuously deposited within a reputable, competent entity having sufficient financial resources.</p> <p>When the fund's assets are deposited by the depositary bank with a third party, these deposits are under the monitoring and supervisory responsibility of the depositary bank, implying that the latter must know at all times in which manner the assets are invested and where and how these assets are available. This responsibility is not affected by the fact that the depositary has entrusted to a third party the assets in its safe-</p>



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	<p>A choice of a bank, authorized under the provisions of the law of 5 April 1993, requires furthermore a separate approval from the CSSF, when it intends to act as depositary bank of a UCI (UCITS and non-UCITS). The approval of a UCIs choice of the depositary is only given under condition that the proposed depositary can justify to the CSSF that it possesses the necessary infrastructure, that is to say sufficient human and technical resources, to perform the totality of the tasks relating to its duties. The CSSF's evaluation regarding the choice of the depositary focuses more specifically on following areas:</p> <ul style="list-style-type: none"> -organisation structure and human resources at the disposal of the depositary -IT infrastructure systems of the depositary, including the 	<p>failure to perform its obligations or its wrongful improper performance thereof. Anyone suffering damages must prove the depositary's negligence in respect of its duty of supervision and the correspondence between cause and effect.</p> <ul style="list-style-type: none"> • According to article 17(4) respectively article 34(2) of the Luxembourg law dated 20 December 2002, the depositary's liability shall not be affected by the fact that it has entrusted all or some of the fund's assets in its custody to a third party. • According to the general rules on deposit agreements (articles 1915 and following of the Civil code), the one who holds assets in deposit has the obligation to return these assets. <p>It must be noted that in last instance it is up to the civil court to decide whether or to what extent the depositary would be</p>			<p>keeping.</p> <p>The segregation of assets must be ensured on the delegate's accounts. According to the CSSF's supervisory practice, the due diligence procedure to be performed by the depositary regarding the third party (the delegate) with which the UCI's assets should be deposited must more specifically be focused on following areas:</p> <ul style="list-style-type: none"> • Verification of general information regarding the delegate i.e. legal status, date of incorporation, jurisdictions, articles of incorporation. • Verification of the licenses (i.e. bank licence or others) required with respect to the activities to be performed by the delegate. • Verification of the professional respectability



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	<p>description of the business continuity plan and the back-up systems</p> <p>-description of the information and transaction flows and of the related controls between the depositary and all the other intervening parties in course of the activities of the UCI (i.e. management company, central administration)</p> <p>-description (if applicable) of the outsourcing of functions carried out by the depositary, which is only permitted to the extent compatible with the nature of the task involved and the subsequent liability involved.</p> <p>In accordance with circular CSSF 01/27, the CSSF requires the preparation of an analytical report by the bank's external auditor on a yearly basis for banks incorporated under Luxembourg law as well as for Luxembourg branches of non-EU</p>	<p>required to restore UCIs assets in case of sub-custody arrangements.</p>			<p>and qualification of the management of the delegate.</p> <ul style="list-style-type: none"> • Analysis of the delegate's level of expertise to provide the services required. • Assessment of the delegate's financial stability. • Verification of the organizational structure, the compliance and control processes in place. • Verification of technology support and IT systems (i.e. existence of back-up systems). • Assessment of the information and transaction flows between the delegate, the depositary and all the other intervening parties in course of activities of the UCI • Identification of potential conflict of interests situations between the depositary,



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	<p>banks. The purpose of the analytical report is to assess the quality of the bank's organization and the exposure to the different risks.</p> <p>In case of banks incorporated under Luxembourg law carrying out depositor functions for UCIs, the analytical report has inter alia to assess the quality of the bank's organization in the field of depositary activities.</p> <p>In addition, the analytical report that the external auditor of the UCI is required to produce on a yearly basis pursuant to circular CSSF 02/81 must cover the following aspects with regard to the depositary of the UCI: assessment of the procedures relating to the activities of the depositary; assessment of the IT system of the depositary; assessment of the adequacy of the procedures concerning the reconciliation of the positions accounted for the UCI and the positions registered with the</p>				<p>the delegate and all other related parties. An improper execution of the due diligence to be performed by the depositary regarding the third party with which the UCI's assets should be deposited may constitute a serious breach to the depositary's supervisory duties with the consequence that the depositary shall be liable for its wrongful failure to perform its obligations in the sense of articles 19(1) respectively 36 of the law dated 20 December 2002. The kind of due diligence described above has to be updated on a regular basis.</p> <p>Finally, the concentration of duties to be executed by one single correspondent of the depositary is allowed where this single correspondent is chosen</p>

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	<p>depositary. Where a depositary subject to the supervision by the CSSF is not complying with the legal and regulatory provisions applying to depositaries, and more specifically with the provisions of the law of 20 December 2002, the CSSF may enjoin that depositary to remedy the situation within such period as it may prescribe. If by the end of the period prescribed by the CSSF, the situation in question has not been remedied, the CSSF may exercise the supervisory powers respectively apply the sanctions provided for by article 53 of the law of 5 April 1993. The power of the CSSF according to article 53 of the law of 5 April 1993 include inter alia the power to request temporary prohibition of professional activity with</p>				<p>for technical reasons. It is however regulatory practice to inform the CSSF about this delegation and to properly disclose this situation in the sales prospectus.</p> <p>Although there are no specific requirements in the Luxembourg regulations regarding formal approval of the sub-custody arrangements by the management company, when a management company choose a depositary, it has in practice to verify and to approve the depositary's network of sub-custodians.</p> <p>It should be added that the depositary has to arrange its relationship with the sub-custodian in such a manner that the depositary is in a position to fulfil its supervisory</p>



Member	General criteria on the depositary	Liability of the depositary where delegation of custody functions	Obligation of means/obligation of result	Legal framework (administrative/civil)	Requirements on depositaries when delegating (due diligence)
	<p>respect to persons subject to its prudential supervision, as well as members of the management or supervisory bodies, employees and tied agents linked to these persons, as well as the power to adopt any type of measure necessary to ensure that the persons subject to its prudential supervision continue to comply with the legal requirements and its implementing measures.</p>				<p>tasks (i.e. description of the delegated tasks in the sub-custodian agreement; communication of information on the composition of the UCIs assets to the depositary; reporting on transactions entered into the account of the sub-custodian on behalf of the UCI). The depositary shall also have a right of intervention in relation to the UCIs assets which have been entrusted to the sub-custodian, if the depositary deems to be no longer able to fulfil its supervisory tasks. In order to be complete, it should be noted that for UCITS using the services of a specialized institution (e.g. UCITS investing in OTC derivatives in the limits authorized by the Directive) the concept of safekeeping may have different meanings in</p>

Member	General criteria on the depositary	Liability of the depositary where delegation of custody functions	Obligation of means/obligation of result	Legal framework (administrative/civil)	Requirements on depositaries when delegating (due diligence)
					consideration of the specific role of that type of institution in the custody of assets.
Malta	<p>The following explanation does not have the purpose of being an exhaustive examination of the requirements on depositaries which are applicable in Malta.</p> <p>Depositaries of collective investment schemes in Malta require a Category 4 investment services licence granted by the MFSA in terms of the Investment Services Act, 1994 ('ISA'). These entities are subject to the Investment Services Act (Control of Assets) Regulations, 1998 (the Regulations) and the Investment Services Rules for Investment Services Providers (the Rules). A copy of the ISA, the Regulations and the Rules is available on the part of the MFSA's web-page www.mfsa.com.mt which</p>	<p>The requirements on the liability of depositaries authorised in Malta are set out in regulations 19 and 20 of the Regulations referred to in column 1.</p> <p>Regulation 19 sets the general requirement that a depositary is liable for any loss or prejudice suffered by the manager, the scheme or the holders of units or participants of the scheme due to the depositary's fraud, wilful default or negligence including the unjustifiable failure to perform in whole or in part the depositary's obligations arising under: [i] the Regulations; [ii] the terms and conditions of the agreement appointing the depositary; [iii] the deed or other instrument establishing or regulating the scheme, [iv] the conditions of the collective investment scheme's licence</p>	<p>Although there is no explicit reference to or recognition of the concepts of 'obligation of means' and 'obligation of result' in the local legal and regulatory framework, the provisions of the Regulations appear to provide Depositaries with an obligation of means when appointing third party sub-custodians and an obligation of result when the delegate is a group company.</p>	<p>As indicated in the column entitled '<i>General Requirements</i>', the legal framework for the regulation of depositaries is set in the Investment Services Act, 1994, the Investment Services Act (Control of Assets) Regulations, 1998 and Investment Services Rules for Investment Services Providers.</p> <p>Depending on the nature of the breaches by a depositary, the MFSA may impose a range of administrative sanctions in terms of its enforcement powers. There are also legal remedies for repayment of damages in the case of breaches of obligations by the Depositary.</p>	<p>Depositaries which want to delegate part of their functions to a sub-custodian are subject to the requirements on outsourcing set in Section 4 of the Investment Services Rules for Investment Services Providers. These rules are based on the requirements on outsourcing which are set in the Markets in Financial Instruments Directive.</p> <p>The Rules on outsourcing <i>inter alia</i> stipulate that the depositary must carry out appropriate due diligence in respect of the sub-custodian before appointing the latter. This includes being satisfied that the delegate</p>



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	<p>is dedicated to Securities/ Investment Services.</p> <p>The Regulations <i>inter alia</i> stipulate requirements on: [i] the eligibility of entities to act as depositaries; [ii] the functions and duties of depositaries; [iii] the independence of depositaries from the fund manager; [iv] the liability of the depositary; and [v] the delegation of custody functions and duties to a sub-custodian. The Regulations also stipulate requirements on the safekeeping of the assets by Depositaries.</p> <p>The Rules stipulate organisational requirements, general conduct of business requirements, capital requirements and supplementary requirements which must be satisfied by <i>inter alia</i> a Depositary of a collective investment scheme.</p>	<p>which may be held by the scheme, [v] the conditions of any investment services licence or such other requirements as may be laid down by the MFSA.</p> <p>Regulation 20 spells out the extent of liability of a depositary where it has delegated the depositary function to a sub-custodian.</p> <p>The general principle in Regulation 20 is that the liability of the depositary shall not be affected or reduced as result of the depositary delegating functions and duties or entrusting all or part of the assets of the Scheme to a sub-custodian.</p> <p>The above principle applies in full where the depositary delegates or entrusts functions, duties or assets to a person which is a group company. In all other cases, the depositary is not liable for any loss or prejudice suffered by the manager, the</p>			<p>has the ability, capacity and any authorization required by law to perform the outsourced functions. Moreover, the Depositary must properly supervise the carrying out of the outsourced functions and adequately manage the risks associated with the outsourcing.</p>

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	<p>The following are the eligibility criteria which entities licensed by the MFSA to act as depositaries of collective investment schemes (UCITS & Non-UCITS) must satisfy. Such entities must have an established place of business in Malta and must fall under any of the following categories:</p> <p>The Custodian is required to have an established place of business in Malta and shall be:</p> <ul style="list-style-type: none"> a. a credit institution, constituted and licensed under the laws of Malta; or b. a branch established in Malta, of a credit institution authorised in a EU Member State or EEA State; or c. a branch established in Malta of an overseas 	<p>scheme or unit holders as a result of the acts or omission of a sub-custodian, where the depositary can prove that the sub-custodian was and remains qualified and competent to carry out the functions and duties delegated to it and that the depositary exercised reasonable care to oversee that the functions and duties delegated were undertaken by such person competently. Moreover, the liability of a depositary for the failures of the sub-custodian may be varied or reduced with the written consent of the scheme or the manager, where acting on behalf of the scheme, and in accordance with the terms and conditions of the agreement appointing the depositary, the deed or other instrument establishing or regulating the scheme, the conditions of the collective investment scheme licence which may be held by the scheme, the condition of any investment services licence of</p>			

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	<p>credit institution which is subject to prudential requirements at least equivalent to the requirements applicable to Maltese credit institutions; or</p> <p>d. a company incorporated in Malta which is wholly owned by a credit institution, provided that the liabilities of the Licence Holder are guaranteed by the credit institution and the credit institution is either a Maltese credit institution or is an overseas credit institution which is subject to prudential requirements at least equivalent to the requirements applicable to Maltese credit institutions; or</p> <p>e. a company</p>	<p>the depositary and such other requirements as may be laid down by the MFSA. Provided that the depositary discloses fully to the scheme or the manager, where acting on behalf of the scheme, any risks that may be associated with the nature of the custody arrangements, and that the agreement appointing the depositary shall clearly define the extent of liability of the custodian. Any such risks shall also be fully disclosed to the holders of units or participants in the scheme.</p>			



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	<p>incorporated in Malta which is wholly owned by a Maltese or foreign institution or company which is deemed by the MFSA to be an institution or company which provides unit-holders with protection equivalent to that provided by a Licence Holder fulfilling the requirements of (a), (b), (c) or (d) above and provided the liabilities of the company acting as Custodian are guaranteed by the institution or company and the institution or company has paid-up share capital of EUR5 million or its equivalent in foreign currency.</p> <p>The Depositary/Custodian is required to have the business organization, systems, and appropriate expertise and</p>				

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	<p>experience deemed necessary by the MFSA for it to carry out its functions. Moreover, UCITS Depositaries have both safekeeping and monitoring duties in respect of the UCITS and its investment management as more fully set out in the Investment Services Rules.</p>				
<p>Netherlands</p>	<p>A UCITS must always have a depositary, except for the circumstances mentioned in article 14 UCITS directive.</p> <p>General requirements applying to UCITS and non-UCITS.</p> <p>Section 4:42 A management company administrating a common fund shall take measures to ensure that:</p> <p>a. the assets of the common fund shall be acquired on behalf of the unit-holders by a depositary independent from the management company;</p>	<p>The depositary may assign the safekeeping of assets to a third party, which shall legitimately exercise the duties of depositary. The depositary remains responsible at all time. Liability cannot be delegated.</p>	<p>General: According to the Act on Financial Supervision the depositary must act in the best interest of the investors.</p>	<p>The depositary's liability to investors for economic loss and non-compliance is governed by civil law.</p>	<p>The choice of sub-custodian is up to the depositary to decide and on its responsibility. There is no formal approval by the regulator. The depositary remains responsible at all time. In case of delegation, the depositary must ensure that:</p> <ul style="list-style-type: none"> - The sub-custodian is able to report on its performance at all time; - The depositary can give instructions to the sub-custodian and suspend the activities

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	<p>and</p> <p>b. the depositary may solely dispose of the common fund assets and liabilities with the cooperation of the management company.</p> <p>Section 4:43</p> <p>1. Where a depositary keeps the assets of a collective investment scheme, the management company of the collective investment scheme shall conclude a written agreement on administration and depositing with the depositary.</p> <p>2. Rules may be laid down by order in council with regard to the content of the agreement on administration and depositing to be concluded between the management company and a depositary.</p> <p>Section 4:44</p> <p>1. Only a legal person with as the sole object under the articles of association keeping the assets and administrating</p>				<p>of the sub-custodian at all times;</p> <ul style="list-style-type: none"> - The sub-custodian is able to fulfil all the requirements imposed upon the depositary (which are subsequently delegated) .

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	<p>the goods in which a collective investment scheme invests shall act as a depositary.</p> <p>2. The assets of a common fund shall be kept by a depositary that solely keeps the assets on behalf of the common fund, where there is a real risk based on the investment policies of the common fund concerned that the assets and liabilities of the common fund shall not suffice to pay off the claims meant in Section 4:45 (1) and the own funds of the depositary shall not suffice to pay off such claims.</p> <p>3. The Netherlands Authority for the Financial Markets may, on application, grant a waiver, fully or in part, whether or not for a fixed term, of the second subsection, if the applicant shows proof that it cannot reasonably comply with those provisions and that the objectives which that subsection seeks to attain</p>				



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	<p>shall be attained otherwise.</p> <p>UCITS</p> <p>Section 4:56 1. The assets of an undertaking for collective investment in transferable securities which is an investment company shall be kept by a depositary independent from the former for safe-keeping. Derogation from this requirement is permitted subject to conditions to be laid down by order in council. 2. Section 4:42 opening words and under b shall apply mutatis mutandis.</p> <p>Section 116 The agreement as referred to in Section 4:43(1) of the Act to be concluded between a management company and a custodian shall stipulate in any case that: a. the custodian, in performing the custody</p>				



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	<p>services, act in the interest of the unit holders in the collective investment scheme;</p> <p>b. the custody in the name of the collective investment scheme be organised in such a way that the assets placed in custody can be deployed only by the management company and the custodian together;</p> <p>c. the custodian only release the assets placed in custody in exchange for a statement from the management company showing that their release is required for the purpose of the regular performance of the management function;</p> <p>d. under the law of the state where the management company has its registered office, the custodian be liable towards the collective investment scheme and the unit holders for the damage sustained by them insofar as this damage results from the imputable non-fulfilment or inadequate fulfilment of its</p>				



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	<p>obligations, even if the custodian entrusted the assets placed in its custody to a third party, either wholly or in part;</p> <p>e. if depositary receipts for units are issued, these receipts be signed by the custodian;</p> <p>f. a proposal to amend the terms and conditions applicable between the collective investment scheme and the unit holders be made by the management company and the custodian together; and</p> <p>g. if the agreement concerns the assets of an undertaking for collective investment in transferable securities, that the custodian:</p> <p>1°. ascertain that the offering, purchase, sale and withdrawal of and repayment on units take place at the expense of the collective investment scheme, in accordance with the Act or with the articles or fund</p>				

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	<p>regulations of the collective investment scheme;</p> <p>2°. ascertain that, in transactions involving the assets of the collective investment scheme, the consideration is paid within the customary periods;</p> <p>3°. ascertain that the returns of the collective investment scheme are appropriated in accordance with the Act or with the articles or fund regulations of the collective investment scheme;</p> <p>4°. ascertain that the value of the units is calculated in accordance with the Act or with the articles or fund regulations of the collective investment scheme; and</p> <p>5°. follow the management company's instructions, unless these are contrary to the Act or to the articles or fund regulations of the collective investment scheme.</p>				
Norway	According to the Norwegian	A depositary may delegate to a	According to the Act on	The depositary's liability	There is no explicit

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	<p>Act on Securities Funds, the depositary must be an institution submitted to supervision. The depositary is in practice a bank, but may also be for instance an investment firm. The depositary must have its registered office in Norway or its head office in another EEA state, in case a depositary is a branch established in Norway. The obligations of the depositary are stated in the Act. The depositary shall hold in safekeeping all assets of a securities fund. The depositary also receives payments and administers payment from the fund. The depositary shall follow the management company's instructions as long as the instructions not are in breach of law or the fund's rules. The depositary has a duty to control that the value of units is calculated in accordance with the law and the fund rules. The choice of the</p>	<p>sub-custodian when it comes to safekeeping of foreign financial instruments and under certain conditions to hold 'cash accounts'. The Act on Securities Funds states explicitly that a depositary is liable for losses inflicted on the fund through negligence of the depositary's obligations. According to the standard written agreement between the management company and the depositary, the depositary's liability shall not be affected by the fact that it has delegated to a sub-custodian all or some of the assets in its safekeeping. The sub-custodian must comply with instructions from the depositary. Only custody may be delegated; control duties may not be delegated to a third-party. The depositary's liability may not be altered by the contractual arrangements with the sub-custodian, i.e. it is not possible to enter into a contract according to which the depositary should not at all be</p>	<p>Securities Funds a depositary is liable for losses inflicted on the fund through negligence of the depositary's obligations. With reference to the Act the depositary's safe-keeping obligation should presumably be read as an obligation of means. In case the safekeeping function is delegated to a third party and a failure (negligence of the sub-custodian) occurred at the level of the latter, the depositary's liability should probably be read as an obligation of result. However, Kredittilsynet is not aware of any practical legal decision to this question. It should be added that the Act does not make a distinction between obligation of means and obligation of result.</p>	<p>regime is governed by the civil law. Kredittilsynet has no authority to decide liability (i.e. compensation).</p>	<p>regulation in the Act on delegation to a sub-custodian. However, a depositary must make a due diligence before the delegation takes place, and is also subsequently obliged to make an assessment on the sub-custodian arrangement. A depositary may delegate custody of foreign assets to a sub-custodian which is subject to satisfactory supervision in the home state. According to the standard agreement between the depositary and the management company, the depositary may only make a sub-custodian arrangement with an entity which is well-known and of good repute. There is no obligation to apply explicitly for permission to delegate.</p>

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	<p>depositary is subject to approval by the supervisory authority. The persons responsible for the depositary function within the bank/possibly another institution, must be sufficiently experienced and be of sufficiently good repute. The relationship between the management company/securities fund and the depositary shall be regulated by a written agreement, which is also subject to approval by the supervisory authority. The Act on Securities Funds states explicitly that a depositary is liable for losses inflicted on the fund through negligence of the depositary's obligations</p>	<p>responsible for negligence. However, the depositary is free to undertake a more extensive responsibility than stated in the Act.</p>			
Poland	<p>The selection of the depositary is a subject of the Polish Financial Supervision Authority (PFSA) approval. According to Article 22 of the Act on Investment Funds as a part of the management</p>	<p>According to Article 75 of the Act on Investment Funds the depositary shall be liable for any damage caused by non-performance or undue performance of the responsibilities specified in Art.</p>	<p>Obligation of means The depositary shall act independently from the management company and in the interest of unitholders thus the</p>	<p>The liability of the depositary should be considered on the grounds of the Civil Law and could be a subject of the assessment by the Courts.</p>	<p>Article 72.1 of the Act on Investment Funds states that the depositary's responsibilities shall include, inter alia, maintaining a register of the investment fund's</p>

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	<p>company's application for an authorisation to create an investment fund shall be attached, inter alia, the following:</p> <ul style="list-style-type: none"> - the agreement with the depositary on the maintenance of a register of the fund's assets; - personal details of the depositary's management board members responsible for the performance of depositary responsibilities by the organisational unit of the bank and personal details of the persons designated by the depositary to carry out the responsibilities defined in the agreement, together with a description of their qualifications and professional experience as well as information from the National Criminal Register. <p>According to Article 71 of the Act on Investment Funds an agreement on the</p>	<p>72.1 (see the last column). The depositary's liability may not be disclaimed or limited by way of the agreement on the maintenance of a register of the fund's assets.</p> <p>Article 81 of the Act states, inter alia, that the investment fund's assets kept by the depositary, shall not be subject to enforcement proceedings against the depositary or entities referred to in Art. 72.1 (see the last column) or form part of bankruptcy estate of the depositary or such entities, and may not be included in recovery proceedings.</p> <p>The liability of the depositary may differ depending on a nature of agreement concluded by the depositary (i.e. at the request of the fund or not) and contractual provisions. However the depositary shall always act in the interest of unitholders which shall mean, inter alia, fit & proper testing. Nevertheless,</p>	<p>depositary should, inter alia, provide an appropriate test in case of possible or actual keeping the assets of the fund by a third party.</p>	<p>The PFSA, as a competent administrative authority, may order the fund to replace the depositary or impose a financial penalty of up to PLN 500,000 (approx. € 120,000) on such depositary if the depositary violates the provisions of the Act on Investment Funds or does not carry out the responsibilities specified in the agreement on the maintenance of a register of the fund's asset. However the PFSA does not have the power to order the depositary to restore assets of the fund in case of assets are not safe-kept and the power to assess the level of liability of the depositary in such situations.</p>	<p>assets, including the assets registered in the appropriate accounts and kept by the depositary and other entities under other regulations or pursuant to agreements concluded by the depositary at the request of the fund.</p> <p>According to Article 72.3 of the Act the depositary may also conclude those agreements with domestic banks, credit institutions or foreign banks.</p> <p>The Act on Investment Funds does not provide specific rules related to above mentioned agreements.</p>



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	<p>maintenance of a register of the fund's assets may only be concluded with:</p> <ol style="list-style-type: none"> 1) a domestic bank whose equity amounts to at least PLN 100,000,000 (approx. € 24,000,000); 2) a branch of a credit institution registered in the Republic of Poland if the funds allocated to such branch amount to at least PLN 100,000,000 (approx. € 24,000,000), or 3) Krajowy Depozyt Papierów Wartościowych Spółka Akcyjna (National Depositary for Securities). <p>According to Article 9 and 10 of the Act a depositary shall perform the responsibilities defined in the Act, in particular it shall maintain a register of the investment fund's assets. A management company and a depositary shall act independently and in the interest of unitholders.</p>	<p>all of the circumstances should be considered on the grounds of the Civil Law and could be a subject of the assessment by the Courts.</p>			



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	<p>If a depositary violates the provisions of the Act or does not carry out the responsibilities specified in the agreement on the maintenance of a register of the fund's assets, the PFSA may order the fund to replace such depositary or impose a financial penalty of up to PLN 500,000 (approx. € 120,000) on such depositary.</p>				
<p>Portugal</p>	<p>The depositaries are banks subject to supervision and authorization by Banco de Portugal, which have their registered offices in Portugal or in another European Union Member State and a branch in Portugal, provided they are authorized to perform depositary functions in the state of origin.</p> <p>The Portuguese legal framework of Collective Investment Undertakings (CIU), approved by Decree-Law No. 252/2003, of 17</p>	<p>Article 40/3 of Decree-Law No. 252/2003, of 17 October determines that safekeeping of CIU assets may be entrusted, in whole or in part and in agreement with the management company, to a third party by means of a written contract, and that the depositaries' liability shall not be affected (as required by article 7/2 of the Directive 85/611/CEE).</p> <p>As to the depositaries' liability established by article 9 of the Directive, the Portuguese legal</p>	<p>Obligation of result.</p>	<p>The depositary's liability regime is governed by the collective investment schemes specific legislation and by the civil and commercial law in general. The depositary's liability for the breach of the legal duty of assets safe guard needs as such to be assessed by the court. However it cannot be excluded that, in case the assets are not safe kept by the depositary, some administrative measures or sanctions</p>	<p>The Portuguese legal framework does not foresee specific rules related to the diligences to be observed by the CIU depositaries in the case of delegation to a third party. In accordance with article 306-A of the Portuguese Securities Code (by transposition of the Directive 2004/39/EC), the financial intermediary that wishes to register or deposit clients' financial instruments in either one or more bank accounts at</p>



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	<p>October, establishes, in article 38/2 (as allowed by article 8/3 of the Directive 85/611/CEE), the type of institutions that are eligible to be depositaries and the prudential rules related to their own funds. In particular, credit institutions defined in items a) to e) of Article 3 of the Legal Framework for Credit Institutions and Financial Companies (Decree-Law No. 298/1992, of 31 December) (in general, banks) may be depositaries, whereby they shall maintain own funds of not less than 7.5 million Euro.</p> <p>These institutions are subject to technical and governance requirements which apply to banks generally, including: -corporate governance arrangements (clear responsibility lines and organizational structure, risk identification, management and control and associated transparency, internal control</p>	<p>framework for CIU determines in article 29/5 that the management company and the depositary shall indemnify the unit-holders in accordance with the terms and conditions set forth in the regulation, for losses resulting from situations attributable to either of them, namely: Errors and irregularities in the evaluation or attribution of UCITS portfolio operations; Errors and irregularities in subscription and redemption processing; Charging amounts not due.</p>		<p>may be issued by the competent authorities.</p>	<p>a third party shall: 1) Observe the protection duties and employ high standards of professional diligence in the selection, appointment and in the periodic assessment of the third party, taking into consideration its technical capability and market reputation; and 2) Consider the legal or regulatory requirements and market practices regarding financial instruments which are held, registered and deposited by those third-parties and which are prone to adversely affect clients' rights. Besides that, whenever the registration and deposit of financial instruments is subject to regulation and supervision in the State in which the financial intermediary intends to register and deposit the</p>

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	<p>mechanisms (article 14/1/f/g of DL 298/1992 on general requirements);</p> <ul style="list-style-type: none"> - Adequate human, technical and material resources subject to which the authorization is granted (article 17/1/b/f of DL 298/1992 on request for authorization. The adequacy of human, technical and material resources must be assured by the depositary on an ongoing basis; - Subcontracted entities should have the necessary skills and abilities to perform the subcontracted activities (article 35/2/d of Decree-Law No. 252/2003 of 17 October 'Subcontracting' heading). <p>CMVM is informed of all subcontracts the management company wishes to enter in, ahead of its signature (article 37 of DL 298/1992).</p>				<p>financial instruments (third party), the financial intermediary may not register or deposit them with an entity that is not subject to that kind of authorisation or supervision.</p> <p>On the other hand, the financial intermediary shall not register or deposit clients' financial instruments with an entity that is established in a State that does not regulate the registration and deposit of financial instruments on behalf of a third party, unless:</p> <ul style="list-style-type: none"> a) The nature of the financial instruments or the investment services related to those financial instruments require so; or b) The financial instruments are to be registered or deposited on behalf of a professional investor who has

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					<p>requested such in writing.</p> <p>Finally, general principles applicable to outsourcing (defined in articles 308, 308-A and 308-B of the Portuguese securities code, by transposition of the Directive 2004/39/EC) are also applicable in case of delegation to a third party or the depositary duties related to the custody and registration of the CIU assets.</p>
Romania	<p>Eligibility According to the provisions of art. 69 of the Law no. 297/2004 regarding the capital market (Law no. 297/2004), a depositary must be a credit institution authorised by the National Bank of Romania (N.B.R.) in accordance with banking legislation, or Romanian branch of a credit institution authorized in a Member State, approved by C.N.V.M. to conduct depositary</p>	<p>Eligibility & Prudential requirements According to the provisions of art. 72 of the Law no. 297/2004: '(1) The depositary is liable to AMC, investment company and to unit-holders for any loss suffered by them as a result of its unjustifiable failure to perform its obligations or its improper performance of them. (2) The depositary liability to the investors may be invoked by the unit-holders either directly or indirectly through the AMC,</p>	<p>Obligation of result In accordance with the provisions of art. 72 indent (1) and (2) of the Law no. 297/2004, and the art. 50 and art. 56 of the Regulation no. 15/2004: 'Art. 72. (1) The depositary is liable to AMC, investment company and to unit-holders for any loss suffered by them as a result of its unjustifiable failure to perform its</p>	<p>Administrative According to the provisions of art. 79 letter b) of the Regulation no. 15/2004: 'Art. 79 C.N.V.M. shall withdraw the certification issued under the following conditions:[...] b) where the depositary does not comply with the legal provisions regarding the activities, obligations and responsibilities of a depositary; [...]</p>	<p>In accordance with the provisions of the Law no. 297/2004 and Regulation no. 15/2004, the depositary is not absolved of the responsibilities regarding the safekeeping of assets entrusted to it by the AMC, even if it has entrusted to a third party all or some of the assets for safekeeping</p> <p>There are no provisions</p>

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	<p>activities, in accordance with the provisions of the law, and which is entrusted with all the assets of an U.C.I. for safekeeping.</p> <p>Liabilities The depositary shall register, verify, monitor and control all the assets held by each UCI for which depositary activities are performed. According to the provisions of art. 70 of the same law „A depositary must: a) ensure that the sale, issue, re-purchase and cancellation of units effected on behalf of a AMC or by another entity on behalf of an UCI, are carried out in accordance with this law, C.N.V.M. regulations and the fund rules and/or the instruments of incorporation of the investment company; b) ensure that the value of units is calculated in accordance with the law and the fund rules and the instruments of incorporation</p>	<p>depending on the legal nature of the relationship between the depositary, the management company and the unit-holders. (3) A depositary may entrust a third party, a sub-depositary, with the safekeeping of some of the assets of an UCI, according to the regulations issued by C.N.V.M. (4) The activities delegated to the third parties, as referred to in paragraph (3) are carried out on observing the same regime applicable to the depositary. (5) The liability of a depositary referred to in paragraph (3) shall not be affected by the fact that it has entrusted to a third party all or some of the assets in its safekeeping.’</p> <p>According to the above mentioned provisions, the sub-depositary must be also a credit institution, authorised by the National Bank of Romania (N.B.R.) in accordance with banking legislation or Romanian branch of a credit institution</p>	<p>obligations or its improper performance of them. (2) The depositary liability to the investors may be invoked by the unit-holders either directly or indirectly through the AMC, depending on the legal nature of the relationship between the depositary, the management company and the unit-holders’</p> <p>‘Art. 50 The credit institutions in Romania, authorised by N.B.R. in accordance with the banking legislation, or the branches in Romania of a credit institution, authorised in a member state as depositary ensure the safekeeping of all the assets of UCI and a permanent control, from the point of view of compliance with legislation, over the operations of the</p>	<p>These provisions are applicable also in the case where safe-keeping functions were delegated to a sub-custodian.</p>	<p>in our legislation regarding the percentage of loss for which the depositary and the sub-depositary are responsible.</p>

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	<p>of the investment company; c) carry out the instructions of a AMC or of the investment companies, which have not designated a management company, unless they conflict with the law or the fund rules /instruments of incorporation of the investment company; d) ensure that in transactions involving the assets of an UCI any consideration is remitted to it within the usual time limits; e) ensure that an UCI's income is managed and calculated in accordance with the law and the fund rules/instruments of incorporation of the investment company.</p> <p>Prudential requirements The Romanian law also states at art. 71 the followings: „In order to obtain approval by C.N.V.M., the credit institution shall submit to C.N.V.M. documents and evidence to prove that:</p>	<p>authorized in a Member State, approved by C.N.V.M. to conduct depositary activities.</p> <p>Due diligence and on going monitoring According to the provisions of art. 73 of the CNVM Regulation no. 15/2004: ‘(2) The depositary can transfer the entrusted assets of a UCI to another sub-depositary, being responsible for safe keeping them as well as the depositary. (3) The assets such as the monetary placements, transferable securities not admitted to trading and intangible assets, as well as the asset with an accounting nature are excepted by the obligation of being kept to a depositary or a sub-depositary. (4) The depositary is not a absolved of the responsibility for safe keeping the assets entrusted to it. (5) The depositary shall certify the existence and the value of the assets mentioned above</p>	<p>investment management firms which act on behalf of the UCI managed.’</p> <p>‘Art. 56 The depositary shall register, verify, monitor and control all the assets held by each UCI for which depositary activities are performed.’</p>		

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	<p>a) it holds sufficient financial resources, as required by C.N.V.M. regulations; b) it has an adequate management structure; c) it has the professional skills required to adequately carry out its depository activities.'</p> <p>Organisational requirements & requirements regarding the experience and the skills of the staff and directors</p> <p>The CNVM Regulation no. 15/2004 on the authorisation and functioning of investment management firms, collective investment undertakings and depositories (Regulation no. 15/2004), issued in application of the above mentioned law, itemize which are the documents requested by CNVM for authorisation: „Art. 53 (1) The following documents shall be submitted [...]: a) the legalised copy of the</p>	<p>based on the documents issued by: a)the manager, for the accounting assets; b)the land documents, for the intangible assets; c)issuers, through the shareholders register for the transferable securities not admitted to traded; d)bank where the placement was made, for the monetary placement. (6) The activities carried out by sub-depositories shall be performed in compliance with the conditions set out in Law no. 297/2004 and in this regulation regarding depository activities. (7) In the case of a UCI, the transfer of assets to a sub-depository shall be performed by including in the issue prospectus/documents of UCI information on the identification data of the sub-depository and of the activities delegated. (8) The liability for the lawfulness of depository</p>			



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	<p>certificate of registration with TRO;</p> <p>b) authorisation mentioning that the institution has been authorised to carry out the activities of depositing opened end investment fund and investment companies' assets according to the legislation in force;</p> <p>c) the certificate of change registration for the changes in the object of activity in accordance with indent b) of this paragraph, where appropriate;</p> <p>d) the proof issued by N.B.R. that the applicant bank/branch in Romania of a credit institution authorised in a member state is not subject to special supervision or administration;</p> <p>e) the legalised copy of the documents of incorporation, as well as of all the addenda to these, where appropriate;</p> <p>f) the organisation chart of the firm/of the branch in Romania of a credit</p>	<p>operations in the case of transferring the assets of a UCI to a sub-depository lies with the depository which has performed the transfer.'</p> <p>According to the provisions of art. 74 of the CNVM Regulation no. 15/2004:</p> <p>'(1) The depository or the sub-depository opens securities accounts and bank accounts for the settlement of transactions, on behalf of each UCI, where it shall keep all the cash received for every such UCI. These accounts shall be debited/credited only based on the depository/sub-depository functions, strictly in compliance with the appropriate instructions of the firm which provides for the management of the investments.</p> <p>(2) The transferable securities and other similar financial instruments shall be deposited separately for each entity and shall be registered so that to identify them as property of</p>			



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	<p>institution authorised in a member state, the structure and the function of the department/office in charge of depository operations, the staff allocated to this purpose, the decision-making and reporting process and internal control procedures, security and control procedures, as well as those applicable in the case of Acts of God to allow for the safekeeping of all the deposited assets of the UCI, a description of the technical capabilities and the equipment owned;</p> <p>g) the original written procedures approved by the Board of Directors/the persons authorised to manage the activity of the branch with respect to the separation of the bank assets from those of the UCI for which they undertake depository activities and the separation of the assets of the UCI among themselves;</p>	<p>the UCI for which the depository activity is carried out.</p> <p>(3) Where the securities which are assets of a UCI are dematerialised, recorded and transferred to the central depository, a depository may keep their record, provided that the securities are registered in an account of the depository opened with the central depository on behalf of the UCI.'</p> <p>Regarding <i>the role of the competent authorities in approving the delegation of safekeeping activities</i>, the provisions of art. 72 indent (3) and (4) of the Law no. 297/2004 states that:</p> <p>„(3) A depository may entrust a third party, a sub-depository, with the safekeeping of some of the assets of an UCI, according to the regulations issued by C.N.V.M.</p> <p>(4) The activities delegated to the third parties, as referred to in paragraph (3) are carried out on observing the same regime</p>			

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	<p>h) curriculum vitae signed and dated, original criminal record certificate submitted in the validity term according to the legislation in force, for the decision-making staff within the department/office which carries out depository operations and for the persons replacing them;</p> <p>i) the list of signature specimens for the persons who shall represent the depository in its relationship with C.N.V.M.;</p> <p>j) proof of paying to the C.N.V.M. account the approval fee.</p> <p>(2) The decision-making staff, which provides for the effective management of the depository activities must have attended a higher education institution, graduated with a bachelor degree or a diploma, as appropriate, and must have a minimum 3 year experience in the financial and banking field.'</p>	<p>applicable to the depository.' According to the provisions of art. 73 (7) of Regulation no. 15/2004, in the case of a UCI, the transfer of assets, by the depository, to a sub-depository shall be performed by including in its issue prospectus/documents of incorporation, the information on the identification data of the sub-depository and of the activities delegated.</p> <p>Please note that according to the provisions of art. 131 of Regulation no. 15/2004 any change in the conditions based on which the authorisation of the open-end investment fund has been granted (including issue prospectus/documents of incorporation) shall be subject to authorisation by C.N.V.M.</p> <p>Other requirements Regarding the <i>minimum contents of subcustody agreements</i>, the provisions of art. 72 (4) of the Law no. 297/2004 and art. 73 (6) of</p>			

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	<p>Other requirements According to the provisions of art. 70, art. 71 and art. 72 of CNVM Regulation no. 15/2004 issued in application of the Law no. 297/2004: 'Art. 70 (1) Any change performed on the documents referred to in art. 53 paragraph (1) indent f), related to the structure and functions of the department/office in charge of depository operations, the decision-making and reporting process and the internal control process, security and control procedures as well as those applicable in the case of Acts of God, as well as the changes referred to in art. 53 indent g) shall be subject to endorsement by C.N.V.M. before their coming into force. (2) The request for the endorsement of the changes shall be accompanied by the documents referring to and</p>	<p>Regulation no. 15/2004 states that: „(4) The activities delegated to the third parties, as referred to in paragraph (3) are carried out on observing the same regime applicable to the depository.’ (6) The activities carried out by sub-depositories shall be performed in compliance with the conditions set out in Law no. 297/2004 and in this regulation regarding depository activities.’</p> <p>Regarding the possible approval or revocation of the sub-depository arrangement by the management company, according to the provisions of art. 61 of Regulation no. 15/2004 the depository shall inform the AMC or the self-managed investment firms of any act or fact relevant to the activity of the UCI for which depository activities are carried out. Also according to art. 76 of Regulation no. 15/2004 a depository contract may be terminated by the will of the</p>			



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	<p>based on which those changes shall be performed.</p> <p>Art. 71 The replacement of the staff which provides for the effective management of the depository activity shall be immediately notified to C.N.V.M. together with the documents referred to in art. 53 paragraph (1) indent h).</p> <p>Art. 72 The changes performed on the documents of incorporation of a credit institution/branch of a credit institution in Romania shall be notified to C.N.V.M. within 15 days from the date of their authorisation by N.B.R.’</p> <p>According to the provisions of the art. 131 and art. 212 (2) of the Regulation no. 15/2004, the replacement of the depository of an open-end investment fund and of an closed-end investment fund which publicly raises finance, is subject to the agreement of the competent authority.</p>	<p>parties to the contract, as follows:</p> <p>a) at the initiative of one of the parties under the condition established in the contract;</p> <p>b) with the agreement of the parties.</p> <p>Taking into account the provisions mentioned before and those of art. 72 indent (3) and (4) of the Law no. 297/2004 and of art. 73 (6) of Regulation no. 15/2004, we can conclude that the revocation of the sub-depository arrangement may be terminated as in the case of the depository contract.</p>			
Slovak	According to Slovak law – Act	According to Act No. 594/2003	According to <u>civil law</u> and	Civil law (Civil Code	As the Slovak act on

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Republic	<p>No. 594/2003 Coll. on collective investment, as amended, Article 81 para 2 – ‘The depositary of a mutual fund shall be a bank, or a branch of a foreign bank, whose licence issued under a separate law covers the provision of an ancillary investment service involving the safe-keeping and/or administration of financial instruments. The depositary of an open-end fund whose units are offered to the public in the territory of a Member State other than the Slovak Republic in accordance with Article 60 of this Act shall be a bank which has its registered office in the territory of the Slovak Republic or a foreign bank which has established a branch in the territory of the Slovak Republic.’</p> <p>There are no specific prudential requirements imposed upon depositaries.</p>	<p>Coll. on collective investment, as amended, Article 87 para 2 ‘a depositary which, in performing its activities, breaches an obligation arising under this Act, the fund deed or the depositary contract, shall be liable to the management company and fund shareholders for any damage caused as a result; the depositary’s liability shall not cease with the termination of its activities.’</p> <p>Concerning the sub-custody, it is possible for the depositary to designate an entity at which assets of the fund can be deposited. In this case, according to Act, the depositary shall be responsible as if those assets were deposited with it.</p> <p>It has to be noted, however, that the in the case the liability of depositary is triggered, the civil court decides on the actual amount of compensation to the management company and to</p>	<p>Collective Investment Act (594/2003 Coll.) the depositary has a general legal obligation to return the assets in custody and has a legal and contractual duty of care.</p>	<p>40/1964 Coll.. Civil procedural code 99/1963 Coll., Commercial Code 513/1991 Coll.) and Collective investment Act (No. 594/2003 Coll.) governs depositaries primary liability to unit holders and management company; it needs to be assessed by the court. Administrative liability is laid on depositary by Act No. 747/2004 Coll. on Supervisory (of National Bank of Slovakia) over the Financial market (procedural law) and Act No. 594/2003 Coll. on Collective Investment.</p>	<p>collective investment is in the part governing the depositary functions rather a plain transposition of the UCITS Directive, it does not contain any specific rules on sub-custody nor on due diligence and on-going controls of the depositary.</p>

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	<p>Depositaries underlie the regulatory framework on collective investment (transposition of UCITS Directive) and the regulatory framework on investment services (transposition of UCITS Directive). As depositaries in Slovak Republic are banks they also underlie capital requirements stemming from CRD.</p>	<p>the unit-holders.</p>			
<p>Slovenia</p>	<p>Custodian services may only be provided by a bank holding an authorisation by the Bank of Slovenia for the provision of custodian services.</p> <p>For the provision of custodian services, a custodian bank has to meet the conditions stipulated by the banking law - i.e. technical, organizational and personnel conditions.</p> <p>The Bank of Slovenia issues authorisation to the custodian bank for the provision of custodian services following the Agency's opinion.</p>	<p>When rendering custodian services, a custodian must act in compliance with all the relevant legislation and the rules of the profession on the provision of custodian services, has to take special care that the interests of the holders of mutual funds' investment coupons or investment companies' shares are protected.</p> <p>A custodian is liable to holders of investment coupons of a mutual fund on behalf of which it provides custodian services, or to the investment company, on behalf of which it performs</p>	<p>A custodian is liable to holders of investment coupons of a mutual fund on behalf of which it provides custodian services, or to the investment company, on behalf of which it performs custodian services, for any loss suffered by them <u>as a result of the custodian's actions conflicting with the law or with the professional rules of custody</u>.</p> <p>The depositary's safe keeping obligation is</p>	<p>To recover such loss the management company is entitled to take legal action on behalf of its mutual fund or investment company. None of this does exclude the right of each individual holder of a mutual fund's investment coupons or shareholder of an investment company to recover the loss suffered by them as a result of the custodian's failure to meet its obligations or failure to properly meet its obligations.</p>	<p>The custodian may conclude a contract authorising a bank or another financial organisation authorised by a competent authority or another Member State or foreign country to provide custodian services of keeping securities accounts or the service of safekeeping of securities to perform, for the account of one or several investment funds for which the custodian provides custodian services,</p>

Member	General criteria on the depositary	Liability of the depositary where delegation of custody functions	Obligation of means/obligation of result	Legal framework (administrative/civil)	Requirements on depositaries when delegating (due diligence)
	<p>Since only banks can act as custodian, the prudential requirements, the requirements in relation to the experience and skills of the staff and directors, the organizational and any other (e.g. capital) requirements are those, which are set out by the banking act.</p> <p>RULES applying to sub-custodian (summary – more detailed rules are described in column 3):</p> <ul style="list-style-type: none"> - the subcustodian can only be a bank or another financial organisation authorised by a competent authority or another Member State or foreign country to provide custodian services of keeping securities accounts or the service of safekeeping of securities; - the custodian must be able to at any time provide sub-custodian 	<p>custodian services, for any loss suffered by them as a result of the custodian's actions conflicting with the law or with the professional rules of custody.</p> <p>To recover such loss the management company is entitled to take legal action on behalf of its mutual fund or investment company.</p> <p>Within thirty days after receiving a written request either from a unit holder, from a supervisory board member, or from an investment company shareholder, should the management company fail to take the legal action, such legal action may be taken on behalf of a mutual fund or an investment company by any holder of a mutual fund's investment coupons, by a supervisory board, or by any shareholder of an investment company.</p> <p>None of this does exclude the right of each individual holder of</p>	<p>therefore an obligation of means, and the obligation of the result in reference to civil liability – since the loss has to be suffered in order to invoke civil liability.</p> <p>In administrative procedure and penal procedure the obligation of custodian is an obligation of means rather than the obligation of the result – the loss is not part of the consideration, the only thing taken into the consideration in these cases is whether the custodian has acted in accordance with the relevant legislation.</p> <p>In case of delegation of safe-keeping function <u>the liability</u> for damage of the custodian for the provision of the mentioned services cannot be limited or altered in</p>	<p>The depositary liability is therefore <u>a civil one</u>.</p> <p>It is also an administrative one, since the depositary is a licenced subject, and is subjected to the Agency's supervision over in order to verify whether the custodian adheres to the provisions of the law and the provisions of other Acts and regulations governing the provision of custodian services for investment funds (with cooperation with the Bank of Slovenia).</p> <p>It can be issued an order to terminate violations – which is <u>an administrative instrument</u>.</p> <p>If the custodian fails to provide the services of keeping accounts and safekeeping of securities</p>	<p>securities keeping and safekeeping of the securities traded on organised markets of other Member States or on organised markets of foreign countries, and of other securities of issuers from other Member States or foreign issuers and other securities of issuers from other Member States or foreign issuers representing the investments of individual investment funds.</p> <p>A custodian may issue a written authorisation referred to in the preceding paragraph only if the following conditions have been met:</p> <ol style="list-style-type: none"> 1. the custodian <ul style="list-style-type: none"> - has acquired written consent of a management company with which he/she concluded the contract of providing custodial services, prior to

Member	General criteria on the depositary	Liability of the depositary where delegation of custody functions	Obligation of means/obligation of result	Legal framework (administrative/civil)	Requirements on depositaries when delegating (due diligence)
	<p>further instructions concerning the provision of these services, and may always revoke the issued authorisation, in which case the revocation applies at the moment when the custodian considers it necessary for the protection of interests of investors in individual investment funds,</p> <ul style="list-style-type: none"> - must always be able to acquire from a sub-custodian all information and documentation required for undisturbed provision of custodian services; and that he/she has a constant insight in the implementation of individual custodian services; - the custodian must acquire written consent of a management company with which he/she concluded the contract of providing custodial services, prior to the 	<p>a mutual fund's investment coupons or shareholder of an investment company to recover the loss suffered by them as a result of the custodian's failure to meet its obligations or failure to properly meet its obligations.</p> <p>A custodian's liability for loss can be neither excluded nor limited. The provision of custodian services of keeping an account of non-materialised securities or safekeeping of securities for the account of an investment fund by sub-custodian may not limit or exclude the liability for damage of the custodian for the provision of the mentioned services.</p> <p>The liability described also refers to the diligence in choice of sub-custodian. The provision of custodian services of keeping an account of non-materialised securities or safekeeping of securities for the account of an investment fund by a sub-custodian may not limit or</p>	<p>any case.</p>	<p>also <u>the penal sanction</u> for misdemeanour is imposed for such failure to act.</p>	<p>the conclusion of the contract with the sub-custodian;</p> <ul style="list-style-type: none"> - is not a member of the system of equalisations and fulfilment of obligations arising from securities transactions referred to in the first paragraph and the keeping of the register of these securities, whose member is a bank or other financial organisation referred to in the first paragraph, and - may, regardless of the provision of custodian by sub-custodian, act in the best interest of investors in investment funds under his/her custody, and - improves, by providing custodian services by the sub-custodian, the efficiency of provision of custodian services for investment funds and is capable of reasoning the

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	<p>conclusion of the contract with the sub-custodian.</p> <p>The minimum content of sub-custody arrangements must cover all the relations, rights and obligations between sub-custodian and custodian as described by law (listed in column 3);</p>	<p>exclude the liability for damage of the custodian for the provision of the mentioned services.</p>			<p>efficiency at any time, and</p> <ul style="list-style-type: none"> - may always provide a bank or another financial organisation he/she has authorised to provide custodian services of safekeeping or keeping of securities accounts or financial instruments further instructions concerning the provision of these services, and may always revoke the issued authorisation, in which case the revocation applies at the moment when the custodian considers it necessary for the protection of interests of investors in individual investment funds, and - may always acquire from a bank or another financial organisation he/she has authorised to provide custodian services of safekeeping or keeping of securities accounts or financial instruments all information and



Member	General criteria on the depositary	Liability of the depositary where delegation of custody functions	Obligation of means/obligation of result	Legal framework (administrative/civil)	Requirements on depositaries when delegating (due diligence)
					<p>documentation required for undisturbed provision of custodian services; and that he/she has a constant insight in the implementation of individual custodian services, and</p> <p>2. the provision of individual custodian services by the sub-custodian:</p> <ul style="list-style-type: none"> - does not reduce the possibility of provision of custodian services or custodian tasks for individual investment funds, and - does not reduce the possibility of fulfilling the instructions of a management company and other contractual obligations of the custodian, and - does not reduce the efficiency and possibility of the Agency and the Bank of Slovenia to



Member	General criteria on the depositary	Liability of the depositary where delegation of custody functions	Obligation of means/obligation of result	Legal framework (administrative/civil)	Requirements on depositaries when delegating (due diligence)
					<p>supervise the custodian - ensures a level of protection of investors in an investment fund at least equal to the level of protection in the case where the custodian service is directly performed by the custodian, and</p> <p>3. the bank or another financial organisation which the custodian has authorised to provide custodian services of safekeeping or keeping securities accounts or financial instruments: - safekeeps or keeps the balances of securities and their circulation in individual investment funds in the manner allowing the custodian or a management company to check the balance and circulation of securities of individual investment funds at any moment, and</p>



Member	General criteria on the depositary	Liability of the depositary where delegation of custody functions	Obligation of means/obligation of result	Legal framework (administrative/civil)	Requirements on depositaries when delegating (due diligence)
					<p>- does not provide the services of assets management for these investment funds, and</p> <p>4. the bank or another financial organisation authorised by the custodian to provide custodian services of safekeeping or keeping of securities accounts or financial instruments, is the object of supervision of a competent authority in a Member State or a foreign country with which the Agency exchanges the data and information on the mutual basis, and the cooperation between this authority and the Agency is ensured, and</p> <p>5. the interest of the bank or another financial organisation authorised by the custodian to provide custodian services</p>



Member	General criteria on the depositary	Liability of the depositary where delegation of custody functions	Obligation of means/obligation of result	Legal framework (administrative/civil)	Requirements on depositaries when delegating (due diligence)
					<p>of safekeeping or keeping of securities accounts or financial instruments, is not and will not conflict with the interests of investors in individual investment funds for which it is authorised to provide custodian services, and</p> <p>. The provision of custodian services of keeping an account of non-materialised securities or safekeeping of securities for the account of an investment fund by the sub-custodian may not limit or exclude the liability for damage of the custodian for the provision of the mentioned services.</p> <p>Where the mentioned conditions are not fulfilled at any time, the custodian must unilaterally withdraw from the contract. In this case the</p>



Member	General criteria on the depositary	Liability of the depositary where delegation of custody functions	Obligation of means/obligation of result	Legal framework (administrative/civil)	Requirements on depositaries when delegating (due diligence)
					bank or another financial institution authorised by the custodian to provide custodian services of safekeeping or keeping of securities accounts or financial instrument of an investment fund is not entitled to receive compensation because of the withdrawal from the contract, which would be debited from the investment fund assets.
Spain	<p>Rules applicable to depositaries:</p> <p>CIS Law (Ley 35/2003): Articles 57 onwards</p> <p>-CIS Royal Decree: (Real Decreto 1309/2005): Articles 91 onwards</p> <p>-Orden EHA/596/2008 on several aspects of the legal regime applicable to depositaries.</p>	<p>According to article 62 of the Spanish CIS Law:</p> <p>-Depositaries will always act in the best interest of the CIS investors, acting in a proper manner.</p> <p>-Depositaries are responsible towards CIS investors for any damage deriving from breaches of their duties. They will be also responsible for the safekeeping of the CIS assets, even when this function has been delegated</p>	<p>Spanish rules don't explicitly establish the concepts of obligation of means or obligation of results</p>	<p>The administrative legislation establishes that depositaries are responsible towards CIS investors for any damage deriving from breaches of their duties. They will be also responsible for the safekeeping of the CIS assets, even when this function has been delegated to a third entity (sub custodian). In this sense the CNMV will determine whether the depositary has carry</p>	<p>-Sub custodians must be appointed by the depositary entity.</p> <p>-Eligibility and prudential requirements on sub custodians: the sub custodian must be member of the corresponding registration, compensation and settlement systems. Consequently, only two step are allowed in the</p>

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	<p>- Circular 3/2009, on the content of the half-yearly report on fulfillment of the oversight function.</p> <p>According to article 58 of the Spanish CIS Law, the depositary must be a Spanish credit institution or the registered Spanish branch of a foreign credit institution. Investment services providers such as brokers/dealers, can also be appointed as depositaries.</p> <p>Any credit institution or broker/dealer wishing to act as CIS depositary must obtain the CNMV approval to perform such activity.</p> <p>CIS depositaries are subject to specific supervision regarding their depositary activities by the CNMV. Additionally, prudential supervision on solvency is carried out by the bank of</p>	<p>to a third entity (sub custodian).</p> <p>There are no other regulations as regards depositary liability.</p> <p>Special rules for hedge fund depositaries:</p> <p>Depositaries are not liable for the hedge fund safekeeping when it is entrusted to the prime broker and two conditions are met:</p> <ul style="list-style-type: none"> -transparency of the fact is given in the prospectus and, -the PB has enough credit quality. <p>Nevertheless, according to the Circular 1/2006 on hedge funds, a conciliation triangle (among the management company, the depositary and the PB) is required to ascertain the fulfilment of the oversight function by the depositary.</p>		<p>out their tasks and obligations according to best standards. If this were not the case the CNMV, in the exercise of its enforcement powers, may impose the measures appropriate to the breaches of the depositary duties.</p> <p>Administrative sanctions may be issued by the competent authority against the depositary when assets are not safe-kept. Sanctions may be appealed to the Court.</p>	<p>chain of delegation.</p> <p>-Standards of due diligence and ongoing monitoring to be carried out by depositaries: At the moment of the appointment of a sub custodian by the depositary, the depositary has to establish mechanisms and procedures (due diligence procedures) to control, oversee and carry out conciliations, in order to guarantee that under no circumstance asset disposal is carried out by the sub custodian, without the depositary authorization.</p> <p>Finally, when operating in foreign markets where the use of omnibus accounts are allowed, the following requirements</p>



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	<p>Spain (in case of credit institutions) and by the CNMV (where the depositary has the status of broker/dealer). Rules applicable to depositaries, as regard resources and means they must have, stem from the specific regulation on credit institutions and broker/dealers (i.e. there are not specific requirements on means and resources for the status of CIS depositary). In this sense, expertise, experience, means and capital requirements are defined by their own specific regulation of credit institutions and brokers/dealers. Resources and capabilities are required at any time, to meet their obligations as depositary entities.</p> <p>Besides, the management company and the depositary of any CIS can not belong to the same group unless the management company</p>				<p>must be fulfilled:</p> <p>-The depositary has to issue a report on the credit quality of the sub custodian, including the specific operational and legal risks attached to this activity.</p> <p>-A separation of the entity's own account and the clients' account is required.</p> <p>There are no regulations on the contents of sub custody agreements.</p>



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	<p>establishes a specific procedure in its internal code of conduct setting several Chinese walls such as the following:</p> <ul style="list-style-type: none"> - No existence of common board members or directors - The effective management of the management company must be independent of the depositary entity. - A physical separation must exist between the management company and the depositary entity. <p>If the management company and the depositary belong to the same group, additional procedures are required:</p> <ul style="list-style-type: none"> - Disclosure to investors of their relationship. - The periodic information to investors must include any purchase or sell of 				

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	<p>securities where the depositary acted as counterparty.</p> <p>The mentioned procedure is subject to the oversight of an independent body within the board of directors of the management company. Additionally, an annual report must be submitted to the CNMV with regard to the compliance of the requirement of separation between the management company and the depositary.</p>				
Sweden	<p>According to the Investment Funds Act (2004:46) Chapter 3 Section 1 each investment fund shall have a depositary.</p> <p>According to the Investment Funds Act a depositary should either be a bank or other credit institution. The depositary must fulfil organizational and prudential requirements in banking regulation. The depositary shall have its registered office</p>	<p>According to the Investment Funds Act Chapter 3 Section 2 third paragraph the depositary may delegate some of its duties. Where foreign financial instruments are included in the fund, the depositary may delegate to a suitable foreign depositary to hold such assets in custody. Such arrangement shall not release the depositary from its liabilities pursuant to the Act.</p> <p>The depositary's liability</p>	<p>The depositary's safe-keeping obligation is an obligation of result. The depositary would be liable to the investors and the fund management company where the depositary has violated the Act on Investment Funds or the fund rules resulting in economic loss, according to the Investment Funds Act Chapter 2 Section 21</p>	<p>The depositary's liability to investors and fund management companies for economic loss is governed by civil law. Administrative sanctions may be issued by Finansinspektionen against the depositary simultaneously but will not affect the civil liability.</p>	<p>There are no binding provisions regarding the depositary function other than the Investment Funds Act . However, Finansinspektionen has published 'Depositary and delegation - guidelines' (2004-09-20). The guidelines state that a depositary does not need Finansinspektionen approval to delegate some of its duties to a foreign</p>



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	<p>in Sweden or, where a depositary is a branch established in Sweden, in another state within the EEA. The depositary shall conduct business independently of the fund management company and exclusively in the common interests of the unit holders.</p> <p>The obligations of the depositary are stated in the Investment Funds Act Chapter 3 Section 2 first and second paragraph. The depositary shall implement decisions of the fund management company which pertain to the investment fund provided they do not violate the Act or the fund rules. The depositary shall in addition take receipt of and hold in custody the assets of the fund and ensure that:</p> <ul style="list-style-type: none"> - the sale and redemption of fund units is conducted in accordance with the provisions of the Act and the 	<p>towards the investors is not affected by a sub-custody arrangement.</p>			<p>sub-custodian. Furthermore, the depositary should submit to Finansinspektionen a copy of the delegation agreement along with a communication that clearly states the due diligence made by the depositary, especially with regards to the segregation of assets in the foreign sub-custodian. The guidelines are not specific as regards criteria for sub-custodians or the due diligence required in choosing one.</p>



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	<p>fund rules;</p> <ul style="list-style-type: none"> - the value of the fund units is calculated in accordance with the provisions of the Act and the fund rules; - the assets of the fund are transferred to the depositary without delay; and - the assets of the fund are used in accordance with provisions of the Act and the fund rules. 				
<p>UK</p>	<p>The following submission is an overview and not an exhaustive analysis of the relevant subject matter. It focuses on UK financial services legislation and not the general law (including trust law).</p> <p>There are two sets of criteria that are relevant – those applying to all persons or firms requiring authorisation by the FSA to conduct regulated activities, and those that are specific to a depositary of a collective investment scheme (CIS).</p>	<p>Since safeguarding of assets is a regulated activity under FSMA, any delegation of custody to a UK entity will be to an authorised person who is directly answerable to the FSA and subject to its rules. However, in practice most sub-custodians are appointed outside the UK and are not UK authorised. Although there are restrictions on a depositary’s ability to delegate particular functions (see fifth column), in terms of the delegation arrangements the general MiFID / BCD rules on delegation apply. There is a high-level</p>	<p>The relevant UK rules are set out in column 5. In the FSA’s view the obligation is not an obligation of result, since it foresees the possibility that not all losses will be as a result of a depositary’s unjustifiable failure or improper performance of its duties, in which case it might not be held liable for the loss.</p> <p>However, a UK depositary’s liability goes further than is implied by CESR’s definition of an</p>	<p>Depending on the nature and extent of any breach by the depositary, the FSA may be able to exercise the own-initiative powers conferred on it by primary legislation. The FSA is able to require the depositary to take certain action, or refrain from taking certain action, or it may cancel the depositary’s specific permission to act as a depositary. The FSA may also give a direction in relation to a particular scheme to remove the</p>	<p>All references are to the Collective Investment Schemes Sourcebook within the FSA Handbook – see http://fsahandbook.info/FS A/html/handbook/COLL</p> <p>COLL 6.6.4R (3) The depositary, when acting in its capacity as depositary, must act solely in the interests of the unitholders.</p> <p>COLL 6.6.12R (1) The depositary of an authorised fund is</p>

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	<p>The general criteria may be summarised as compliance with the threshold conditions for authorisation (see http://fsahandbook.info/FSA/html/handbook/COND) which cover legal status, location of offices, close links (i.e. to a firm outside the EEA), adequate resources and suitability.</p> <p>The last two are particularly significant. The firm must have adequate resources in relation to the activities it carries on; the FSA interprets the term as meaning sufficient in quantity, quality and availability in relation to all financial and non-financial resources. In terms of suitability, the firm must satisfy the FSA that it is fit and proper to carry on the regulated activities it proposes to undertake, and must ensure that its affairs are conducted soundly and</p>	<p>requirement for a firm not to undertake the outsourcing of important operational functions in such a way as to impair materially the quality of its internal control and the ability of the FSA to monitor the firm's compliance with all its obligations under the regulatory system – for further details see http://fsahandbook.info/FSA/html/handbook/SYSC/8</p> <p>Consequently, there are no regulations specific to depositaries on such matters as eligibility and prudential supervision of the sub-custodian, standards of due diligence to be carried out by the depositary, minimum contents of the sub-custody agreement, or the role of the FSA in relation to approving or monitoring the arrangement.</p> <p>Column 5 contains some more relevant information</p>	<p>obligation of means. It is not sufficient for the depositary to have carried out appropriate due diligence; the delegate must in fact be and remain competent to perform the delegated role. So, for a failure to be regarded as justifiable, both the depositary and the delegate would have to be able to show that they had behaved properly and in a competent manner (although any decision on the facts of a specific case would be subject to the appeals procedure mentioned in column 4 and ultimately could be decided by a court of law).</p>	<p>depositary and replace it with another depositary. There are also important powers in relation to the relevant individuals discharging controlled functions, which include prohibition orders and withdrawals of approval. The FSA has powers to issue public censure and impose fines, and can seek court orders in the form of injunctions and restitution.</p> <p>All decisions by the FSA to exercise its disciplinary powers are subject to an independent appeals process. The Financial Services and Markets Tribunal, which hears such appeals, has the power to make binding decisions (although either party may appeal to the courts on a point of law).</p>	<p>responsible for the safekeeping of all of the scheme property (other than tangible movable property) entrusted to it and must:</p> <p>(a) take all steps and complete all documents needed to ensure completion of transactions properly entered into for the account of the scheme;</p> <p>(b) ensure that scheme property in registered form is, as soon as practicable, registered in the name of the depositary, its nominee or a person retained by it under COLL 6.6.15R...;</p> <p>(c) take into its custody or under its control documents of title to the scheme property other than for transactions in derivatives or forward transactions; and</p> <p>(d) ensure that any transaction in derivatives or a forward transaction</p>



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	<p>prudently.</p> <p>To meet these conditions, the firm must have appropriate systems, controls and organisational requirements in place. Under FSA rules, any firm in the scope of the Capital Adequacy Directive, Banking Consolidation Directive or MiFID is subject to common general requirements when outsourcing or delegating any function. The rules closely follow Article 13(5) of MiFID and Articles 13 and 14 of the MiFID implementing Directive Further details can be found in http://fsahandbook.info/FSA/html/handbook/SYSC</p> <p>Certain functions in every authorised firm are specified as controlled functions (e.g. directors, apportionment and oversight of responsibilities, head of compliance, other</p>				<p>is entered into so as to ensure that any resulting benefit is received by the depositary.</p> <p>COLL 6.6.15R (4) The depositary of a scheme may delegate any function to any person save: (a) the [Investment Company with Variable Capital] or any director of the ICVC or the authorised fund manager of a scheme, to assist the depositary to perform: (i) any function of oversight in respect of the scheme, its directors or the authorised fund manager as the case may be; or (ii) any function of custody or control of the scheme property; (b) an associate of the ICVC or of any of the directors of the ICVC or of the authorised fund</p>



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	<p>significant management); full details are listed in http://fsahandbook.info/FSA/html/handbook/SUP/10</p> <p>All individuals who carry out such functions are subject to the FSA approved persons regime and must be approved by the FSA, based on an assessment of their personal fitness and propriety, before beginning to carry out their role. Further details of the standards applicable to approved persons can be found in http://fsahandbook.info/FSA/html/handbook/APER and http://fsahandbook.info/FSA/html/handbook/FIT</p> <p>Authorised persons and firms must comply with all FSA rules that are applicable to them. They are also required to comply with the FSA's Principles for Business and can be disciplined for a breach</p>				<p>manager of the scheme (as the case may be) to assist the depositary to perform any function in (a)(i); or</p> <p>(c) a nominee company or anyone else to assist it to perform the function of being a custodian of documents evidencing title to scheme property of the scheme unless the arrangements with the custodian prohibit the custodian from releasing the documents into the possession of a third party without the consent of the depositary.</p> <p>(5) Where a depositary retains services under (4):</p> <p>(a) if it retains the services of a director of the ICVC, or an associate of such a director or its own associate, then its liability for those services shall remain unaffected; and</p>



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	<p>of the Principles even where no specific rule has been broken. Further details can be found in http://fsahandbook.info/FSA/html/handbook/PRIN</p> <p>The remaining requirements stated in this column are specific to depositaries. UK legislation (Financial Services and Markets Act 2000) requires a depositary (including the trustee of an authorised unit trust) to be a body corporate, independent of the investment company, its directors and the management company. It must be an authorised person with the necessary permission to act as depositary. This permission must be specifically granted and requires the FSA to assess the applicant's competence to carry out the function of a depositary. Therefore, although all UK depositaries are in practice (subsidiaries</p>				<p>(b) in any other case, it will not be held responsible by virtue of the rules in COLL for any act or omission of the person so retained if it can show that</p> <ul style="list-style-type: none"> (i) it was reasonable for it to obtain assistance to perform the function in question; (ii) the person retained was and remained competent to provide assistance in the performance of the function in question; and (iii) it had taken reasonable care to ensure that the assistance in question was provided by the person retained in a competent manner. <p>For the purposes of the rules described above, 'associate' is defined as an affiliated company of the depositary, or 'any other person whose business or</p>



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	<p>of) banking groups, there is no legislative requirement for them to be so.</p> <p>As stated above, one of the threshold conditions for authorisation of any firm is that it must have adequate resources, which includes a capital requirement. For a depositary whose permitted business consists only of depositary activities, there is an own funds requirement of GBP 4,000,000. Where the depositary forms part of a group, such as a bank, it does not have to meet this requirement separately if the group as a whole is adequately capitalised.</p>				<p>domestic relationship with [the depositary] might reasonably be expected to give rise to a community of interest between them which may involve a conflict of interest in dealings with third parties’.</p> <p>Any breach of the above rules, whether caused by the depositary itself or its delegate, may be subject to sanctions by the FSA, which could include requiring the depositary to restore assets to the fund.</p>