CSSF Circular 16/644

relating to the organisational provisions applicable to the depositaries of UCITS subject to Part I and UCIs subject to Part II of the law of 17 December 2010 concerning undertakings for collective investment and to all such undertakings, where applicable represented by their management company or their manager, respectively

Please note that this is a non-official translation drawn up by Arendt & Medernach for information purposes only. In case of discrepancies between the French and the English texts, the French text, as published by the *Commission de Surveillance du Secteur Financier* (CSSF) shall prevail.

Luxembourg, 11 October 2016

To all credit institutions acting as depositaries of UCITS subject to Part I, and certain UCIs subject to Part II[1], of the Law of 17 December 2010 relating to undertakings for collective investment and to all these undertakings, as the case may be, represented by their management company or manager

CSSF Circular 16/644

as amended by CSSF Circular 18/697

Re: Provisions applicable to credit institutions acting as depositaries of UCITS subject to Part I and UCIs subject to Part II of the Law of 17 December 2010 on undertakings for collective investment and to all UCITS, as the case may be, represented by their management company

Ladies and Gentlemen,

This Circular follows the entry into force of the Law of 10 May 2016 transposing Directive 2014/91/EU of the European Parliament and of the Council of 23 July 2014 (the "UCITS V Directive") into Luxembourg law (the "2016 Law") by amending the Law of 17 December 2010 on undertakings for collective investment (the "2010 Law") and the Commission Delegated Regulation (EU) 2016/438 with regard to obligations of depositaries (the "Delegated Regulation"). These texts provide for a set of requirements, some new, concerning the duties of depositaries regarding the safekeeping of assets, oversight obligations and obligations in relation to the monitoring of financial flows, and they have modified the liability regime of depositaries with regard to UCITS and unitholders.

This Circular provides clarifications concerning the organisational obligations applicable to depositaries of undertakings for collective investment in transferable securities subject to Part I of the 2010 Law (each a "UCITS") by clarifying certain aspects of the 2016 Law and/or the Delegated Regulation in a Luxembourg context and by also providing clarifications on some aspects that are not specifically covered by the 2016 Law or the Delegated Regulation. In so doing, this Circular repeals and replaces CSSF Circular 14/587 as amended by CSSF Circular 15/608.

[1] This applies to all collective investment undertakings established in Luxembourg under Part II of the 2010 Law ("Part II UCI") that do not explicitly state in their issuing documents that the sale of fund shares or units to retail investors established in Luxembourg is prohibited, irrespective of the status of their manager.

This Circular is addressed to Luxembourg credit institutions governed by the Law of 5 April 1993 on the financial sector (the "1993 Law") and to the Luxembourg branches of credit institutions established in a Member State of the European Union which act, or intend to apply for authorisation to act, as depositary bank ("depositaries" or "depositary") of UCITS. It is also addressed to these UCITS themselves, as the case may be, represented by their management company, with regard to their interaction with their depositary.

Following the entry into force of the law of 27 February 2018 principally amending the 2010 Law, this Circular is also addressed to entities which act, or which intend to apply for authorisation to act, as depositary banks (“depositaries” or “depositary”) for Part II UCIs, and which have not explicitly stated in their issuing documents that the sale of fund shares or units to retail investors established in Luxembourg is prohibited, irrespective of the status of their manager.

In this Circular, any reference to a UCITS is, as the case may be and according to the circumstances, to be understood as a reference to a UCITS and/or its management company, or as a reference to a Part II UCI and/or its manager, as the case may be.

Given that the duties and responsibilities of UCITS depositaries may evolve or be subject to clarifications, particularly by guidelines or questions/answers of the European Securities and Markets Authority (ESMA), the organisational arrangements described below may be completed or modified and are, as the case may be, to be read in conjunction with the guidelines and recommendations for the attention of the competent authorities and/or players in the financial markets.

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Definitions:

For the purpose of this Circular the following means:

"1993 Law":	the Law of 5 April 1993 on the financial sector, as amended;
"2004 Law":	the Law of 15 June 2004 on the investment company in risk capital (SICAR), as amended;
"2007 Law":	the Law of 13 February 2007 on specialised investment funds, as amended;
"2010 Law":	the Law of 17 December 2010 on undertakings for collective investment, as amended;
"2013 Law":	the Law of 12 July 2013 on alternative investment fund managers, as amended;
"2016 Law":	the Law of 10 May 2016 transposing the UCITS V Directive and amending the 2010 Law and the 2013 Law;
"assets":	the financial instruments that may be held in custody and the other assets in which a UCITS is invested at any given moment and/or which are owned by a UCITS at any given moment;
"cash":	money in cash and bank deposits of a UCITS;
"CSSF Circular 12/546":	CSSF Circular 12/546 (as amended by Circular CSSF 15/633) concerning authorisation and organisation of Luxembourg management companies subject to Chapter 15 of the 2010 Law on undertakings for collective investment as well as investment companies which have not designated a management company within the meaning of Article 27 of the 2010 Law on undertakings for collective investment;
"CSSF Circular 12/552":	CSSF Circular 12/552 (as amended by CSSF Circulars 13/563, 14/597 and 16/642) concerning central administration, internal governance and risk management;
"CSSF Circular 14/587":	CSSF Circular 14/587 (as amended by Circular 15/608 concerning the provisions applicable to credit institutions acting as depositaries of UCITS subject to Part I of the 2010 Law on undertakings for collective investment and to all UCITS, as the case may be, represented by their management company;
"CSSF Circular 14/592":	CSSF Circular 14/592 concerning the guidelines of the European Securities and Markets Authority (ESMA) on ETFs and other UCITS issues;

"collateral agent":	an agent appointed by the UCITS, by the counterparty of the UCITS or jointly by both, to be in charge solely of custody (to the exclusion of management and administration) of the guarantees and securities that the UCITS is required to give or receive within the context of the performance of its investment policy;
"collateral manager":	an agent appointed by the UCITS, by the counterparty of the UCITS or jointly by both, to be in charge of the management and administration of the guarantees and securities the UCITS is required to give or receive within the context of the performance of its investment policy. A collateral manager may also in certain cases act as a collateral agent;
"contract appointing the depositary":	the written contract entered into between a UCITS or its management company (for a UCITS established in contractual form) and an institution which has been approved to act as depositary of a UCITS, through which this institution has been entrusted with the duty of a depositary within the meaning of the provisions of Articles 17, 33 or 39 of the 2010 Law. The term contract appointing the depositary shall be understood to include the depositary contract itself as well as all of the annexes and amendments to the contract, insofar as such annexes or amendments create contractual obligations between the parties. For UCITS established in corporate form having appointed a management company, the contract may be tripartite between the UCITS, the management company and the depositary;
"delegate":	a third party appointed by the depositary to which the depositary delegates the safekeeping functions of the UCITS' assets in accordance with Articles 18*bis,* 34*bis* and 39 of the 2010 Law and Articles 15, 16 and 17 of the Delegated Regulation;
"Delegated Regulation":	Commission Delegated Regulation (EU) 2016/438 of 17 December 2015 supplementing Directive 2009/65/EC of the European Parliament and of the Council with regard to obligations of depositaries;
"delegation":	delegation of functions in relation to the safekeeping of UCITS' assets by the depositary to a third party within the meaning of Articles 18*bis,* 34*bis* and 39 of the 2010 Law and Articles 15, 16 and 17 of the Delegated Regulation;
"escalation procedure":	procedure to be established as an integral part of the contract appointing the depositary in which the different successive steps to be followed upon the intervention of the depositary or of the UCITS are specified. This procedure must clearly identify the persons to be contacted at the level of the UCITS by the depositary when the latter deems an intervention to be necessary and at the level of the

	depositary upon the intervention of the UCITS;
"financial instruments that may be held in custody":	the financial instruments whose custody can be assured within the meaning of Articles 18(4)a), 34(3)a) and 39 of the 2010 Law;
"other assets":	the assets, including cash, other than financial instruments that may be held in custody within the meaning of Articles 18(4) b), 34 (3) b) and 39 of the 2010 Law;
"outsourcing":	the complete or partial transfer of operational functions, activities or provision of (support) services of the depositary to an external service provider,[2] whether or not it is part of the group to which the depositary belongs, other than a delegation;
"outsourcing of a material activity":	the outsourcing of any activity which, when it is not carried out within the rules, diminishes the capacity of the depositary to comply with the regulatory requirements or to carry out its operations, as well as any activity which is necessary for the sound and prudent risk management;
"person responsible for the UCITS "depositary bank" business line":	the person(s), whether directors(s) or not, of the institution acting as depositary, who is/are in charge at a senior hierarchical level of responsibility of the operational aspects of the institution's UCITS depositary business in Luxembourg;
"safekeeping of assets of a UCITS in liquidation or without a depositary":	the obligation of the last credit institution that acts as a depositary of a UCITS prior to its removal or withdrawal from the official list referred to in Article 130(2) of the 2010 Law, to keep open all of the securities and cash accounts for the different assets of such UCITS which are held in custody by such institution at the moment of the removal or withdrawal, and until the appointment of a successor or until the closure of the liquidation of such UCITS, in accordance with the provisions of points 91 and 92 of this Circular;
"UCITS":	an/the undertaking(s) for collective investment in transferable securities established in the form of a SICAV (self-managed or having appointed a management company) or a common fund, governed by Part I of the 2010 Law;
"UCITS V Directive":	Directive 2014/91/EU of the European Parliament and of the Council of 23 July 2014 amending Directive 2009/65/EC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) as regards depositary functions, remuneration policies and

[2] Referred to as "subcontractor" in this translation.

	sanctions;
"unitholders":	the unitholders of UCITS established in contractual form (common funds, managed by a management company) and the shareholders of UCITS established in corporate form (investment companies).

Part I. General remarks

1. The organisational aspects applicable in the context of the UCITS V depositary regime introduced by the 2016 Law are above all clarified in the Delegated Regulation as far as the obligations of depositaries are concerned. The Delegated Regulation provides clarification in particular on the content of the written contract between a UCITS (and/or its management company) and its depositary, the escalation procedure of the depositary with regard to the UCITS, the tasks to be carried out by the depositary with regard to its monitoring duties established by the 2016 Law and the information to be received by the depositary concerning its obligations with regard to the monitoring of financial flows. The Delegated Regulation also provides clarifications regarding the depositary's new asset safekeeping obligations with regard to the various types of assets in which UCITS can invest, with particular clarification of the obligations of segregation and due diligence to be put in place at depositary level and at the level of the entities to which a depositary envisages delegating or has delegated its asset safekeeping obligations. Insofar as this Circular provides additional clarifications on topics also covered by the Delegated Regulation, reference is made to the relevant article(s) in the Delegated Regulation.

Part II. Appointment of a credit institution as depositary of a UCITS: eligibility and approval criteria

Chapter 1. Eligibility criteria in order to act as depositary of a UCITS

2. In accordance with the provisions applicable to UCITS under the 2010 Law, access to the function of depositary of a UCITS is reserved to credit institutions within the meaning of the 1993 Law which have their registered office in Luxembourg or to the Luxembourg branches of credit institutions which have their registered office in another Member State of the European Union[3].

3. These institutions can only accept to be appointed as the depositary of a UCITS if they possess, in addition to their authorisation as credit institution, a specific authorisation to act as depositary of a UCITS established in Luxembourg, this authorisation is granted by the CSSF in accordance with the provisions set out in Chapter 2. hereafter.

Chapter 2. Authorisation procedure in order to act as depositary of a UCITS

4. An institution which is eligible to act as a depositary of a UCITS in accordance with the applicable legal provisions (see Chapter 1. above) must submit a file requesting authorisation as depositary of a UCITS within the framework of the provisions of Article 129(2) of the 2010 Law.

5. Those institutions which have already been authorised as depositary of UCITS as of the date of the entry into force of the Circular are not required to apply for a new authorisation on the basis of the provisions below, but shall comply with the obligations described hereafter.

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[3] As clarified in the 2010 Law, the States that are contracting parties to the Agreement creating the European Economic Area other than the Member States of the European Union, within the limits set forth by this Agreement and related acts, are considered as equivalent to Member States of the European Union.

Sub-Chapter 2.1. Condition of professional experience and reputation of the person(s) responsible for the UCITS "depositary bank" business line of the credit institution

6. In order for an institution to obtain its authorisation as the depositary of a UCITS, its person(s) responsible for the UCITS "depositary bank" business line shall have the requisite reputation and experience, particularly having regard to the type of UCITS for which the credit institution intends to act as depositary. To this end, the identity of the person(s) responsible for the UCITS "depositary bank" business line, as well as that of every person succeeding them in their function, must be notified immediately to the CSSF.

As regards the condition of the requisite professional experience, the person(s) responsible for the UCITS "depositary bank" business line must have the proper professional experience by having already exercised similar activities in the field of a depositary of UCITS, or the depositary of UCIs other than UCITS with an investment policy with similar characteristics to those of UCITS for which the person(s) responsible intend(s) to act as person(s) responsible for the "depositary bank" business line, with a high level of responsibility and autonomy.

Sub-Chapter 2.2. Description of human and technical resources

7. The CSSF must receive a precise and detailed description of the organisation of the human and technical resources that the credit institution has at its disposal to perform all of the tasks related to the function of the depositary of a UCITS. This description must take into account the type of UCITS for which the credit institution intends to act as depositary, taking into particular account the investment policy that the UCITS concerned intend to pursue.

8. The information to be provided to the CSSF in an application for authorisation as depositary of a UCITS is set out in Annex 1 of this Circular. This list of information to be provided to the CSSF is not exhaustive. It may be supplemented by any other item deemed to be appropriate, given the characteristics of the file submitted to the CSSF.

9. The information to be provided has to permit the CSSF to assess whether there is sufficient substance in Luxembourg in view of the applicable legal and regulatory requirements. The analysis of the information will focus particularly on the operational model of the institution (or the model it plans to put in place) with a view to analysing the operational risks inherent in the model. Particular attention will be had, as the case may be, to aspects of the delegation of asset safekeeping functions, to aspects of outsourcing and to the monitoring procedures to be put in place by the institution in these areas, in the event that such delegation or outsourcing is envisaged from the time of the initial application for authorisation as a UCITS depositary. Regarding the provisions applicable to delegation and outsourcing, reference is made to points 11 to 16 of sub-chapter 2.3. below.

10. Any authorisation as depositary of a UCITS remains valid for so long as the elements on the basis of which it was granted remain unchanged. Any credit institution which acts as depositary of a UCITS is required to apply for approval from the CSSF for any fundamental change of the elements which formed the basis of its initial authorisation as depositary of a UCITS (including notably any possible change concerning the delegation and outsourcing aspects of a material activity) or in the case of a significant change to its operational model. The elements which appear

under Annex 1 of this Circular must be kept up-to-date and must be provided to the CSSF in accordance with the frequency indicated therein.

Sub-chapter 2.3. Specific provisions applicable to delegation and outsourcing

11. Any credit institution acting as UCITS depositary must comply with the provisions of this sub-chapter in the event of delegation and outsourcing.

12. The depositaries of UCITS shall ensure that the risk management policies and procedures and, as the case may be, the risk management function, correctly identify the risks associated with every delegation and outsourcing of a material activity. With regard to the risks which have been identified, the depositaries shall also ensure that efficient risk management and control systems, processes and mechanisms for these risks are in place.

13. Any delegation and any outsourcing by the depositary shall be documented by a contract between the depositary and its delegate or subcontractor according to the principles outlined in sub-chapter 2.2. of Chapter 2. of Part III. of this Circular. This contract shall confer a right of direct access of the CSSF to the premises of any entity responsible for carrying out a material outsourced activity.

14. Concerning the delegation of functions relating to the safekeeping of the assets of UCITS, the rules under Articles 18*bis*¸ 34*bis,* and 39 of the 2010 Law and Articles 15, 16 and 17 of the Delegated Regulation specify the conditions applicable to such a delegation. It should be noted that these delegates must appear on the list of delegates which is to be kept up-to-date and to be sent to the CSSF on an annual basis in accordance with point f) of Annex 1 of this Circular.

15. Any outsourcing by a depositary to external service providers shall be carried out in compliance with the principles outlined in sub-chapter 7.4 of Circular 12/552.

16. Any outsourcing of a material activity requires the prior authorisation of the CSSF. A notification to the CSSF, justifying compliance with the applicable conditions, particularly with regard to the 2010 Law, the Delegated Regulation and the principles outlined in sub-chapter 7.4 of Circular 12/552, is sufficient when the depositary uses a Luxembourg credit institution or a support professional of the financial sector (PFS) according to Articles 29-1, 29-2, 29-3 and 29-4 of the 1993 Law.

Chapter 3. The contract appointing the depositary (Chapter I of the Delegated Regulation)

17. The definitions and details of the written contract (contract appointing the depositary) to be established between the depositary, on the one hand, and the investment and/or management company on the other hand, are specified in Chapter 1 of the Delegated Regulation. Article 2.2 of the Delegated Regulation lists the items that this contract must at least include.

A single and unique depositary shall be appointed for each UCITS under the terms of Articles 17(1), 33(1) and 39 of the 2010 Law. For UCITS with multiple sub-funds, one and the same depositary shall be appointed for all of the sub-funds of the UCITS with multiple sub-funds.

With the entry into force of the contract appointing the depositary, the depositary is vested with the duties of a depositary of the UCITS with whom the contract has been concluded.

18. Every contract appointing the depositary is subject to the general principle of freedom of contract, subject to compliance with the applicable legal, regulatory and administrative provisions. Pursuant to Article 2.5 of the Delegated Regulation, the law applicable to the contract must be specified. In all cases the applicable law shall be Luxembourg law. It is also recommended to provide for between the contracting parties that any litigation shall be subject to the exclusive jurisdiction of the Luxembourg courts.

19. The depositary may, on the condition of specific contractual provisions, benefit from a general or specific pledge on the assets of the UCITS on deposit. The provisions concerning this general or special pledge must, as the case may be, specify the exceptions to this general or special pledge, either in the form of specific provisions in the contract appointing the depositary, or in the form of an amendment agreement to the contract appointing the depositary.

20. Any provisions concerning the pledge of the depositary shall specify the extent to which the depositary benefits from a right to use the assets pledged in its favour.

21. The parties may agree to a clause which permits the depositary to invoke a right of set-off between the various credit/debit balances of the accounts opened in its books on behalf of a UCITS or, as the case may be, on behalf of each of the different sub-funds of a UCITS with multiple sub-funds.

Part III. Clarifications relating to governance and organisation

Chapter 1. Conflicts of interest

22. Pursuant to Articles 20, 37 and 39 of the 2010 Law, the management and/or the investment company and the depositary of a UCITS shall act honestly, fairly, professionally and independently and act solely in the interests of the UCITS and its unitholders. These Articles in the 2010 Law clarify more specifically the requirement of independence between the depositary and the management and/or investment company. In this context it should be noted that the Delegated Regulation structures this requirement of independence with regard to an operational independence, as opposed to a legal or structural independence.

23. The obligation for the depositary to act honestly, fairly, professionally, independently and solely in the interest of the UCITS and its unitholders requires that the activity of depositary of a UCITS must be managed and organised in such a way as to minimise any potential conflicts of interest.

24. In order to avoid any risk of conflicts of interest, no delegation or sub-delegation of the principal function of investment management can be accepted by the depositary.

25. The prohibition in relation to the delegation or sub-delegation of the principal function of investment management also applies to any delegate and in general to any entity below a delegate in the custody chain of an asset. The prohibition according to which no mandate relating to the principal function of investment management can be given to a depositary or to a delegate and in

general to any entity below a delegate in the custody chain of an asset shall not prohibit the delegation of the principal function of investment management to an entity linked to the depositary by common management or control.

26. Neither the depositary nor one of the delegates to whom all or part of the assets of a given UCITS has been entrusted, can accept the delegation of the risk management function from the UCITS or from its management company. The depositary or a delegate may however be entrusted with the performance of certain tasks linked to the risk management function.

27. Subject to compliance with the rules set out in Articles 20(2), 37(2) and 39 of the 2010 Law, the credit institution acting as depositary of a UCITS may in particular act in the following capacities, on condition that, as the case may be, it benefits from the necessary authorisations:

a) agent for reception and transmission of orders relating to one or more financial instruments;

b) counterparty to the transactions carried out by UCITS in accordance with the provisions of Chapter 5 of the 2010 Law;

c) administrative agent and/or registrar agent;

d) collateral agent;

e) collateral manager;

f) tax or reporting service provider.

With regard to points c) to f) above, the depositary is required (i) to establish, implement and maintain operational an effective conflicts of interest policy, (ii) to establish a functional and hierarchical separation between the performance of its depositary functions of a UCITS and the performance of other tasks, (iii) to proceed with the identification as well as the management and adequate disclosure of potential conflicts of interest and (iv) where applicable, to put in place a contractual separation.

It should be noted that every institution should, where applicable, be able to provide proof of the adequate management of potential conflicts of interest, proof that can notably be provided by reference to the conflicts of interest policy put in place, in the case where all or part of the services other than that of depositary are provided to the UCITS by the legal entity of the depositary or by entities linked to the depositary by a common management or control.

28. In the application of the principles of CSSF Circular 12/546, a credit institution is permitted to be either a direct or an indirect shareholder of a management company when it is acting as depositary of UCI(TS) managed by that management company or to have a qualifying holding in such a management company. In the case of a qualifying holding, the management company must identify the conflicts of interest which could result from this holding and must strive to eliminate them in accordance with the procedures foreseen by the conflicts of interest policy of the management company. By analogy, the credit institution must in this case also establish a procedure relating to the policy and to the management of potential conflicts of interest.

29. The principle of the independence of the depositary in relation to a UCITS or to the management company of such UCITS as set out in CSSF Circular 12/546 also precludes the possibility of a director[4] of a UCITS within the meaning of Articles 27(1) or 102(1) and Article 129(5) of the 2010 Law or, as the case may be, of the management company, being employed by the depositary.

Chapter 2. Internal procedures and written procedures or contracts with external persons relating to the UCITS depositary function

30. The depositary shall establish internal written procedures relating to the acceptance and the performance of a contract appointing the depositary of a UCITS and establish written procedures or contracts with the external persons with whom the depositary is required to work in so far as the performance of each of its UCITS depositary mandates is concerned. "External persons" within the meaning of this chapter, shall mean all persons with whom a depositary will work in the performance of its duties as a UCITS depositary (i.e. those external persons who are not appointed by the depositary itself, such as, for example, the registrar agent of a UCITS, as well as those external persons who are appointed by the depositary itself, for example a delegate or a subcontractor of the depositary). The internal procedures must, alongside the procedure for the acceptance of the appointment as UCITS depositary, document the stages and the operational process relating to the performance of the contracts appointing the depositary, namely the performance of the different tasks linked to the depositary function at the level of the depositary itself. The written procedures or contracts with the external persons shall cover the organisation of any relationships with third parties with whom the depositary is required to work within the context of the provision of services of a UCITS depositary. These internal procedures and written procedures or contracts with external persons shall cover in an appropriate manner all of the aspects relating to the function of a UCITS depositary and take into account the specific characteristics of the UCITS for whom the credit institution is acting as depositary. The written procedures or contracts with the external persons may be established between the depositary and the external person directly, or may be covered by the written procedures or contracts between the UCITS and/or its management company and the external persons concerned.

31. It is the responsibility of the internal audit function or of the internal control department of the depositary to verify the existence and appropriateness of these internal procedures and written procedures or contracts with external persons as well as ensuring their periodic update and at least once a year. The internal audit function or the internal control department shall also verify the effective application of the internal procedures and written procedures or contracts with external persons. This requirement applies in particular to the internal procedures and written procedures or contracts with the delegates and subcontractors of the depositary.

Sub-Chapter 2.1. Internal procedures

32. The internal procedures which shall be established by the depositary must in particular:

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[4] d*irigeant.*

- describe in a general manner the type of UCITS (on the basis of the legal nature and the investment strategy and policy of the UCITS) for which the credit institution can and is disposed to act as depositary of a UCITS;

- ensure the implementation of a preliminary control, either through adequate procedures and/or an approval committee for the appointment as depositary of a UCITS, with the aim of ensuring that for any new appointment as the depositary of a UCITS, the credit institution identifies and examines, in relation to every UCITS, the specific characteristics of the UCITS, particularly in terms of operational and legal risks. Through this preliminary control, it shall be ensured that the credit institution accepts to act as depositary in full knowledge and having taken into account the risk profile and operational complexities of a given UCITS;

- indicate the person(s) responsible for the UCITS "depositary bank" business line;

- describe in a general manner how the depositary will perform its duty as depositary of a UCITS, taking into account the different types of UCITS in particular on the basis of their investment policy (a description of the general operational model) and the specific UCITS where the internal operational model for certain UCITS differs from that of the general operational model (description of the specific operational model for one or more UCITS);

- generally describe the human and technical resources put in place for the performance of the duties as depositary of a UCITS; and

- document in a detailed manner the due diligence criteria applied by the institution.

Sub-Chapter 2.2. Written procedures or contracts with external persons

33. In addition to the internal procedures, the depositary of a UCITS shall also establish written procedures (with the external persons who have not been appointed by the depositary itself such as, for example, the registrar agent of a UCITS) or contracts (with the external persons who have been appointed by the depositary itself, such as, for example, a delegate or a subcontractor of the depositary) with all the persons with whom the depositary is required to work in the performance of its duties as depositary of a UCITS. The implementation of these written procedures or contracts shall ensure that the operational stages of the interaction of the depositary with each given third party, which are necessary for the proper performance of the obligations linked to the depositary's mandate, are adequately documented. These written procedures or contracts may take the form of operating memoranda or service level agreements. These written procedures or contracts with external persons must in particular provide for a procedure with the administrative agent of the UCITS and, as the case may be, the registrar agent of the UCITS, the contracts and procedures to be put into place with the delegates as well as the contracts and procedures with the subcontractors of the depositary. The depositary must determine the external persons with whom it is necessary to establish such a procedure or contractual documentation and the form and the complexity of each of these.

34. The objective of the contracts and written procedures with the external persons to be established by the depositary as required in Chapter 2. is to document the operational procedure(s) between the depositary and the third parties, who, as the case may be, have been

formally appointed by the UCITS. In this regard, the requirement that the depositary must put in place contracts and written procedures with external persons is without prejudice to the obligation applicable to the UCITS to put in place a contract with each of the service providers who have been appointed by the UCITS.

Chapter 3. Organisational arrangements to be established in relation to the assets of a UCITS

Sub-chapter 3.1. Clarifications concerning the general aspects of the organisational provisions under the 2010 Law and the Delegated Regulation

35. The 2010 Law and the Delegated Regulation contain important provisions concerning the duties of the depositary, and in particular the organisational measures to be put in place by the depositary with regard to the assets of a UCITS. These provisions revolve primarily around (i) a division of assets into two categories, namely (a) the category of financial instruments that may be held in custody and b) the category of other assets (in which the sub-category of cash is to be distinguished), and (ii) a precise definition of the tasks to be accomplished by the depositary with regard to these categories and sub-categories of assets. This is how the 2010 Law and the Delegated Regulation define the organisational measures to be put in place with regard to the keeping of accounts and records (Articles 13, 16 and 17 of the Delegated Regulation), the segregation rules at the different levels of a custody chain (Articles 13, 16 and 17 of the Delegated Regulation), the rules concerning the delegation by the depositary of tasks linked to these assets (Articles 18*bis*, 34*bis*, and 39 of the 2010 Law and Articles 15 and 16 of the Delegated Regulation) and rules concerning cash monitoring (Articles 9 to 11 of the Delegated Regulation). These provisions are combined with a revised liability regime for the depositary according to the category of assets (Articles 19, 35 and 39 of the 2010 Law and Chapter 3 of the Delegated Regulation), with the obligation of restitution of lost financial instruments that may be held in custody as regards UCITS and unitholders and a more general liability regime based on negligence or intentional improper performance with regard to its other obligations under the 2010 Law.

36. It is recognised that the depositary may use the registers and accounts opened in its books for each UCITS or each sub-fund of a UCITS with multiple sub-funds, the registers and accounts opened in the accounting books of a UCITS with an administrative agent and extracts of accounts (e.g. the extracts of the collateral agent's statements) produced by third parties. At the level of the registers and accounts of the UCITS in the accounting books of the administrative agent, this requires that the depositary has access to the accounting data of the administrative agent which permits it to know at any moment the assets reflected in the books of the administrative agent for the account of the UCITS or for each of the sub-funds of the UCITS for UCITS with multiple sub-funds, and that the depositary performs due diligence on the administrative agent and/or on all of the third parties which are covered by the accounting system used and from which it can be concluded that a correct and exhaustive accounting of all of the assets has been carried out by the administrative agent and/or other third party or ensures that the review of the accounting system is subject to a control of type ISAE 3402/SSAE16. According to Articles 18(5), 34(4) and 39 of the 2010 Law, the depositary shall regularly provide the management company or the investment company with a full inventory of all the assets of the UCITS. The production of a comprehensive inventory/statement of all the asset positions of a UCITS or, as the case may be, of each of the sub-funds of a UCITS with multiple sub-funds in which the UCITS is invested, is mandatory in

relation to the end of the financial year of a UCITS in view of the audit of the annual accounts to be published by each UCITS.

37. The comprehensive inventory/statement of all the asset positions of a UCITS must include all guarantees or securities which belong to a UCITS or to a given sub-fund of a UCITS with multiple sub-funds.

Sub-chapter 3.2. The safekeeping of assets

38. The 2016 Law and the Delegated Regulation have also revised the depositary regime by introducing a new Community definition of the concept of safekeeping of assets. The concept of safekeeping is thus defined as the obligation of custody with regard to financial instruments that may be held in custody (Articles 18(4)(a), 34(3)(a) and 39 of the 2010 Law), as the requirement for record-keeping and ownership verification for the other assets (Articles 18(4)(b), 34(3)(b) and 39 of the 2010 Law) and as the obligation of cash flow monitoring (Articles 18(3), 34(2) and 39 of the 2010 Law. The Delegated Regulation clarifies the organisational measures which apply to the monitoring of financial flows (cash) in Articles 9 and 10, the safekeeping duties for financial instruments that may be held in custody in Article 13 and concerning the safekeeping duties regarding the ownership verification and record-keeping of other assets.

39. With reference to the assets which the depositary itself ensures the custody of, the depositary must open in its books, in the name of the UCITS, or as the case may be, in that of each of the sub-funds of a UCITS with multiple sub-funds, one or more accounts which record in the depositary's books all the assets which are owned by the UCITS and which it holds in custody.

40. The credit institution acting as depositary is also required to respect the rules provided for by Article 37-1(7) of the 1993 Law as well as the implementing measures contained in Articles 18 and 19 of the Grand-Ducal Regulation of 13 July 2007 relating to organisational requirements and to the rules of conduct in the financial sector. The depositary must account for the securities and other fungible financial instruments held on deposit or registered in an account separately from its own assets and off-balance sheet. With regard to the deposit of the assets of a UCITS with the depositary, the depositary and the UCITS may have recourse to a fiduciary contract between the depositary and the UCITS.

Sub-chapter 3.3. Organisational arrangements to be implemented in relation to assets held in custody by a delegate at the first level below the depositary

41. In the context of the depositary regime put in place by the 2016 Law and the Delegated Regulation, the use of delegates by the depositary qualifies technically as a delegation of the safekeeping of assets (Articles 18*bis*, 34*bis,* and 39 of the 2010 Law) according to the categorisation of assets established by these texts and the Delegated Regulation. It should be noted that according to Articles 18*bis*(2), 34*bis*(2) and 39 of the 2010 Law, the depositary must demonstrate that there is an objective reason for the delegation.

42. In case safekeeping is delegated, the depositary shall ensure in particular that an appropriate and documented due diligence procedure is implemented and applied according to the provisions of Articles 18*bis*(2), 34*bis*(2) and 39 of the 2010 Law and Article 15 of the Delegated Regulation.

43. The due diligence procedure must be re-examined regularly, at least once a year, and is to be made available to the CSSF upon request. It is the responsibility of the internal audit function or of the internal control department of the depositary to monitor the existence, periodic update and effective application of this procedure.

44. The applicable organisational measures shall be applied effectively at all times and shall not be considered as exhaustive, namely that they neither establish in detail the way in which a depositary shall exercise the necessary skill, care and diligence, nor fix all the measures to be taken by the depositary under the applicable regulatory provisions. It is for the depositary to adapt the criteria on the basis of which it fulfils its duties, particularly in terms of diligence, depending on particular situations that may present themselves, for example on the basis of the specific features applicable to the custody chain of a given asset or the specific features applicable to each of the delegates or specific rules applicable in the jurisdiction where the delegate is established, or possible exceptional circumstances which may present themselves.

45. With regard to the structuring of accounts with delegates, every account which is opened with a delegate may take the form of a distinct common account or "omnibus account", it being understood that separate omnibus accounts must be opened or maintained by the delegates for those assets belonging to the depositary's clients which are managed collectively (namely those UCITS and other UCIs subject to the 2010 Law, the 2004 Law and the 2007 Law). In addition, omnibus accounts opened with a delegate for one or several clients of the depositary which are subject to collective management cannot be used for the assets of the depositary's other clients which are not managed collectively nor for the depositary's own assets.

46. In the case where the legal, regulatory or administrative provisions applicable in an investment market dictate other rules and require that the accounts be opened in another manner to the rules described above, the accounts may be opened in accordance with the requirements of such investment market provided that these rules are not contrary to the provisions of the 2010 Law and of the Delegated Regulation. The depositary shall therefore take all measures required and necessary, insofar as the rules of the investment market in question permit, to ensure an effective control over the assets in question and to ensure insofar as possible, that the assets belonging to the depositary's UCITS clients are protected from any insolvency of the entity with which the assets are held in custody.

Sub-chapter 3.4. Organisational arrangements to be implemented at the level of the depositary in relation to those entities below the delegates in the custody chain of an asset

47. By analogy to the qualification of the use of delegates by the depositary as being a delegation of the safekeeping of assets (Articles 18*bis,* 34*bis* and 39 of the 2010 Law), the regime put in place by the 2016 Law and the Delegated Regulation with regard to the use of entities below the delegates in the custody chain qualifies as a sub-delegation of the safekeeping of assets (Articles 18(4), 34(3) and 39 of the 2010 Law and Articles 15.4, 16.2 and 17.4 of the Delegated Regulation. As is the case for delegation, there must be an objective reason for any sub-delegation.

48. The depositary shall ensure that each delegate applies at its level the rules relating to due diligence and segregation, by analogy, with regard to each entity immediately below this delegate.

49. The accounts opened or maintained with entities below the delegates in the custody chain of an asset may take the form of omnibus accounts. These omnibus accounts do not necessarily have to be either distinct omnibus accounts specific to the depositary's UCITS clients (or the depositary's clients whose assets are managed collectively), or distinct omnibus accounts specific to the depositary.

50. The depositary must, in relation to each delegate, benefit from the right of access to information as referred to in Chapter 4 below, to ensure that it can exercise its obligations relating to the assets of a UCITS. It is for the UCITS to ensure that the depositary benefits from such rights, in particular, in the case that the accounts in question are opened, or the registration is in the name of the UCITS or of a sub-fund of a UCITS. The existence and the means by which the depositary can exercise its rights must be documented in an appropriate manner.

Sub-chapter 3.5. Organisational arrangements to be implemented in relation to the assets of a UCITS which cannot be held in custody

51. On the basis of Articles 18(5), 34(4) and 39 of the 2010 Law, the depositary should at all times have a comprehensive overview of all of the assets of a UCITS, including other assets which includes all cash. These other assets are subject to the obligation to verify the ownership and record-keeping in light of the establishment of the comprehensive inventory/statement of all the asset positions as referred to in points 36 to 37. To achieve a sufficient level of certainty that the UCITS is indeed the owner of such an asset, the depositary must ensure that it receives all the information it deems necessary to be satisfied that the UCITS holds the ownership over this asset. If necessary, the depositary should request additional proof from the UCITS or, as the case may be, from a third party.

Sub-Chapter 3.6. Due diligence obligations with regard to the investment in a target UCI(TS) in which a given UCITS can invest

52. In terms of the due diligence obligations relating to an investment in a target UCI(TS) in which a given UCITS can invest, it is necessary to take into account the manner in which the UCITS proceeds to invest in a target UCI(TS), in particular how the registration of the investment is carried out by the issuer or its agent, for example a registrar or a transfer agent (see Sub-chapter 6.3.).

In applying this principle, the depositary is obliged to carry out the due diligence required on the basis of the criteria laid down in Article 15 of the Delegated Regulation where the investment in the target UCI(TS) is made through a specialised intermediary (other than the registrar of the target UCI(TS)) through which the investments in one or more target UCI(TS) are taken into account on behalf of the UCITS.

In the case where the investment in a target UCI(TS) is made directly with the target UCI(TS) or by an agent of the latter, for example a registrar or transfer agent of this target UCI(TS), the investment of the UCITS in this target UCI(TS) shall not give rise to specific due diligence obligations at the level of the depositary.

Sub-chapter 3.7. Accounting and adequate monitoring of financial flows

53. The depositary is required to ensure adequate monitoring of accounting and cash flows according to Articles 18(3), 34(2) and 39 of the 2010 Law and Articles 9 to 11 of the Delegated Regulation.

54. Where the depositary holds cash belonging to UCITS clients, the depositary must make adequate arrangements in order to ensure the preservation of the rights of its UCITS clients. The credit institution acting as depositary is, in this case, required to respect the rules under Article 37-1(8) of the 1993 Law as well as the implementing measures contained in Article 18 of the Grand Ducal Regulation of 13 July 2007 relating to organisational requirements and rules of conduct in the financial sector.

55. Concerning the deposit of cash of a UCITS with the depositary or with a third party, the depositary, the UCITS and/or, as the case may be, the third party may have recourse to the mechanism of a fiduciary contract.

56. The accounts opened in relation to the execution of issues (and redemptions) of units, in which the amounts to be received (or paid) by the UCITS are or will be received pending payment to the UCITS or, where applicable, to the unitholders (collection accounts), must be opened with the entities as defined in Articles 18(3)(b), 34(2)(b) and 39 of the 2010 Law.

Chapter 4. Right of access to information

57. The depositary must, at any time, have a right of access, as soon as possible, to all relevant information which the depositary needs to fulfil its legal obligations. The right of access to information must permit the depositary to have access to information which is available notably from a delegate, clearing broker, broker or registrar or transfer agent, which is necessary for the depositary as regards transactions and asset positions. The obligation to have a right of access to information is notably considered to be fulfilled when the depositary has a right to access the reporting system by means of access to a website (e.g. concerning positions in target UCITS held with the registrar agent or transfer agent of the target UCI(TS) or with regard to the assets of a UCITS held for all or part by the entity acting as broker, or concerning financial derivative instruments agreements).

58. In relation to guarantees and securities, this right of access to information must also exist as regards every entity with whom collateral given to a UCITS can be found, such as in particular every collateral agent (e.g. upon the transfer of legal ownership as guarantee to the UCITS in the books of a collateral manager acting as collateral agent, as against this collateral manager).

59. With regard more particularly to the safekeeping obligations of other assets, it should be noted that the depositary must also make sure that procedures are in place so that the registered assets can only be assigned, transferred, exchanged or delivered if the depositary itself or the third party to which the safekeeping has been delegated has been informed.

Chapter 5. Escalation procedure between the depositary and the UCITS and/or its management company (Articles 3.3 and 14.4 of the Delegated Regulation)

60. According to Articles 3.3, 6(b) and 14.4 of the Delegated Regulation, the depositary shall establish and implement one or more escalation procedures to be followed by the depositary in case of the detection of a potential discrepancy or irregularity which, without prejudice to the obligations applicable to the UCITS and/or its management company, notably provides for the notification to the UCITS and/or its management company and to the competent authorities if the situation cannot be rectified.

61. In a similar manner and without prejudice to the obligations applicable to the depositary, one or more escalation procedure(s) shall also be established and implemented by the UCITS and/or its management company regarding the procedures to be followed by the UCITS and/or its management company in case of the detection of a potential discrepancy or irregularity, which provides notably for the notification of the situation to the depositary and to the competent authorities if the situation cannot be clarified or rectified.

62. The escalation procedure(s) concerning the intervention of the depositary in relation to the UCITS shall identify the persons working for the UCITS whom the depositary must contact when it launches such a procedure and must provide for an obligation on the part of the UCITS to inform the depositary of the measures it has taken following an intervention by the depositary, as the case may be, to remedy a breach of the rules applicable to the UCITS. This or these procedure(s) must also provide that in the case that the UCITS fails to take appropriate measures within a reasonable period of time, the depositary must inform the CSSF thereof. These elements apply by analogy to the escalation procedure(s) concerning the intervention of the UCITS in relation to the depositary. This or these escalation procedure(s) shall form part of the contract appointing the depositary (the contract or its annexes). It is permissible for the contract appointing the depositary or its annexes to contain the principles of the escalation procedure(s) and for the details to be described in other more easily modifiable documents (such as for example, a service level agreement or an operating memorandum).

63. Any notification by or to the UCITS shall be made by or to the management company for those UCITS in contractual form (common funds). For UCITS in corporate form (investment companies) having appointed a management company, the notifications to a UCITS shall be made to the management company at the same time as they are made to the investment company. Notifications to self-managed investment companies shall be made by or to the investment company. Notifications to the depositary shall be performed by the UCITS or its management company, as the case may be.

Chapter 6. Specific organisational arrangements at the level of the depositary in view of the investment policy of the UCITS or the techniques that the UCITS employs

64. This chapter provides clarifications regarding certain specific situations which arise when a UCITS pursues an investment policy which requires the implementation of specific organisational arrangements at the level of the depositary, in order to guarantee, at any time, the protection of the interests of the unitholders of the UCITS.

Sub-chapter 6.1. Specific organisational arrangements with regard to guarantees or securities, including in the case of recourse to a collateral agent

65. Insofar as a UCITS has recourse to techniques or invests in instruments which give rise to guarantees or securities in the form of financial instruments or cash by one or the other party to a transaction, the depositary must be able to determine whether or not the collateral provided to or by a third party for the benefit of the UCITS is owned by the UCITS.

66. The assets of a UCITS which are given by the UCITS as a guarantee to a third party, or which are received as a guarantee by the UCITS from a third party, are safekept by the depositary for so long as such assets are owned by the UCITS. The custody of these assets may in this case be structured according to one of the following three plans: (1) the collateral taker is the depositary of the UCITS or is appointed by the latter or the UCITS as custodian of the collateralised assets of the UCITS; (2) the depositary of the UCITS appoints a delegate who acts on behalf of the collateral taker; or (3) the collateralised assets remain with the depositary of the UCITS and are indicated as collateralised in favour of the collateral taker.

67. In its assessment of whether or not the collateral given to a third party or by a third party for the benefit of the UCITS is owned by the UCITS, the depositary must take into account the legal nature, and/or the legal, regulatory or contractual provisions which are applicable to the transaction which gave rise to the establishment of this guarantee or security. The UCITS must ensure that the depositary receives all necessary information to this effect.

68. When a UCITS enters into transactions in OTC financial derivative instruments and has recourse to effective portfolio management techniques, it is necessary to take into account particularly the ESMA guidelines on ETFs and other UCITS issues, as implemented into the Luxembourg regulatory framework by CSSF Circular 14/592 concerning the financial guarantees received by a UCITS within the framework of these transactions or efficient portfolio management techniques and whose purpose it is to reduce counterparty risk, as well as Regulation EU 2015/2365 on transparency of securities financing transactions and of reuse.

69. Without prejudice to the responsibility of the UCITS in the matter, when guarantees or securities are put in place for the benefit of the UCITS (be it in the form of a transfer of the legal ownership or by means of a pledge), the depositary is.[5]

a) in the context of securities lending transactions, required to ensure that the securities to be received by the UCITS are received prior to or at the same time as the transfer of the securities lent and that at the end of the securities lending transaction, the security will be remitted at the same time or after the return of the securities lent and that the level of securities is adequate throughout the duration of the securities lending transaction;

b) obliged to verify that the securities to be received comply with the legal and regulatory provisions in force, taking into account particularly the rules contained in CSSF Circular 14/592.

[5] See CSSF Circular 08/356: Rules applicable to undertakings for collective investment when they employ certain techniques and instruments relating to transferable securities and money market instruments.

70. In the case where guarantees or securities are transferred by the UCITS or delivered to the UCITS by a counterparty to a collateral manager (who is also acting as collateral agent) or to a collateral agent and insofar as this is permitted in particular pursuant to CSSF Circular 14/592, a tripartite agreement between the UCITS, this collateral manager or collateral agent, as well as the depositary should be put in place. In this case the entity in charge of the management and administration of the guarantees and securities which the UCITS is required to give or receive (in principle the collateral manager) must ensure that an adequate level of guarantees and securities exists in the pool of assets which serve as guarantees and securities. The collateral manager must also ensure that any substitution of assets in this pool of guarantees and securities is carried out according to the rules defined by the parties within the framework of the agreement put in place. The depositary must, in this context, benefit from the right of access to information in accordance with points 57 to 59 of this Circular, and benefit from a real time and online access to a reporting tool of this collateral manager (who also acts as collateral agent) or of this collateral agent or to daily reports made available to the depositary by the collateral manager (who also acts as collateral agent) or of this collateral agent, concerning all the information which is necessary to allow the depositary to fulfil its obligations. Where this collateral manager or collateral agent can act as delegate of the depositary in relation to the safekeeping of assets of a UCITS, the depositary must benefit from a right of refusal concerning the choice and appointment of this collateral manager or collateral agent as far as the delegation of safekeeping of assets is concerned. It should be noted that this right of refusal of the depositary shall apply more generally to any third party appointed by the UCITS which, in the context of services provided to the UCITS, is vested with the safekeeping of the assets of that UCITS.

Sub-chapter 6.2. Organisational arrangements in the case that the UCITS invests in financial derivative instruments (financial derivative instruments dealt in on a regulated market or OTC financial derivative instruments)

71. In the case where a UCITS invests in financial derivative instruments, the UCITS must ensure that the depositary is able to monitor the following aspects with regard to the transactional aspect of an investment in a financial derivative instrument and in order to permit the depositary to exercise its legal obligations in relation to the safekeeping of the assets and its monitoring duties:

a) it must know all the positions of the UCITS in such financial derivative instruments, in particular in relation to the positions held with clearing brokers or with a central counterparty. In order to fulfil this obligation, it is notably permitted that the depositary may use the registers and accounts opened in the accounting books of the UCITS with its administrative agent, base itself on reconciliations carried out by the latter or use extracts of the accounts produced by third parties as specified under point 36 of this Circular (subject to the conditions enounced thereunder);

b) it must monitor on a daily basis the statements made with regard to initial margin deposits carried out by the UCITS with an intermediary (e.g. a broker) and the variation margin the context of financial derivative instruments dealt in on a regulated market or OTC financial derivative instruments. The depositary may notably, in this context, base itself on the broker statements received from the brokers involved in a given transaction or on reconciliations carried out by the administrative agent.

Sub-chapter 6.3. Organisational arrangements applicable with regard to investments by a UCITS in target UCI(TS)

72. Concerning the due diligence obligations relating to target UCI(TS) in which a UCITS has invested, reference is made to point 52 of this Circular.

73. As far as more specifically the registration of the investments of a UCITS in target UCI(TS) is concerned, it is possible that the registration of such investment with a target UCI(TS) or with an agent of the latter may be made directly in the name of the investing UCITS, provided that the national law of the target UCI(TS) does not require a different registration. The investment of a UCITS in a target UCI(TS) may also be registered in the name of the depositary with an indication that the assets belong to the clients of the depositary, in the name of the depositary with an indication of the name of the investing UCITS or the name of the sub-fund concerned in the case of a UCITS with multiple sub-funds or only in the name of the investing UCITS or of a sub-fund of the latter in the case of a UCITS with multiple compartments, this last option only being available where the national law of the target UCI(TS) permits or requires this. In the latter case, procedures must be established with the target UCI(TS) or the agent of the latter in order to ensure that the positions opened in the name of the investing UCITS cannot be assigned, transferred, exchanged or delivered unless the depositary has been informed in advance and the depositary has access without undue delay to those documents which evidence each transaction and each position. The provisions under this point also apply to UCITS which qualify as fund of funds or feeder funds within master-feeder structures.

Chapter 7. Organisational arrangements relating to reconciliations

74. It is the responsibility of the depositary of a UCITS to establish procedures which cover all of the reconciliations and reconciliation methods (including the reconciliations used by depositaries that have been carried out by third parties) to be put in place by the depositary in accordance with Articles 3.2, 10, 13.1.c) and 16.1.c) of the Delegated Regulation, to comply with its obligations concerning the assets of a UCITS, to effectively apply such procedures and to review such procedures periodically. These procedures must not only cover the details of the reconciliation processes to be established, but must also clarify the measures to be taken by the depositary in order to resolve any differences in the reconciliation within a reasonable period of time.

75. It is the responsibility of the internal audit function or of the internal control department of the depositary to monitor the existence, the regular update and effective application of these reconciliation procedures and to ensure the resolution within a reasonable period of time of any discrepancies in reconciliations identified.

76. Regarding the reconciliation procedures, particular attention must be paid to the following aspects:

a) the procedures to be established must cover all of the assets and transactions relating to the assets of the UCITS;

b) on the basis of the provisions of Articles 18(5), 34(4) and 39 of the 2010 Law, the depositary is obliged to produce a comprehensive inventory/ statement of all the asset positions of a UCITS (or as the case may be of each sub-fund of a UCITS with multiple sub-funds) in which the

UCITS is invested at the close of the financial year. This implies that any differences in reconciliation identified by the depositary or a third party are justified at the moment of the production of a comprehensive inventory/ statement of all the asset positions of a UCITS.

Chapter 8. Obligation to put in place a contingency plan

77. With the objective of ensuring the continuity of the activities of a depositary in case of events likely to interrupt the ability of the depositary to provide its depositary services with regard to its UCITS clients, every depositary must put in place a contingency plan.

78. The depositary shall develop a contingency plan with respect to each market in which the depositary appoints a third party to which safekeeping functions are delegated according to the rules laid down in Article 15.5 of the Delegated Regulation.

Part IV. Specific obligations of the depositary

Chapter 1. Obligations relating to the ongoing administration of assets

79. The depositary shall fulfil all operations concerning the ongoing administration of the assets of a UCITS in its custody.

80. This means that the depositary must in particular cash in dividends, interest and securities due, exercise rights over securities and, in general, carry out any other operations concerning the ongoing administration of securities and liquid assets belonging to the UCITS.

81. To the extent that the operations referred to above relate to assets which are not held in custody by the depositary itself, the latter may, on a contractual basis confer the performance thereof to delegates with whom the assets are effectively deposited. In such case, and in order to satisfy its oversight duty relating to the assets of the UCITS, the depositary must organise its relations with the delegates in such a manner that it is immediately informed of all operations which these delegates carry out in the context of the ongoing administration of the assets that they have on deposit.

Chapter 2. Oversight and control duties

82. The depositary is vested with oversight and control duties on the basis of Articles 18(2), 34(1) and 39 of the 2010 Law and Articles 3 to 8 of the Delegated Regulation. The changes introduced by the 2016 Law and the Delegated Regulation are relatively limited, and mainly revolve around the fact that the 5 types of oversight duties are carried out with regard to all the UCITS, whatever their legal structure and the clarifications provided in the Delegated Regulation on the tasks to be fulfilled by the depositary in order to be discharged from its obligations with regard to its oversight duties. Regarding these oversight and control duties, it is the responsibility of the internal audit function or of the internal control department of the institution acting as depositary to control the existence, periodic update and effective application of the procedures connected with the control duties.

Part V. Information obligations of the depositary applicable to the UCITS

83. In accordance with Articles 3.4, 9.3 and 14.1 of the Delegated Regulation, the UCITS shall ensure that the depositary has access, without undue delay, upon its appointment and on an ongoing basis, to all relevant information which it needs to comply with its obligations in relation to the depositary activity for a given UCITS.

84. Where the home Member State of the management company of a UCITS is not the Grand Duchy of Luxembourg, the depositary shall sign a written agreement with this management company regulating the flow of information deemed necessary to allow it to perform its functions, particularly in relation to the safekeeping of the assets and in relation to monitoring and in general in relation to legislative, regulatory or administrative provisions applicable to the depositary.

85. The parties to the contract appointing the depositary may agree to transmit electronically all or part of the information which is to be communicated.

Part VI. Information obligations applicable to the depositary vis-à-vis the UCITS

86. In order to ensure that every UCITS is informed of any element affecting the assets of a UCITS which is known to or comes to the attention of the depositary in the exercise of its functions, the depositary shall ensure that the UCITS, or, as the case may be, its management company, is informed without undue delay of any element relating to the assets of the UCITS, to the extent that the depositary has knowledge of it, and in particular concerning all events affecting the life of the assets.

87. The information obligations applicable to the depositary *vis-à-vis* the UCITS are to be read in conjunction with the obligations applicable under the escalation procedure in accordance with Chapter 5. of Part III. of this Circular.

Part VII. Information obligations of the depositary vis-à-vis the authorities

88. The depositary is required to provide the CSSF, upon request, with all the information which the depositary has obtained in the performance of its functions and which may be necessary to permit the CSSF to supervise the compliance with the laws and regulations applicable to the depositary as well as to UCITS for which the credit institution acts as depositary.

89. If the CSSF is not the competent authority for the supervision of the management company of the UCITS, it shall communicate the information received to the respective competent authorities.

90. In the context of the escalation procedure to be implemented on the basis of Chapter 5. of Part III. of this Circular, the depositary may be required to notify the CSSF of any event disclosed/notified by the depositary to the UCITS in the context of this escalation procedure, when the UCITS has failed to take adequate measures within a reasonable period of time.

Part VIII. Specific provisions where a contract appointing a depositary is terminated during the life of the UCITS

91. Where a contract appointing a depositary is terminated during the life of a UCITS without a new contract appointing a depositary being in place and in force at the end of the notice period applicable to a termination, it is necessary to ensure that the assets of the UCITS are subject to an adequate safekeeping, according to the nature of these assets, in the interests of the UCITS and its unitholders (safekeeping measures). These safekeeping measures are generally necessary in the event of the liquidation of a UCITS and/or in case there is no longer an appointed depositary. It is the responsibility of each UCITS to inform the CSSF of all cases where measures for the safekeeping of the UCITS' assets have to be put in place.

92. As regards this function of safekeeping the assets of a UCITS in liquidation or without a depositary, the credit institution that last acted as depositary is responsible for keeping open all the securities and cash accounts for the different assets of that UCITS which are held in custody by this institution at the moment of the removal or withdrawal of the UCITS and until the appointment of a new depositary or until the closure of the liquidation of the UCITS.

Entry into force and miscellaneous provisions

93. This Circular shall enter into force on 13 October 2016.

94. CSSF Circular 14/587, as amended by CSSF Circular 15/608, is repealed and replaced by this Circular with effect from the date stated in point 93.

95. Chapter E ("Rules relating to the depositary of a Luxembourg UCI") of IML Circular 91/75 of 21 January 1991 no longer applies to UCITS.

Annex 1.[6] List of information concerning the functions of a UCITS depositary which must be kept up-to-date and sent to the CSSF on a punctual, periodic or annual basis[7] (see the points below)

In accordance with the provisions of this Circular, the information listed below must be kept up-to-date and provided to the CSSF on a punctual, periodic or annual basis:

a) name and title of the directors of the depositary, and, where applicable, the person(s) responsible for the "depositary" business line (at the time of the appointment of the person(s) responsible)), if there are several persons in charge, please indicate the reasons for and the decision-making process;

b) internal organisation chart of the institution, in particular of the services involved in the context of the depositary function of the type of fund concerned for the purpose of monitoring the sufficiency and adequacy of the structures necessary for the performance of the general and specific duties (on an annual basis), if the institution also acts in the context of the central administration function, please specify the services concerned and indicate the tasks performed by each of the services mentioned;

c) the number of employees hired to ensure the depositary function of the type of funds concerned (on an annual basis), please indicate the number of full-time equivalent employees by department or service;

d) CV(s) of the person(s) responsible for the “depositary" business line (at the time of the appointment of the person(s) responsible), please specify the date of entry into service, professional experience, education, date and place of birth of the persons concerned;

e) information on the technical resources (of the unit in charge of the depositary function within the credit institution, including a description of the IT system (hardware and software) used) (on an annual basis);

f) a list of delegates appointed by the depositary for the safekeeping of financial instruments that may be held in custody (on an annual basis), and a list of prime brokers or collateral agents; or information on the website on which such up-to-date lists are available;

g) a list of sub-contractors assisting the depositary in its duties and a description of the links with these subcontractors, the operating mode of the depositary and the interaction with the delegates and subcontractors shall be explained, where appropriate, on the basis of one or more diagrams (on an annual basis);

h) a list of the agents, description of the possible group relationship with the administrative agent and, if different, the registrar agent, if the administrative agent/registrar agent is the same legal entity as the depositary, a description of the elements ensuring the required

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6 CSSF Circular 18/697.

7 The annual information must be sent no later than 2 months after the closure of the financial statements of the depositary.

functional and hierarchical separation, as indicated under point b) in annex 1 (on an annual basis);

i) written confirmation signed by the person responsible for the “depositary" business line that the contracts appointing the depositary include all the different elements that must be covered under the applicable legislation depending on the type of fund concerned;

j) a list of procedures with an indication of the topic covered and the date of the last update covering the various aspects of the depositary function of the type of fund concerned (on an annual basis);

k) a description of the types of funds (depending on their legal form as well as their investment policy) for which the depositary intends to accept to act as a depositary (on an annual basis).

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