

(4) A depositary shall keep its records up to date.

(5) Schedule II applies in respect of the obligations of a depositary under this paragraph.

**Depositaries: general compliance**

31 (1) A depositary of an AIF, or an AIFM acting on behalf of an AIF, shall ensure that—

(a) the following requirements are fulfilled in accordance with these Rules, the constitution, the prospectus of the AIF, and the law of the jurisdiction where the AIF is authorised or established—

(i) the sale, issue, re-purchase, redemption and cancellation of units or shares of the AIF are carried out;

(ii) the values of the units or shares of the AIF are calculated;

(iii) the instructions of the AIFM are carried out, unless there is a conflict with these Rules, the constitution, the prospectus, or the law of the jurisdiction where the AIF is authorised or established;

(b) in transactions involving the AIF’s assets, any consideration is remitted to the AIF without delay;

(c) an AIF’s income is applied in accordance with these Rules, the constitution, the prospectus, and the law of the jurisdiction where the AIF is authorised or established.

(2) Schedule II applies in respect of the obligations of a depositary under this paragraph.

**Depositary: delegation of functions**

32 (1) A depositary shall not delegate its functions, with the exception of those relating to safe-keeping of assets.

(2) If a depositary delegates any of the activities outlined in paragraphs 29 and 30 of these Rules, the following conditions shall apply—

(a) the depositary shall not delegate any functions to an undertaking if the purpose of the delegation is to enable it to avoid compliance with its obligations under these Rules;

(b) there are objective reasons for the delegation;

(c) the depositary has exercised all due skill, care and diligence in the selection and appointment of the delegate, and continues to exercise all due skill, care and diligence in the periodic review and ongoing monitoring of any delegate to whom it has delegated parts of its tasks, and of the arrangements of the delegate in respect of the matters delegated to it; and

(d) the depositary ensures that the delegate, at all times during the performance of the delegated tasks, satisfies the conditions of subparagraph (3).

(3) The conditions referred to in subparagraph (2) are—

(a) the delegate has the structure and the expertise that are adequate and proportionate to the nature and complexity of the assets of the AIF, or of the AIFM acting on behalf of the AIF, which have been entrusted to it;

(b) in relation to custody tasks referred to in paragraphs 29 and 30, the delegate is subject to effective prudential regulation, including minimum capital requirements, and supervision in the jurisdiction concerned, and the delegate is subject to an external periodic audit to ensure that the financial instruments are in its possession;

(c) the delegate segregates the assets of the depositary’s clients from its own assets and from the assets of the depositary in such a way that they can, at all times, be clearly identified as belonging to clients of a particular depositary;

(d) the delegate does not make use of the assets without the prior consent of the AIF, or the AIFM acting on behalf of the AIF, and prior notification to the depositary; and

(e) the delegate complies with the general obligations and prohibitions set out in paragraphs 27, 29, 30 and 31.

(4) A delegate to whom functions have been delegated under this paragraph may sub-delegate any or all of the delegated functions to a sub-delegate and, in such a case, the requirements of this paragraph apply mutatis mutandis to the sub-delegate.

(5) Where the law of the jurisdiction where the AIF is authorised or established requires that assets be held in the custody of a local entity and no local entity satisfies the requirements of subparagraph (3)(c), the depositary may delegate the custody of such financial instruments to such a local entity only to the extent required by the law of that jurisdiction and only for as long as there are no local parties that satisfy the delegation requirement but subject to the requirements specified in subparagraph (6).

(6) The requirements referred to in subparagraph (5) are—

(a) the investors of the relevant AIF must be duly informed that such delegation is required owing to legal constraints under the law of the jurisdiction where the relevant AIF is authorised or established, and of the circumstances justifying its delegation prior to their investment; and

(b) the AIF, or AIFM on behalf of the AIF, must instruct the depositary to delegate the custody of such financial instruments to such local entity.

(7) Schedule II applies in respect of the obligations of a depositary under this paragraph.

**Depositary liability for loss of financial instrument**

33 (1) This paragraph applies where a financial instrument, held in custody in accordance with these Rules by a depositary, delegate, or sub-delegate, is lost.

(2) Subject to subparagraphs (3) and (4), where a financial instrument has been lost, the depositary must return a financial instrument of identical type or the corresponding amount to the AIF, or the AIFM acting on behalf of the AIF, without undue delay.

(3) The depositary is not required to comply with the obligations in subparagraph (2) if it can prove that the loss occurred owing to an external event beyond the depositary’s reasonable control.

(4) In the case of the loss of a financial instrument held in custody by a delegate, the depositary is not required to comply with the obligation in subparagraph (2) if—

(a) the conditions around delegation of custody were met in accordance with these Rules;

(b) a written contract between a depositary and the delegate expressly transfers the liability of the depositary to that third party and makes it possible for the AIF, or the AIFM acting on behalf of the AIF, to make a claim against the delegate in respect of the loss of financial instruments or for the depositary to make such a claim on their behalf; and

(c) a written contract between the depositary and the AIF, or the AIFM acting on behalf of the AIF, expressly discharges the depositary of their liability and establishes an objective reason for such discharge.

(5) Irrespective of any contractual arrangements that provide otherwise, the obligation of the depositary under subparagraph (2) or any liability of the depositary under subparagraph (4)(b) is not affected by any delegation or sub-delegation under these Rules.

(6) Schedule II applies in respect of the obligations of a depositary under this paragraph.

**Depositary liability for other losses**

34 (1) If an AIF, or investors of an AIF, have suffered losses other than the loss referred to in paragraph 33, the depositary is liable to the AIF, or investors of the AIF, if the losses are a result of the depositary’s negligent or intentional failure to comply with a provision that applies to it.

(2) Irrespective of any contractual arrangements that provide otherwise, any liability of the depositary to the AIF, or to investors of the AIF, under subparagraph (1) is not affected by any delegation by the depositary of its functions.

(3) Schedule II applies in respect of the liabilities of a depositary as set out under this paragraph.

**Liability and overseas depositaries**

35 (1) This paragraph applies where—

(a) the law of the jurisdiction where the AIF is authorised or established requires certain financial instruments to be in held custody by a local entity; and

(b) there is no local entity that satisfies the delegation requirements in these Rules.

(2) The depositary is not liable for a failure to comply with the obligation under paragraph 33(2), provided that the following conditions are met—

(a) the constitutional instruments of the AIF concerned expressly allow for a discharge of the obligation;

(b) the investors of the AIF were informed of the discharge and of the circumstances

justifying it prior to their investment;

(c) the AIF, or the AIFM on behalf of the AIF, instructed the depositary to delegate the custody of the financial instruments to a local entity;

(d) a written contract between the depositary and the AIF, or the AIFM acting on behalf of the AIF, expressly allows for such a discharge; and

(e) a written contract between the depositary and the local entity expressly transfers the depositary’s liability to the third party making it possible for the AIF, or the AIFM acting on behalf of the AIF, to make a claim against the local entity with regards to loss of financial instruments or the depositary to make such a claim on their behalf.

*Transparency requirements*

**Annual report**

36 (1) An AIFM shall, in such form that the Authority may require, for each AIF that it manages and markets, prepare an annual report (the “annual report”) for each financial year which shall be submitted to the Authority no later than 6 months following the end of the relevant financial year of the AIF.

(2) The annual report shall, where applicable, be submitted to the competent authority of the jurisdiction where the AIF is authorised or established.

(3) The annual report shall be provided to investors of the relevant AIF upon request made to the AIFM.

(4) The AIFM shall ensure that the information provided in the annual report is presented in a form that provides materially relevant, reliable, comparable and clear information relating to each AIF.

(5) The annual report must contain all information investors require in relation to AIF structures managed by the AIFM.

(6) In addition to the information required in subparagraph (5), the annual report shall comprise—

(a) a balance-sheet or a statement of assets and liabilities;

(b) an income and expenditure account for the financial year;

(c) a report on the activities of the financial year;

(d) written confirmation of any material changes in the information required to be disclosed to investors of the AIF by these Rules during the financial year covered by the report;

(e) written confirmation of the total amount of remuneration for the financial year, divided into fixed and variable remuneration, paid by the AIFM to its staff, and number of beneficiaries, and, where relevant, carried interest paid by the AIF;

(f) a description of the aggregate amount of remuneration broken down by senior management and members of staff of the AIFM whose actions have a material impact on the risk profile of the AIF.

(7) The accounting information provided in the annual report must be prepared in accordance with the accounting standards set out in subparagraph (8) in the case of a Bermuda authorised or established AIF, or prepared in accordance with the requirements of the jurisdiction where the AIF is authorised or established.

(8) The standards referred to in subparagraph (7) are—

(a) Intentional Financial Reporting Standards (“IFRS”);

(b) generally accepted accounting principles (“GAAP”) that apply in Bermuda, Canada, the United Kingdom or the United States of America; or

(c) such other GAAP as the Authority may recognise.

(9) The accounting information provided in the annual report is required to be audited by one or more persons authorised in accordance with the law of the jurisdiction where the AIF is authorised or established.

(10) Every person authorised to provide accounting information in accordance with subparagraph (9) shall also provide a written report (the “auditor’s report”) to the AIFM prior to the submission of the annual report by the AIFM to the Authority.

(11) The auditor’s report required in accordance with subparagraph (10), which shall include any qualifications made by the auditor, must be reproduced in full in the annual report.